

Act LXXVI of 1999
on copyright

Modern copyright legislation that keeps up with technological development plays a decisive role in encouraging intellectual creation and preserving national and universal cultural heritage; it creates and maintains a balance between the interests of authors and other right holders on the one hand, and users and the broader public on the other hand, while also taking into account the needs of education, culture, scientific research and free access to information; moreover, it also ensures the extensive and effective enforcement of copyright and related rights. In consideration of these aspects, in accordance with the prevailing international commitments of Hungary within the field of the protection of intellectual property, as well as with the legislation of the European Community, the National Assembly has adopted the following Act:

PART ONE

GENERAL PROVISIONS

Chapter I

INTRODUCTORY PROVISIONS

The subject matter of copyright protection

Section 1 (1) This Act shall protect literary, scientific and artistic creations.

(2) All literary, scientific and artistic creations, whether or not specified by this Act, shall be protected by copyright. Such creations shall be in particular

- a) literary works (e.g. fictional, academic, scientific and journalistic works),
- b) public speeches,
- c) computer program creations and their documentation (hereinafter “software”) recorded as source code, object codes or in any other form, including application programs and operating systems,
- d) plays, musical plays, choreographic works and pantomimes,
- e) musical compositions with or without lyrics,
- f) radio and television plays,
- g) cinematographic creations and other audio-visual works (hereinafter jointly “cinematographic creations”),
- h) creations produced by drawing, painting, sculpting, engraving, lithography or by any other similar means as well as their designs,
- i) photographic works,
- j) maps and other cartographic creations,
- k) architectural works and their designs, as well as the designs for complexes of buildings and urban architecture,
- l) designs for technical structures,
- m) applied art works and their designs,
- n) costumes, scenery and their designs,
- o) works of industrial design,
- p) databases qualifying as collections of works.

(3) A creation shall enjoy copyright protection based on its individual and original quality deriving from the intellectual activity of the author. Protection shall not be dependent on any

quantitative, qualitative or aesthetic characteristics or be subject to any value judgement as regards the standard of creation.

(4) Laws, public law regulatory instruments, judicial and administrative decisions, administrative and other official communications and case files, standards prescribed by law as well as other similar provisions, shall not fall within the scope of protection provided by this Act.

(5) Copyright protection shall not extend to facts and daily news items which serve as a basis for press reports.

(6) Ideas, principles, theories, procedures, operating methods and mathematical operations shall be excluded from copyright protection.

(7) Expressions of folklore shall not enjoy copyright protection. This provision shall be without prejudice to the copyright protection of the author of an individual and original work inspired by folk art.

(8) Subject-matters of performers, phonogram producers, radio and television organisations, film producers and makers of databases shall enjoy the protection provided for by this Act.

Scope of the Act

Section 2 The protection defined by this Act shall extend to works first made public abroad only if the author is a Hungarian national or if the author is entitled to protection on the basis of an international treaty or international reciprocity.

Section 3 (1) Questions not regulated in this Act and concerning the conveyance, transfer and encumbrance of copyright and related rights or matters in any other personal or economic legal relationships relating to works or other subject-matters falling within the scope of this Act, shall be governed by the provisions of the Civil Code.

(2) Questions not regulated in this Act and concerning the collective management of copyright and related rights, shall be governed by the provisions of the Act on the collective management of copyright and related rights (hereinafter “CRM Act”).

Copyright

Section 4 (1) Copyright shall belong to the person who has created the work (author).

(2) If individual and original in nature, the adaptation, transformation or translation of another author’s work shall enjoy copyright protection, without prejudice to the rights of the author of the original work. Without prejudice to the rights of the author of the original work, the adaptation, transformation or translation of another author’s work shall enjoy copyright protection, if it is individual and original in its nature.

Works of joint authorship

Section 5 (1) Multiple authors of a joint work, the parts of which cannot be used independently, shall jointly enjoy copyright protection and, in case of doubt, in equal proportions; however, each co-author shall be entitled to take action independently against copyright infringement.

(2) If parts of a joint work can also be used independently (connected works), each co-author may independently exercise the copyright relating to his respective part. The consent of all authors of the original joint work shall be required for connecting any part of the jointly created work, which consists of connected works, with another work.

