

**PARLIAMENT OF THE REPUBLIC OF MOLDOVA**

**L A W  
on Copyright and Related Rights**

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The Parliament hereby adopts this organic Law.

## **Chapter I GENERAL PROVISIONS**

### **Article 1. Legal Basis**

- (1) Copyright and related rights and the protection and the liability for their infringements shall be governed by the Constitution of the Republic of Moldova, by the international treaties to which the Republic of Moldova is a party, by this Law and by other normative acts.
- (2) This Law governs the relations that arise from the creation and use of the literary, artistic and scientific works (copyright) and from the creation and use of performances, phonograms, videograms and broadcasts of radio and television organizations (related rights), as well as certain other rights acknowledged to be in relation to the intellectual activity in the field of literature, arts and sciences.

### **Article 2. International Treaties. National Treatment**

- (1) Where the international treaty to which the Republic of Moldova is a party contains rules different from those specified in this Law, the provisions of the international treaty shall apply.
- (2) Unless otherwise provided in this Law, those natural persons and legal entities whose works or objects of related rights are to be protected under an international treaty to which the Republic of Moldova is party shall enjoy the same protection under this Law as those who are nationals or legal entities of the Republic of Moldova (national treatment).
- (3) This Law shall be applied to all works and objects of related rights protected by a treaty to which the Republic of Moldova is party which at the moment of the entry into force of the treaty concerned have not fallen yet into the public domain in their country of origin through the expiry of a term of protection previously granted, and which have not fallen yet into the public domain in the Republic of Moldova either through the expiry of a term of protection previously granted.

### **Article 3. Basic Concepts**

For the purposes of this Law:

*author* means the creative person whose creative effort had led to the creation of a work;

*audiovisual work* means a work consisting of a series of fixed related images, with or without accompanying sounds giving an impression of movement when it is made visible – if accompanied by sounds, along with the sounds – by an appropriate device;

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

*collective work* means a work created by more than one natural person, and their contribution constitutes an indivisible whole to the point of impossibility to identify each one's contribution, at the initiative and under the direction of a natural or legal person who will publish the work under his own name;

*communication to the public* means the transmission by air, including by satellite (broadcasting), by cable or by any other means, of images and/or sounds of works or objects of related rights where such images or sounds may be perceived by persons outside the usual circle of a family and its close acquaintances in places where, without the transmission they would not be able to perceive the images and/or the sounds. Communication of codified signals shall represent a transmission by air (broadcasting) or by cable when the decoding means are offered to the public by the air broadcasting organisation or by the cable distributor organisation, respectively, or with its consent. Retransmission by air (rebroadcasting) or by cable of works or objects of related rights transmitted by air (broadcast) or by cable which does not take place simultaneously with the original communication to the public, or which includes changes (dubbing, subscriptions, insertions of advertisement etc.) shall be qualified as a new act of communication to the public by air (broadcasting) or by cable.

*computer program* means a set of instructions, commands and/or codes expressed in any form or mode, and which may operate a computer with a view to a specific aim or result. This concept covers the material incorporated in the computer memory, the material accompanying a created program, the preparatory material produced during the development of a program, provided that the program is drawn and expressed in such a form that the preparatory material results later in the elaboration of the computer program. The computer program may be expressed in any language, in either the source-code or target-code;

*database* means a compilation of data or other materials irrespective of whether or not they are protected by copyright or related rights, both in a machine-readable form and in other form, arranged in a systematic or methodical way and individually accessible by electronic or other means;

*distribution* means the putting into circulation by sale or other transfer of property of the original or copies of the work or objects of related rights, either against payment or without it, as well as public offer thereof for this;

*expression of folklore* means a creation consisting of characteristic elements of the traditional cultural heritage, manifested and perpetuated by the community or by individuals, reflecting the traditional artistic legacy of the community;

*interactive making available to the public* means the making available of a work or an object of related rights, by wire or wireless means, in a way that members of the public may access it from a place, and at a time individually chosen by them.

*lending* means the making available of publications for a limited time where there is no direct or indirect economic or commercial advantage and where the act is performed by establishments accessible to the public;

*performer* means an actor, singer, musician, dancer, conductor, or any other person who acts, declaims, sings, plays in, dances, or otherwise performs a literary or artistic work, an expression of folklore or all kinds of shows, including folklore, circus, dolls and puppet variety shows;

*phonogram* means any exclusively sound recording of performances, of a work or expression of folklore, sounds or representation thereof, except for recording of sounds included in the audio-visual work;

*producer of an audiovisual work* means a natural person or legal entity, on whose initiative and responsibility the audiovisual work is created;

*producer of a phonogram* means the natural person or legal entity who or which takes the initiative and responsibility for the first fixation of the sounds of a performance of other sounds or the representations of sounds;

*producer of a videogram* means a natural person or legal entity on whose initiative and responsibility the videogram is recorded;

*publication* means the offering of copies of a work, a fixed performance, a phonogram or a videogram to the public with the consent of the author or other holder of copyright or related rights, in sufficient quantity to satisfy the reasonable needs of the public;

*public display* means the showing of an original or a copy of a work either directly or – by means of displaying the image of a work by slide or by other means on a screen or in a similar manner – indirectly (except for transmission by air or by wire) where the work, its copy or its image is shown at a place open to the public or where it may be otherwise perceived by persons outside the usual circle of a family and its close acquaintances; the public display of an audiovisual work consists in the showing of individual images of the audiovisual work in a non-sequential manner, on the understanding that the showing of an audiovisual work in usual sequential manner means public performance;

*public performance* means the presentation of works, fixed performances or phonograms, by reciting, playing, singing or by any other means either in a live show or with the aid of a device or process of any kind (except for transmission over the air (broadcasting) or by cable) at places open to the public or where otherwise the works, performances, phonograms or broadcasts may be perceived by persons outside the usual circle of a family and its close acquaintances;

*recording [fixation]* means the embodiment by any means and in any manner of sounds and/or images, or the representations thereof, in any material – including electronic – form that permits them to be perceived, reproduced or communicated;

*rental* means the making available for use for a limited period of time and for direct or indirect economic or commercial advantage of a work or an object of related rights;

*reproduction* means the making of one or more copies of a work or object of related rights either directly or indirectly, and either temporarily or permanently, in any form whatsoever, including an audio or video recording, and the temporary or permanent storage of a work or object of related rights in an electronic medium;

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

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

*rights management information* means any information, provided by the right holder, identifying the work or any other object protected by this Law, the author or another right holder, or information on the conditions of the use of the work or other object of protection, as well as any numbers and codes representing such information;

*satellite* means any satellite operating on frequency bands which, under telecommunication law, are reserved for communication to the public (broadcast) of signals for reception by the public or which are reserved for closed, point-to-point communication; in the latter case, however, the circumstances in which the reception of the signals by the members of the public takes place must be comparable to those which apply in the first case;

*technical protection measures* means any technical equipment or its components that, in the normal course of its operation, is designed to control access to works or to other objects of related rights, thus preventing or restricting acts which are not authorised by the right holders whose rights are protected by this Law; technological measures shall be deemed “effective” where the use of a protected work or other object protected by this Law is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other object of protection, or a copy-control mechanism, which, if not circumvented, achieves the protection objectives.

*use* means any act covered by copyright, related rights or other rights protected by this Law.

*videogram*, means the first fixation of a film; that is, any sequence of images with or without sounds, irrespective of whether or not it qualifies as an audiovisual work.

*work* means the result of original intellectual creation in the field of literature, arts and science, irrespective of the means of its making, of the concrete manner and form of its expression and of its merit and importance;

#### **Article 4. Functions and Obligations of the State Agency on Intellectual Property of the Republic of Moldova in the field of Copyright and Related Rights**

(1) The State Agency on Intellectual Property (*hereinafter – the AGEPI*) shall have the following tasks and functions under this Law:

- a) developing – and within its competence - applying adequate policy for protection, exercise and enforcement of copyright, related rights and other rights protected by this Law in accordance with the international obligations and with the corresponding national interests of the Republic of Moldova;
- b) submitting to the Government and/or other governmental bodies proposals where certain measures necessary for the applications of the policy mentioned in point (a) of this article would go beyond its competence;
- c) collecting necessary information, carrying out studies and consulting for the governmental bodies, administrative, judicial and other institutions, rightholders and users concerning the importance and the legal and practical aspects of the protection, exercise and enforcement of copyright, related and other rights protected by this Law through preparing and distributing information materials, organising awareness campaigns, and maintaining active relationship with the press and media.
- d) preparing draft laws and regulations concerning the protection, exercise and enforcement of copyright, related rights and other rights protected by this Law;
- e) representing the Republic of Moldova at international and regional organisations dealing with copyright, related rights and other rights protected by this Law;
- f) establishing and maintaining mutually advantageous cooperation with governmental offices, agencies and research institutions and other organisations of other countries dealing with copyright, related rights and other rights protected by this Law, in accordance with the legislation of the Republic of Moldova;
- g) receiving and examining applications for the registration of objects of copyright and related rights, effecting the registration of works, and issuing, on behalf of the state, registration certificates;
- h) accrediting, and supervising the activities of, the organisations for collective management of copyright and related rights;
- i) granting hallmarks according to the legislation.

(2) A Mediation and Arbitration Body shall be set up at the AGEPI for the settlement of disputes in the field of intellectual property in cases provided for by intellectual property laws and by this Law, as well as the disputes in the field of collective management of copyright and related rights. Mediation and Arbitration Body shall operate according to the regulation approved by the Government.

## **Chapter II COPYRIGHT**

### **Article 5. Requirements for Protection**

(1) This law shall protect as copyright works created in the literary, artistic and scientific fields, expressed in a certain objective form, whether they have been disclosed or not.

(2) An author shall enjoy exclusive rights in his work by the sole fact of having created such work. For the existence and application of copyright no registration of the work or any other act of notice or other formality shall be required.

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

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

(5) The economic rights may belong either to the author or to another natural person or legal entity as the lawful owner of such rights.

(6) Copyright protection shall extend to the form of expression, but not to the ideas, theories, scientific discoveries, procedures, methods of functioning or mathematical concepts, nor to the inventions comprised in a work, whatever the mode they were taken, explained or expressed.

#### **Article 6. Scope of Copyright**

(1) Copyright protection shall extend to:

- a) works, irrespective of the place of first publication, of which the copyright holder is a natural or legal person of the Republic of Moldova;
- b) works published for the first time in the Republic of Moldova, irrespective of the domicile or residence of the respective works' right holder;
- c) other works, in accordance with the international treaties to which the Republic of Moldova is a party.

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

#### **Article 7. Works Protected by Copyright**

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

- a) written form (manuscript, typewritten text, musical score, etc.);
- b) oral form (public recitation, etc.);
- c) audio or video recording (mechanical, magnetic, digital, optic, etc.);
- d) figurative form (drawing, sketch, painting, plan, photograph, etc.);
- e) three-dimensional form (sculpture, model, mock-up, structure, etc.);
- f) any other form.

(2) Copyright protection shall extend to:

- a) literary works (books, essays, novels, poems, etc.);
- b) computer programs which shall be protected in the same manner as literary works;
- c) scientific works;
- d) dramatic and dramatico-musical works, scenarios and storyboards, librettos, and film synopses;
- e) musical works, with or without words;
- f) choreographic works and mimed works;
- g) audiovisual works;
- h) works of painting and sculpture, graphic works and works of fine art;
- i) works of architecture, town planning and park and garden design;
- j) works of applied art;
- k) photographic works and works obtained by processes analogous to photography;
- l) maps, plans, sketches and three-dimensional works relating to geography, topography, architecture and other scientific fields;
- m) databases;
- n) other works.

