

**Copyright Law**  
**(Legislative Decree No. 822)\***

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## Preliminary Title

*Art. 1.* The purpose of this Law is to protect the authors of literary and artistic works and their successors in title and the owners of rights neighboring on copyright that it recognizes and the safeguarding of the cultural heritage.

Protection shall be accorded regardless of the nationality or domicile of the author or owner of the rights concerned or the place of publication or disclosure.

*Art. 2.* For the purposes of this Law, the expressions that follow, and the various derived forms thereof, shall have the meanings specified:

(1) author: the natural person who accomplishes the intellectual creation;

(2) performer: the person who acts, sings, reads, recites, interprets or in any form executes a literary or artistic work or an expression of folklore, including variety and circus performers;

(3) domestic circle: the area in which family meetings take place in a residential house serving as the natural location of a home;

(4) data base: a compilation of works, facts or data in printed form, in a computer storage unit or in any other form;

(5) communication to the public: any act whereby one or more persons, either gathered together in one place or not, are afforded access to the work without the prior distribution of copies to each one of them, by any analog or digital means or process that is or may yet become known for the purpose of disseminating signs, words, sounds or images; the entire process necessary to make the work accessible to the public constitutes communication;

(6) copy: the material medium in which the work is embodied as a result of an act of reproduction;

(7) successor in title: the person, whether natural person or legal entity, to whom the rights recognized by this Law are transferred on whatever ground;

(8) distribution: making the original or copies of the work available to the public by sale, rental, lending by any means that is or may yet become known of transferring ownership or possession of the said original or copy;

(9) disclosure: making the work, performance or production accessible to the public for the first time with the consent of the author, performer or producer, as the case may be, by any means or process that is or may yet become known;

(10) publisher: the person, whether natural person or legal entity, who enters into a contract with the author or his successor in title whereby he undertakes to publish and disseminate the work on his own account;

(11) transmission: direct or indirect transfer over a distance of sounds, images or both for reception by the public by any means or process;

(12) expressions of folklore: productions of characteristic elements of the traditional cultural heritage, consisting of the whole range of literary and artistic works created on the national territory by unknown or unidentified authors presumed to be nationals of the country or members of its ethnic communities, which are handed down from generation to generation in such a way that they reflect the traditional artistic or literary aspirations of a community;

(13) fixation: the incorporation of signs, sounds, images or digital representations thereof in a physical medium that allows them to be read or otherwise perceived, reproduced, communicated or used;

(14) phonogram: the sounds of a performance or other sounds, or digital representations thereof, when fixed for the first time exclusively in the form of sounds; phonographic, magnetic-tape and digital recordings constitute copies of phonograms;

(15) ephemeral recording: the temporary fixation in a sound or audiovisual medium of a performance or a radio broadcast made by a broadcasting organization by means of its own facilities, and used by it for its own broadcast programs;

(16) license: the authorization or permit granted by the owner of the rights (licensor) to the user of the protected work or other production (licensee), for use in a specified manner according to conditions agreed upon in the license agreement; unlike assignment, licensing does not transfer ownership of rights;

(17) work: any personal and original intellectual creation capable of being disclosed or reproduced in any form that is or may yet become known;

(18) anonymous work: a work that does not mention the identity of the author at the latter's wish; a work in which the pseudonym used by the author leaves his true identity in no doubt is not an anonymous work;

(19) audiovisual work: any intellectual creation expressed by a series of related images that give an impression of movement, with or without integral sound, capable of being projected or shown with appropriate apparatus, or by any other means of image and sound communication, regardless of the characteristics of the physical medium in which it is incorporated, whether celluloid film, videogram, digital representation or any other medium or mechanism that is or may yet become known; audiovisual works include cinematographic works and those obtained by processes analogous to cinematography;

(20) work of applied art: an artistic creation with utilitarian functions or incorporated in a useful article, whether a work of hand-crafted or produced on an industrial scale;

(21) work of joint authorship: a work created jointly by two or more natural persons;

(22) collective work: a work created by two or more authors on the initiative and at the direction of a person, whether natural person or legal entity, who discloses and publishes it on his own responsibility and in his own name, where it is not possible to identify the authors, or where their various contributions are so merged in the whole work for which they were made that it is not possible to attribute to each of them a separate right in the whole work so made;

(23) literary work: any intellectual creation, whether of literary, scientific, technical or merely practical character, expressed in a specific form of language;

(24) original work: the work originally created;

(25) derived work: a work based on a pre-existing work, subject to the rights of the author of the original work and the relevant authorization, the originality of which lies in the arrangement, adaptation or transformation of the pre-existing work, or in the creative features of the translation thereof in a different language;

(26) individual work: a work created by a single natural person;

(27) unpublished work: a work that has not been disclosed with the consent of the author or his successors in title;

(28) three-dimensional work: a work whose purpose is to appeal to the senses of the person contemplating it, such as a painting, sketch, drawing, engraving or lithograph; the specific provisions of this Law on three-dimensional works do not apply to photographs, architectural works or audiovisual works;

(29) pseudonymous work: a work whose author uses a pseudonym that does not identify him as a natural person; a work shall not be considered pseudonymous where the name used leaves no doubt as the identity of the author;

(30) broadcasting organization: the person, whether natural person or legal entity, who decides on the material broadcast, has control over programming and the date and time of broadcasts;

(31) public lending: the transfer of possession of a lawful copy of the work for a limited time, without gainful intent, by an institution whose services are available to the public, such as a library or public archive;

(32) producer: the person, whether natural person or legal entity, who takes the initiative and direction of and assumes responsibility for the production of the work;

(33) producer of phonograms: the person, whether natural person or legal entity, on whose initiative and responsibility and at whose direction the sounds of a performance or other sounds, or digitized representations thereof, are fixed for the first time;

(34) computer program (software): the expression of a set of instructions in words, codes, plans or any other form which, on being entered in a computer input device, is capable of making the computer carry out a task or produce a result; the protection of a computer program includes the technical documentation and users' manuals;

(35) publication: production of copies to be made available to the public, with the consent of the owner of the rights concerned, provided that the availability of such copies allows the reasonable demands of the public to be met, considering the nature of the work;

(36) broadcasting: communication to the public by wireless transmission; broadcasting includes communication by satellite from the moment of injection of the signal, both in the upward and in the downward stage of the transmission, until such time as the program is carried by the signal is made accessible to the public;

(37) reproduction: fixation of the work or intellectual production in a material medium that allows it to be communicated, including electronic storage, and the making of copies of all or part thereof;

(38) reprographic reproduction: the making of facsimile copies from originals or copies of a work by means other than printing, for instance by photocopying;

(39) retransmission: the relaying of a signal or program received from another source, effected by wireless dissemination of signs, sounds or images, or by wire, cable, optic fiber or any other analog or digital process that is known or may yet become known;

(40) satellite: any device located in extraterrestrial space that is capable of receiving and transmitting or retransmitting signals;

(41) any electronically produced vector capable of transporting signs, sounds or images through space;

(42) collective management society: legally constituted, non-profit-making associations under civil law devoted to the management, in their own or another's name, of copyright or neighboring rights of economic character on behalf and in the interest of a number of authors or owners of such rights, such associations having obtained from the Copyright Office of the National Institute for the Defense of Competition and Intellectual Property (INDECOPI) the operating license provided for in this Law; the status of management society shall be acquired by virtue of the said license;

(43) ownership: status of owner of rights provided for in this Law;

(44) original ownership: ownership deriving from the actual creation of the work;

(45) derived ownership: ownership arising from circumstances other than creation, whether from a mandate or legal presumption or alternatively from assignment by virtue of a transaction *inter vivos* or transfer by succession;

(46) transmission: communication over a distance by means of broadcasting or cable distribution or any other analog or digital process that is or may yet become known;

(47) fair use: use that does not interfere with the normal exploitation of the work or unjustifiably prejudice the legitimate interests of the author or the owner of the rights concerned;

(48) personal use: reproduction or another form of use of another's work, in a single copy, exclusively for an individual's own purposes;

(49) videogram: an audiovisual fixation incorporated in a videocassette, videodisc or any other physical medium or comparable material.

## **Title I**

### **Subject Matter of Copyright**

*Art. 3.* Copyright protection shall be accorded to all works of the mind in the literary or artistic field, whatever their kind, manner of expression, merit or purpose.

The rights provided for in this Law are independent of the ownership of the material object in which the work is embodied, and the enjoyment or exercise thereof shall not be subject to registration or compliance with any other formality.

*Art. 4.* Copyright is independent and compatible with:

- (a) any industrial property rights that may subsist in the work;
- (b) the neighboring rights and other intellectual property rights provided for in this Law.

In the event of conflict, the arrangement most favorable to the author shall be adopted.

*Art. 5.* Protected works shall include the following:

- (a) literary works expressed in written form in books, magazines, pamphlets or other writings;
- (b) literary works expressed orally, such as lectures, addresses and sermons or educational presentations;
- (c) musical compositions with or without words;
- (d) dramatic, dramatico-musical, choreographic and mimed works, and stage works in general;
- (e) audiovisual works;
- (f) works of three-dimensional art, whether or not they constitute applied art, including sketches, drawings, paintings, sculptures, engravings and lithographs;
- (g) works of architecture;
- (h) photographic works and works expressed by a process analogous to photography;
- (i) illustrations, maps, outlines, plans, diagrams and three-dimensional works relating to geography, topography, architecture or science;
- (j) slogans and phrases in so far as they have a literary or artistic form of expression and possess original characteristics;

- (k) computer programs;
- (l) anthologies or compilations of various works or expressions of folklore, and data bases, provided that the said collections are original in the selection, coordination or arrangement of their contents;
- (m) newspaper or magazine articles, whether on current events or not, reports, editorials and commentaries;
- (n) in general, any other product of the intellect in the literary or artistic field that has original character and is susceptible of disclosure or reproduction by any method of process that is or may yet become known.

*Art. 6.* Without prejudice to the rights subsisting in the original work and the corresponding authorization, the following shall also enjoy protection as derived works in so far as they have original character:

- (a) translations and adaptations;
- (b) revised, updated and annotated versions;
- (c) summaries and extracts;
- (d) arrangements of music;
- (e) other transformations of literary or artistic works or expressions of folklore.

*Art. 7.* The title of a work, if it is original, shall be protected as an integral part thereof.

*Art. 8.* Protection shall apply exclusively to the form of expression used to describe, explain or illustrate the author's ideas or incorporated them in works.

*Art. 9.* The following are not eligible for copyright protection:

- (a) the ideas contained in literary or artistic works, processes, operating methods or mathematical concepts in themselves, systems or the ideological or technical content of scientific works, or the industrial or commercial exploitation thereof;
- (b) official texts of legislative, administrative or judicial character, or official translations thereof, without prejudice to the obligation to respect the texts and mention the source;
- (c) news of the day, provided that, in the case of word-for-word reproduction, the source from which it has been taken shall be mentioned;
- (d) simple facts or data.

## **Title II**

### **Owners of Rights**

*Art. 10.* The author is the original owner of the exclusive rights in the work, both moral and economic, that are provided for in this Law.

However, the protection accorded to the author by this Law may benefit other natural persons or legal entities where it expressly so provides.

*Art. 11.* In the absence of proof to the contrary, that natural person shall be considered the author of the work who is mentioned as such in or on the said work by name, by his signature or by a sign that serves to identify him.

*Art. 12.* Where the work is disclosed anonymously or under a pseudonym, the exercise of the rights shall accrue to the person, whether natural person or legal entity, who discloses it with the

author's consent until such time as the latter reveals his identity and proves his authorship, in which case the acquired rights of third parties shall be reserved.

*Art. 13.* The author of a derived work is the owner of the rights in that work, without prejudice to the protection of the authors of the original works used in the making thereof.

*Art. 14.* The co-authors of a work of joint authorship shall jointly be the original owners of the moral and economic rights therein, and shall exercise those rights by common consent.

Where the contributions are divisible, or where the participation of each of the co-authors belongs to a different genre, each of them may, unless otherwise agreed, exploit his personal contribution separately, provided that the exploitation of the joint work is not thereby prejudiced.

In the event of disagreement, the parties may apply to the Copyright Office, which shall issue a ruling within 15 days after having convened a conciliation board. An appeal against the ruling that settles the disagreement between the parties may be filed only within five days following the notification thereof, and shall be settled within 15 days.