Collectively created works

Section 6 (1) Copyright relating to a collectively created work (e.g. national standards) shall belong to the natural or legal person qualifying as the authors' legal successor, upon whose initiative and under whose management the work was created and who published it in his or its own name.

(2) Works in which the contributions of the cooperating authors are combined in the resulting integrated work in a manner that makes it impossible to establish the rights of each individual co-author shall qualify as collectively created works.

Collection of works

Section 7 (1) A collection shall enjoy copyright protection if the selection, arrangement or editing of its content is of an individual and original nature (collection of works). Protection shall apply to a collection of works, even if the parts or elements thereof do or may not enjoy copyright protection.

(2) Regarding the collection of works as a whole, copyright shall belong to the editor; however, this shall be without prejudice to the independent rights of the authors of the individual works or of the right holders in subject-matters covered by related rights included in the collection.

(3) Copyright protection of a collection of works shall not cover the content elements of the collection of works.

Works published anonymously or under a pseudonym

Section 8 For works published anonymously or under a pseudonym, the author's rights shall be exercised, until the author takes action, by the person who first published the work.

Creation of authors' rights, authors' rights as objects of property

Section 9 (1) From the time of creation of a work the author shall be entitled to the totality of copyright, i.e. to all moral and economic rights.

(2) The author shall not be entitled to transfer his moral rights, such rights shall not be conveyed to another person in any other manner, and may not be waived.

(3) Subject to the exceptions under paragraphs (4) to (6), economic rights shall not be transferred or otherwise conveyed to another person, and may not be waived.

(4) Economic rights shall be subject to inheritance, and the author shall be entitled to dispose of them for the eventuality of his death.

(5) Persons acquiring economic rights by way of inheritance shall be entitled to dispose of those rights for the benefit of each other.

(6) Upon the events and conditions specified in this Act, economic rights may be subject of transfer or conveyance. Unless otherwise provided in the contract for the transfer of such rights, the person acquiring the rights shall be entitled thereafter to avail himself of the economic rights acquired.

Chapter II

MORAL RIGHTS

Publishing works

Section 10 (1) The author shall decide whether his work may be published.

(2) Providing information on the substantial content of the work to the public before the publication of the work shall require the consent of the author.

(3) Under a licence contract, unless otherwise provided therein, the consent of the author to make information on the content of the work public in a manner complying with the purpose of the use shall be deemed given.

(4) For works found after the death of the author, the intention of the author to make the work public shall be presumed in the absence of statements to the contrary by the author or their legal successors or unless it is proven to the contrary in any other manner.

Section 11 If there is due cause, the author shall be entitled to withdraw in writing his consent to the publication of his work and to prohibit the further use of his published work; however, the author shall be liable for the reimbursement of damage having arisen until such a statement is made. This shall not affect the employer's right to use the work and shall not prevent the party who acquired the economic rights through transfer from using the work based upon those rights.

Indicating the name of the author

Section 12 (1) The author shall be entitled to be indicated as the author on his work and, depending on the length and nature of the communication, in the communication relating to his work. Reference to the author shall also be made in all cases where any part of the author's work is included, quoted or reviewed in another work (right of attribution). The author shall be entitled to exercise his right of attribution depending on the nature of the use, in a manner conforming thereto.

(2) The name of the author of a work shall also be indicated on the adaptation, transformation or translation of the work.

(3) The author shall be entitled to publish his work without having his name indicated or under a pseudonym. The author of a work published under his name shall be entitled to stipulate that his work be published without the indication of his name in instances of new and lawful use.

(4) The author shall be entitled to claim that his authorship not be questioned.

Protection of the integrity of the work

Section 13 Any distortion, mutilation or other alteration of the author's work or any other misuse relating to the author's work that prejudices the honour or good reputation of the author, shall be considered an infringement of the author's moral rights.

The exercise of moral rights

Section 14 (1) After the death of the author, the person entrusted by the author with the management of his literary, scientific or artistic legacy, or in the absence of such or if the entrusted party fails to take action, the party who acquired the author's economic rights under the legal title of succession shall be entitled to take action against an infringement of the moral rights regulated in this Act, within the term of protection (section 31).