(3) Without causing any prejudice to the right holder of the original work, the copyright protection shall extend to the derived and composite works, resultant from a series of works and/or other prior materials, namely:

- a) translations, adaptations, annotations, musical arrangements, and any other transformations of literary, artistic or scientific works which represent results of an intellectual creation;
- b) collections of literary, artistic or scientific works (encyclopaedias and anthologies, compilations of other materials or data, whether protected or not, including databases), which, on account of the selection and systematization of their content, represent results of intellectual creation.

(4) A component part, or another element of the work (including the title or the characters embodied in the work) that in itself represents an intellectual creation, shall also be protected as such by copyright.

(5) A work and its components, or other elements specified under paragraphs (1)–(4) shall be protected by copyright if original in the sense that they represent in themselves the author's intellectual creation. No other criteria – such as some quantitative, qualitative or aesthetic characteristics shall be applied to determine their eligibility for protection.

#### **Article 8. Works Not Protected by Copyright**

Copyright protection, according to this Law, shall not extend to:

a) legal acts, other administrative, political or judicial acts (laws, court decisions), or to the official translations thereof;

*[Art.8 a) amended by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

b) state emblems and official signs (flags, armorial bearings, decorations, monetary signs, etc.);

c) folklore expressions;

d) daily news and facts of simple informational nature.

#### **Article 9. The Holder of Copyright. Authorship. Presumptions and Copyright Notice**

(1) In the absence of proof to the contrary, the natural person whose name appears on a work in the usual manner shall be deemed to be the author thereof.

(2) Where a work is published in anonymous form or under a pseudonym, in a way that does not make it possible to identify the author, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he or it shall be entitled to protect and enforce the author's rights.

(3) Until the proof of the contrary, the natural or legal person, whose name or designation appears on an audiovisual work, videogram or phonogram, shall be deemed to be the producer of the respective audiovisual work, videogram or phonogram.

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

a) a circled capital letter C: ©;

b) the name or designation of the holder of the exclusive rights;

c) the year of the first publication of the work.

(5) According to this Law, the use of the copyright symbol on a work shall not constitute a condition to grant copyright protection to the respective work.

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

(7) An official certificate shall be issued to the person who registers a work. Pursuant to Art.5 (2) and paragraph (1) of the present Article, the certificate shall not imply the presumption of authorship. However, in the event of a dispute, it may constitute a presumption of authorship, in the absence of the proof to the contrary.

(8) According to the Regulations approved by the Government, the official registration of works protected by copyright and related rights shall be effected by the AGEPI.

#### **Article 10. Moral Rights of the Author**

(1) An author of a work shall enjoy the following moral rights:

a) the right of authorship – the right to be acknowledged as the author of his work and the right to require such acknowledgement, including by placing his name on all copies of the published work or referring to his name in connection with any other public use, in the usual manner, except where this turns out to be impossible, and unless the absence of the obligation to indicate the name of the author follows from other provisions of this Law.

b) the right to be named – the right of the author to decide how he is to be designated in relation to use of his work (by his true name, pseudonym or anonymously);

c) the right to respect for the integrity of his work – the right to protection of his work against any distortion, mutilation or other derogatory act liable to prejudice his honor and reputation as an author;

- d) the right to disclose his work – the right to decide on the disclosure of the work, in what form and at what time;
- e) the right of withdrawal of his work – the right of the author to withdraw his work from the trading network, provided that the author pays in advance the damages resulting from this action, if any, incurred by the holder of right to exploit the work.

(2) Moral rights shall not constitute the object of renunciation or cession as they are inalienable. The author shall maintain his moral rights also when he transfers his economic rights.

#### **Article 11. Exclusive Economic Rights**

(1) An author or other holder of copyright shall enjoy the exclusive right to perform, to authorize or prohibit the following acts:

- a) reproduction of the work;
- b) distribution of the original or copies of the work;
- c) rental of the copies of the work, except for the works of sculpture and works of applied art;
- d) importing of copies of the work for the purposes of distribution, including copies made with the authorization of the author or other holder of copyright;
- e) presentation of the work in public;
- f) public performance of the work;
- g) communication of the work by air to the public, including satellite (broadcasting by television and radio), or by cable;
- h) simultaneous retransmission and without modifications, by air or cable, of the work transmitted by air or cable;
- i) interactive making available the work to the public;;
- j) translation of the work;
- k) transformation, adaptation, arrangement or any other modifications of the work, except where the actions under letters a)-k) do not correspond to the form of expression of the work, or in relation to which no sanctions can be prescribed.

(2) The author or other holder of the exclusive economic rights shall have a right to remuneration. The amount and manner of payment of remuneration due to the author for each form of exploitation of his work shall be laid down in the author's contract or in the contracts which the collective management organizations conclude with users.

(3) The right of distribution provided for in paragraph (1) letter (b) of this Article shall be consumed with the first sale of the work or other transfer of the original or the copies of the work in the territory of the Republic of Moldova.

(4) Where an author has transferred or assigned his rental right provided for in paragraph (1)(c) of this Article concerning a phonogram or an audiovisual work to the producer of phonogram or audiovisual work, respectively, the author shall retain the right to obtain an equitable remuneration for the rental. This right cannot be waived and may only be exercised through a collective management organisation.

(5) The right of cable retransmission provided for in paragraph (1)(h) of this article may only be exercised through a collective management organisation. The amount of remuneration for the authorisation granted by the collective management organisation shall be established on the basis of any payment that the members of the public have to pay to the cable network operators for their corresponding services including for the technical access, as well as for the maintenance of the equipment used for retransmission. The amount of the remuneration shall be sufficient both for the remuneration due to the authors and other holders of copyright for their exclusive right provided for in paragraph (1)(h) of this Article and for the equitable remuneration due to performers and producers of phonograms provided for in Article 37(1)(c) of this Law.

(6) For the establishment of the amount of remuneration provided for in paragraph (5) of the present Article and other conditions, and the settlement of possible disputes between the parties concerned, Article 50 of this Law shall apply, on the understanding, that

- a) the parties concerned which shall try to establish the amount of the remuneration are the collective management organisation mentioned in paragraph (7)(a) of this Article, on the one hand, and the representatives of the interested cable network operators, on the other hand; and

b) no matter in which way the remuneration is established, it shall not be less than what the Government may determine as minimum remuneration.

(7) Unless otherwise provided in an agreement between the representatives of the interested rightholders, all the remuneration mentioned in paragraph (5)

a) shall be collected by the collective management organisation representing authors and other holders of copyright:

b) after the deduction of the actual cost of management, shall be distributed in the following manner:

- in case of television programs retransmitted by cable, 15% to producers of audiovisual works or videograms, 25% to authors of audiovisual works, except for the composers and authors of the text for the musical works, 20% to composers and authors of the text for the musical works, 2,5% to authors of literary works, 2,5 % to authors of works of art and photography, 15% for performers whose performances are fixed on phonograms, 10% to performers of audiovisual works, and 10% to producers of phonograms;

- in case of radio programs retransmitted by cable, 40% to authors or other holders of copyright in musical works, 10% to authors or other holders of copyright in literary works, 25% to performers and 25% to producers of phonograms.

(8) The collective management organisation mentioned in paragraph (7)(a) of this Article shall transfer the corresponding shares of remuneration mentioned in paragraph (7)(b) of this article due to the categories rightholders not represented by it to the collective management organisations or other representative bodies of the rightholders concerned which may take care of the distribution thereof among the corresponding rightholders concerned.

#### **Article 12. The Right to Remuneration for the Rental of Works**

(1) Where the owner lends the original or copies of his work, except for the works of architecture and works of applied art, the consent of the author or other holder of copyright shall not be necessary, however, the author or the holder of copyright is entitled to equitable remuneration.

(2) The remuneration specified under paragraph (1) shall be waived for libraries and other similar institutions which are not for direct or indirect economic or commercial advantage.

(3) The right of lending provided for in paragraph (1) of this Article may only be exercised through a collective management organisation.

(4) For the establishment of the amount of remuneration and other conditions, and the settlement of possible disputes between the parties concerned, Article 50 of this Law shall apply, on the understanding, that

a) the parties concerned which shall establish the amount of the remuneration are the collective management organisation, on the one hand, and the representatives of the interested libraries and other similar organisations, on the other hand; and

b) the remuneration established shall not be less than what the Government may determine as minimum remuneration.

(5) The Government may determine to what extent the remuneration for lending may be distributed to individual authors and other owners of copyright and to what extent it should be used for collective purposes, such as the promotion of creativity and recognition of outstanding creative achievements.

#### **Article 13. Joint Authorship**

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

(2) Each of the joint authors shall maintain copyright in the part of the work he has created, if that part is independent, and he may use it as he sees fit. A component part of a work shall be deemed independent if it is liable to be used independently of other parts of the work.

(3) The relations between the joint authors shall be covered, on a regular basis, by a contract. In the absence of such contract, all the joint authors shall enjoy jointly the copyright in the work and the corresponding remuneration shall be divided them proportionately to everybody's

contribution, if it can be determined. Where the contributions of the joint authors cannot be determined, the remuneration shall be divided in equal shares.

(4) If the joint work cannot be divided into independent parts, the joint authors may only exercise the copyright in it in agreement with each other.

#### **Article 14. Copyright in Works Created in the Execution of Duties**

(1) The moral rights in a work created in the execution of an assignment from an employer or service duties (service creation) shall belong to the author of such work.

(2) The author of the work mentioned in paragraph (1) shall not have the right to prohibit to his employer the publishing and making available of the work to the public by other means.

(3) Unless otherwise agreed by contract, to the extent the use of the work is conditioned by the assignment of the author to create such work, the copyright in the service creation shall belong to the employer.

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

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

#### **Article 15. Copyright in Collective Works**

(1) The natural person or legal entity at whose initiative and under whose direction a collective work (such as an encyclopaedia, a dictionary, other similar collections, newspapers, reviews and other periodicals) has been created and under whose name it has been published shall enjoy the economic rights in such works. Such a person or entity shall have the right to indicate his or its name or designation, or to require that it be indicated, in connection with any public use of the collective works.

(2) Unless otherwise agreed in the author's contract concluded between the author and the natural or legal persons mentioned in paragraph.(1), the authors of the works included in a collective work shall maintain their exclusive rights, provided for by this Law, in their own works and may exploit them independently of the collective work as a whole.

#### **Article 16. Copyright in Derived Works**

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

(2) Translations or other derived works shall be made only with the consent of the author of the original work. The copyright of the translator or of other author of a derived work shall not prejudice the rights of the author of the work that has been translated, adapted, arranged or otherwise transformed.

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

#### **Article 17. Copyright in Composite Works**

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

(2) Works protected by copyright may be included in a composite work only with the consent of the author or other holder of copyright in respective works. The copyright of the compiler shall not prejudice the rights of the authors of each work included in the composite work.

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

(4) Notwithstanding the copyright of the compiler, any other person may make an independent compilation or an independent arrangement of the same materials for the purpose of creating his own composite work subject to the right of authorisation of the authors of or other owners of rights in the works protected to be included into the collection.

(5) Collections containing various informative materials (articles and information, allocutions and essays, diagrams and tables, etc.), if such selection or arrangement constitutes the result of

an intellectual activity, shall be protected as such. Protection shall not extend to numerical data or to the content of the informative materials included in the selection.

#### **Article 18. Copyright in Audiovisual Works**

(1) The following shall be recognized as authors (joint authors) of an audiovisual work:

- a) the principle director;
- b) the author of the scenario (the scriptwriter);
- c) the author of the dialogue;
- d) the composer – author of any musical work (with or without words) created specifically for the audiovisual work;
- e) the cameraman;
- f) the scene painter;
- g) other possible authors who contribute in a creative manner to the production of the audiovisual work.