*Art. 15.* It shall be presumed, in the absence of proof to the contrary, that the authors of a collective work have assigned unlimited and exclusive ownership of the economic rights to the person, whether natural person or legal entity, who publishes or discloses it in his own name, which person shall likewise be entitled to exercise the moral rights in the work.

*Art. 16.* Except as provided for audiovisual works and computer programs, the ownership of transferable rights in works created in the course of employment relations or under a commission contract shall be governed by agreement between the parties.

In the absence of an express contractual provision, it shall be presumed that the economic rights in the work have been assigned non-exclusively to the employer or commissioning party to the extent necessary for his usual activities at the time of creation, which likewise means that the employer or commissioning party, as the case may be, has the authority to disclose the work and act in defense of the moral rights therein, where necessary for the purposes of exploitation.

*Art. 17.* In a marital relationship, the individual spouses shall be the owners of their respective works, and shall retain absolute ownership of the moral rights therein, provided that any economic rights that have come into effect in the course of the marriage shall have the character of common property, except under a marital regime of separate estates.

## **Title III**

### **Content of Copyright**

#### **Chapter I**

#### **General Provisions**

*Art. 18.* The author of a work has, by virtue of the mere fact of the creation thereof, original ownership of an exclusive right, enforceable against third parties, which in turn comprises the rights of moral and economic character specified in this Law.

*Art. 19.* Disposal of the physical medium incorporating the work shall not imply any transfer of rights to the acquirer, unless otherwise stipulated by express contractual or legal provision.

*Art. 20.* Copyright may subsist in translations and other derived works even where the original works are in the public domain, provided that it shall not imply any exclusive rights in the said original works, so that the author of the derived work may not object to the translation, adaptation or alteration of the same original works, or their inclusion in a collection, by others, provided that the results thereof as original works different from his own.



## **Chapter II**

### **Moral Rights**

*Art. 21.* The moral rights provided for in this Law shall be perpetual, inalienable, unattachable, unrenounceable and imprescriptible.

On the death of the author, the moral rights shall be exercised by his heirs for as long as the work is in the private domain, unless otherwise provided by law.

*Art. 22.* The following are moral rights:

- (a) the right of disclosure;
- (b) the right of authorship;
- (c) the right of integrity;
- (d) the right of alteration or amendments;
- (e) the right to withdraw the work from the market;
- (f) the right of access.

*Art. 23.* The right of disclosure shall entitle the author to decide whether or not his work is to be disclosed, and if so in what form. Where it is to be kept unpublished, the author may provide, either by testamentary provision or any other written expression of his will, that the work is not to be published for as long as it is in the private domain, without prejudice to the provisions of the Civil Code regarding the disclosure of correspondence and memoirs.

The author's right to provide that his work is to remain anonymous or pseudonymous shall not extend beyond the time at which the work falls into the public domain.

*Art. 24.* The right of authorship entitles the author to be recognized as such, requiring the work to bear the appropriate notice, and to decide whether disclosure is to take place under his name, under a pseudonym or sign or anonymously.

*Art. 25.* The right of integrity entitles the author, including in his relations with the acquirer of the material object embodying the work, to object to any distortion, modification, mutilation or alteration thereof.

*Art. 26.* The right of alteration or amendment entitles the author to make changes to the work either before or after the disclosure thereof, subject to respect for the acquired rights of third parties, whom he shall first indemnify for any damages and prejudice that might thereby be caused them.

*Art. 27.* The right of withdrawal of the work from the market entitles the author to suspend any form of use of the work, subject to prior indemnification of third parties for any damages and prejudice that might thereby be caused them.

Where the author decides to resume exploitation of the work, he shall offer the corresponding rights preferably to the previous owner thereof and on terms reasonably similar to the original terms.

The rights provided for in this Article shall lapse on the death of the author. Once the work has fallen into the public domain, it may be freely published or disclosed, but in that case it shall be stated that the work is one that the author rectified or disowned.

*Art. 28.* The right of access entitles the author to have access to the sole or a rare copy of the work that is another's possession for the purpose of exercising his other moral rights or the economic rights recognized by this Law.

This right may not be used to demand that the work be moved, and access to it shall be had in the place and in the manner that cause the possessor the least inconvenience.

*Art. 29.* In order to safeguard the cultural heritage, the exercise of the rights of authorship and integrity of works that belong to or have fallen into the public domain shall belong, without distinction, to the author's heirs, to the State, to the relevant collective management society or to any person, whether natural person or legal entity, who proves a legitimate interest in the work concerned.

### **Chapter III Economic Rights**

*Art. 30.* The author shall enjoy the exclusive right to exploit his work in any form or by any process, and to derive profit therefrom, save where express legal exceptions dictate otherwise.

*Art. 31.* Economic rights shall in particular include the exclusive right to perform, authorize or prohibit any of the following acts:

- (a) reproduction of the work in any form or by any process;
- (b) communication of the work to the public by any means;
- (c) distribution of the work to the public;
- (d) translation, adaptation, arrangement or any other transformation of the work;
- (e) importation into the national territory by any means, including transmission, of copies of the work made without permission from the owner of the rights;
- (f) any other use of the work that is not provided for in the law as an exception to the economic rights, the foregoing list being merely illustrative and not exhaustive.

*Art. 32.* Reproduction shall include any form of either permanent or temporary fixation or production of copies of the work, notably by printing or an graphic or three-dimensional art process or by reprographic, electronic, phonographic, digital or audiovisual reproduction.

The foregoing enumeration is merely illustrative.

*Art. 33.* Communication to the public may take the following forms in particular:

- (a) stage performances, recitals, public presentations and renderings of dramatic, dramatico-musical, literary and musical works by any means or process, whether with the live participation of the performers or received or generated by mechanical, optical or electronic instruments or processes or produced from a sound or audiovisual recording or from a digital representation or other source;
- (b) public projection or showing of cinematographic and other audiovisual works;
- (c) analog or digital transmission of any works by broadcasting or another means of wireless dissemination or by wire, cable, optic fiber or another analog or digital process serving for the transfer over a distance of signs, words sounds or images, whether or not simultaneously and whether or not against subscription or payment;
- (d) retransmission of a broadcast work by a broadcasting entity other than the original one;
- (e) reception in a place open to the public, and by means of any appropriate apparatus, of a work broadcast by radio or television;
- (f) public display of works of art or reproductions thereof;

- (g) public access to computer data bases by means of telecommunication or any other means or process in so far as they incorporate or constitute protected works;
- (h) in general, dissemination of signs, words, sounds or images by any means or process that is or may yet become known.

*Art. 34.* For the purposes of this Chapter, distribution includes the making available to the public, by any means or process, of the original or copies of the work by means of sale, exchange, assignment or another form of transfer of ownership, or by rental, public lending or another method of use or exploitation.

When the authorized marketing of copies takes place by means of sale or another form of transfer of ownership, the owner of the economic rights may not object to the resale thereof within the country for which the authorization has been given, but he shall retain the rights of translation, adaptation, arrangement or other transformation, communication to the public and reproduction of the work, and also the right to authorize or not to authorize the rental or public lending of copies.

The author of an architectural work may not object to the rental of the building by the owner thereof.

*Art. 35.* Importation shall include the exclusive right to authorize or not to authorize entry into the national territory by any means, including by analog or digital transmission of copies of the work that have been produced without permission from the owner of the rights.

This right shall suspend the free circulation of the said copies at the border, but it shall not have any effect on copies that form part of personal luggage.

*Art. 36.* The author shall have the exclusive right to make or authorize translations and also adaptations, arrangements and other transformations of his work, including dubbing and subtitling.

*Art. 37.* Except where this Law expressly provides otherwise, it shall be unlawful to engage in any reproduction, communication, distribution or other form of exploitation of the work, either in its entirety or in part, without the prior written consent of the owner of the copyright.

*Art. 38.* The owner of the economic rights is entitled to effect or to demand, for the reproduction or communication of the work, the incorporation of safeguarding mechanisms, systems or devices, including the encoding of signals, in order to prevent the unauthorized communication, reception, retransmission, reproduction or modification of the work.

It shall therefore be unlawful to import, manufacture, sell, rent or offer as a service, or place in circulation in any form, apparatus or devices designed to decode encode signals or circumvent any of the safeguarding systems used by the owner of the rights.

*Art. 39.* No authority or natural person or legal entity may authorize the use of a work or any other product protected by this Law, or assist in such use, if the user does not have the prior written authorization of the owner of the relevant rights, save in the exceptional cases provided for by law. In the case of failure to comply, he or it shall be jointly liable.

*Art. 40.* The Copyright Office may apply to the customs authority for the release at the border of pirated merchandise that violates copyright, with a view to suspending the free circulation of the said merchandise where attempts are made to import it into the territory of the Republic.

The measures to secure release shall not apply to copies that form part of household goods, or those that are in transit.

The implementation of the provisions of this Article shall take place in accordance with the relevant Regulation.

## **Title IV**

### **Limits and Duration of Exploitation Rights**

#### **Chapter I**

##### **Limits of Exploitation Rights**

*Art. 41.* The intellectual works protected by this Law may be lawfully communicated, without the necessity of authorization by the author or payment of any remuneration, in the following cases:

- (a) where the act takes place in an exclusively domestic environment, provided that there is no direct or indirect economic interest and that the communication is not deliberately relayed outside by any means, either in its entirety or in part;
- (b) where the act takes place in the course of official events or religious ceremonies, involving small fragments of music or parts of musical works, provided that the public is able to take part in them free of charge and none of the participants in the act is paid specific remuneration for his performance in it;
- (c) where the acts are shown to have an exclusively educational purpose, being performed in the course of the activities of a teaching institution by the staff and students of that institution, provided that the communication pursues no direct or indirect profit-making purpose and the audience is composed solely of the staff and students of the institution or parents or teachers of students and other persons directly associated with the institution's activities;
- (d) where the acts take place in commercial establishments for the purpose of demonstrating, receiving, reproduction or other similar apparatus to customers or with a view to the sale of the sound or audiovisual media that contain the work, provided that the communication is not deliberately relayed outside, either entirely or in part;
- (e) where the acts are essential to the provision of legal or administrative evidence.

*Art. 42.* Lectures given either in public or in private by the lecturers of universities, higher institutes of learning and colleges may be annotated and collected in any form by those to whom they are addressed, provided that no person may disclose them or reproduce them in either a complete or a partial collection without the prior written consent of the authors.

*Art. 43.* With regard to works that have already been lawfully disclosed, the following shall be permitted without the author's consent:

- (a) reproduction by reprographic means, for teaching or the holding of examinations at educational institutions, provided that there is no gainful intent and to the extent justified by the aim pursued, of articles or brief extracts from lawfully published works, on condition that the use made of them is consistent with proper practice, involves no sale or other transaction for consideration and has no direct or indirect profit-making purpose;
- (b) reproduction by reprography of short fragments or of works published in graphic form that are out of print, for exclusively personal use;
- (c) individual reproduction of a work by a public library or archive that pursues no direct or indirect profit-making purpose, where a copy of the work is available in the permanent collection of the said library or archive, with a view to preserving the work and replacing the copy where it has been mislaid, destroyed or rendered unusable, or alternatively to replace a copy belonging to the permanent collection of another library or archive that has been mislaid, destroyed or rendered unusable, provided that it has

proved impossible to acquire such a copy within a reasonable time and on reasonable terms;

- (d) the reproduction of a work for the purposes of judicial or administrative proceedings, to the extent justified by the aim pursued;
- (e) the reproduction of a work of art on permanent display in a street, square or other public place, or that of the outer façade of a building, where it is done in an art form different from that used for the making of the original, provided that the name of the author, if known, the title of the work, if any, and the place in which it is located are specified;
- (f) the lending to the public of the lawful copy of a work in written form by a library or archive whose activities have no direct or indirect profit-making purpose.

In all the cases specified in this Article, any use of works that competes with the author's exclusive right to exploit his work shall be equivalent to unlawful use.

*Art. 44.* It shall be permissible to make quotations from lawfully disclosed works without the author's consent or payment of remuneration, subject to the obligation to state the name of the author and the source, and to the condition that such quotations are made in accordance with proper practice and only to the extent justified by the aim pursued.