(2) After the expiry of the term of protection, the affected collective management organisations or representative organisation of authors shall also be entitled to take action, on the ground that the memory of the author has been violated, against any conduct that qualified

under the term of protection as a breach of the right of the author to have his name indicated on his work or in a communication related to his work.

Section 15 Upon the express consent of the author in the licence contract, the user shall also be entitled to take action for the protection of specific moral rights of the author.

Section 15/A The request for access to a work under copyright considered as data of public interest or public data of public interest, in the interest of protecting the moral rights of the author, instead of the form and manner requested, may be fulfilled by the organisation carrying out public functions that processes the data, within the time limit prescribed for the fulfilment of data requests, by allowing access to the parts of the work which contain matters of public interest or public data of public interest.

Chapter III

ECONOMIC RIGHTS

General rules on economic rights

Section 16 (1) By virtue of copyright protection, the author shall have the exclusive right to use the entire work or an identifiable part of it in any material and non-material form and to authorise every such use. Unless otherwise provided in this Act, authorisation for the use of the work shall be granted by a licence contract.

(2) The use of the original title of the work shall also be subject to the author's authorisation.

(3) The commercial exploitation of any typical and original character appearing in the work and the authorisation of such exploitation shall also be subject to the exclusive right of the author.

(4) Unless otherwise provided by this Act, in return for the authorisation to use his work, the author shall be entitled to remuneration, which, unless otherwise agreed, shall be proportionate to the revenue earned through the use of the work. The author may waive his claim to remuneration only by an explicit statement. In the event that the validity of a licence contract is subject to a prescribed form by virtue of an Act, the validity of the waiver of remuneration shall also be subject to the prescribed formalities.

(5) In the cases specified by an Act, the author shall be entitled to appropriate remuneration even if he holds no exclusive right to authorise the use. The right to waive such remuneration may be excluded by an Act; the author, even in the absence of such a provision, may only waive the remuneration by an express statement.

(6) Use shall qualify as unauthorised in particular if there is no authorisation given in an Act or in a contract concluded with the right holder, or if the user makes use of the work beyond the limitations of the authorisation granted to him.

(7) Unless otherwise provided by this Act or in the CRM Act., the user shall inform the author or his legal successor, or the collective management organisation on the manner and extent of the use.

(8) Reference in this Act to a collective management organisation exercising the collective management of rights in literary and musical copyright shall mean an organisation that is engaged in exercising authorisation rights or making claims for remuneration under section 33(2) of the CRM Act., on behalf of composers and authors with respect to the literary and musical works concerned as a representative collective management organisation, and which is entitled to pursue extended collective rights management in this respect as well as to determine and collect royalties. This provision shall be applied accordingly when this Act refers to a collective management organisation that exercises the collective management of copyright in works of fine art and applied art.

Section 17 The following in particular shall qualify as uses of the work:

- a) reproduction (sections 18 and 19),
- b) distribution (section 23),
- c) public performance (sections 24 and 25),
- d) communication to the public by broadcasting or in any other manner (sections 26 and 27),
- e) retransmission of the broadcast work to the public with the involvement of an organisation other than the original one (section 28),
- f) adaptation (section 29),
- g) exhibition (section 69).

The right of reproduction

Section 18 (1) The author shall have the exclusive right to reproduce his work and to grant authorisation for others to reproduce his work. Reproduction shall mean

a) the direct or indirect recording of the work on a tangible carrier, in any manner, whether permanently or temporarily, and

b) the making of one or more copies of the recording.

(2) In particular the following shall qualify as reproduction: the recording of the work in a mechanical, cinematographic or magnetic way and making copies of the work by printing; the production of an audio or video recording of the work; its recording for purposes of broadcasting or communication to the public by cable; the storage of the work in a digital form on electronic devices; and the production in material form of the work transmitted through a computer network. For architectural works, the construction of the work in the design and any subsequent constructions shall qualify as reproduction.

Section 19 (1) Composers and lyricists may exercise their rights relating to the subsequent reproduction and distribution of phonograms of their already published non-stage musical compositions, lyrics or parts of stage works only through their collective management organisation, and shall be entitled to waive their right to remuneration only to the extent due to them and effective from the date of apportionment.