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

(3) Unless otherwise laid down by contract, the conclusion by an author of a contract for creating an audiovisual work shall imply assignment, in exchange of an equitable remuneration, by the joint authors to the producer of such work of the following exclusive rights of exploitation: the rights of reproduction, distribution, rental, public display, public performance, retransmission, interactive making available to the public and the rights of subtitling and dubbing.

(4) The producer of the audiovisual work shall be entitled to indicate his or its name or designation or require that it be indicated in respect of any public use of the work. Authors of audiovisual works cannot prohibit the publication of the audiovisual work, or the use of the final version of the audiovisual work, in whole or in part.

(5) Notwithstanding the provisions of paragraph (3) of this Article, when the authors transfer their right of rental to the producers of audiovisual works, they – as provided in Article 11(4) of this Law – shall retain a right to equitable remuneration for each rental. When the authors of musical works, with or without words, transfer their rights of public performance and communication to the public to the producers of audiovisual works, they also shall retain a right to remuneration for each act of public performance or communication to the public.

(6) The master copy of the audiovisual work (negatives, original recording) may not be destroyed without the consent of the author or the other holders of economic rights and related rights in the audiovisual work.

#### **Article 19. Copyright in Works of Fine Art. Right of Access**

(1) The author of a work of fine art shall have the right to require the owner to allow him the possibility of reproducing his work (the right of access). However, the owner of the work may not be required to deliver the work to the author to that end.

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

#### **Article 20. Copyright in Works of Art. Right of Resale**

(1) For each resale of an original work of art, subsequent the first transfer of property thereof by the author, the seller shall be obligated to pay to the author or his successor in title remuneration representing 5% of the resale price where such a price is at least 20 times the minimum wage (right of resale). This right shall be inalienable during the lifetime of the author and may be transferred only to the legal or testamentary heirs of the author, for the duration of copyright.

(2) The right of resale provided for in paragraph (1) of this article shall apply to all acts of resale involving – as sellers, buyers or intermediaries – dealers of works of art, such as auction organisers, salesrooms, art galleries, shops, etc. The right to resale royalty stipulated under paragraph (1) shall apply to each case of resale of an original work of art that involves art traders as vendors, buyers or intermediaries, like the organizers of auctions, salons, art galleries, shops, etc.

(3) For the purposes of this Article, *original works of art* means works of plastic or graphic art (pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries,

ceramics, glassware and photographs), provided they are made by the artist himself or are copies considered to be original works of art. Copies of such works of art that have been executed in a limited number by their author himself or with his consent (normally numbered, signed or otherwise authorised by him) shall be considered to be original works of art.

(4) The right to resale royalty, provided for in paragraph (1), may be exercised only through a collective management organisation.

(5) For a period of three years after a resale, the holder of the right of resale or the collective management organisation representing him may require any art dealer mentioned in paragraph (2) of this article to furnish any information that may be necessary in order to secure payment of royalties in respect of the resale.

(6) The holders of right of resale provided for in paragraph (1) who are not nationals, and do not have their habitual residence in the territory, of the Republic of Moldova shall enjoy such a right only if the legislation in the country of which they are nationals grants a right of resale to the holders of rights who are nationals of the Republic of Moldova.

#### **Article 21. Copyright in Photographic Works**

(1) The transfer of the property of the negative or other similar embodiment of a photographic work on the basis of which copies may be made thereof, unless otherwise provided in a contract, shall result in the transfer of economic rights in the work other than the right of resale.

(2) Unless otherwise agreed in the contract, the person represented in the photograph and on whose commission the photograph has been taken may dispose of the publication, reproduction and putting the photographic work into circulation in an interactive mode.

(3) Creation, reproduction, modification and distribution of a photographic work containing a portrait shall be permitted with the consent of the person represented in the photograph or testamentary heirs of the represented person.

(4) Unless otherwise laid down by the contract, the consent of the person represented in the photograph shall not be necessary in the following cases:

- a) if the represented person is a model by profession and/or received a remuneration for posing;
- b) if the person represented is generally known and the photographic work has been made on the occasion of his/her public activities;
- c) if the person represented constitutes only a detail of the photographic work containing a landscape, a group of persons, or a public manifestation.

#### **Articolul 22. Copyright in Works of Applied Art (design) and Works of Architecture**

(1) The protection granted by this Law for works of applied art (design) shall cover the external aspect of the objects concerned determined by such features as lines, contour, shape, texture, etc., irrespective whether the object is bidimensional or three-dimensional.

(2) The protection granted by this Law shall extend to:

- a) objects of architecture;
- b) architectural plans and the technical documentation prepared on the basis thereof;
- c) plans of architectural complexes.

(3) The right to transformation, adaptation and other similar alterations of the work of applied art or works of architecture, provided for in Article 11 paragraph (1) (k), shall not cover the alterations that do not result in a change of the external aspect of the work.

(4) In respect to the works of applied art or works of architecture:

- a) the right to respect for the integrity of the work, stipulated under Article 10 paragraph (1) (c), shall not cover the alterations that do not result in the change of the external aspect of the work;
- b) with the transfer of plans of works of architecture and architectural complexes for the construction thereof, the right of disclosure provided for in Article 10(1)(d) of this Law shall exhaust;
- c) the right of withdrawal provided for in article 10(1) (e) shall not apply.

#### **Article 23. Term of Protection of Copyright**

(1) The exclusive economic rights and the right to remuneration provided for by this Law in relation to works (hereinafter in this article – *economic rights*), except for similar rights stipulated in relation to works of applied art, shall be protected throughout the lifetime of the

author and for 70 years after his death, computed as from January 1 of the year following that of his death, unless other provisions of the present Article.

(2) Copyright in audiovisual works shall be protected for 70 years, computed as from January 1 of the year following that of the death of the last surviving joint author:

a) the principle director;

b) the author of the scenario (the scriptwriter);

c) the author of the dialogue;

d) the composer – the author of the musical work (with or without words) created specifically for such audiovisual work.

(2<sup>1</sup>) The term of protection of a musical composition with words shall expire 70 years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the author of the lyrics and the composer of the musical composition, provided that both contributions were specifically created for the respective musical composition with words.

*[Art.23 paragraph (2<sup>1</sup>) introduced by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

(3) Copyright in anonymous or pseudonymous works, except in works of applied art, shall be protected for 70 years, as computed from January 1 of the year following that of the legal publishing of the work. If the author of an anonymous or pseudonymous work reveals his identity or if it becomes evident during that period, the provisions of paragraphs (1) and (2) of this article shall apply.

(4) Copyright in works of joint authorship, except in works of applied art, shall be protected throughout the lifetime of each joint author and for 70 years as computed from January 1 of the year following that of the death of the last surviving joint author.

(5) For the term of copyright in collective works provisions of paragraphs (1) and (3) of the present Article shall be applied.

(6) Where a work has been published in volumes, series, editions or episodes, and term for protection runs from the date the work was lawfully made available to the public, the term of protection shall run for each such item separately.

(7) Copyright in works of applied art shall be protected for 25 years from its creation, except the industrial designs and models unregistered in compliance with the Law on the protection of the industrial designs and models, created for industrial purposes of reproduction and subject to a 3-year protection from creation.

(8) If term of protection for a work in the country of origin is greater than the term of protection set out by this law, the term of protection laid down by this Law shall apply, if it is lesser, the term of protection laid down by the laws of the country of the author shall apply.

(9) On expiry of the term of copyright, the works shall fall into the public domain. Works in the public domain shall be used freely subject to respect the moral rights of the authors and other holders of rights, and subject to payment of the remuneration according to Article 47.

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

### **Chapter III**

#### **EXCEPTIONS TO AND LIMITATIONS ON ECONOMIC RIGHTS**

##### **Article 24. General Criteria for the Application of Exceptions and Limitations**

Exceptions and limitations provided for in this chapter may only be applied if they do not contravene the normal use of the works and do not unduly prejudice the legitimate interests of the authors and other holders of copyright.

*[Art.24 amended by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

### **Article 25. Temporary Reproduction of Works**

Temporary acts of reproduction shall be permitted without the consent of the author or other holder of copyright and without the payment of remuneration, provided that:

- a) they are transient or incidental;
- b) they are integral and essential part of a technological process;
- c) their sole purpose is to enable
  - a transmission in a network between third parties by an intermediary, or
  - a lawful use of a work, and
- d) they have no independent economic significance.

### **Article 26. Reproduction of Works for Personal and Private Use**

(1) Reproduction of a lawfully published work shall be permitted without the consent of the author or other holder of copyright, but subject to payment of an equitable remuneration, as provided for in paragraphs (3) – (11) of this Article, if made by a natural person for his own exclusive use, and for purposes that are neither directly or indirectly commercial. The right to remuneration may only be exercised through a collective management organization.

(2) The provisions of paragraph (1) of the present Article shall not apply to reproduction:

- a) of a work of architecture in the form of a building or similar construction;
- b) of a database;
- c) of a computer program, except in the cases referred to in Article 29;
- d) of a complete book, a musical score or the original of a work of plastic art;
- e) of an audiovisual work during its public performance;
- f) of any work on the basis of a copy or from a source about which the person that makes a reproduction knows, or, under the given circumstances, he has reasonable reasons to know, that it is illegal.

(3) The equitable remuneration mentioned in paragraph (1) shall be paid by those natural or legal persons who produce or import any equipment (sound recording equipment, video recorders, drivers for recordable and re-recordable discs, etc.) and mediums (blank tapes and cassettes, laser discs, compact discs, etc.) that may be used for reproduction of audiovisual works and phonograms.

(4) No equitable remuneration shall be paid in respect of recording equipment and mediums mentioned in paragraph (3)

- a) where they are exported,
- b) where they constitute professional equipment not intended for home recording; or
- c) where they are imported by a natural person for his own exclusive use.

(5) The equitable remuneration mentioned in paragraph (1) of this article

a) shall be paid by the manufacturers or importers of the recording equipment or mediums mentioned in paragraph (3) of this article to the collective management organisation mentioned in paragraph (10)(a) of this article before putting into circulation (that is, before including into the chain of distribution immediately after manufacturing or importation) of such equipment or mediums;

b) shall be sufficient not only for the compensation of authors and other rightholders of copyright whose works may be reproduced in the way mentioned in paragraph (1) of this article, but also for the compensation of performers and producers of audiovisual works and phonograms whose performances, audiovisual works and phonograms, respectively, may be reproduced thereby in the said way; and

c) shall be determined by taking into account the application or non-application of technological measures by the rightholders of audiovisual works and phonograms.

(6) For the establishment of the amount of remuneration and other conditions, and the settlement of possible disputes between the parties concerned, Article 50 of this Law shall apply, on the understanding, that

a) the parties concerned which shall try to establish the amount of the remuneration are the collective management organisation mentioned in paragraph (10)(a) of this Article, on the one

hand, and the representatives of those physical persons and legal entities who and which are obligated to pay the equitable remuneration, on the other hand;

b) the remuneration established shall not be less than 3% of the resale price of the equipment and mediums mentioned in paragraph (3).

(7) The manufacturers and importers, when they put into circulation the equipment or mediums mentioned in paragraph (3) of this Article,

a) shall inform the collective management organisation mentioned in paragraph (10)(a) of this article about the payment of the equitable remuneration, and shall make available to it the necessary documents indicating the number of pieces of equipment and/or mediums manufactured or imported and the identity of the distributors through whom or which they have put the equipment or mediums into circulation;

b) shall hand over to the distributors through whom or which they put the recording equipment and/or mediums into circulation all the necessary documents proving the fact that the equitable remuneration has been paid to the collective management organisation.