*Art. 45.* The following shall likewise be lawful without authorization, provided that the name of the author and the source are stated and that reproduction or disclosure have not been expressly reserved:

- (a) dissemination, in connection with the reporting of current events by sound or audiovisual means to the extent justified by the informatory purpose, of images or sounds or works seen or heard in the course of such events;
- (b) dissemination by the press or transmission by any means, as news of current events, of speeches, lectures, addresses, sermons and other works of similar character delivered in public, and speeches delivered in the course of judicial proceedings, to the extent justified by the informatory purpose pursued, and without prejudice to the right retained by the authors of the works disseminated to publish them individually in the form of a collection;
- (c) dissemination by broadcasting or transmission by cable or any other means that is or may yet become known of the image of an architectural work, a work of three-dimensional art, a photographic work or a work of applied art located permanently in a place open to the public.

*Art. 46.* It shall be lawful for a broadcasting organization, without the consent of the author or payment of additional remuneration, to make ephemeral recordings, using its own facilities and for a single use in its own broadcasts, of a work that it has the right to broadcast. The recording shall be destroyed within three months, unless a longer period has been agreed upon with the author. Such a recording may however be preserved in official archives, likewise without the author's consent, where the work possesses exceptional documentary character.

*Art. 47.* It shall be lawful, without the author's consent or payment of additional remuneration, for a broadcasting organization to transmit or retransmit a work originally broadcast by it, provided that the retransmission or transmission to the public takes place simultaneously with the original broadcast and the work is broadcast or transmitted to the public without alteration.

*Art. 48.* It shall be lawful to make copies for exclusively personal use of works, performances or productions published as sound or audiovisual recordings. The reproductions permitted by this Article shall not however include the following:

- (a) the reproduction of a work of architecture in the form of a building or any other structure;
- (b) the reproduction of the whole of a book, a musical work in written form or the original or a copy of a three-dimensional work made and signed by the author;
- (c) a data base or compilation of data.

*Art. 49.* A parody of a disclosed work shall not be considered a transformation requiring authorization by the author where it does not involve a risk of confusion therewith or risk damaging the original work or its author, without prejudice to the remuneration accruing to him for such use.

*Art. 50.* The exceptions provided for in the foregoing Articles shall be interpreted restrictively, and may not be applied to cases that are contrary to proper practice.

*Art. 51.* The limitations on the exploitation rights in computer programs shall be exclusively those provided for in the Chapter concerning such programs.

## **Chapter II**

### **Term**

*Art. 52.* The term of economic rights shall be the lifetime of the author and 70 years following his death, regardless of the country of origin of the work, and shall be transferred on death in accordance with the provisions of the Civil Code.

In the case of works of joint authorship, the term of protection shall be counted from the date of the death of the last surviving co-author.

*Art. 53.* The term of protection of anonymous and pseudonymous works shall be 70 years from the year of disclosure, except where the author reveals his identity before that term expires, in which case the provisions of the foregoing Article shall apply.

*Art. 54.* In the case of collective works, computer programs and audiovisual works, economic rights shall lapse after 70 years following first publication or, in the absence of publication, following completion. This limitation shall not affect the economic rights of the individual co-authors of audiovisual works in relation to their personal contributions, or the enjoyment and exercise of the moral rights in their contributions.

*Art. 55.* Where one work has been published in successive volumes, the periods provided for in this Law shall be counted from the publication date of the last volume.

*Art. 56.* The periods provided for in this Chapter shall be calculated from the first of January of the year following that of the author's death, or where appropriate that of the disclosure, publication or completion of the work.

## **Title V**

### **Public Domain**

*Art. 57.* The expiration of the periods provided for in this Law shall cause the economic rights to lapse and the work to fall into the public domain and consequently become part of the common cultural heritage.

Expressions of folklore shall likewise form part of the public domain.

# Title VI

## Special Provisions on Certain Works

### Chapter I

#### Audiovisual Works

*Art. 58.* Unless otherwise agreed, the following shall be considered co-authors of an audiovisual work:

- (a) the director or maker;
- (b) the author of the plot;
- (c) the author of the adaptation;
- (d) the author of the script and dialogue;
- (e) the author of music specially composed for the work;
- (f) the animator, in the case of animated cartoons.

*Art. 59.* Where the audiovisual work has been drawn from a pre-existing work that is still protected, the author of the original work shall have a status equivalent to that of the authors of the new work.

*Art. 60.* Unless otherwise agreed between the co-authors, the director or maker shall exercise the moral rights in the audiovisual work, without prejudice to those accruing to the co-authors in relation to their own contributions, or to those that may be exercised by the producer.

The moral rights of authors may only be exercised in relation to the final version of the audiovisual work.

*Art. 61.* The producer of the audiovisual work shall cause to appear on the medium in which it is embodied, in such a way that it may be seen in the course of the showing thereof, a mention of the name of each of the co-authors; such a mention shall not however be required of audiovisual productions of advertising character or those whose nature or short duration does not permit such a mention.

*Art. 62.* Where one of the co-authors refuses to complete his contribution or is prevented from doing so by force majeure, he may not object to the use of the already-completed part of his contribution for the completion of the whole work, without such an eventuality depriving him of his authorship of that contribution and his enjoyment of the rights deriving therefrom.

*Art. 63.* Unless otherwise agreed, each of the co-authors may freely dispose of the part of the audiovisual work constituting his personal contribution, in the case of a divisible whole, for exploitation in a different genre, provided that the exploitation of the joint work is not thereby prejudiced.

*Art. 64.* The audiovisual work shall be considered completed when the final version has been produced in accordance with the agreement between the director on the one hand and the producer on the other.

*Art. 65.* It shall be presumed, in the absence of proof to the contrary, that the person, whether natural person or legal entity, who is credited in the usual way on the work with the status of producer is indeed the producer thereof.

*Art. 66.* It shall be presumed, unless otherwise agreed, that the authors of the audiovisual work have assigned the economic rights therein exclusively to the producer and for the entire

duration of the said rights, and that the producer is authorized to decide on the disclosure of the work.

Without prejudice to the rights of the authors, the producer may, unless otherwise provided, assert the moral rights in the audiovisual work in his own name.

*Art. 67.* Without prejudice to the rights of the authors, the right to bring action in the event of infringement of the rights in the audiovisual work shall belong both to the producer and to the assignee or licensee of the rights.

*Art. 68.* The provisions contained in this Chapter shall apply as appropriate to works that electronically incorporate moving images, with or without text or sound.

## **Chapter II Computer Programs**

*Art. 69.* Computer programs shall be protected on the same terms as literary works. That protection shall extend to every form of expression thereof, including both operating and application programs, in the form of either source codes or object codes.

The protection provided for in this Law shall extend to any of the successive versions of the program, and also to derived programs.

*Art. 70.* It shall be presumed, in the absence of proof to the contrary, that the person, whether natural person or legal entity, who is named on the computer program as the producer is indeed the producer thereof.

*Art. 71.* It shall be presumed, unless otherwise agreed, that the authors of the computer program have assigned to the producer, exclusively, without limitation and for the entire duration thereof, the economic rights recognized by this Law, and by implication that they have authorized him to decide on the disclosure of the program and to assert the moral rights therein.

Unless otherwise agreed, the authors may not object to the making or authorization by the producer of alterations to or successive versions of the program, or of programs derived therefrom.

*Art. 72.* The right of rental or lending shall not apply to computer programs when the program concerned is incorporated in a machine or product and cannot be reproduced or copied in the course of the normal use of the said machine or product, or alternatively where the rental or lending does not relate essentially to the computer program in itself.

*Art. 73.* The storage of a computer program in the internal memory of appropriate equipment by the lawful user for his exclusive personal use shall not constitute unlawful reproduction of that program.

The aforesaid lawful use shall not extend to the accessing of the program by two or more persons through the installation of networks, workstations or other comparable arrangements, except where the express consent of the owner of the rights is obtained.

*Art. 74.* The lawful user of a computer program may make a copy or adaptation of the said program provided that:

- (a) it is essential for the use of the program;
- (b) it is intended exclusively as a reserve copy to replace a legitimately acquired copy where the latter cannot be used on account of damage or loss.

Reproduction of a computer program, including for personal use, shall require permission from the author of the rights, with the exception of the reserve copy.



*Art. 75.* The adaptation of a program by the lawful user, including the correction of errors, shall not constitute adaptation or transformation unless it has been expressly prohibited, except in the case of express prohibition by the owner of the rights, provided that the adaptation is intended solely for personal use.

The making of copies of the program so adapted for use by two or more persons, or the distribution thereafter to the public, shall require the express permission of the owner of the rights.

*Art. 76.* The consent of the author shall not be required for the reproduction of a program code and the translation of the form thereof when such action is essential to achieve the interoperability of an independently created program with other programs, provided that the following requirements are met:

- (a) the acts must be performed by the lawful licensee or by any other person empowered to use a copy of a program, or in their name by a person duly authorized by the owner;
- (b) the information essential for interoperability to be achieved must not have been previously, or must not be readily and rapidly in the light of all the circumstances subject to a reasonable request made to the owner, available to the persons referred to in the foregoing subparagraph;
- (c) the acts must be confined strictly to those parts of the original program that are essential to the achievement of interoperability.

In no event may the information obtained by virtue of the provisions of this Article be used for purposes other than those mentioned therein, or for the development, production or marketing of a program that is substantially similar in expression, or for any other act in violation of the author's rights. Such information may likewise not be communicated to third parties except where it is essential to the interoperability of the independently created program.

The provisions of this Article shall not be so interpreted that the application thereof is liable to prejudice unjustifiably the legitimate interests of the author of the program or is contrary to the normal exploitation thereof.

*Art. 77.* None of the provisions of this Chapter may be so interpreted that the application thereof unjustifiably prejudices the legitimate interests of the owner of the rights or is contrary to the normal exploitation of the computer program.

### **Chapter III Data Bases**

*Art. 78.* Data bases or compilations of data or other material that are machine-readable or accessible in another form shall be protected provided that they constitute intellectual creations in terms of the selection or arrangement of their subject matter. The protection so recognized shall not extend to the actual data, information or material compiled, but it shall not affect any rights that may subsist in the works or constituent subject matter.

### **Chapter IV Architectural Works**

*Art. 79.* The acquisition of an architectural plan or project shall by implication entitle the acquirer to carry out the projected work, but the consent of the author shall be required for it to be used again for another work.

*Art. 80.* A designer of architectural works may not object to any alterations that may prove necessary in the course of or after construction, or to demolition.

Where the alterations are made without the designer's consent, the latter may disclaim authorship of the altered work, and the owner shall be prohibited from mentioning the name of the designer of the original work in the future.

## **Chapter V**

### **Works of Three-Dimensional Art**

*Art. 81.* Unless otherwise agreed, the contract for the disposal of the material object embodying a work of art shall confer on the acquirer the right to display the work in public.

*Art. 82.* In the event of resale of works of three dimensional art, either at public auction or through a professional art dealer, the author, and on his death his heirs or legatees, shall enjoy, for the duration of the protection of the economic rights, an inalienable and unrenounceable right to collect three per cent of the resale price from the vendor, it being possible to agree on a different percentage.

*Art. 83.* The manager of a trading establishment, the professional dealer or any other person who has taken part in the resale shall inform the appropriate management society, or where applicable the author or his successors in title, within three months, and shall provide the documentation necessary for the corresponding settlement to be made.

*Art. 84.* An action for the enforcement of rights against the said manager of a trading establishment, dealer or agent shall be statute-barred after three years following notification of the sale. Where the said period expires without the amount of the author's share having been claimed, the amount collected for the purpose shall be credited to the National Institute of Culture for cultural promotion purposes.

*Art. 85.* The portrait or bust of a person may not be placed on the market without the consent of the person portrayed, and on his death that of his successors in title. Nevertheless, publication of a portrait is free in the case of a well-known person or where it is connected with scientific, educational or cultural purposes in general, or with circumstances or events in the public interest or occurring in public.

## **Chapter VI**

### **Articles in the Press**

*Art. 86.* Unless otherwise agreed, any authorization of the use of articles in newspapers, magazines or other mass communication media, granted by an author having no connection with the newspaper company, shall confer on the editor or owner of the said publication the right to insert it only once, the remaining economic rights of the assignor or licensor remaining reserved.