(2) The provision in paragraph (1) shall not apply to the right of adaptation and the exercise of this right.

Section 20 (1) The authors of works, performers of performances and producers of films and phonograms that are broadcast in the programmes of radio and television organisations, which are included in the programmes of entities communicating their own programmes to the public by cable, or which are distributed on audio-visual or audio carriers, shall be entitled to adequate remuneration with regard to the private-purpose copies of their works, performances, films and phonograms.

(2) The remuneration referred to in paragraph (1) shall be determined by the collective management organisation carrying out the management of rights in literary and musical works, in agreement with the collecting societies of other right holders. When determining the remuneration, the application or the lack of application of effective technological measures for the protection of copyright and related rights on the works, performances, films and phonograms concerned shall be taken into account (section 95). The amount of remuneration shall be paid by the manufacturer of blank video and audio carriers or, in the case of foreign manufacturing, by the person obliged by law to pay customs duties or, in the absence of the obligation to pay customs duties, under joint and several liability by the person who imports the carriers and by the person who is the first to place the carriers on the market in Hungary, to the collective management organisation carrying out the management of rights in literary and musical works, within eight days from the completion of the customs clearance and the payment

of the customs duties or, in the absence of an obligation to pay customs duties, from the date of the carriers' placing on the market, or from the date of taking the carriers in stock with the intention of placing them on the market, if the latter happens earlier. All Hungarian distributors of the carriers concerned shall be jointly and severally liable for the payment of royalties.

(3) The obligation to pay remuneration shall not apply to

a) placing on the market for export purposes, and
b) video and audio carriers which can only be used with devices (e.g. studio equipment, dictaphones) which are not applied in their the proper use to the private copying of works, performances or phonograms.

(4) For audio carriers, unless otherwise agreed between the affected collecting societies by 31 March every year, from the amount of the collected remuneration remaining after the deduction of costs, forty-five per cent shall be distributed to the music composers and writers, thirty per cent to the performers and twenty-five per cent to the producers of phonograms.

(5) For video carriers, unless otherwise agreed between the affected collecting societies by 31 March every year, from the amount of the received remuneration remaining after the deduction of costs, thirteen per cent shall be distributed to film producers, twenty-two per cent to the cinematographic creators of movie pictures, four per cent to the creators of fine arts, designs and authors of photographic works, sixteen per cent to script writers, twenty per cent to composers and lyricists and twenty-five per cent to performers.

(6) The part of the remuneration that is due to authors and right holders of copyright, performers and producers of phonograms who are not represented by the collective management organisation carrying out the management of rights in literary and musical works in relation to the allocation of the remuneration shall be transferred to the collecting societies performing the management of rights for the right holders involved.

(7) The right holders shall be entitled to enforce their claims to remuneration only through the collecting societies performing the management of their rights, and shall be entitled to waive their right to remuneration only to the extent of the amounts due to them and effective from the date of apportionment.

Section 21 (1) The authors and publishers of works reproduced by photocopying or by similar means on paper or a similar carrier (hereinafter jointly "by reprography") shall be entitled to adequate remuneration in regard to private copying. Within the time limit indicated in the third sentence of section 20(2), the remuneration shall be paid by the manufacturer of the device for reprography or, in the case of foreign manufacturing, by the person obliged by law to pay customs duties or, in the absence of such an obligation, under joint and several liability by the person who imports the device and by the person who was first to place it on the market in Hungary. Domestic distributors of the device concerned shall also be jointly and severally liable for the payment of the royalties. Beyond this remuneration, the person operating the reprographic device for a consideration shall also pay remuneration. Both types of remuneration shall be paid to the collective management organisation.

(2) The Government shall specify by decree the list of devices that are used for reprography.

(3) The remuneration referred to in paragraph (1) shall be determined by the collective management organisation. When determining the remuneration, the collective management organisation society shall take into account, in particular, the manner of use and performance of the device and, if used for a consideration, the place of operation.

(4) The remuneration referred to in paragraph (1) shall not exceed two per cent of the manufacturer's producer price of the reprography device or, for devices manufactured abroad, two per cent of the customs value prescribed by law.

