

THE LAW OF UKRAINE

ON THE DISTRIBUTION OF COPIES OF AUDIOVISUAL WORKS, PHONOGRAMS, VIDEOGRAMS, COMPUTER PROGRAMS, DATABASES

*As amended and supplemented by
the Law of Ukraine No. 2122-III of December 7, 2000,
the Criminal Code of Ukraine No. 2341-III of April 5, 2001,
the Law of Ukraine No. 1098-IV of July 10, 2003
(the present Law was set out in the new wording according to the Law of Ukraine
No. 1098-IV of July 10, 2003)*

*Additionally, see the Ruling of the Constitutional Court of Ukraine No. 49-“y”/2004 of
June 3, 2004*

This Law provides the legal foundations for the distribution of copies of audiovisual works, phonograms, videograms, computer programs, databases and is directed at the protection of interests of subjects of copyrights and related rights and protection of consumers' rights.

Article 1. The scope of the Law

The force of this Law applies to relations arising in the process of distribution of audiovisual works, phonograms, videograms, computer programs, databases.

Article 2. Definition of terms

In this Law, the terms are used in the following meaning:

Audiovisual work is a work that is fixed on a certain tangible medium (film, magnetic tape or magnetic disc, disc for laser reading systems and so on) in the form of a series of consecutive shots (images) or analog or discrete signals, which represent (encode) moving images (either with accompanying sound or without it), and perception of which is solely possible with the help of a certain type of screen (cinema screen, television screen, etc.), on which moving images are represented visually with the help of certain technical means. The types of audiovisual works are: motion pictures, television film, video films, diapositive film strips, slide films, etc., which can be fiction films, animated films (animated cartoon films), non-fiction films, etc.;

Database (compilation of data) is a totality of works, data of any other independent information in an arbitrary form, including electronic one, a selection and arrangement of components of which and putting in good order of which is a result of creative work, the components of which are accessible individually and can be found with the help of a special searching system on the basis of electronic means (a computer) or other means.;

Videogram is a video record of performance or any moving images (either with accompanying sound or without it) on a respective tangible medium (magnetic tape, magnetic disc, disc for laser reading systems, etc.), except for images in the form of a record that is a part of audiovisual work. A videogram is a source material for manufacturing of its copies;

Reproduction of copies is the manufacturing of one or more copies of audiovisual work, phonogram, videogram, computer program, database in any tangible form, as well as recording of them for temporary or permanent storage in the electronic (including digital), optical or other form, readable by a machine;

Reproducer is a legal entity or natural person, who ordered a reproduction or carried out reproduction independently with the equipment that it owns or possesses or uses;

Vinyl disc is a disc, which is manufactured from synthetic materials and on the surface of which grooves (tracks) with a record of sound are located by spiral;

Importer of copies is a Ukrainian subject of entrepreneurial activity who has conducted a purchase (including that with payment in a non-monetary form) of copies of audiovisual works, phonogram, videogram, computer program, database from a foreign subject of entrepreneurial activity with or without importing them into the customs territory of Ukraine;

Exporter of copies is a Ukrainian subject of entrepreneurial activity who has conducted a sale (including that with payment in a non-monetary form) of copies of audiovisual works, phonogram, videogram, computer program, database from a foreign subject of entrepreneurial activity with or without exporting them from the customs territory of Ukraine;

Computer program is a set of statements or instructions in the form of words, figures, codes, schemes, symbols or in any other form, expressed in a form, suitable for reading it by a computer, that put it in action to achieve a certain goal or result (this term covers both operating system and applied program, expressed in a source or object code);

Control mark is a special sign indicating the observance of copyright and (or) related rights, and provides the right to distribute copies of audiovisual works, phonograms, videograms, computer programs, databases. The control mark is a self-adhesive sign of single use, with the outer side thereof having a special holographic protection;

Marking with control marks is marking of copies of audiovisual works, phonograms, videograms, computer programs, databases by means of gluing of control marks on their packages;

Copy of a audiovisual work, phonogram, videogram, computer program, database is a copy of audiovisual work, phonogram, videogram, computer program, database on a respective tangible medium that has been conducted directly or indirectly from this audiovisual work, phonogram, videogram, computer program, database and contains all moving images, recorded in the audiovisual work, phonogram, videogram, computer program, database, or their part (either with accompanying sound or without it);

Copy of phonogram is a copy of phonogram on a respective tangible carrier that has been conducted directly or indirectly from this phonogram and contains all sounds, recorded in the phonogram, or their part;

Copy of videogram is a copy of videogram on a respective tangible carrier that has been conducted directly or indirectly from this videogram and contains all moving images, recorded in the videogram, or their part (either with accompanying sound or without it);

Distribution of copies of audiovisual works, phonograms, videograms, computer programs, databases is the putting into circulation of copies of audiovisual works, phonograms, videograms, computer programs, databases by means of their sales or other transfer of ownership to them;

Subject of proprietary copyrights and (or) related rights is a physical person or legal entity that is legally entitled to proprietary copyrights and (or) related rights to audiovisual works, phonograms, videograms, computer programs, databases;

The Institution is the central body of executive power in the sphere of intellectual property;

Phonogram is a sound recording of performance or any other sounds, except for sounds in the form of a record that is a part of an audiovisual work, on a respective tangible carrier (magnetic tape or magnetic disc, gramophone records, discs for laser reading system). A phonogram is a source material for manufacturing of its copies.