In the case of an author working under an employment contract, the right of reproduction of the newspaper article shall not be reserved, and shall be presumed assigned to the company or medium of communication. Nevertheless, the author shall retain his rights in relation to the relevant issue, independently of anything that he may produce in the form of a collection.

*Art. 87.* The provisions of this Chapter shall apply by analogy to any drawings, short stories, graphics, caricatures, photographs and other works liable to be published in newspapers, magazines or other mass communication media.

# Title VII

## Transfer of Rights and Third-Party Exploitation of Works

### Chapter I

#### General Provisions

*Art. 88.* Economic rights may be transferred by instrument or by legal presumption, by *inter vivos* transaction or transfer by succession, in any of the forms permitted by law.

*Art. 89.* Any *inter vivos* assignment shall be presumed to have been made for consideration except where expressly agreed otherwise, and the rights of the assignee shall revert to the assignor on expiration.

Assignment shall be limited to the right or rights assigned and to the contractually agreed time and territorial scope. Each of the forms of use of works shall be independent of the others, and the assignment of each form of use shall consequently be expressly evidenced in writing, all rights not expressly assigned remaining reserved to the author.

Where the territorial scope has not been specified, it shall be presumed to be the country of grant; if the manner of exploitation is not expressly stated, the assignee may exploit the work only in the form that is immediately deducible from the contract itself and is essential for the purpose of the contract to be achieved.

*Art. 90.* Except in the case of computer programs and audiovisual works, the assignment of exclusive rights shall be expressly granted as such, and the assignee shall, unless the contract provides otherwise, be granted the right to exploit the work to the exclusion of any other person, including the assignor himself, and also the right to make non-exclusive assignments to third parties.

The assignee of non-exclusive rights shall be entitled to make use of the work according to the terms of the assignment and in competition with both other assignees and the assignor himself.

*Art. 91.* Any assignment of the economic rights in all of the works that an author might create in the future shall be null and void, except where those works are clearly specified in the contract.

Any clause under which the author undertakes not to create any work in the future shall likewise be null and void.

*Art. 92.* Assignment granted for consideration shall entitle the author to a proportional share in the income realized by the assignee through exploitation of the work, the amount thereof to be agreed in the contract.

*Art. 93.* The provisions of the foregoing Article shall not apply and consequently remuneration may be set at a higher amount:

- (a) where the manner of exploitation is such that it is very difficult to determine income, or proof thereof is impossible to obtain or involves costs out of all proportion to the potential rewards;
- (b) where the use of the work is of incidental character in relation to the activity or physical object for which it is intended;
- (c) where the work, being used with others, does not constitute an essential element of the intellectual creation in which it is incorporated;
- (d) in the case of the first or sole edition of any of the following works that have not been disclosed previously: dictionaries, anthologies and encyclopedias, prologues,

annotations, introductions and presentations, scientific works, works serving to illustrate a work, translations or cut-price popular editions;

(e) where the parties expressly so agree.

The provisions of this Article shall likewise be applicable to the tariffs of collective management societies.

*Art. 94.* Except where the law assumes unlimited assignment of economic rights, or where expressly agreed to the contrary, the transfer of rights by the assignee to a third party in an *inter vivos* transaction may take place only with the consent of the assignor, given in writing.

In the absence of consent, the assignee shall be jointly liable to the assignor for the obligations under the assignment. Consent shall not be necessary, however, where transfer takes place as a result of the liquidation or change of ownership of the assignee's business.

*Art. 95.* The owner of economic rights may likewise grant third parties a simple license for use, which shall be non-exclusive and non-transferable and shall be governed by the clauses of the relevant contract and the provisions governing the assignment of rights, where applicable.

Contracts for the assignment of economic rights, contracts licensing use and any other authorization granted by the owner of rights shall be evidenced in writing, except where the law presumes the transfer of such rights to be *inter vivos*.

## **Chapter II**

### **Publishing Contracts**

*Art. 96.* A publishing contract is a contract under which the author or his successors in title assign to another person, called the publisher, the right to publish, distribute and disclose the work on his own account and at his own risk, according to agreed conditions and subject to the provisions of this Law.

*Art. 97.* The publishing contract shall be evidenced in writing and shall specify:

- (a) the identity of the author, the publisher and the work;
- (b) whether or not the work is unpublished;
- (c) the territorial scope of the contract;
- (d) the language in which the work is to be published;
- (e) whether the assignment confers exclusive rights on the editor publisher;
- (f) the number of editions authorized;
- (g) the time limit set for the placing in circulation of the copies of the sole or first edition;
- (h) the minimum and maximum numbers of copies constituting the print run or each of the agreed print runs;
- (i) the copies reserved for the author, for critical review for the promotion of the work and for the replacement of defective copies;
- (j) the remuneration payable to the author;
- (k) the period within which the author has to deliver the original of the work to the publisher;
- (l) the publication quality;
- (m) the means of setting the cover price of copies.

*Art. 98.* In the absence of an express clause in the contract, it shall be understood that:

- (a) the work has been published previously;
- (b) the publisher is granted the right to make a single edition, which shall be available to the public within six months following the delivery of the copy to the publisher in a fit state for reproduction of the work;
- (c) the work will be published in the language in which the work delivered by the author is expressed;
- (d) the minimum number of copies constituting the first edition is 1,000;
- (e) the number of copies reserved for the author, for critical review, for promotion and for the replacement of defective copies shall be five per cent of the edition, up to a maximum of 100 copies, allocated proportionally to each of those purposes;
- (f) the author shall deliver the original of the work to the publisher within 90 days following the date of the contract.

*Art. 99.* The publisher's obligations shall be the following:

- (a) to publish the work in the agreed form, without making any alteration that the author has not authorized;
- (b) to mention on each copy the title of the work and, in the case of a translation, also the title in the original language, the name or pseudonym of the author, translator, compiler or adapter if any, except where they insist on anonymous publication, the names and addresses of the publisher and printer, the reserved copyright notice, the year and place of first publication and subsequent publications where applicable, the number of copies printed and the date on which printing was completed;
- (c) to submit the proofs of the print run to the author, unless otherwise agreed;
- (d) to distribute and disseminate the work within the period and on the conditions specified and in accordance with the usual practice;
- (e) to pay the agreed remuneration to the author and, where remuneration is proportional and unless a shorter period is specified in the contract, to remit the appropriate amounts to him every six months; where extra remuneration has been agreed upon, it shall be payable from the time at which the copies are available for distribution and sale, unless otherwise agreed;
- (f) to submit to the author, under the conditions specified in the foregoing subparagraph, a statement of account that shows the date and print run of the edition, the numbers of copies sold and kept in stock for placing and those rendered unusable or destroyed by accident or unforeseen circumstances;
- (g) to allow the author to inspect periodically the documents and other evidence substantiating the statements of account, and also the premises on which the copies constituting the edition are stored;
- (h) to seek the registration of the copyright in the work and make the legal deposit on behalf of the author;
- (i) to return the original of the work from which the edition was made to the author once the printing and assembly operations have been completed, except where this is rendered impossible by technical factors;
- (j) to number each of the copies.

*Art. 100.* The author's obligations shall be the following:

- (a) to answer to the publisher for the authorship and originality of the work;
- (b) to assure the publisher of undisturbed and, where appropriate, exclusive exercise of the rights to which the contract relates;
- (c) to deliver to the publisher, in due form and by the agreed time, the original of the work to be published;
- (d) to correct the proofs of the print run, unless otherwise agreed;

*Art. 101.* The right granted to a publisher for the publication of two or more works separately shall not include the right to publish them together in a single volume, and vice versa.

*Art. 102.* The author shall have an indefeasible right to terminate the publishing contract:

- (a) where the publisher fails to edit and publish the work within the agreed time or, if no time has been set, within a maximum of six months following the delivery of the original to the publisher;
- (b) if the publisher, having been authorized to publish more than one edition, fails to publish a new edition within two months, unless otherwise agreed, when the supply of copies available for sale is exhausted; an edition shall be considered out of print when 95 per cent of the copies constituting it have been sold.

In all cases of termination due to a failure on the part of the publisher, the author shall be relieved of the obligation to return any advances that he may have received from the latter, without prejudice to the right to bring whatever actions may be appropriate against him.

*Art. 103.* The publisher shall have an indefeasible right to terminate the publishing contract where the author fails to deliver the work within the agreed period or, if no such period has been set, within a period of six months following the agreement, without prejudice to the right to bring whatever actions may be appropriate against him.

*Art. 104.* The publisher may not, without the author's consent, remainder the edition before two years have elapsed following the initial circulation of copies.

If, when that period expires, the publisher decides to remainder the balance of the copies, he shall formally notify the author of the fact, whereupon the author may collect the remainder price quoted to wholesalers.

The above option shall be exercised within the 30 days following receipt of the notice.

*Art. 105.* Where, on expiration of the two-year period referred to in the foregoing Article, the publisher decides to destroy the remaining copies of an edition, he shall likewise inform the author of the fact, whereupon the author may demand that all or some of the copies be handed over to him within a period of 30 days following the notice.

*Art. 106.* The publisher may bring and prosecute before the judicial and administrative authorities all the actions available to him, in his own right and as the representative of the author, for the assertion and administration of the economic rights of each one of them throughout the term of the publishing contract, being invested for the purpose with the broadest powers of procedural representation.

The publisher shall likewise have the right to proceed against unauthorized reproductions of the graphic forms of the edition.

*Art. 107.* Joint publishing contracts, where two or more publishers are under obligation to the author, shall likewise be governed by the provisions of this Chapter.

## **Chapter III**

### **Publishing Contracts for the Disclosure of Musical Works**

*Art. 108.* Under a publishing contract for the disclosure of musical works, the author assigns to the publisher the exclusive right of publication and empowers him, either in his own right or through third parties, to carry out the fixation and phonographic reproduction of the work, the audiovisual adaptation, translation or sub-edition thereof and any other form of use thereof that may be provided for in the contract, the publisher being under the obligation to give it the broadest disclosure by all methods available to him, and collects in exchange a share in any monetary returns, on which both shall agree.

*Art. 109.* The author shall have an indefeasible right to terminate the contract where the publisher has not edited or published the work, or has not taken any steps with a view to the disclosure thereof by the time specified in the contract, or, if no time has been set, within the six months following the delivery of the originals. In the case of symphonic and dramatico-musical works, the period shall be one year following the said delivery.

The author may likewise seek the termination of the contract if the musical or dramatico-musical work has not generated any economic profits within three years, and the publisher shows no evidence of having taken active steps to bring about the dissemination thereof.

Unless otherwise agreed, the music publishing contract shall not have a term in excess of five years.

*Art. 110.* The provisions on publishing contracts relating to the payment of remuneration to the author and the accreditation of the publisher before the judicial and administrative authorities shall be applicable to publishing contracts for the disclosure of musical works.

## **Chapter IV**

### **Stage and Music Performance Contracts**

*Art. 111.* Under the contracts provided for in this Chapter, the author, his successors in title or the relevant management society assign or license to a natural person or legal entity the right to perform publicly a literary, dramatic, musical, dramatico-musical, mimed or choreographic work in exchange for economic compensation.

Such contracts may be entered into for a specific time or for a specific number of public performances.

*Art. 112.* In the case of assignment of exclusive rights, the term of the contract may not exceed five years, unless otherwise agreed.

The absence or interruption of performances in the course of the period agreed upon by the parties shall terminate the contract as of right. In that case the organizer of the show shall return to the author the copy of the work received from him and shall compensate him for any damages and prejudice caused by his failure to comply with the contract.

*Art. 113.* The impresario's obligations shall be the following:

- (a) to ensure that the author or his representatives are able to inspect the performance and attend it free of charge and make arrangements accordingly;
- (b) to pay the agreed remuneration punctually;
- (c) to submit to the author or his representatives the exact program of the performance, where appropriate setting down for the purpose in daily schedules what works have

been used and the authors thereof, which schedules shall likewise contain the name, signature and identity document of the impresario responsible.

*Art. 114.* Where the remuneration payable to the author is proportional, the impresario shall be obliged to submit an authentic and documented account of his proceeds.

*Art. 115.* The author's participation in box office takings shall have the character of a deposit in the hands of the impresario, who shall at all times keep such deposits at the disposal of the author or his representative, and no attachment procedure ordered against the impresario may be applied to him. In that case the provisions laid down in the Civil Code shall apply to such deposits.