(8) The distributors at any point of the distribution chain, including resale units (shops, commercial centres, etc.) who or which are in possession of equipment or mediums mentioned in paragraph (3) for commercial purposes, shall be able to prove, on the basis of valid documents, that the equitable remuneration mentioned in paragraph (1) has been paid for the equipment or mediums concerned. The distributors, at the request of the collective management organisation, shall be obligated to make any relevant documents available and to reveal the identity and the contact data of the manufacturer or importer or any physical person or legal entity in the distribution chain from whom or which they received the equipment or mediums.

(9) The distributors who are unable to present to the collective management organisation mentioned in paragraph (10)(a) of this article the necessary documents and/or contact data mentioned in paragraph (8) that are necessary to verify whether or not the equitable remuneration has duly been paid, shall be liable to pay the equitable remuneration.

(10) Unless otherwise provided in an agreement between the representatives of the various categories of rightholders mentioned in paragraph (5)(b) of this Article, the equitable remuneration

a) shall be collected, for all the categories of rightholders, by a collective management organization entrusted with this functions by the AGEPI;

b) shall be distributed, after the deduction of the actual expenses incurred in rights management, in the following manner:

- with respect to reproduction of audiovisual works and videograms: 40% to authors of such works, 30% to performers of such works, and 30% to producers of such works;

- with respect to reproduction of phonograms: 50% to authors whose works are fixed on phonograms, 25% to performers whose performances are fixed on phonograms, 25% to producers of phonograms.

(11) The collective management organisation after the deduction of the actual cost of management, shall transfer the corresponding shares of remuneration mentioned in paragraph (10)(b) of this Article due to the categories of rightholders not represented by it to the collective management organizations or other representative bodies of the rightholders concerned which may take care of the distribution thereof among the corresponding rightholders concerned.

(12) The equitable remuneration shall be distributed amongst the authors and other holders of copyright, performers and producers of audiovisual works and phonograms, respectively, in respect of whose works, performances and phonograms, respectively, may be assumed that have been reproduced by virtue of paragraph (1) of this Article.

## **Article 27. Reprographic Reproduction by Libraries, Archive Services and Other Establishments**

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

a) of a lawfully published work if the reproduction is made by the libraries or archive services with no direct or indirect economic or commercial advantage, and if the purpose is to replace the copies that have been lost, destroyed or have become unusable or to make a copy available to other libraries or similar archive services in order to replace in their own collections works that have been lost, destroyed or have become unusable, where it is impossible to obtain copies of the work through usual channels;

b) of isolated articles and other succinct works or of short extracts of literary works that have been lawfully published (except for computer programs) if such reproduction is made by the libraries or archive services to meet the needs of natural persons that use the copies so obtained for their personal purpose of study and research, with no direct or indirect economic or commercial advantage;

c) of isolated articles and other succinct works or of short extracts of literary works that have been lawfully published (except for computer programs) if such reproduction is made by teaching establishments for purposes of study or research and with no direct or indirect economic or commercial advantage.

(2) In other cases than those specified under paragraph (1) it shall be permitted without the consent of the author or other holder of copyright, but subject to payment of remuneration, the reprographic reproduction of a work, except for entire books or musical scores. The right to an equitable remuneration shall be exercised through a collective management organization.

(3) The equitable remuneration stipulated in paragraph (2) of this Article shall be paid by:

a) the natural or legal persons that manufacture or import the equipment (photocopying, machines, scanners, etc.) used for the reprographic reproduction (equipment royalty);

b) any natural or legal persons that operate equipment for reprographic reproduction at a place open to the public (operator royalty).

(4) The equitable remuneration mentioned in paragraph (2):

a) shall be paid by the producers and importers of the equipment mentioned in paragraph (3) letter a) to the collective management organization mentioned in paragraph (2), before putting into circulation (that is, before including in the chain of distribution immediately after manufacturing or importation) of such equipment;

b) shall be sufficient for the compensation of authors and publishers of works about whom or which it may be presumed that their works and publications, respectively, have been reproduced by virtue of paragraph (2) of this article.

(5) For the establishment of the amount of remuneration and other conditions, and the settlement of possible disputes between the parties concerned, Article 50 of this Law shall apply, on the understanding, that

a) the parties concerned which shall try to establish the amount of the remuneration are the collective management organisation mentioned in paragraph (2) of this article, on the one hand, and the representatives of those physical persons and legal entities who and which are obligated to pay the equitable remuneration, on the other hand;

b) the remuneration established, in the case of the equipment royalty provided for in paragraph (3)(a) shall not be less than 3% of the resale price of the equipment, and, in the case of the operator royalty provided for in paragraph (3)(b), it shall not be less than what the Government may determine as minimum remuneration.

(6) The manufacturers and importers, when they put into circulation equipment mentioned in paragraph (3)(a) of this article

a) shall inform the collective management organisation mentioned in paragraph (2) of this article about the payment of the equitable remuneration, and shall make available to it the necessary documents indicating the number of pieces of equipment manufactured or imported and the identity of the distributors through whom or which they have put into circulation;

b) shall hand over to the distributors through whom or which they put the equipment all the necessary documents proving the fact that the equitable remuneration has been paid to the collective management organisation;

(7) The manufacturers and importers or the distributors, when they sell, rent or otherwise transfer the property or possession of an equipment mentioned in paragraph 3(a) to any operator of such an equipment, shall hand over to the operators the documents mentioned in paragraph (6)(b) of this article.

(8) The distributors at any point of the distribution chain, including resale units (shops, magazines, etc.) who or which are in possession of equipment mentioned in paragraph (3)(a), shall be able to prove, on the basis of valid documents, that the equitable remuneration mentioned in paragraph (2) has been paid for the equipment. The distributors, at the request of the collective management organisation, shall be obligated to make any relevant documents available and to reveal the identity and the contact data of the manufacturer or importer or any physical person or legal entity in the distribution chain from whom or which they received the equipment.

(9) The distributors who or which are unable to present to the collective management organisation mentioned in paragraph (2) of this article the necessary documents and/or contact data mentioned in paragraph (8) that are necessary to verify that the equitable remuneration has duly been paid shall be liable to pay the equitable remuneration.

(10) The provisions of paragraphs (8) and (9) shall be applied, *mutatis mutandis*, also to the obligations and liability of operators of equipment mentioned in paragraph (3)(a) of this article.

(11) Unless otherwise provided in an agreement between the representatives of authors and publishers, the equitable remuneration collected by the collective management organisation, after the deduction of the actual cost of management, shall be due in equal shares – 50%-50% – to the authors about whose works, and to publishers about whose publications may be presumed that they have been reproduced by virtue of paragraph (2) of this article.

#### **Article 28. Other Exceptions and Limitations**

It shall be permitted without the consent of the author or other holder of copyright and without payment of remuneration

a) short quotations in another work for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, provided that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;

b) use of works by way of illustration in publications, broadcast or sound or visual recordings for teaching, as long as the source, including the author's name, is indicated, unless this turns out to be impossible, and to the extent justified by the non-commercial purpose to be achieved;

c) reproduction and distribution by the press, communication to the public or interactive making available of published articles on current economic, political or religious topics or of broadcast works or other subject matter of the same character, in cases where this is not expressly reserved, and as long as the source, including the author's name, is indicated;

d) use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;

e) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;

f) use for the purposes of public security or to ensure the proper performance and reporting of parliamentary, administrative or judiciary proceedings;

g) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts. Such recordings shall be erased or destroyed after six months, with the exception of those that have exceptional documentary character, which may be preserved in official State archives;

h) use, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;

i) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals, on condition that the rightholders receive equitable remuneration;  
j) use of works during religious celebrations or national or international official celebrations organized by public authorities for educational and promotional purposes without obtaining an economic or commercial advantage;

*[Art.28 j) in the wording of Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

k) use of works, such as works of architecture or sculpture, made to be located permanently in public places;

l) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;

m) use for the purpose of caricature or parody;

n) use in connection with the demonstration or repair of equipment;

o) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;

p) use by communication or interactive making available to the public, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to Article 27(1) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections.

*[Art.28 q) repealed by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

## **Article 29. Use of Computer Programs and Databases.**

### **Decompilation of Computer Programs**

(1) In the absence of specific contractual provisions, no acts shall require the authorisation by the author or other holder of copyright where it is necessary for the use of a computer program or a database by the lawful acquirer thereof, in accordance with its intended purpose, including for error correction.

(2) The making of a back-up copy by a person having a right to use a computer program may not be prevented by contract insofar as it is necessary for that use.

(3) A person having a right to use a copy of a computer program shall be entitled, without the authorisation of the author or other holder of copyright, to observe, study or test the functioning of the program in order to determine the ideas which underlie any element of the program if he does so while performing any of the acts of loading, running, transmitting or storing the program which he is entitled to do.

(4) The authorisation of the author or other holder of copyrights shall not be required where the reproduction of the code and translation of its form are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

a) these acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorised to do so;

b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in point (a); and

c) these acts are confined to the parts of the original program which are necessary to achieve interoperability.

(5) The provisions of paragraph (4) shall not permit the information obtained through its application:

a) to be used for purposes other than to achieve the interoperability of the independently created computer program;

b) to be given to others, except where necessary for the interoperability of the independently created computer program; or

c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

*[Art.29 paragraph (6) repealed by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

## **Chapter IV**

### **COPYRIGHT CONTRACTS**

#### **Article 30. Transfer of Economic Rights by Copyright Contracts**

(1) The exclusive economic rights as well as the rights to remuneration of authors, unless otherwise provided in this Law, may be assigned by the authors or other holders of copyright by means of a copyright contract. As a result of such assignment, the assignee shall be the holder of rights.

(2) In respect of the exclusive economic rights, unless otherwise provided in this Law, also licenses may be granted either in the form of an exclusive license or in the form of a non-exclusive license. If in a license contract, it is not stipulated that it is exclusive, the license shall be deemed to be non-exclusive.

(3) Under an exclusive license, only the licensee may use the work within the limits laid down by the contract. Within the limits laid down in the contract, he shall also have the right to authorise or prohibit the use of the work by other persons.

(4) Under a non-exclusive license, the licensee, within the limits laid down in the contract, may use the work in the same way as other persons who have obtained authorisation to use it. He shall not have the right to authorise or prohibit the use of the work by other persons.

#### **Article 31. Conditions and Form of Copyright Contracts**

(1) A copyright contract shall be concluded in written form and shall set out the uses of the work (the rights) covered by it, the period of its validity, the territory for which it applies, the amount of remuneration or the basis for determining such amount for each of uses of the work, the conditions and time limits for payment of the remuneration and any other conditions considered essential by the parties. A copyright contract for the use of works in newspapers and other periodical publications may also be concluded verbally.

(2) If, in copyright contract, the territory for which it applies is not stipulated, it shall only be applicable for the territory of the Republic of Moldova.

(3) If, in a copyright contract, the term of its validity is not stipulated, it shall be deemed to have been concluded for three years as from the date of its conclusion if it concerns use of a work in its original form, and for five years if it concerns use of a work in an adapted or otherwise modified form or in translation.

(4) Any clauses in a copyright contract that are contrary to the provisions of this Law shall be deemed null and void, and the conditions set out in this Law shall apply in place thereof.

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

(6) A copyright contract shall define the remuneration in the form of a percentage of the revenue obtained from the use of the work, in the form of a lump sum, in accordance with a tariffs applied by collective management organisations or in any other way.

(7) The Government may determine a percentage or amount in certain cases of which the remuneration can be more but cannot be less (minimum remuneration).

## **Chapter V**

### **RELATED RIGHTS**

#### **Article 32. Beneficiaries of Related Rights. Scope of Related Rights**

(1) Performers, producers of phonograms, producers of videograms and broadcasting and cable distribution organisations shall be the beneficiaries of related rights. Related rights shall be exercised without prejudice to copyright.