Article 3. Conditions of distribution of copies of audiovisual works, phonograms, videograms, computer programs, databases

Distribution of copies of audiovisual works, phonograms, videograms, computer programs, databases on the territory of Ukraine, as well as leasing of them, is only permitted subject to their marking with control marks.

Article 4. Right for the acquisition of control marks

1. The right for the acquisition of control marks belongs to importers, exporters and reproducers of audiovisual works, phonograms, videograms, computer programs, databases.

2. Control marks shall be issued by the Institution. Any intermediary activity related to the acquisition and distribution of control marks is prohibited.

Article 5. Procedure for the acquisition of control marks

1. To obtain control marks, persons listed in part one of this Law (hereinafter referred to as applicants) shall submit the following documents to the Institution:

- the application in the prescribed form,
- a copy of the statute, articles of incorporation (in cases, specified by legislation) – for legal entities,
- a copy of the certificate of state registration of a subject of entrepreneurial activity,

- a copy of the certificate of inclusion into the Unified State Register of Enterprises and Organizations of Ukraine (for legal entities) or that of the certificate of assigning the identification code (for physical persons),
- a list of names of copies of audiovisual works, phonograms, videograms, computer programs, databases in the prescribed form with indication of the works, fixed on this copies (in a language that is used for an original of respective copy),
- a copy of the State Certificate of the Right to Distribute and Display Audiovisual Works – Films,
- a copy of the agreement about the transfer (alienation) of proprietary rights of authors and (or) subjects of related rights or agreements about the transfer of the rights for use of audiovisual works, phonograms, videograms, computer programs, databases by means of their reproduction and distribution of copies, starting from the agreement, under which proprietary rights of authors and (or) subjects of related rights or the right to use are transferred from primary subjects of the Ukrainian law and (or) related rights (in case of origination of such rights on the territory of Ukraine). The applicant shall submit copies of the agreements, mentioned above, as well as an original copy of the agreement, under which proprietary rights of authors and (or) subjects of related rights to or the right to use of audiovisual works, , phonograms, videograms, computer programs, databases are transferred directly to the applicant. Agreements compiled in a foreign language shall be accompanied by translations into Ukrainian, certified in the established order.
- a copy of the License for conducting economic activity in the field of holographic protective elements.

2. An application and copies of the documents, mentioned in part one of this Article, shall be verified: for a legal entity – by signature of an official of the applicant, to which a seal shall be attached; for a natural person – by a personal signature.

3. The originals of the agreement, mentioned in paragraph seven of part one of this Article shall be returned to the applicants together with a written resolution either to issue control marks or to refuse to issue such control marks.

It is prohibited to demand from the applicant to present any documents or information not specified in part one of this Article.

4. An applicant is responsible for the authenticity of the documents, submitted for the acquisition of control marks.

5. The application for the acquisition of control marks shall include: date of the application, the number of audiovisual work, phonograms, videograms, computer programs, databases, the right for reproduction and distribution of which is transferred by the agreements, the number of control marks, necessary for the applicant to mark the copies.

6. The Institution shall give a written resolution either to issue control marks or to refuse to issue such control marks within three working days from the date of the receipt of the application.

7. The only basis for refusal to issue control marks shall be:

- submission by the applicant of an incomplete set of documents, specified in part one of this Article,
- submission by the applicant of documents for the acquisition of control marks that contain inaccurate information,
- violation by the applicant of the rights of subjects of copyright and (or) related rights.

The resolution to refuse control marks may be appealed according to the procedure established by the legislation in force.

9. Information about the applicant who applies for control marks for the first time, and who is permitted to obtain them, is registered by the specially designated government authority. The following information should also be included in the Register:

- information about the applicant,
- the number of the application for the acquisition of control marks,
- the quantity of the issued marks and their numbers, series and data about their acquisition.

The applicant shall receive its registration number. The date of the applicant's registration in the Register and its register number shall be included in the written decision concerning the issue of the control marks. The applicant's non-registration in the Register does not deprive him of the right to obtain control marks during the period determined by this Law and to utilize the acquired marks. The Cabinet of Ministers of Ukraine shall establish the procedure for the maintenance of the Register. It is prohibited to require from the applicant documents and information not stipulated in this article.

The applicant submits to the specially designated authority a copy of the document evidencing payment, which contains a note by the banking institution of receiving the sum equal to the cost of the control marks payable to the State Budget of Ukraine, and receives the control mark on the same day.

Further applications for the acquisition of control marks by the same applicant do not require the submission of documents referred to in paragraphs three, four and five of this article.