*Art. 116.* The owner or manager or designated representative responsible for the activities of establishments in which acts of communication to the public take place and which make use of works, performances or productions protected by this Law shall be jointly liable with the organizer of the event for any violations of the relevant rights that are perpetrated in such places or undertakings, without prejudice to such criminal liability as may be appropriate.

Performers who communicate the work on the instructions of the person responsible shall not be liable for the performance, and shall be obliged only to draw up and sign the performance schedule, and to be liable for the accuracy thereof. In the case of musical ensembles, the leader of the ensemble shall be responsible for drawing up the schedule. If it is not possible to establish who is the leader, the members of the ensemble shall be jointly under the said obligation.

*Art. 117.* Shows and public performances may not be held, and authorities of all kinds shall abstain from authorizing them, if the person responsible fails to submit the consent of the owners of the rights in the protected works for the use of those works, or that of their representatives.

*Art. 118.* For the purposes of this Law, the performance or communication of music in public includes the use of that music, by any means or process, with or without accompanying words, in its entirety or in part, for payment or free of charge, in radio and television stations, theaters, closed or open-air auditoria, cinemas, hotels, dance halls, bars, social and sports club parties, banking and trading establishments, markets, supermarkets, working environments and generally any place that is not strictly domestic in character. The foregoing enumeration is illustrative and not exhaustive.

*Art. 119.* The authorization granted to the radio or television station or any broadcasting organization shall not imply any right regarding the reception and use of the broadcasts involved by third parties either in public or in places open to the public, it being necessary in that case to have the express permission of the authors of the works concerned or that of the society representing them.

*Art. 120.* The provisions concerning performance contracts shall likewise be applicable, where appropriate, to other forms of communication to the public.

## **Chapter V**

### **Phonographic Recording Contracts**

*Art. 121.* Under a phonographic recording contract, the author of a musical work or his representative authorizes a phonogram producer, against remuneration, to record or fix a work for reproduction on a phonographic disc, magnetic tape, digital medium or any other comparable device or machine, for the purposes of reproduction and the sale of copies.

The consent given by the author or publisher or by the management society representing them for the inclusion of the work in a phonogram shall confer on the authorized producer the right to reproduce or license the reproduction of the phonogram, subject to the payment of remuneration.



*Art. 122.* The consent given to the phonographic producer shall not include the right of communication to the public of the work contained in the phonogram, or any other right different from those expressly granted.

*Art. 123.* The producer is obliged to specify the following particulars on all originals or copies of the phonogram, including those intended for distribution free of charge:

- (a) the titles of the works and the names or pseudonyms of the authors, and those of the arrangers and adapters, if any; if the work is anonymous, that fact shall be stated;
- (b) the names of the main performers, including the names of orchestral or choral ensembles and of their conductors or leaders;
- (c) the name or abbreviated name of the collective management society responsible for the economic rights in the works;
- (d) the notice of reserved rights in the phonogram, in the form of the circled (P) symbol followed by the year of first publication;
- (e) the business style and trade name of the phonogram producer and the appropriate identifying mark;
- (f) a mention that all the rights of the author, the performers and the phonogram producer are reserved, including the rights of copying, rental, exchange or lending and public performance.

Any particulars that for want of space cannot be printed directly on the originals or copies containing the reproduction shall be compulsorily printed on the jacket, sleeve or inlay card.

*Art. 124.* The phonogram producer is obliged to pay at least every six months the appropriate remuneration to the authors, publishers and performers, or to their representatives, except where a different interval has been laid down in the contract. The phonogram producer shall assume the role of withholding agent and shall operate a system of registration that enables the owners of rights to verify the numbers of reproductions sold, and shall allow them to verify the correctness of remuneration payments made by inspecting supporting documents, offices, workshops, stores and repositories, either in person or through the intermediary of an authorized representative or the corresponding collective management society.

*Art. 125.* The provisions of this Chapter shall be applicable as appropriate to literary works that are used as the text of a musical work, or are declaimed or read for fixation on a phonogram with a view to reproduction and sale.

## **Chapter VI**

### **Broadcasting Contracts**

*Art. 126.* Under a broadcasting contract the author, his representative or his successor in title authorizes a broadcasting organization to broadcast his work. The provisions of this Chapter shall likewise apply to broadcasts transmitted by wire, cable, optic fiber or another comparable medium.

*Art. 127.* Broadcasting organizations shall set down in monthly schedules, in the order of broadcasting, the title of each of the works broadcast and the names of the authors or performers thereof, or those of the conductors or leaders of the ensemble or orchestra where applicable, and that of the audiovisual or phonogram producer where applicable.

Copies of the said schedules, duly signed and dated, shall likewise be submitted to each of the management societies representing the owners of the rights concerned.

*Art. 128.* It shall be mandatory, in all programs issued, to state the title of each musical work used, and also the names of the authors concerned, the main performers involved and the conductor or leader of the ensemble or orchestra, as appropriate.

## **Title VIII**

### **Rights Neighboring on Copyright and Other Intellectual Rights**

#### **Chapter I**

##### **General Provisions**

*Art. 129.* The protection accorded to rights neighboring on copyright and to other intellectual rights provided for under this Title shall in no way affect the protection of the copyright in literary or artistic works. Consequently, none of the provisions under this Title may be interpreted in a manner that detracts from that protection, and in the event of conflict the provisions most favorable to the author shall prevail.

Without prejudice to its specific limitations, all the exceptions and limits laid down in this Law relating to copyright shall likewise be applicable to the rights provided for under this Title.

*Art. 130.* The owners of neighboring rights and other intellectual rights may invoke the provisions relating to authors and their works in so far as they conform to the nature of their own rights.

#### **Chapter II**

##### **Performers**

*Art. 131.* Performers shall enjoy the moral right:

- (a) to be recognized by name in relation to their performances;
- (b) to object to any distortion, mutilation or may other adverse act in relation to their performance that would damage their prestige or reputation.

*Art. 132.* Performers or their successors in title shall have the exclusive right to carry out, authorize or prohibit any of the following acts:

- (a) communication of their performances to the public in any form;
- (b) fixation and reproduction of their performances by any means or process;
- (c) reproduction of an authorized fixation where intended for purposes other than those for which authorization was given.

Notwithstanding the provisions of this Article, performers may not object to the communication of their performances to the public where done by a means of a fixation made with their prior consent and published for commercial purposes.

*Art. 133.* Performers shall likewise have the right to equitable remuneration for the communication to the public of a phonogram published for commercial purposes that contains their performance, except where the communication falls within the limits of the right of exploitation under this Law. Such remuneration, in the absence of agreement between the owners of the rights, shall be shared equally with the phonogram producer.

*Art. 134.* Orchestras, vocal ensembles and other groups of performers shall designate a representative for the purposes of the exercise of the rights accorded by this Law. In the absence of such designation, representation shall be exercised by the leader or conductor.

The representative shall have the right to entrust his mandate where appropriate to a collective management society.

*Art. 135.* The term of the protection granted under this Chapter shall be the lifetime of the performer and 70 years thereafter, counted from the first of January of the year following his death. On the expiration of the corresponding period, the performance shall fall into the public domain.

### **Chapter III Producers of Phonograms**

*Art. 136.* Producers of phonograms shall have the exclusive right to carry out, authorize or prohibit any of the following acts:

- (a) reproduction of their phonograms, either direct or indirect;
- (b) distribution, rental or lending of copies of their phonograms to the public, or any other transfer possession thereof, for consideration;
- (c) communication in digital form by optic fiber, radio or other wave, satellite or any other system that has been or may yet be devised, where such communication is equivalent to an act of distribution, in such a way that the user is able to select the work and production by digital means;
- (d) inclusion of their phonograms in audiovisual works;
- (e) alteration of their phonograms by technical means.

The rights provided for in [subparagraphs \(a\), \(b\) and \(c\)](#) above shall extend to the person, whether natural person or legal entity, who exploits the phonogram under an assignment or exclusive license.

*Art. 137.* The producers of phonograms shall have the right to receive remuneration for the communication of the phonograms to the public by any means or process, except in the case of the lawful communications provided for in this Law; such remuneration shall be shared equally among the performers.

*Art. 138.* In cases of infringement of the rights provided for in this Chapter, the right to bring action shall belong to the original owner of the rights in the phonogram, to the person who shows that the rights concerned have been assigned or licensed exclusively to him or to the collective management society representing those persons.

*Art. 139.* The protection granted to the phonogram producer shall be for 70 years counted from the first of January of the year following that of the first publication of the phonogram.

On expiration of the term of protection, the phonogram shall fall into the public domain.

### **Chapter IV Broadcasting Organizations**

*Art. 140.* Broadcasting organizations shall have the exclusive right to carry out, authorize or prohibit the following:

- (a) retransmission of their broadcasts by any means or process that is or may yet become known;
- (b) recording of their broadcasts on any sound or audiovisual medium, including that of any isolated image included in the broadcast or transmission concerned;
- (c) reproduction of their broadcasts.

Broadcasting organizations shall likewise have the right to receive equitable remuneration for the communication of their broadcasts or transmissions to the public where its takes place in places open to the public on payment of an admission charge or purchase of a ticket.

*Art. 141.* For the purposes of the enjoyment and exercise of the rights provided for in this Chapter, comparable protection shall be accorded, where appropriate, to entities that transmit programs to the public by wire, cable, optic fiber or another comparable process.

*Art. 142.* The protection granted under this Chapter shall be for 70 years counted from the first of January of the year following that of the broadcast or transmission.

## **Chapter V Other Neighboring Rights**

*Art. 143.* This Law recognizes a right of exploitation in relation to recordings of moving images, with or without sound, that are not creations capable of qualifying as audiovisual works.

In such cases, the producer shall enjoy in relation to his audiovisual recordings the exclusive right to authorize or not to authorize reproduction, distribution and communication to the public, including that of phonographs taken in the course of production of the audiovisual recording.

The term of the rights provided for in this Article shall be 70 years, counted from the first of January of the year following that of the disclosure of the recording, or that of its making if it has not been disclosed.

*Art. 144.* Any person who takes a photograph or makes another form of fixation by means of a comparable process that does not qualify as a work according to the definition in this Law shall enjoy the exclusive right to authorize the reproduction, distribution and communication to the public thereof on the same conditions as are accorded to the authors of photographs.

The term of this right shall be 70 years counted from the first of January of the year following that of the taking of the photograph.

*Art. 145.* Any person who publishes for the first time a work that is in the public domain shall have the same exploitation rights in relation to it as would have accrued to its author.

The rights provided for in this Article shall have a term of 10 years counted from the first of January of the year following that of publication.

## **Title IX Collective Management**

*Art. 146.* Authors and neighboring rights societies that have been or may yet be set up for the defense of the economic rights provided for in this Law shall require authorization by the Copyright Office of INDECOPI in order to operate as collective management societies, and shall be under its responsibility, supervision and control as provided in this Law and, where appropriate, in the Regulations under it.

The above entities shall be civil associations without gainful intent, shall have legal personality and their own assets, and may not engage in any activity that is of political or religious character or alien to their essential function.

*Art. 147.* Collective management societies administrations shall be authorized, under conditions deriving from their own statutes, to exercise the rights entrusted to them for management and to assert them in all kinds of administrative and judicial proceeding without submitting any entitlement other than the said statutes, it being presumed, in the absence of proof to the contrary,

that the rights exercised have been entrusted to them either directly or indirectly by the owners thereof. Without prejudice to that empowerment, the societies shall keep at the disposal of users, in the material form used by them for their management activities, their tariffs and a directory of the owners of national and foreign rights that they manage for the purposes of consultation at their central offices. Any other form of consultation shall be charged to the person requesting it.

*Art. 148.* The Copyright Office shall, with due regard to the requirements laid down under this Title, specify in a decision accompanied by reasons those entities which, for the sole purpose of collective management, are authorized to represent the owners of rights in works, publications, productions, performances and broadcasts. The decision by which such authorization is granted or refused shall be published in the legal provisions supplement to the Official Gazette *El Peruano*.