(2) The acquisition, enjoyment and exercise of related rights shall not be subject to compliance with any formality. In the absence of proof to the contrary, the natural person or the legal entity whose name appears on a fixation of a performance, on a phonogram, on a videogram or on the fixation of a broadcast or original program distributed by cable, respectively, in the usual manner, shall be deemed to be the performer, producer, broadcaster or distributor by cable, thereof, respectively.

(3) In order to indicate their rights, producers of phonograms and performers may place a notice on each copy of a phonogram or on each phonogram sleeve, to be comprised of the following three elements:

- a) a circled capital letter P: (P);
- b) the name (designation) of the holder of the exclusive related rights;
- c) the year of first publication of the phonogram, videogram, or broadcast.

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

- a) the performer is a national of the Republic of Moldova;
- b) the performance took place on the territory of the Republic of Moldova;
- c) the performance was fixed on a phonogram or videogram according to provisions referred to in paragraph (5);
- d) the performance has not been fixed on a phonogram or videogram, but it is included in a program broadcast by a broadcasting or cable distribution organization meeting the conditions of paragraph (6) of this Article.

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

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

(6) The rights of the broadcasting or cable distribution organizations shall be protected according to this Law, if the organization has its headquarters in the Republic of Moldova and broadcasts from transmitters located on the territory of the Republic of Moldova.

(7) The related rights of foreign natural persons or legal entities mentioned in paragraph (1) of this Article shall be protected in accordance with the international agreements to which the Republic of Moldova is a party.

### **Article 33. Rights of Performers**

(1) A performer shall enjoy the following moral rights with respect to his performance:

- a) the right to authorship – the right to consider himself a performer and to require such recognition, including by communicating or indicating his name in each case of exploitation of his performance, if this Law does not set out different provisions or exceptions;
- b) the right to be named – the right of the performer to decide on the manner his name is indicated in the exploitation of his performance (real name, pseudonym, or anonymously);
- c) the right to respect for the integrity of his performance – the right to the protection of his performance against any mutilation or distortion or other derogatory act liable to prejudice his honor or dignity.

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

- a) fixation of his unfixed performance;
- b) reproduction of the fixation of his performance;
- c) distribution of the fixation of his performance;
- d) rental of the fixation of his performance;
- e) communication to the public of his performance by air (broadcasting) or by cable, except where the performance is itself a broadcast performance or is made from a fixation;
- f) interactive making available to the public of his fixed performance.

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

(4) Unless otherwise laid down by the contract, the conclusion of a contract to create an audiovisual work by the performer and the director shall imply the transfer by the performer of the rights referred to in the paragraph (2) of this Article.

(5) The exclusive rights in the performance created pursuant to explicit instructions by the employer or to service duties shall belong to the person to whom the performer is bound by employment contract, unless otherwise provided by such contract.

(6) A performer may transfer, assign, or grant license for, the exclusive rights afforded by paragraph (2) of this Article to other persons by contract, according to the provisions of Articles 30–31.

(7) The right of distribution provided for in paragraph (2)(c) of this article shall be exhausted with the first sale or other first transfer of property of the fixation of the performance in the territory of the Republic of Moldova.

(8) Where an performer has transferred or assigned his rental right provided for in paragraph (2)(d) of this article to a producer of a phonogram, videogram or audiovisual work, respectively, the performer shall retain the right to obtain an equitable remuneration for the rental. This right cannot be waived and may only be exercised through a collective management organisation.

#### **Article 34. Rights of Producers of Phonograms**

(1) A phonogram producer shall have the exclusive right to authorise or prohibit the following actions with respect of his phonogram:

- a) reproduction of the phonogram;
- b) distribution of copies of the phonograms;
- c) rental of copies of the phonogram;
- d) importation for the purposes of distribution of copies of the phonogram, including the copies made with the consent of the producer of phonograms;
- e) interactive making available to the public of the phonogram;
- f) adaptation or any other transformation of the phonogram.

(2) The producer of phonogram may transfer, assign, or grant license for, the exclusive rights provided for in paragraph (1) of this article to other persons by contract, according to Articles 30 and 31.

(3) The right of distribution provided for in paragraph (1)(b) of this Article shall be exhausted with the first sale or other first transfer of property of the phonogram in the territory of the Republic of Moldova.

#### **Article 35. Rights of Producers of Videograms**

(1) A producer of videograms shall have the exclusive right to authorise or prohibit the following acts in respect of his or its videogram:

- a) reproduction of the videogram;
- b) distribution of the original or the copies of the videogram;
- c) rental of copies of the videogram;
- d) importation for the purposes of distribution of copies of the videogram, including the copies made with the consent of the producer of videograms;

*[Art.35 paragraph (1) d) in the wording of Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

e) interactive making available to the public of the videogram.

(2) The producer of videograms may transfer, assign, or grant license for, the exclusive rights provided for in paragraph (1) of this Article to other persons by contract, according to the conditions set out in Articles 30 and 31.

(3) The right of distribution provided for in paragraph (1)(b) of this Article shall be exhausted with the first sale or other first transfer of property of the phonogram in the territory of the Republic of Moldova.

#### **Article 36. Rights of Broadcasting and Cable Distribution Organisations**

(1) A broadcasting or cable distribution organisation shall enjoy the exclusive right to authorise or to prohibit the following acts in respect of its program broadcast or distributed by cable (jointly referred to as “broadcast”):

- a) fixation of the broadcast;
- b) reproduction of a fixation of the broadcast;
- c) distribution of the fixation of the broadcast;
- d) rebroadcasting or communication to the public by cable of the broadcast;
- e) retransmission of the broadcast;

f) communication of the broadcast to the public in places to which a charge is made for admission.

g) interactive making available to the public of the fixation of the broadcast.

(2) The broadcasting or cable distribution organisation may transfer, assign, or grant license for, the exclusive rights provided for in paragraph (1) of this article to other persons by contract, according to the conditions in Articles 30 and 31.

(3) The right of distribution provided for in paragraph (1)(c) of this Article shall be exhausted with the first sale or other first transfer of property of the fixation of the broadcast in the territory of the Republic of Moldova.

#### **Article 37. Use of Phonograms Published for Commercial Purposes**

(1) The following acts shall be permitted without the consent of the producer of a phonogram published for commercial purposes and of the performer whose performance is recorded on such phonogram, subject to payment of an equitable remuneration, amount of which shall be agreed by the parties:

a) public performance of a phonogram;

b) communication to the public of the phonogram by air or by cable;

c) simultaneous and unchanged retransmission of the phonogram;

*[Art.37 paragraph (1) d) repealed by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

(2) The right to an equitable remuneration provided in paragraph (1) of this Article may be exercised through a collective management organization.

*[Art.37 paragraph (2) amended by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

(3) For the establishment of the amount of remuneration and other conditions of the payment of the equitable for the acts mentioned in paragraph (1)(a) and (b) of this article, and the settlement of possible disputes between the parties concerned, Article 50 of this Law shall apply, on the understanding, that

a) the parties concerned which shall try to establish the amount of the remuneration are the collective management organisation mentioned in paragraph (4) of this Article, on the one hand, and the representatives of those physical persons and legal entities who or which perform acts mentioned in paragraph (1)(a) and (b) of this Article, on the other hand;

b) the remuneration shall not be less than what the Government may determine as minimum remuneration.

(4) Unless otherwise provided in an agreement between the representatives of the interested performers and producers of phonograms, the remuneration mentioned in paragraphs (1) of this article, shall be collected by that collective management organisation entrusted with this function by a common agreement of the representatives of the interested rightholders, and, after the deduction of the actual cost of management, shall be distributed in equal shares – 50%-50% – between performers and producers of phonograms about whose performances and phonograms may be presumed that they have been used by virtue of paragraph (1)(a) or (b) of this article.

#### **Article 38. Exceptions to and Limitations on Related Rights**

The provisions of Articles 24 to 26 and 28 on exceptions to, and limitations on, copyright shall apply, *mutatis mutandis*, also to related rights.

#### **Article 39. Terms of Protection of Related Rights**

(1) The performer's right to authorship, the right to be named and the right to respect for the integrity of his performance shall be protected without limitation in time. The rights of performers provided for in Articles 33 paragraph (2) and in Article 37 shall be protected for 50 years as from the date of the performance. However:

a) if a fixation of the performance otherwise than in a phonogram is lawfully published or lawfully communicated to the public within this period, the performer's rights shall be protected for at least 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier;

b) if a fixation of the performance in a phonogram is lawfully published or lawfully communicated to the public within this period, the performer's rights shall be protected for at

least 70 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

*[Art.39 paragraph (1) in the wording of Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

(2) The rights of producers of phonograms provided for in Article 34 and in Article 37 shall be protected for 50 years as from the date of the first fixation of the phonogram. However:

a) if the phonogram is lawfully published or lawfully communicated to the public within this period, these rights shall be protected for at least 70 years from the date of the first lawful publication;

b) if no lawful publication takes place within the period mentioned, and it is communicated to the public within this period, the rights of producers of phonograms shall be protected for 70 years from the date of the first lawful communication to the public.

*[Art.39 paragraph (2) in the wording of Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

(2<sup>1</sup>) If, 50 years after the phonogram was lawfully published or lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public, the performer may terminate the contract by which the performer has transferred his rights in the fixation of his performance to a phonogram producer.

*[Art.39 paragraph (2<sup>1</sup>) introduced by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

(2<sup>2</sup>) If, 50 years after the phonogram was lawfully published or, failing such publication, 50 years after it was lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them, the performer may terminate the contract by which the performer has transferred his rights in the fixation of his performance to a phonogram producer. The right to terminate the contract on transfer may be exercised if the producer, within a year from the notification by the performer of his intention to terminate the contract on transfer, fails to carry out both of the acts of exploitation mentioned above. This right to terminate may not be waived by the performer.

*[Art.39 paragraph (2<sup>2</sup>) introduced by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

(2<sup>3</sup>) Where a phonogram contains the fixation of the performances of a plurality of performers, they may terminate their contracts on transfer in accordance with the legislation in force. If such contracts are terminated pursuant to this paragraph, the rights of the phonogram producer in the phonogram shall expire.

*[Art.39 paragraph (2<sup>3</sup>) introduced by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

(3) The rights of producers of videograms provided for in Articles 35 shall be protected for 50 years from the date of the first recording of the videogram. However, if the videogram is lawfully published or lawfully communicated to the public within this period, these rights shall be protected for 50 years from the date of the first such publication or first such communication to the public, whichever is the earlier.

(4) The rights of broadcasting and cable distribution organisations provided for in Article 36 shall be protected for 50 years as from the first broadcasting or cable transmission of the program by such organisation, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

*[Art.39 paragraph (4) amended by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

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

(6) If the term of protection of the economic rights in an object of related rights, in its country of origin is longer than the term of protection provided for in this Law, the provisions of this Law shall apply; if it is shorter, the term of protection provided for in the country of origin shall apply.

(7) Related rights shall pass to the heirs or other successor of title of performers, phonogram producers of videogram and broadcasting or cable distribution organisation, respectively for the remainder of the term of protection provided for in paragraphs (1) to (4) of this Article.

## **Chapter VI**

### **OTHER RIGHTS. PUBLIC DOMAIN**

#### **Article 40. Rights of the Producers of Databases. Object of Protection**

(1) A producer of a database that shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents shall have a right to prevent extraction and/or re-utilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.

(2) For the purposes of this chapter:

*extraction* means the permanent or temporary transfer of all or a substantial part of the contents of the database to another medium by any means or in any form;

*re-utilization* means any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database on the territory of the Republic of Moldova by the right holder or with his consent shall exhaust the right to control sale of that copy.

(3) The right referred to in paragraph (1) may be transferred under contractual license.