Article 6. Series of control marks and procedure for production thereof

Each control mark shall have its own series and number.

The following series of control marks are established:

“A” – for copies of phonograms in the form of magnetic carriers and vinyl discs;

“B” - for copies of audiovisual works and videograms in the form of magnetic carriers and films;

“K” – for copies of audiovisual works, phonograms, videograms, computer programs, databases in the form of optical carriers.

Control marks are produced at the request of the specially designated government authority on copyright and related rights (referred to hereinafter as a specially designated government authority) pursuant to procedure prescribed by legislation.

Article 7. Payment for the acquisition of control marks

For each control mark the applicant shall pay a sum equal to one per cent from the non-taxable income of citizens.

It is prohibited to impose upon and require from the applicant any other payment for the acquisition and use of control marks.

Payments received from the sale of control marks go to the State Budget of Ukraine.

Article 8. Marking with control marks

1. Each package of the audiovisual work or phonogram copy is marked with one control mark. If the package, being an indispensable part of the product, comprises several copies, it is marked with one control mark.

Copies consisting of short pieces consisting of audiovisual works or phonogram records or of pieces of several audiovisual works or phonogram records are not marked with the control mark if the record is made with the aim of advertising these audiovisual works or phonograms.

Audiovisual work or phonogram copies that are personal by their character (family holidays, etc.), are reproduced in order to distribute it among the participants of these events, these copies of audiovisual works or phonograms are not marked with control marks.

The copies of the audiovisual works or phonograms marked with control marks do not give the right to public performance or public demonstration of the audiovisual works and phonograms recorded thereof.

Copies of audiovisual works or phonograms are not marked if they are manufactured by subjects of entrepreneurial activity who independently reproduce them with the equipment that it owns or possesses or uses (referred to hereinafter as the performer), at the order of another person, residents or non-residents of Ukraine (hereinafter – the customer), and copies manufactured by it are transferred to customers with all of the following conditions being met:

- the performer produces copies of audiovisual works and phonograms at the order of the other subject of entrepreneurial activity;

- the order is fulfilled on the basis of a contract (order) agreement and the performer uses primary materials, their components and raw materials, which are the property of the customer or fully paid for by the customer;
- matrixes (stampers, R-DAT, Betacam SP, U-MATIC SP cassettes, etc.), other primary materials, including those transmitted by the electronic means, used in the production of copies of audiovisual works and phonograms, are the property of the customer, notwithstanding whether such matrixes or other primary materials are transmitted by the customer or produced by the performer within the scope of the order;
- copies of audiovisual works and phonograms produced at the order are passed by the performer to the customer in full are not used by the performer of the order for sale as its own product;
- copyright and related rights to copies of audiovisual works and phonograms belong to the customer, and are not passed to the performer of the order;
- property rights to copies of audiovisual works and phonograms belong to the customer who is responsible for using the copyright and related rights to these copies of audiovisual works and phonograms before the third parties;
- copies of audiovisual works and phonograms produced at the order of other persons are brought out of the customs territory of Ukraine and there are legal grounds for such export (foreign trade contracts, agreements, etc.) and they are not distributed in the territory of Ukraine;
- copies of audiovisual works and phonograms produced at the order of other persons are brought out of the customs territory of Ukraine without transferring the rights of possession or use to any third party (the rule does not apply to dispatching transport organizations receiving such goods for carriage).

Customer and performer have solid responsibility for violation of copyright or related rights of third parties. The agreement between the customer and the performer shall establish the procedure of distribution of such responsibility among them.

Copies of audiovisual works or phonograms transited though the territory of Ukraine are not subject to marking with control marks.

Article 9. Storage in the territory of Ukraine and transportation within this territory of copies of audiovisual works or phonograms whose packages do not bear control marks

Only reproducers or importers may store in the territory of Ukraine and transport within this territory copies of audiovisual works or phonograms whose packages do not bear control marks.

Copies of audiovisual works or phonograms whose packages do not bear control marks may only be transported for the purpose of storage thereof in the warehouses belonging to any subject of entrepreneurial activity referred to in the first part of this article.

Audiovisual works or phonograms whose packages do not bear control marks may not be transported in the customs territory of Ukraine for other purposes. The only exception to this rule is contained in Article 10 of this Law.

Article 10. Retail trade with copies of audiovisual works and phonograms

Only specialized shops shall be permitted to trade with copies of audiovisual works and phonograms. The Cabinet of Ministers of Ukraine shall establish the requirements to such shops selling copies of audiovisual works and phonograms and rules for such trade.

Article 11. Liability for the violation of this Law

Persons guilty of illegal production, counterfeiting, use or sale of the illegally produced and obtained or counterfeit control marks are liable to criminal proceedings.

Persons guilty of illegal distribution of copies of audiovisual works and phonograms are administratively liable.

Article 12. Control over observance of this Law

1. The Law shall come into effect on the date of its publication and changes made to the Code on Administrative Infringements shall become effective on January 1, 2001.

President of Ukraine

L. Kuchma

March 23, 2000
N 1587-III