*Art. 149.* The collective management society shall meet at the least the following requirements to be granted an operating license by the Copyright Office:

- (a) it must have been set up in the form of a civil association without gainful intent;
- (b) its statutes must comply with the requirements specified in the relevant laws under this Title;
- (c) it must have as its corporate objective the management of copyright and neighboring rights;
- (d) it must be possible to deduce from the data supplied to the Copyright Office and the information obtained by the latter that the association meets the conditions to be fulfilled to guarantee respect for legal provisions and ensure efficient management on the national territory of the rights entrusted to it.

*Art. 150.* Due regard shall be had to the following in particular when the fulfillment of the conditions laid down in the foregoing Article is assessed:

- (a) the number of owners who have undertaken to entrust the management of their rights to the candidate society in the event of authorization being granted it;
- (b) the size of the repertoire that it proposes to manage, and the actual use of that repertoire by the most significant users in the course of the preceding year;
- (c) the number and importance of the potential users;
- (d) the suitability of the statutes and of the human, technical, financial and material resources available for the achievement of its objectives;
- (e) the potential effectiveness of the management abroad of the repertoire that it proposes to manage, in the form of prospective reciprocal representation contracts with societies of the same nature that operate abroad.

*Art. 151.* Without prejudice to the legal provisions applicable to the candidate society on account of its nature and form, its statutes shall contain the following:

- (a) its name, which may not be identical or confusingly similar to that of other societies;
- (b) its objective or aims, with details of the category of categories of rights to be managed; it may not conduct its activity outside the scope of copyright or neighboring rights protection;
- (c) the classes of owners of rights included within the scope of its management, and the various categories of membership, such as membership and associate membership with rights under administration, for the purposes of participation in the administration of the society;

- (d) the general rules that will govern the contract of association with the society, which shall be independent of the instrument of membership and is to be signed by all members, whether full or associate; the said rules shall be applicable to the representation contracts that the management societies may enter into with comparable foreign organizations;
- (e) the conditions governing the acquisition and loss of membership, and also the suspension of membership rights; exclusion shall be allowed only in the case of a final sentence for an offending act to the detriment of the society to which the member belongs; only original or derived owners of the rights under management and exclusive licensees of any of those owners may be members;
- (f) the duties of members and the disciplinary rules to which they are subject, and also their rights, including the right to information and voting rights; voting in the election of governing and representative bodies shall be secret;
- (g) the governing and representative bodies of the society and their relative competence and also the rules on the convening, constitution and operation of its collegiate bodies; the bodies shall be at least the following: the General Assembly, the Management Board and a Supervisory Committee;
- (h) the initial capital and the envisaged resources;
- (i) the principles to which the systems of distribution of amounts collected are subject;
- (j) the provisions governing control of the economic and financial administration of the society;
- (k) the provisions that ensure management of the repertoire that is free of all interference on the part of users and which prevent any preferential use of works, performances or productions under management;
- (l) the fare of the capital or net assets in the event of liquidation of the society, which may not in any event be distributed among the members.

*Art. 152.* The General Assembly is the supreme body of the collective management society, which elects the members of the Management Board and Supervisory Committee. The Management Board appoints the Director General, who is the legal representative of the society.

*Art. 153.* Management of societies are obliged:

- (a) to register the following with the Copyright Office: their articles of association and statutes, and also their rules on membership, on general tariffs, on collection and distribution, on elections, on loans and on emergency funds for members and any others that elaborate on the statutory provisions; contracts entered into with associations of users, and representation contracts with foreign organizations of the same nature, including any amendments to such documents; instruments or documents by which members of the administrative and supervisory bodies are appointed, including their directors and agents; to submit annual balance sheets, audit reports and any relevant amendments; all of the foregoing being within the 30 days following approval, conclusion, completion, election or appointment, as appropriate; in the case of the conclusion of agreements with associations of users, the collective management society for the purpose of the implementation thereof, be obliged to adjust its tariff rules and publish them in accordance with the provisions of [subparagraph \(f\)](#) of this Article;
- (b) to agree to such management of copyright and neighboring rights as is requested of them directly by owners who are Peruvian nationals or residents, in accordance with their objective or aim, in so far as the rights involved cannot be effectively asserted

without the intervention of a management society and the requester is not a member of another management society of the same type, whether national or foreign, or has renounced such membership;

- (c) to agree to the management requested subject to the rules of the contract of association laid down in the statutes, and subject also to the provisions of the same statutes that are applicable thereto; the contract of association with the society may be a mandate or an assignment contract for the purposes of management, and it may not require the global transfer or making over of the rights of the owner, or any rights or exploitation arrangements in addition to those necessary for the purposes of management by the society, and the term of the mandate may not exceed three years, which term may be renewed indefinitely;
- (d) to accord those whom it represents an appropriate right of participation in its decisions, with the possibility of introducing a voting system that incorporates reasonable weighting criteria proportionate to the actual use of the works, performances or productions embodying rights that are managed by the society; in matters relating to the suspension of membership rights, the voting system shall be equal;
- (e) to ensure that the sums to be collected by them are reasonable and equitable and are determined by the remuneration payable for the use of works in their repertoires, whether belonging to national or foreign owners, whether resident in the country or not; they shall be governed by the principle of remuneration proportional to the income realized through exploitation of the repertoire concerned, except in cases of fixed remuneration permitted by law, and provision may be made for reductions for uses of works and performances that are made without gainful intent by non-profit legal or cultural entities;
- (f) to keep at the disposal of the public the general tariffs and any amendments thereto which, to be enforceable, shall be published in the Official Gazette *El Peruano* and in a wide-circulation national newspaper not less than 30 calendar days prior to the date of entry into force thereof;
- (g) to enter into contractual dealings, unless grounds dictate otherwise, with any user who so requests and who accepts the established tariff, with a view to the grant of non-exclusive licenses for the use of their repertoires, in so far as they have been empowered to make such grants by the owners of the rights concerned or their representatives, except in the case of single uses of one or more works of any kind that require separate authorization by the owner thereof;
- (h) to collect the remuneration for the rights under management, applying to that end the previously published tariffs;
- (i) to distribute the remuneration collected at intervals not exceeding one year on the basis of their distribution rules, with only administrative and management expenses deducted;
- (j) to secure approval of their income and expenditure budgets by the Management Board for periods not exceeding one year; administrative costs may not exceed 30 per cent of the overall amount of remuneration actually collected for the use of the rights of their members and the members of foreign collective management societies with which they have reciprocal representation contracts; collective management societies may, to fulfill social and cultural aims previously defined by the General Assembly, set aside an additional 10 per cent of the net amount collected for collective management, after deduction of administrative costs; only the Management Board may authorize costs not originally provided for in the relevant budget, without exceeding the specified upper limits, the Directors and Director General of the society being jointly responsible for

any violations of this Article; such joint liability shall likewise apply to the members of the Supervisory Committee in the event of their failing to give the Copyright Office timely notice of any such irregularity; the society may as an exceptional measure, given due justification and only for the procurement of assets, incur greater expenses exceeding by 10 per cent the maximum percentage provided for in this Law, in which case it shall previously have obtained the unanimous consent of the Management Board and the approval of the Supervisory Committee and the General Assembly;

- (k) to apply systems of actual distribution that preclude arbitrary action, on the principle of equal distribution among the owners of rights, which shall be genuinely proportional to the use of the works, performances or productions concerned, as the case may be;
- (l) to issue a periodical publication for the benefit of their members, with information on the society's activities that may have a bearing on the exercise of their rights, which shall at least contain the society's balance sheet, the auditor's report and the text of any resolutions adopted by its governing bodies; similar information shall be sent to the foreign organizations with which they have representation contracts for the national territory, and to the Copyright Office of INDECOPI;
- (m) to draw up, within the three months following the close of each accounting period, the balance sheet and an account of activities carried on in the course of the previous year, which documents shall be made available to members at least 30 calendar days in advance of the holding of the General Assembly that has to rule on their approval or rejection;
- (n) to submit the balance sheet and accounting documents for examination by an external auditor appointed by the Management Board on the basis of a list of three names submitted by the Supervisory Committee, whose report shall be available to members, with a copy being also sent to the Copyright Office within five days of the issue thereof, without prejudice to the deliberations and reports for which the internal supervisory bodies are responsible in accordance with the statutes;
- (o) to publish the annual balance sheet of the society in a wide-circulation national newspaper within the 20 days following the meeting of the General Assembly;
- (p) bear the costs incurred for the publications provided for in this Law, and also the cost of the auditing ordered by the Copyright Office, which shall not be counted as part of the percentage for administrative costs.

*Art. 154.* The instruments evidencing the representation that collective management societies exercise on behalf of foreign entities or associations and the appointment of the members of their governing bodies and Director General shall be binding within the Organization and on third parties as from their registration at the Copyright Office.

The said Office may refuse or cancel the registration of instruments or documents appointing members of the governing bodies of the collective management society for violations of legal or statutory provisions committed in the course of their election.

*Art. 155.* The members of the Governing Board shall be subject to the following incompatibilities:

- (a) being related to each other down to the fourth degree of blood relationship and the second of legal relationship;
- (b) being married to or cohabiting with each other;
- (c) being an artistic director, impresario, owner, member, representative or attorney in relation to an entity that is in debt to the Organization or in dispute with it;



- (d) being a relation down to the fourth degree of blood relationship or the second of legal relationship, the spouse or the concubine of a member of the Supervisory Committee or of the Director General;
- (e) being a relation down to the fourth degree of blood relationship or the second of legal relationship, the spouse or the concubine of an officer of the Copyright Office or of the Tribunal of INDECOPI.

*Art. 156.* The members of the Supervisory Committee shall be subject to the following incompatibilities:

- (a) being related to each other down to the fourth degree of blood relationship or the second of legal relationship;
- (b) being married to or cohabiting with each other;
- (c) being an artistic director, impresario, owner, member, representative, officer or attorney working in relation to an entity that is in debt to the society or in dispute with it;
- (d) being a relation down to the fourth degree of blood relationship or second of legal relationship, the spouse or the concubine of a member of the Management Board or of the Director General;
- (e) being a relation, down to the fourth degree of blood relationship or the second of legal relationship, the spouse or the concubine of an officer of the Copyright Office or the tribunal of INDECOPI.

*Art. 157.* The Director General shall be subject to the following incompatibilities:

- (a) being the Director General or a member of the Management Board or Supervisory Committee of another collective management society;
- (b) being a relation, down to the fourth degree of blood relationship or the second of legal relationship, the spouse or the concubine of a member of the Management Board or Supervisory Committee;
- (c) being an artistic director, impresario, owner, member, representative, office or attorney in relation to an entity that is in debt to the Organization or in dispute with it;
- (d) being a relation, down to the fourth degree of blood relationship or the second of legal relationship, the spouse or the concubine of an officer of the Copyright Office or of the Tribunal of INDECOPI.

*Art. 158.* The society may not conduct dealings with the spouse or concubine or with the relations down to the fourth degree of blood relationship or the second of legal relationship of the Director General.

*Art. 159.* No employee of the society may represent a member of the society at ordinary or extraordinary meetings of the General Assembly.

*Art. 160.* The members of the Management Board and Supervisory Committee and the Director General shall, on taking up their duties and annually thereafter, submit to the Copyright Office of INDECOPI a sworn statement that they are not affected by any of the incompatibilities referred to in this Law, and also a sworn statement of assets and income.

*Art. 161.* Management societies may not hold non-distributable funds. To that end they shall, for three years counted from the first of January of the year following that of distribution, make available to their members and to the management societies represented by them the documentation used in connection with that distribution, and shall retain any sums corresponding to works, performances or productions regarding which it has not been possible to establish the identity of the

holder of rights. On expiration of the said period, the sums in question shall be included in an additional distribution among the owners who shared in the previous one in proportion to their individual shares in the said previous distribution. Amounts accruing to members that have not been collected by those members shall revert to the collective management society after five years counted from the first of January of the year following that of distribution.

*Art. 162.* Amounts allocated to members of a collective management society that have not been collected by the said members shall revert to the society after a period of five years counted from the first of January of the year following that of the allocation.