(4) The right provided for in paragraph (1) of this article shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of eligibility of the contents of that database for protection by copyright or by other rights. Protection of databases under the right provided for in paragraph (1) of this article shall be without prejudice to rights existing in respect of their contents.

(5) The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of databases implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the producer of database shall not be permitted.

#### **Article 41. Rights and Obligations of Lawful Users of Databases**

(1) The producer of a database which is made available to the public in whatever manner may not prevent a lawful user of the database from extracting and/or re-utilizing insubstantial parts of its contents, evaluated qualitatively and/or quantitatively for any purpose whatsoever. Where the lawful user is authorised to extract and/or to re-utilize only part of the database, this paragraph shall apply only to that part. Any clause contrary to the provisions of this paragraph shall be deemed null and void.

(2) A lawful user of a database which is made available to the public in whatever manner may not perform acts which conflict with normal exploitation of a database or unreasonably prejudice the legitimate interests of the maker of the database.

(3) A lawful user of a database which is made available to the public in whatever manner may not cause prejudice to the holder of copyright or related rights in respect of the works or subject matter contained in the database.

#### **Article 42. Exceptions to the Rights of Producers of Databases**

A lawful user of a database which is made available to the public in whatever manner may, without the authorisation of its producer, extract and/or re-utilize a substantial part of its contents:

- a) in the case of extraction for private purposes of the contents of a non-electronic database;
- b) in the case of extraction for purposes of study or research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
- c) in the case of extraction and/or re-utilization for the purposes of public security or a parliamentary, administrative or judicial procedure.

#### **Article 43. Term of Protection of the Rights of Producers of Databases**

(1) The right provided for in Article 40 shall be protected for fifteen years, as from the first of January of the year following the date of completion.

(2) In the case of a database which is made available to the public in whatever manner before the expiry of the period provided for in paragraph (1) of this Article, the term of protection of the right of the producer of database shall expire fifteen years from the first January of the year following the date when the database was first made available to the public.

(3) Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.

#### **Article 44. Beneficiaries of the Protection of the Rights of Producers of Databases**

(1) The right provided for in Article 40 shall apply to databases whose makers or holders are nationals of the Republic of Moldova or have their habitual residence on the territory of the Republic of Moldova.

(2) The right provided for in Article 40 shall also apply to companies and firms formed in accordance with the law of the Republic of Moldova and having their registered office, central administration or principal place of business within the territory of the Republic of Moldova. However, where such a company or firm has only its registered office in the territory of the Republic of Moldova, its operations also must be genuinely linked on an ongoing basis with the economy of the Republic of Moldova.

(3) Databases made in third countries and falling outside the provisions of paragraphs (1) and (2) of the present Article shall be protected under international treaties to which the Republic of Moldova is a party. The term of any protection extended to databases made in third countries shall not exceed that provided for in Article 43.

#### **Article 45. Protection of Previously Unpublished Works Fallen into the Public Domain**

(1) Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished shall benefit from a protection equivalent to the economic rights of the author.

(2) The term of protection of such right shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.

#### **Article 46. Protection of Critical and Scientific Publications of Works Fallen into the Public Domain**

(1) Any person who, after the expiry of copyright protection, publishes a critical or scientific publication of a work that has come into the public domain benefits from a protection equivalent to the economic rights of the authors.

(2) The term of protection of economic rights referred to in paragraph (1) shall be 30 years from the time the publication was first lawfully published.

#### **Article 47. Remuneration for the Use of Works in the Public Domain and Expressions of Folklore**

(1) For the following acts performed in respect of the following categories of works already fallen into the public domain and of the following categories of expressions of folklore, shall be subject to the payment of a contribution:

- a) the public performance and the communication to the public by air (broadcasting) or by cable of such musical works and for musical expressions of folklore;
- b) the resale of such original works of art in the public domain and of similar artistic expressions of folklore.

(2) The contribution mentioned in paragraph (1) of this article shall be paid and collected

- a) for the acts mentioned in point (a) of the paragraph (1), by the collective management organisations representing authors and other holders of copyright in musical works;
- b) for resale of works and expressions of folklore as provided in point (b) of the paragraph (1), by the collective management organisation mentioned in Article 20(4) of this Law.

(3) For the establishment of the amount of the contribution mentioned in paragraph (1) of this article, and for possible disputes concerning its payment, the following provisions of this Law shall be applied *mutatis mutandis*:

a) in respect of the acts mentioned paragraph (1) (a), the provisions of Article 50,

b) in respect of the resale of works and expressions of folklore as provided in paragraph (1) (b), the provisions of Article 20 (1).

(4) After deduction of expenses related to rights management, the contribution due for the acts referred to in paragraph (1) shall be distributed as follows:

a) the accumulated amount for the exploitation of works fallen into the public domain, including for the resale of such original works of art, shall be used to promote creativity and appreciate outstanding creative achievements as well as to grant aid to authors who, on grounds of illness, old age or other similar grounds, need financial support;

[Art.47 paragraph (4) a) amended by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]

b) the accumulated amount for exploitation of folklore expressions shall be used both for the purposes referred to in letter a), and for supporting folklore research and preservation activities, including for appreciating the achievements made in the relevant field and in the field of interpretation of folklore expressions.

(5) Electronic fixation of the works included in the public domain for the purpose of storing in archive by the libraries, with no direct or indirect economic or commercial advantage, shall be permitted without the consent of the author or other holder of copyright and without payment of any remuneration.

[Art.47 paragraph (5) introduced by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]

## **Chapter VII COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS**

### **Article 48. Establishment of the Collective Management Organisations**

(1) Authors, performers, producers of phonograms, producers of videograms, and other holders of copyright and related rights may, on their own initiative, establish organisations for collective management of their economic rights (hereinafter – *collective management organizations*).

(2) Collective management organisations shall have the statute of legal persons and shall be established freely and directly by the holders of copyright and related rights who shall either become members of the organization or empower it by written contract.

(3) There may be established either collective management organizations administering a specific type of right on behalf of different categories of holder, or organizations administering various rights on behalf of a single category of holder or organizations administering various rights for various categories of holder.

(4) Collective management organizations shall operate in accordance with the provisions of this Law, and other relevant normative acts of the Republic of Moldova, on the basis of their own statutes and, with the exceptions mentioned in paragraph (13), within the limits of the mandate they receive from the holders of copyright and/or related rights, functioning according to regulation on non-profit associations.

(5) An organization shall function as a collective management organization:

a) if it is registered as an organization according to the provisions of applicable legislation;

b) if it is accredited as a collective management organisation by the State Agency on Intellectual Property;

(6) The State Agency on the Intellectual Property shall grant accreditation to an organization to function as a collective management organisation according to the procedure set by the Government, if:

a) its membership or the circle of those rightholders who otherwise have entrusted it the management of their rights, extends to a substantial part of right holders who are nationals or permanent residents – or, as legal entities, have their headquarters in the territory of the Republic

of Moldova, and it may be joined by any right holders who wishes to do so according to its statutes;

b) it has entered into reciprocal representation agreements with similar organizations representing foreign right holders, or at least, makes all the necessary efforts to conclude such agreements;

c) it has the capacity to manage collectively the economic right concerned, including appropriate staff and technical equipment;

d) it has at its disposal adequate mechanisms for the collection, distribution, and payment of author's remuneration or remuneration due to the holders of related rights;

e) it guarantees equal treatment both to right holders and users where the objective conditions of the treatment concerned are the same; and

f) its statute and other regulations are in accordance with the provisions of this Law and other relevant laws of the Republic of Moldova, and of the international treaties to which the Republic of Moldova is a party.

(7) An organization that submits a request for accreditation to the State Agency on Intellectual Property of the Republic of Moldova shall make available all the information and relevant documents that are necessary for the State Agency to take a decision on the request.

(8) Where more than one organisation submits requests for accreditation to perform collective management of the same category of rights, the State Agency on Intellectual Property shall grant accreditation to that organisation which the most completely fulfil the conditions mentioned in paragraph (6) of this article.

(9) The fact of the accreditation of an association as collective management organisation, along with the indication of the rights and categories of rightholders to which the collective management extends, shall be published in the Official Gazette of the Republic of Moldova.

(10) In order to claim the due remuneration, until the settlement of the possible disputes arisen from the decision of State Agency on Intellectual Property to refuse accreditation, the collective management organization, which made the appeal or the rightholders it represents, shall provide, in a reasonable term from the filing of the appeal, all the necessary information on the identity of the rightholders it represents, the rights to which it extends, to the collective management organization that has the accreditation to manage such rights and the category of rights referred to in the request for accreditation.

(11) Extended collective management (extended license). In the case of the following rights, the effect of a license for uses granted by a collective management organisation on behalf of those rightholders who are its members, or who otherwise entrusted it with the management of their rights, shall be extended also to those rightholders who are neither its members, nor have entrusted it otherwise with the management of their rights, provided that the rightholders concerned have not withdrawn their rights from the repertoire of the collective management:

a) the right of public performance, communication to the public by air (broadcasting) or by cable – except for communication to the public by satellite where it is not simultaneous with a terrestrial broadcasting by the same broadcasting organisation – and interactive making available to the public of musical works and excerpts from dramatico-musical works;

b) the right of reproduction on phonograms of musical works in those cases where the rightholders concerned have already authorised such reproduction for a producer of phonograms;

c) the right of performers of interactive making available to the public of their performances fixed on phonograms.

*[Art.48 paragraph (11) d) repealed by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

(12) In the case of extended collective management provided for in paragraph (11) of this Article, those rightholders who neither are members of the collective management organisations, nor have entrusted it otherwise with the management of their rights may notify the collective management organisation not later than three months before the end of each calendar year that they withdraw their rights from the collective management system. Such withdrawal shall take effect on January 1 of the year following that when such a notification is made.

(13) Mandatory collective management (mandatory license). In accordance with the corresponding provisions of this Law, the following rights may only be exercised through a collective management organisation accredited for this purpose by the State Agency for Intellectual Property:

- a) the right to equitable remuneration agreed by the parties for reprographic reproduction as provided for in Article 27(2) to (11) of this Law;
- b) the right to equitable remuneration of authors and other holders of copyright and related rights for private copying of their works and/or objects of related rights as provided for in Article 26 of this Law;
- c) the right to equitable remuneration of authors and performers preserved after the transfer of their exclusive right of rental to producers of phonograms or audiovisual works as provided for in Articles 11(4) and 33(8) of this Law;
- d) the right of performers and producers of phonograms to a single equitable remuneration for the public performance and communication to the public of phonograms published for commercial purposes as provided for in Article 37 of this Law;
- e) the right of authors and other holders of copyright and the holders of the corresponding related rights in respect of the simultaneous and unchanged retransmission of their works, performances and phonograms by cable as provided for in Article 11(1)(h) and (5) to (8) and 37(1)(c) and 2(b); and
- f) the right of resale as provided for in Article 20 of this Law.

(14) Collective management organisations shall be authorised neither to carry out a commercial activity nor to use the works and objects of related rights in respect of which they have been entrusted with collective management.

(15) An organisation that has granted a license shall be required to settle any dispute arising from an economic claim asserted by the holders of copyright or related rights with regard to the users concerning the use of works or objects of related rights covered by the license.