*Art. 163.* If a union or association representing users considers that the tariff laid down by a collective management society is being applied improperly, it may call upon INDECOPI to arbitrate through an arbitration board composed of one representative of the Free Competition Board, one representative of the Consumer Protection Board and one representative of the Copyright Office, with the latter convening it and presiding over it. The arbitration request may be filed within the 30 working days following the publication of the tariff. The Copyright Office may likewise convene the Board *ex officio*. While the decision is pending, the union or association representing users may make use of the repertoire administered by the society, provided that the appropriate payment is deposited or the amount demanded by the society according to its current tariffs is lodged with a judicial authority. Where the board finds that there has indeed been an improper application of the tariff, it shall specify the criteria on which the collective management society has to base the application of its tariff regulations. No appeal may be lodged against the ruling handed down by the board.

*Art. 164.* For the purposes of the system of authorization and supervision provided for in this Law, the Copyright Office may require management societies to provide information of any kind regarding their corporate activity; it may order inspections or audits, examine the Organization's books and documents and also appoint a representative to attend, with the right to speak but not to vote, the meetings of deliberative, administrative or supervisory bodies, or those of any other body provided for in the relevant statutes.

The decision ordering an audit shall be accompanied by a statement of reasons, and the collective management society shall defray any costs arising from it.

*Art. 165.* The Copyright Office is the only competent authority that may impose sanctions on management societies that infringe their own statutes or regulations or the relevant legislation, or those that are implicated in acts affecting the interests of those that they represent, without prejudice to any criminal sanctions or civil actions that may be appropriate.

*Art. 166.* The sanctions referred to in the foregoing Article may be any of the following:

- (a) a reprimand, the publication of which in the legal provisions supplement of the Official Gazette *El Peruano*, at the expense of the infringer, may also be ordered;
- (b) a fine of up to 150 tax units (UIT), depending on the seriousness of the offense;
- (c) suspension of the society's authorities from the exercise of their functions for up to one year, with the appointment of an administrative board to replace it;
- (d) cancellation of the operating license.

*Art. 167.* The sanction of cancellation of the operating license of a collective management society may be contemplated only in the following cases:

- (a) if it is proved that the operating license has been obtained through the falsification or alteration of data or documents, or in any other manner contrary to the law;
- (b) if any serious fact emerges or is revealed that would have caused the operating license to be refused at the outset;

- (c) if it is shown that the society is incapable of fulfilling its corporate objectives;
- (d) if the society commits for a second time a serious offense that has already provided grounds for a sanction within the three years preceding the said second offense.

In any of the foregoing circumstances, a warning shall first be issued by the Copyright Office, which shall set a period of not more than three months for the appropriate remedy or correction to be implemented.

Cancellation of an operating license shall come into effect after 30 days following publication in the legal provisions supplement of the Official Gazette *El Peruano*.

## **Title X**

### **The Administrative Role of the State**

#### **Chapter I**

#### **Copyright Office**

*Art. 168.* The Copyright Office of INDECOPI is the competent national office responsible for the administrative monitoring and protection of copyright and neighboring rights; it possesses technical, administrative and operational independence for the exercise of the duties entrusted to it, and hands down first-instance rulings on contentious and non-contentious issues referred to it, either at the request of a party or ex officio.

*Art. 169.* The Copyright Office shall have the following powers:

- (a) direct, coordinate and oversee the implementation of laws and of international treaties or conventions to which the Republic is party and which relate to copyright and other rights recognized by this Law, and to ensure the observance thereof;
- (b) as the sole competent authority, to discharge the duty of authorizing collective management societies and exercising supervisory control over their management activity, as provided in this Law;
- (c) to file criminal reports where appropriate if it has knowledge of a circumstance that might constitute an offense;
- (d) to act mediator where the parties so request, or to summon them to conciliation proceedings, in disputes relating to the enjoyment or exercise of the rights recognized by this Law;
- (e) to issue technical reports on criminal proceedings in progress for offenses against copyright and neighboring rights;
- (f) to exercise, either ex officio or at the request of a party, supervisory control and inspection functions regarding activities liable to give rise to the assertion of the rights recognized by this Law, in which case users are obliged to provide any facilities and information and documentation that may be required of them;
- (g) to order preventive and precautionary measures and to impose sanctions, at the request of a party, for the infringement or violation of national and international legislation on copyright and neighboring rights, being empowered to reprimand, fine, attach or confiscate, or order the temporary or final closure of premises;
- (h) to set, where appropriate in proceedings submitted to its jurisdiction, the remuneration payable to the owners of rights;

- (i) to devise promotion, introduction and training programs on copyright, neighboring rights and other intellectual property rights provided for in this Law, to which end it may coordinate its work with national or international organizations concerned with the same subject matter;
- (j) to provide for, order, implement and evaluate such action as may be required for the application of the legislation on copyright and neighboring rights and the operation of the National Register of Copyright and Neighboring Rights;
- (k) to keep the appropriate registers within its area of concern, being empowered to register rights and to invalidate or cancel them or declare them lapsed in accordance with the relevant regulations;
- (l) to keep a register of the constituent instruments of the collective management societies governed by this Law, including subsequent amendments thereto;
- (m) to issue technical opinions on draft legal provisions concerning matters within its competence;
- (n) to organize the legislation on copyright and neighboring rights and propose such provisions and other arrangements as will ensure its constant improvement and continuing effectiveness;
- (o) to seek the intervention of the competent political authority and the assistance of the forces of law and order for the enforcement of its decisions;
- (p) to effect the enforced implementation of its decisions or collection of fines imposed by it;
- (q) to propose and coordinate programs of national and international cooperation in its area of concern;
- (r) to take part in international events concerned with copyright and neighboring rights;
- (s) any other duties specified by legislation and its own regulations.

## **Chapter II**

### **Register of Copyright and Neighboring Rights**

*Art. 170.* The Copyright Office shall keep the National Register of Copyright and Neighboring Rights, in which may be registered works of the mind and other intellectual property protected by this Law, and also any agreements or contracts that in whatever form confer, amend, transfer, encumber or cancel economic rights or by which alterations to the work are authorized.

Registration shall be merely optional for authors and their successors in title and not constitutive of rights, so that failure to register shall not prejudice the enjoyment or full exercise of the rights recognized and guaranteed by this Law.

The application and its processing, registration and fee payments in connection with registration shall take place in accordance with the provisions of the relevant regulations, which shall be approved by the Copyright Office in an official resolution which shall itself be published in the legal provisions supplement of the Official Gazette *El Peruano*.

*Art. 171.* No rights shall arise from entry in the register, which shall have mere referential and declaratory character, being no more than an organ of publicity and proof of priority.

*Art. 172.* Any of the owners of rights in one and the same work, performance or production shall be entitled to apply for the registration thereof, and the effects of registration shall benefit all of them.

## **Chapter III**

### **Administrative Procedure**

*Art. 173.* Without prejudice to any civil and criminal actions that may be brought before the competent judicial authorities, the owners of any of the rights recognized in copyright and neighboring rights legislation, or their representatives, may report the infringement of their rights to the Copyright Office in its capacity as competent administrative authority, provided that such report shall not in itself constitute a first-instance proceeding.

*Art. 174.* Infringement actions initiated ex officio or at the request of a party shall be subject to the procedure laid down in **Title V** of Legislative Decree No. 807, with the exception of **Article 22** thereof.

To that end it shall be understood that, where reference is made in the said **Title V** to the Commission, it shall be construed as a reference to the Head of the Office and, where reference is made to the Technical Secretary, it shall be construed as a reference to the official designated by the competent office.

*Art. 175.* Administrative actions for infringement shall be statute-barred after two years.

## **Chapter IV**

### **Preventive or Precautionary Measures**

*Art. 176.* Without prejudice to the provisions of **Title V** of Legislative Decree No. 807, the owners of any of the rights provided for in this Law, or their representatives, may, without prejudice to any other actions that may be available to them, apply on their own account and at their own expense and risk for the immediate cessation of the unlawful activity of the infringer in the terms provided for in this Chapter. To that end the Copyright Office, as administrative authority, shall be empowered to order rapid and effective preventive or precautionary measures:

- (a) to avoid an infringement of any of the rights recognized by this Law, and in particular to prevent the introduction into commercial distribution circuits of suspected infringing merchandise, which shall include measures to prevent the entry of imported merchandise, at least immediately after customs clearance;
- (b) to preserve relevant evidence concerning the presumed infringement.

*Art. 177.* The preventive or precautionary measures shall include the following:

- (a) immediate suspension or cessation of the unlawful activity;
- (b) attachment or confiscation, and withdrawal from commercial distribution circuits, of any copies produced or used and of the material or equipment used for the infringing activity;
- (c) the conduct of inspections, attachments or confiscations without prior notice.

The precautionary measure of attachment or confiscation may be applied for only in connection with an administrative report procedure, without prejudice to any action that may be taken ex officio.

*Art. 178.* The Copyright Office may, where appropriate, order the delivery to the injured party or to a suitable institution of the infringing merchandise and any of the materials and equipment used for the perpetration of the infringement, or it may order the destruction thereof. Where the injured party fails to appear in person before 20 days have elapsed following the corresponding notification, the authority may dispose of the unlawful materials as it sees fit.

The selection of the suitable institution referred to in the foregoing paragraph shall be announced by the administration of INDECOPI.

Precautionary and final measures shall not apply to a copy acquired in good faith for strictly personal use.

*Art. 179.* Any person applying for a preventive or precautionary measure shall first file with the administrative authority any proof that is reasonably accessible to him and which the said authority considers sufficient to establish that:

- (a) the applicant is the owner of the rights or has authority to act;
- (b) the rights of the applicant are being infringed, or that such infringement is imminent;
- (c) any delay in the ordering of the measures could do irreparable harm to the owner of the rights, or if there is a demonstrable risk of evidence being destroyed.

*Art. 180.* The person applying for preventive or precautionary measures shall file with the authority, in addition to the proof referred to in the foregoing Article, any information that might be necessary for the identification of the merchandise in relation to which the application is being made, and details of the place in which the said merchandise is located.

*Art. 181.* The Copyright Office is entitled to order preventive or precautionary measures at the request of a single party, without having to give prior notice to the other party, especially where any delay is liable to do irreparable harm to the owner of the rights, or where there is an immediate risk of evidence being destroyed.

*Art. 182.* The provisions of the foregoing Article shall not apply to cases of communication to the public of a protected work, artistic performance, production or broadcast, carried out by an organizer or impresario who does not have the proper authorization, in which case revocation of the suspension or prohibition may only be achieved by the submission of the consent of the owner of the rights or of the collective management society representing him, or authentic evidence that the subject matter in question is not protected.

The Copyright Office shall in that case proceed, at the request of the owner or of the management society representing him, to notify the alleged infringer immediately and prohibit him from making use of the work, performance, production or broadcast to which the measure relates, giving due warning of the fine and other sanctions provided for in the Law.

## **Chapter V**

### **Infringements**

*Art. 183.* The violation of any of the provisions of this Law shall be deemed an infringement.

*Art. 184.* At the request of the owner of the rights concerned or of the collective management society representing him, the police authority shall immediately investigate the commission of any act in violation of this Law, and shall convey a copy of its report to the person concerned.

*Art. 185.* Where the circumstances to which the administrative procedure relates constitute an alleged offense, the Copyright Office may file a criminal report with the Public Prosecutor.

Where the Copyright Office has destroyed and disposed of the copies that constituted the subject matter of the copyright or neighboring rights infringement, the report shall be accompanied by a certified copy of the corresponding administrative decision, and also copies of the documents associated with the measures, which shall give an account of the subject matter to which they relate, for assessment as proof of the presumed offense.

## **Chapter VI Sanctions**

*Art. 186.* The Copyright Office is empowered to impose the sanctions corresponding to infringements of the copyright and neighboring rights protected by this legislation according to the seriousness of the offense, the conduct of the infringer throughout the proceedings, the economic prejudice caused by the infringement, the unlawful benefits realized by the infringer and other criteria that the said Office may set fit to apply in the light of each individual case.

The infringer shall be considered to have committed a serious offense where he has violated any rights and where at least one of the following situations obtains:

- (a) violation of any of the moral rights recognized by this Law;
- (b) motivation by gainful intent or marketing purposes, whether direct or indirect;
- (c) submission of false statements regarding the certification of proceeds, the repertoire used, the identities of the owners of the rights involved, authorizations supposedly obtained and numbers of copies, or any other tampering with data that is liable to prejudice any of the owners of rights protected by this Law;
- (d) performance of acts attributable to a collective management society without having received the appropriate authorization from the Copyright Office;
- (e) repercussions that the infringement committed has had;
- (f) a second or further instance of prohibited conduct.