#### **Article 49. Functions, Rights and Obligations of Collective Management Organisations**

(1) Collective management organisations shall have, on behalf of the rightholders they represent and on the basis of the powers given to them, and in cases of mandatory collective management, on behalf of the right holders they do not represent, the following functions:

- a) to issue to users licenses for the use of works or objects of related rights, in respect of which they have been given mandate for;
- b) to negotiate with users the amount of remuneration for use of works and/or objects of related rights and other licensing conditions;
- c) to collect remuneration stipulated by the licenses that are granted in accordance with letter (b) of this paragraph and/or that are due on the basis of a mere right to remuneration administered by them;
- d) to distribute and pay out in due time the remuneration collected by them as equitably and as much in proportion with the value and actual use of works and objects of related rights concerned as possible;
- e) to represent the rightholders whose rights they manage in court cases, including the foreign rightholders (through the collective management organisations of that country), as well as in other state bodies or organisations, in relation to the rights transferred to collective management by them or by virtue of this Law, and perform any other legal act necessary for the protection and enforcement of the rights;
- f) to ensure its members exercise their rights abroad by entering in reciprocal representation agreements with similar foreign collective management organisation;
- g) to perform any other activity pursuant to the powers received from the rightholders of copyright and related rights.

(2) Collective management organisations shall be entitled to require users of works and/or objects of related rights to provide them with reports (identified in relation to the rightholders) and other documents specifying the works and/or objects of related rights in respect of which any use covered by a right collectively managed takes place as well as any information necessary for the calculation, collection and distribution of remuneration.

(3) Collective management organisations shall have the obligation, in the interests of the holders of copyright and related rights, to:

a) use the remuneration obtained exclusively for distribution and payment to the holders of copyright and related rights; on the understanding, however, that an organisation shall be entitled to deduct from the amount of the remuneration obtained an amount necessary to cover the actual costs incurred in connection with the collective management of rights and any amount intended for a special fund set up by the organisation to the extent that it has been authorised by the rightholders either directly or – in the case of foreign holders of rights – by the collective management organisations represented by them.

b) distribute, after deduction of the amounts referred to in paragraph (3)(a) of this article, the remuneration obtained and effect its regular payment, in proportion to the actual use of works and/or objects of related rights;

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

(4) In the case of extended collective management, those holders of copyright and/or related rights who are neither members of the collective management organisation nor have entrusted it with the management of their rights and who have not withdrawn their rights from the repertoire of the organisation on the basis of paragraph (11) of Article 48 of this Law shall be entitled to the same remuneration due for a certain kind of use of a certain category of work or object of related rights, and also to the excluding of works or objects of related rights from the licenses issued to the users as the members of the organisation and those who otherwise have entrusted it with the management of their rights.

(5) A collective management organisation shall be entitled to dispose of the amounts of remuneration obtained from users that have not been claimed within three years of the day on which they have been paid into its account, either by adding them to the amounts to be distributed or by allocating them to other purposes for the benefit of the holders of copyright and related rights that it represents and which do not contravene the applicable legislation.

#### **Article 50. Establishment of the Amounts of Remuneration to Be Collected.**

##### **Settlement of Disputes**

(1) Collective management organisations shall determine the remuneration to be paid for – as well as any other conditions of authorisation to be applied in respect of – uses covered by the rights managed by them on the basis of negotiations with those who are obligated to pay the remuneration or with the organisations representing them.

(2) Where the interested parties cannot agree on the remuneration and other conditions of authorisation mentioned in paragraph (1), either of them may call upon the assistance of the Mediation and Arbitration Body specialized in the field of the Intellectual Property, established by the State Agency.

(3) The amount of remuneration established by negotiation or through mediation shall not be less than what the Government may determine as minimum remuneration.

(4) The generally applicable amounts of remuneration (tariffs) and licensing conditions agreed upon by the parties concerned or decided upon in accordance with paragraph (2) of this article shall be published in the Official Gazette of the Republic of Moldova. This provision also applies to the tariffs established under Articles 11(7), 12(4), 20(1), 26(6), 27(5), 37(3) and 47(3) of this Law.

#### **Article 51. Supervision of the Activities of Collective Management Organisations**

(1) The supervision of the activities of collective management organisations shall be carried out by the State Agency on Intellectual Property.

(2) For the purposes of such supervision, collective management organisations shall submit to the State Agency on Intellectual Property Rights:

a) their statutes and regulations, as well as any amendments thereof;

b) their bilateral and multilateral contracts concluded with foreign collective management organisations;

c) decisions of their General Assemblies;

d) their balance, annual report and results of both internal and external auditing;

e) information about the persons empowered to represent them;

f) other documents indispensable to verify the compliance of the activity of the organisation with this law and other relevant laws.

(3) The State Agency on Intellectual Property shall review the activities of a collective management organisation once a year. The State Agency, however, may also carry out a specific review between two regular annual reviews, if it obtains information from the members of the organisation, from holders of rights, from users or from any other relevant sources – on the basis of which reasonable doubts emerge whether the activities of the organisation is in accordance with the provisions of this Law and other relevant laws of the Republic of Moldova and/or its own statutes. During the reviews the collective management organisation is obliged to put at AGEPI's disposal any documents or information requested and their copies, if solicited.

(4) The State Agency on Intellectual Property shall prepare a report on the results of each review mentioned in paragraph (3) of this article which may also include measures provided for in paragraph (5) of this article. The highest governing body of the collective management organisation shall be obligated to examine the report on its agenda, to discuss it, and to inform the State Agency within the prescribed period of time about the measures taken to annihilate the infringements where these were detected.

(5) Where the State Agency for Intellectual Property finds that a collective management organisation does not function in accordance with the provisions of this Law and other relevant laws of the Republic of Moldova, it may call upon the organisation to bring its activities in accordance with this Law and the other relevant laws determining a reasonable deadline for this. Where the organisation does not fulfil this obligation, the State Agency on Intellectual Property may suspend or revoke the accreditation granted to the collective management organisation according to the legislative provisions on collective associations.

## **Chapter VIII**

### **TECHNOLOGICAL PROTECTION MEASURES.**

#### **RIGHTS MANAGEMENT INFORMATION**

#### **Article 52. Technological Protection Measures**

(1) The following acts shall be forbidden, irrespective of whether or not infringing, in any way, copyright, related rights or other rights protected by this Law as a result of their performance:

a) the circumvention of any effective technological measures by a person who carries out the act of circumvention in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective;

b) the manufacture, importation, distribution, rental, advertisement for sale or rental, or possession for commercial purposes of devices, of products or components or the provision of services which:

- are promoted, advertised or marketed for the purpose of circumvention of technological measures, or

- have circumvention as their significant purpose and/or result of their use, or

- are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.

(2) Notwithstanding the legal protection provided for in paragraph (1), in the absence of voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, the beneficiaries of the exceptions and limitations provided for in

Articles 27(1) and 28 (a), (b), (f), (g), (h) and (i) or an organisation representing them as members may turn to the Mediation and Arbitration Body, requesting that it intervene and ensure that rightholders make available to them the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where they have legal access to the protected work and/or objects of related rights and other rights provided for by this Law.

(3) Legal protection provided for by this Article shall extend both to the voluntary technological protection measures taken by the rightholders, including to those taken for the implementation of

the voluntary agreements, and to those taken according to an arbitration resolution or a court decision.

(4) Provisions of paragraphs (2) and (3) shall not apply to the works or objects of related rights specified in this Law that have been made available to the public in an interactive mode under contractual clauses.

#### **Article 53. Rights Management Information**

The following acts shall be forbidden to be knowingly performed by any person without authority:

- a) the removal or alteration of any electronic rights management information;
- b) the distribution, importation for distribution, communication or making available to the public of works or objects of related rights or other rights provided for in this Law from which electronic rights-management information has been removed or altered without authority, if such a person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright, related rights or other rights provided for in this Law.

### **Chapter IX**

#### **ENFORCEMENT OF COPYRIGHT, RELATED RIGHTS, AND OTHER RIGHTS**

##### **Article 54. Infringement of Copyright, Related Rights and Other Rights**

(1) Any use of an object of copyright, related rights or other rights protected by this Law that is performed in violation of the provisions of this Law shall be regarded an infringement.

(2) Any copy of an object of copyright, related rights or other rights protected by this Law the reproduction, importation, distribution, rental or lending of which constitutes an infringement under paragraph (1) of this article shall be regarded an infringing copy.

(3) The possession, for commercial purposes of a copy or an object of copyright, related rights or other rights protected by this Law shall be regarded also an infringement.

(4) In case of infringements and in respect to infringing copies, the provisions of this chapter and concerning administrative, customs and criminal measures, procedures, remedies and sanctions – the relevant provisions of the corresponding laws of the Republic of Moldova shall apply. Procedural provisions of this Law shall be supplemented by common law.

##### **Article 55. Instituting Infringement Proceedings**

(1) Any physical person or legal entity, as well as any other interested organisation that have a claim in respect of the use of an object of copyright, related rights or other rights protected by this Law shall have the right to initiate a proceeding at the competent judicial body or other enforcement authority for the application of measures, procedures and remedies provided for in this chapter.

(2) Proceedings for the infringement of copyright, related rights or other rights protected by this Law may be initiated, in particular, by the following persons or legal entities:

- a) the rightholders or organisations entitled to protect their rights;
- b) all other persons authorised to use such rights, in particular licensees;
- c) collective management organisations having a right to represent holders of copyright or related rights;
- d) professional defence bodies and other representatives of rightholders and licensees.

(3) The judicial bodies and other enforcement authorities shall apply the measures, procedures and remedies provided for in this chapter in a fair and equitable manner in a way that they are not unnecessarily complicated or costly and do not entail unnecessary time-limits or unwarranted delays. The application of these measures, procedures and remedies shall be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

##### **Article 56. Evidence**

(1) On application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the competent judicial authorities may order that such evidence be

presented by the opposing party, subject to the protection of confidential information. For the purposes of this paragraph, a reasonable sample of a substantial number of copies of a work or any other object protected by this Law shall be regarded by the competent judicial authorities as constituting reasonable evidence.

(2) Under the conditions mentioned in paragraph (1) of this Article, an infringement committed on a commercial scale, the competent judicial authorities may order, at the request of a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

#### **Article 57. Measures for Preserving Evidence**

(1) Even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support his or its claims that his or its copyright, related rights or other rights protected by this Law has or have been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

(2) The measures mentioned in paragraph (1) of this article may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto.

(3) The measures mentioned in paragraph (1) of this article shall be taken, if necessary without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the rightholder or where there is a demonstrable risk of evidence being destroyed.

(4) Where measures mentioned in paragraph (1) of this Article are adopted without the other party having been heard, the parties affected shall be given notice, without delay after the execution of the measures. A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the notification of the measures, whether the measures shall be modified, revoked or confirmed.

(5) The measures mentioned in paragraph (1) of this Article may be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph (7) of this article.

(6) The measures mentioned in paragraph (1) of this article shall be revoked, upon request of the defendant, without prejudice to the damages which may be claimed, if the applicant does not institute, within 20 working days, proceedings leading to a decision on the merits of the case before the competent judicial authority.

(7) Where the measures mentioned in paragraph (1) of this Article are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of copyright, related rights or other rights protected by this Law, the judicial authorities may order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

#### **Article 58. Right of Information in Connection with Infringements of Rights**

(1) In the context of proceedings concerning an infringement of an intellectual property right and in response to a justified request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe copyright, related rights or other rights protected by this Law be provided by the infringer and/or any other person who:

- a) was found in possession of the infringing goods on a commercial scale;
- b) was found to be using the infringing services on a commercial scale;
- c) was found to be providing on a commercial scale services used in infringing activities; or
- d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.

(2) The information mentioned in paragraph (1) of this article shall, as appropriate, comprise:

- a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
- b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

(3) Paragraphs (1) and (2) of this article shall apply without prejudice to other statutory provisions which:

- a) grant the rightholder rights to receive fuller information;
- b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
- c) govern responsibility for abuse of the right of information;
- d) afford an opportunity for refusing to provide information which would force the person mentioned in paragraph (1) of this article to admit to his own participation or that of his close relatives in an infringement of copyright, related rights or other rights protected by this Law; or
- e) govern the protection of confidentiality of information sources or the processing of personal data.