*Art. 187.* A serious offense shall also have been committed by a person who manufactures, assembles, imports, alters, sells, rents, offers for sale or rent or in any other way brings into circulation devices, systems, schemes or equipment capable of circumventing another device intended to prevent or restrict the making of copies of works or to impair the quality of copies so made, or those capable of permitting or promoting the reception by unauthorized persons of a coded program that is broadcast or otherwise communicated to the public.

*Art. 188.* The Copyright Office may impose the following sanctions either together or indiscriminately:

- (a) reprimands;
- (b) fine not exceeding 150 tax units (UIT);
- (c) rectification of omissions;
- (d) temporary closure of premises, not exceeding 30 days;
- (e) permanent closure of premises;
- (f) permanent attachment or confiscation;
- (g) publication of the ruling at the infringer's expense.

*Art. 189.* In the event of a second or subsequent offense, understood as being the perpetration of an act of the same nature within a period of two years, the fine imposed may be doubled successively and without limitation.

*Art. 190.* The amounts of fines shall be paid to INDECOPI within a period of five years, after which enforced recovery shall be ordered.

*Art. 191.* The Copyright Office may impose successive coercive fines on the infringer until he complies with the terms of the sentence handed down in a final decision, and also with the obligation to rectify omissions or alterations that he may have made, in which case he shall be given

notice of a mandatory period on pain of the fine specified in **Article 28** of Legislative Decree No. 807, the foregoing being without prejudice to the application of such other sanctions and measures as may be appropriate.

*Art. 192.* The authority may order, either ex officio or at the request of a party, a single publication of the relevant decision in the Official Gazette *El Peruano*, at the expense of the infringer.

*Art. 193.* Where appropriate and without prejudice to the imposition of a fine, the authority shall order the infringer to pay the remuneration accruing to the owner of the rights concerned or to the society representing him.

*Art. 194.* The amount of remuneration payable shall be determined according to the value that the owner of the rights, or the society representing him, would have collected if exploitation had been authorized.

Payment of the aforesaid remuneration shall in no case imply acquisition of copyright by the infringer. Consequently, the infringer shall not be relieved of the obligation to put his legal position in order by obtaining the relevant authorization or license.

## **Title XI**

### **Civil Actions and Procedures**

*Art. 195.* Where, on the grounds of the violation of the provisions of this Law, the person concerned has chosen to institute several actions, those actions shall be conducted according to the rules of summary procedure laid down in the Civil Procedure Code and the provisions contained in special legislation.

*Art. 196.* The owners of any of the rights provided for in this Law, their representatives or collective management societies may, without prejudice to any other action that may be available to them, seek the cessation of the infringer's unlawful activity and demand compensation for the material and moral damage caused by the violation, and also repayment of all costs.

*Art. 197.* Cessation of unlawful activity may include the following:

- (a) immediate suspension of the infringing activity;
- (b) prohibition of the infringer from resuming that activity;
- (c) withdrawal of the unlawful copies from the market, their delivery to the owner of the rights violated where appropriate, or their destruction;
- (d) disablement of molds, plates, matrices, negatives and other material intended for the reproduction of unlawful copies, and where necessary destruction of such material;
- (e) seizure of the equipment used for unauthorized communication to the public.

The courts may likewise order publication of the sentence, at the infringer's expense, in one or more newspapers.

*Art. 198.* The court shall, at the request of the owner of the rights concerned, his representative or the corresponding management society, order the immediate institution of the necessary precautionary measures to avoid the perpetration of the infringement or the continuation or repetition of a violation already committed, including the following measures in particular:

- (a) seizure of the income realized through the unlawful activity or, where appropriate, of the amounts owed in remuneration;



- (b) immediate suspension of the unlawful manufacture, reproduction, distribution, communication or importation, as the case may be;
- (c) sequestration of the copies produced or used and of the material or equipment used for the infringing activity.

The precautionary measures provided for in this Article shall not prevent the adoption of others provided for in ordinary legislation.

*Art. 199.* The measures provided for in the foregoing Article shall be allowed by the judicial authority provided that the need for them is demonstrated and evidence is submitted in support of the likely existence of the alleged violation of rights.

The need for the measure or the alleged violation of rights may also emerge from an inspection ordered by the court on the site of the infringement to produce advance evidence.

*Art. 200.* The precautionary measures specified in the foregoing Article shall be lifted by the judicial authority where:

- (a) the person against whom the measure has been decreed provides sufficient security, in the court's estimation, to cover the results of the action;
- (b) the person seeking the measures fails to give evidence of having initiated the procedure for securing a decision on the substance of the affair within a period of 30 days counted from the ordering or implementation of the said measures.

*Art. 201.* The precautionary measures provided for in the foregoing Article shall apply without prejudice to the obligation on the customs authority, specified in [Chapter III of Title III](#) of this Law, or to the competence accorded to the Copyright Office.

*Art. 202.* The user of the works, performances, productions, broadcasts and other intellectual property recognized by this Law shall be considered in default when he does not make the payments due according to the tariffs laid down for the form of use concerned within 10 consecutive days following a judicial or notarial notice served on him to do so.

## **Title XII**

### **Scope of the Law**

*Art. 203.* Works, artistic performances, phonographic productions, radio broadcasts or transmissions by wire, cable, optic fiber or another comparable process, audiovisual recordings, photographic fixations and other intellectual property having originated abroad shall enjoy national treatment within the Republic, regardless of the nationality or domicile of the owner of the rights concerned, or the place of publication or disclosure.

## **Title XIII**

### **Procedure Before the Court**

*Art. 204.* Appeals shall be substantiated before the authority that handed down the ruling by the filing of new documents, different interpretations of the evidence put forward or questions of pure law. When the requirements laid down in this Article and in the Single Text on Administrative Procedure (TUPA) of INDECOPI have been verified, the competent office shall allow the appeal and refer the relevant documents to the second administrative instance.

*Art. 205.* When the appeal file has been received by the Intellectual Property Chamber of the Tribunal for the Defense of Competition and Intellectual Property of INDECOPI, the appeal shall

be communicated to the other party so that he may submit his arguments within a period of five days.

*Art. 206.* No evidentiary material other than documents shall be allowed. Nevertheless, any of the parties may request the right to speak, and to that end shall state whether he intends to speak on matters of fact or of law. The acceptance or refusal of the said request shall be at the discretion of the Chamber of the Tribunal, depending on the importance and implications of the case. Where the parties have been convened to an oral hearing, the latter shall be held in the presence of those who attended the proceedings.

## Complementary Provision

*Sole provision.* It shall be understood that, for the purposes of **Articles 29 and 30** of Legislative Decree No.807, the provisions of **subparagraphs (a) and (b) of Article 38** of Legislative Decree No. 716 shall be applicable, in so far as it is relevant, to the non-complying party.

## Final Provisions

*First.* In the case of offenses against copyright and neighboring rights, before the Public Prosecutor issues an indictment or opinion, as the case may be, the Copyright Office of INDECOPI shall issue a technical report within a period of five days.

*Second.* Law No. 13714, Supreme Decree No. 06162-ED and all provisions contained in other laws or regulations that are contrary to this Law are repealed.

*Third.* **Articles 216 to 221** of Book II, **Title VII, Chapter I** of the Criminal Code are amended as follows:

*“Art. 216.* A person who is authorized to publish a work and does so in any of the following ways shall be punished with the sanction of confinement for one to three years and a fine of 10 to 60 times his average daily income:

- (a) without naming the author, translator, adapter, compiler or arranger on the copies;
- (b) by printing the name with additions or deletions that adversely affect the reputation of the author as such, or where applicable that of the translator, adapter, compiler or arranger;
- (c) by publishing the work with abridgments, additions, deletions or any other amendments without the consent of the owner of rights;
- (d) by publishing two or more works separately where authorization has been given for their publication as a set, or publishes them as a set where only separate publication has been authorized;

*Art. 217.* A person who performs any of the following acts in relation to a work, artistic performance, phonogram, radio broadcast or transmission, audiovisual recording or photographic image expressed in any form, without the prior written authorization of the author or owner of the rights, shall be punished with the sanction of confinement for no fewer than two or more than six years and 30 to 90 times his average daily income:

- (a) total or partial alteration;
- (b) total or partial reproduction by any means or process;
- (c) distribution by sale, rental or public lending;

- (d) communication or distribution it to the public by any of the means or processes reserved for the owner of the rights concerned;
- (e) reproduction, distribution or communicates in a number greater than that authorized in writing.

*Art. 218.* The sanction shall be confinement for no fewer than two or more than eight years and a fine of 60 to 100 times his average daily income where:

- (a) an unpublished or undisclosed work received in confidence from the owner of the copyright, or from another person in his name, is brought to the notice of any person without the consent of the said owner;
- (b) reproduction, distribution or communication to the public is carried out for commercial purposes with the name or pseudonym of the author, producer or owner of rights either altered or deleted;
- (c) in the knowledge that the copy or reproduction is unlawful, it is nevertheless distributed to the public by any means, stored, concealed, brought into the country or removed from it;
- (d) devices, systems, schemes or equipment are manufactured, assembled, imported, altered, sold, rented, offered for sale or rent or in any other way brought into circulation that are capable of circumventing another device intended to prevent or restrict the making of copies of works, or to impair the quality of copies so made, or that are capable of permitting or promoting the reception of a coded program that is broadcast or otherwise communicated to the public by persons not authorized to do so;
- (e) the work, performance, production, broadcast or any other kind of intellectual property of another person is entered in the Register of Copyright and Neighboring Rights as if it were one's own, or that of a person different from the true owner of the rights.

*Art. 219.* Any person shall be punished with the sanction of confinement for no fewer than two or more than eight years and a fine of 60 to 180 times his average daily income who disseminates a work either in its entirety or in part as being his own, by copying or reproducing it word for word or by attempting to conceal the fact that it is a copy by making certain alterations or by attributing another's authorship or ownership to himself or to a third party.

*Art. 220.* Any person shall be punished with the sanction of confinement for no fewer than four or more than eight years and a fine of 90 to 365 times his average daily income who:

- (a) falsely attributes to himself the original or derived authorship of any of the rights protected by copyright and neighboring rights legislation, and by virtue of that improper attribution causes the competent authority to suspend an act of communication, reproduction or distribution of the work, performance, production, broadcast or any other protected intellectual property;
- (b) engages in activities attributable to a society for the collective management of copyright or neighboring rights without having obtained due authorization from the competent administrative authority;
- (c) makes false statements as to the certification of proceeds, public attendance, repertoire used, identity of authors, authorization supposedly obtained, numbers

of copies produced, sold or distributed free of charge or any other tampering with data in such a way to prejudice any of the owners of the copyright or neighboring rights;

- (d) as the agent committing the offense, belongs to an organization whose purpose is to perpetrate the unlawful acts provided for in this Chapter;
- (e) as the agent committing any of the offenses provided for in this Chapter, possesses the status of public official or civil servant.

*Art. 221.* Where offenses provided for in this Chapter are committed, the unlawful copies and apparatus or materials used for the commission of the unlawful act shall first be seized. At the request of the Public Prosecutor, the court shall likewise order the searching or forcible unlocking of the premises in which the unlawful act was being committed.

Where a condemnatory sentence is passed, the unlawful copies may be delivered to the owner of the rights violated or to an appropriate institution; where such a step is not appropriate, they shall be destroyed. Delivery shall not have indemnifying character.

In no case shall the unlawful copies be returned to the offender.”

*Fourth.* This Law shall enter into force 30 days after its publication in the Official Gazette *El Peruano*.

## **Transitional Provisions**

*First.* The rights in the works and other productions protected under the previous legislation shall benefit from the longer terms of protection provided for in this Law.

*Second.* The titles of newspapers, magazines, programs, radio and television series, cinema newsreels and any other form of publication or broadcast referred to in **subparagraph (c) of Article 60** of Law No. 13714, having been removed from the scope of this Law, shall continue to enjoy protection for a period of one year counted from the entry into force of this Law.

*Third.* Collective management societies operating in accordance with [Article 146](#) and the following articles of this Law shall adapt to the provisions of this Law within a period not exceeding three months counted from the entry into force thereof.

*Fourth.* The procedural provisions contained in this Legislative Decree shall apply to procedures initiated prior to the entry into force thereof.