#### **Article 59. Provisional and Precautionary Measures**

(1) The judicial authorities may, at the request of the applicant:

- a) issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of copyright, related rights or other rights protected by this Law, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment, the continuation of the alleged infringements of the right concerned, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the rightholder;
- b) issue an interlocutory injunction, under the same conditions, against an intermediary whose services are being used by a third party to infringe copyright, related rights or other rights protected by this Law, including intermediaries whose computer and telecommunication services are used by a third party for such infringement;
- c) order the seizure or delivery up of the goods suspected of infringing copyright, related rights or other rights protected by this Law so as to prevent their entry into or movement within the channels of commerce.

(2) In the case of an infringement committed on a commercial scale, if the injured party demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

(3) The judicial authorities may, in respect of the measures mentioned in paragraphs (1) and (2) of this article, require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.

(4) The provisional measures mentioned in paragraphs (1) and (2) of this article may, in appropriate cases, be taken without the defendant having been notified, in particular where any delay would cause irreparable harm to the rightholder. In that event, the parties shall be so informed without delay after the execution of the measures. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.

(5) The competent judicial authorities may make the provisional measures mentioned in paragraphs (1) and (2) of this article subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph (7) of this Article.

(6) The provisional measures mentioned in paragraphs (1) and (2) shall be revoked, upon request of the defendant, if the applicant does not institute, within a period of 20 working days,

proceedings leading to a decision on the merits of the case before the competent judicial authority.

(7) Where the provisional measures mentioned in paragraphs (1) and (2) are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of copyright, related rights or other rights protected by this Law, the judicial authorities may order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

#### **Article 60. Corrective Measures**

(1) Without prejudice to any damages due to the rightholder by reason of the infringement, and without compensation of any sort, the competent judicial authorities may order, at the request of the applicant, that appropriate measures be taken with regard to goods that they have found to be infringing copyright, related rights or other rights protected by this Law and, in appropriate cases, with regard to materials and implements principally used in the creation or manufacture of those goods. Such measures shall include:

- a) recall from the channels of commerce;
- b) definitive removal from the channels of commerce; or
- c) seizure and destruction.

(2) The judicial authorities shall order that the measures mentioned in paragraph (1) of this article be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

(3) In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

#### **Article 61. Injunctions**

(1) Where a judicial decision is taken finding an infringement of copyright, related rights or other rights protected by this Law, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Such injunction may be issued also against an intermediary whose services are being used by a third party to infringe copyright, related rights or other rights protected by this Law, including intermediaries whose computer and telecommunication services are used by a third party for such infringement.

(2) Non-compliance with an injunction mentioned in paragraph (1) of this article shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance.

#### **Article 62. Alternative Measures**

In appropriate cases and at the request of the person liable to be subject to the measures provided for in this section, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in this section if that person acted unintentionally or by negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

#### **Article 63. Damages**

(1) Within the infringement proceedings, the persons mentioned in Article 55 paragraph (2) may request the judicial authorities or other competent bodies, as appropriate, to acknowledge their rights, state the infringement of their rights, re-establishment of the existing situation before infringement of rights and cessation of actions involving infringement of rights or creating the risk of their infringement, and compensate the damages.

*[Art.63 paragraph (1) amended by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

(2) When the judicial authorities set the damages, they shall take into account the necessity to:

- a) recover the losses, including the lost revenue, incurred by the injured party;
- b) surrender any unfair profit made by the infringer;
- c) pay a compensation of between 500 and 500.000 Moldovan Lei for each infringed right.

*[Art.63 paragraph (2) in the wording of Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

(3) Where the infringer did not knowingly, or without reasonable grounds to know, engage in infringing activity, the judicial authorities may order the recovery of profits or the payment of damages set as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

(4) The rightholder injured may claim material compensation for the moral prejudice caused by the infringement of rights protected by this Law.

(5) Any person who infringes copyright, related rights or other rights protected by this Law shall be liable to civil, administrative, and criminal sanctions provided by law.

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

a) the necessary corrections to the work and publication in the press, or notification by any other means, of the reinstatement of the author or holder in his rights;

b) prohibition to publish the work or injunction to cease distribution of the work and confiscation of published copies;

c) material damages for moral prejudice suffered.

(7) The judicial authority shall be entitled to order the seizure or confiscation of allegedly infringing copies of works, phonograms or videograms together with the materials and equipment for their manufacture and reproduction.

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

a) of the allegedly infringing copies of works, phonograms, and videograms;

b) of the materials and equipment used in their manufacture or reproduction;

c) of the accounts and other documents that may provide evidence of the acts performed contrary to this Law.

(9) The customs authorities shall be entitled to seize copies of works, phonograms, and videograms that have been subject to attempted unauthorized importation or exportation. If such copies of works, phonograms, and videograms prove to be infringing, the court may order any one of the measures referred to in paragraph (2) of this Article against the infringer.

*[Art.63 paragraph (9) amended by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665]*

#### **Article 64. Legal Costs**

(1) The due state fee, on institution of proceedings in relation to infringement of copyright, related rights or other rights protected by this Law shall be waived in respect to the persons mentioned in Article 55 paragraph (2). Such fee shall be paid, in the manner and amount set by the relevant laws, by the person acknowledged to be the infringer of the copyright, related rights or other rights protected by this Law.

(2) Reasonable and proportionate legal costs and other expenses incurred by the successful party in an infringement proceeding, as a general rule, shall be borne by the unsuccessful party, unless equity does not allow this.

#### **Article 65. Publication of Judicial Decisions**

In an infringement proceeding, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

#### **Article 66. Infringement of Copyright and Related Rights through Computer Networks**

(1) Any natural or legal person who provides services of hosting and/or data transmissions (internet/intranet), including internet-provider, upon their direct contribution to the infringement of copyright and/or related rights shall be deemed accomplice and becomes responsible in the following situations, if:

a) given the technical possibility of blocking, restricting the access and/or deleting, in due time, the objects published and/or used by actions infringing copyright and/or related rights, and

notified about the violation concerned (with the indication of the specific object) by the holder of respective rights or his representatives, he does not act according to the rightholder's requests for blocking, restricting the access and/or deleting the indicated objects;

b) informed about the illegal activity in the field of copyright and/or related rights, he enables, financially supports, and contributes to the illegal actions of other person;

c) he publishes erroneous information, modifies or deletes information concerning the holder of copyright and/or related rights, as well as distributes copies of works and/or objects of related rights in relation to which the information has been modified or deleted;

d) he intentionally makes available to third persons (links, web addresses) any information that creates possibility of illegal access to the objects of copyright and/or related rights.

(2) Any natural or legal person who provides services of hosting and/or data transmissions (internet/intranet), including internet-provider, shall not be responsible for the illegal actions of other persons who use his services in the actions infringing copyright and/or related rights provided he had not knowledge about such infringing actions or no possibility to restrict the access or delete the objects published or used by such actions.

#### **Article 67. Measures, Proceedings, Remedies and Sanctions to be Applied in Case of Violation of the Provisions on Technological Protection Measures and the Rights Management Information**

(1) In case of violations of the provisions on technological measures referred to in Article 52 of this Law and rights management information mentioned in Article 53 of this Law – irrespective of whether or not the activity infringing copyright, related rights and other rights protected by this Law ceased – the same measures, proceedings, remedies and sanctions, provided for in this chapter and the other relevant laws shall be applied as in case of infringements of copyright, related rights or other rights protected by this Law.

(2) The measures, procedures, remedies and sanctions mentioned in paragraph (1) of this Article concerning infringing copies and equipment used for infringement shall be applied, *mutatis mutandis*, also to devices, products and components mentioned in paragraph (1)(b) of Article 52 of this Law.

#### **Article 68. Social and Legal Protection of Authors and Holders of Related Rights**

(1) Any equipment, sketch, mock-up, manuscript or other similar product that directly generates a copyright shall not be the object of a foreclosure.

(2) The remuneration due to authors and holders of related rights resulting from the use of their works and objects shall be protected under the same conditions as the salaries, in the sense that it can not be traced in the enforcement procedure than under the same conditions as the salary and shall be exempt from value added tax.

(3) Judicial decisions on payment of remuneration shall be effected immediately, if the court finds this necessary.

(4) In order to protect the economic rights of authors and holders of related rights from the effects of inflation or other negative social and economic factors, the minimum rates for authors, set in a fixed amount, shall be indexed simultaneously and proportionately to the development of the minimum wage according to the laws on remuneration for work. The last does not mean the amount of the minimum tariff should correspond to the minimum wage.

### **Chapter X**

#### **FINAL PROVISIONS AND TRANSITIONAL MEASURES**

##### **Article 69. Entry into Force**

(1) This Law shall enter into force within three months from the date of publication.

(2) With entry into force of this Law, the provisions of Law on Copyright and Related Rights No.293-XIII of 23.11.1994 shall lose effect.

##### **Article 69<sup>1</sup>.**

This Law transposes: Directive 2004/48 / EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (Text with EEA relevance), published in the Official Journal of the European Union L 157 of 30 April 2004; Directive 2006/115 / EC of the European Parliament and of the Council of 12 December 2006 on rental

right and lending right and on certain rights related to copyright in the field of intellectual property (codified version), published in the Official Journal of the European Union L 376 of 27 December 2006;

Directive 2001/84 / EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, published in the Official Journal of the European Communities L 272 of 13 October 2001; Directive 2001/29 / EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society, published in the Official Journal of the European Communities L 167 of 22 June 2001; Council Directive 93/83 / EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, published in the Official Journal of the European Communities L 248 of 6 October 1993; Directive 96/9 / EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, published in the Official Journal of the European Communities L 77 of 27 March 1996; Directive 2009/24 / EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version) (Text with EEA relevance), published in the Official Journal of the European Union L 111 of 5 May 2009 and Article 1 paragraph (7) and Article 3 paragraphs (1) - (2a) of Directive 2006/116 / EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version), published in the Official Journal of the European Union L 372 of 27 December 2006. [\[Art.69<sup>1</sup> introduced by Law No.212 of 29.07.16, OM 306-313/16.09.16 Art.665\]](#)

#### **Article 70. Application of the Law**

(1) The provisions of Article 23 of this Law shall also apply to those works whose term of protection calculated according to the provisions previously in force had expired before the entry into force of this Law.

(2) In case the term of protection relating to authors' exclusive economic rights and rights to remuneration had expired by the time of the entry into force of this Law, the uses performed in the period between the expiration of the previously granted term of protection and the time of the entry into force of this Law shall be qualified as free uses.

(3) It shall be allowed to continue the uses mentioned in paragraph (2) of this article for one year more following the entry into force of this Law, but only to the extent existing at the time of the entry into force thereof.

(4) The provisions of paragraph (3) of this article shall be applied also in respect of uses for which definite preparations had been made before the date of the promulgation of this Law, on the understanding that, in this case, the use concerned may only begin and be performed to the extent of the preparation that existed at the time of promulgation of this Law.

(5) Any translation, adaptation or other alteration performed in the period of time referred to in paragraph (2) shall be regarded as if it had been performed with the authorisation of the author. However, in the case of uses of such translations, adaptations or alterations or after the entry into force of this Law the holders of copyright in the works which had been used as their basis may claim an equitable remuneration.

#### **Article 71. Duties of the Government**

The Government within six months from the entry into effect of this Law shall:

- a) submit proposals to the Parliament in view of aligning the legislation in force to this Law together with a draft special Law on State Agency on Intellectual Property;
- b) bring its legal acts in accordance with this Law.

**CHAIRMAN OF THE PARLIAMENT**

**Mihai GHIMPU**

**Chişinău, July 2, 2010.**

**No.139.**