(5) The obligation to pay remuneration shall not apply when the device is placed on the market for export purposes.

(6) After the costs and the share due to publishers under a contract pursuant to section 12(3) of the CRM Act., if any, have been deducted, forty-two per cent of the remaining amount of the remuneration collected shall be due to the authors of academic and scientific works, forty-two per cent to the authors of other literary works and sixteen per cent to the authors of works of fine arts and photographic works. The remuneration shall be transferred to the collecting societies of these right holders according to the above allocation ratios.

(7) The allocation ratios determined in paragraph (6) shall be applied in cases where the affected collecting societies and representative organisations have not agreed otherwise by March 31 of each year.

(8) The authors and, under the scope of a contract pursuant to section 12(3) of the CRM Act, the relevant publishers shall be entitled to enforce their claims for remuneration only through the collecting societies carrying out the collective management of their rights, and they shall be entitled to waive their right to remuneration only to the extent due to them and effective from the date of the allocation, except in the cases of contracts concluded under section 12(3) of the CRM Act.

Section 22 (1) The commercial manufacturer of the blank audiovisual and audio carriers specified in section 20 or of the devices specified in section 21, those without the obligation to pay customs duties for importing such carriers and devices, as well as those who first distribute the carriers and devices having been imported in this way in Hungary, and those that are obliged by law to pay customs duties for importing such carriers and devices shall be obliged to inform the collective management organisation of the quantity and type of the carriers and devices imported or placed on the market by the tenth day of every calendar month but no later than the time limit provided in section 20(2). The collective management organisation shall be entitled to request further information on the placement on the market and the sources of supply and, from those operating reprographic devices for a consideration, it may request further data necessary for determining the amount of appropriate remuneration.

(2) In the event of partial or complete failure to provide information or data pursuant to paragraph (1), beyond the remuneration due, a flat-rate amount of costs equal to the remuneration due shall be paid to cover the extra costs of the collective management organisation.

The right of distribution

Section 23 (1) The author shall be exclusively entitled to distribute his work and to grant authorisation to others to do so. Making the original copy or the reproduced copies of the work accessible to the public through placing them on the market or offering them for placement on the market shall qualify as distribution.

(2) Distribution shall include in particular the assignment of the ownership and the rental of the copy of the work as well as the import of the copy of the work into the country with the purpose of placing it on the market. Possessing for commercial purposes a copy of the work produced through an infringement shall also qualify as an infringement of the right of distribution if the possessor is aware or, with the care that can be generally expected, should have been aware of the fact that the copy was produced through infringement.

(3) The right of distribution shall also extend to lending single copies of the work to the public. The authors of works included in phonograms may exercise their right of distribution in compliance with section 78(2). The authors of cinematographic creations shall also exercise this right through the collective management of rights only, and shall be entitled to waive their right to remuneration only to the extent due to them and effective from the date of apportionment.

(4) For works of architecture, applied art and industrial design, the right of distribution through rental shall pertain to designs only.

(5) If the copy of the work has been placed on the market within the European Economic Area by the right holder or upon his express authorisation by another, through transfer or assignment of ownership in any other manner, the right of distribution, except for the right of rental, public lending and import, shall not be exercised with regard to the copy of the work thus placed on the market.

(6) If the author transferred the right of rental relating to a cinematographic creation or a work included in a phonogram to the producer of the film or phonogram, or granted authorisation to the producers in any other manner to exercise this right, the author shall be entitled to claim from the producer of the film or phonogram an appropriate remuneration for the distribution of the work through rental. The author shall not be entitled to waive this right; however, he may enforce his claim to remuneration only through a collective management organisation.

(7)

Section 23/A (1) Authors of literary works and musical works printed in sheet music distributed by lending in libraries engaged in public lending shall be entitled to appropriate remuneration with regard to the lending.

(2) The collective management organisation shall determine the remuneration in its annually published notification of tariff, within the limits of the amount set forth in an individual line of the budgetary chapter supervised by the minister responsible for culture (for the purposes of this section hereinafter “the minister”).

(3) The authors may enforce their claims for remuneration only through their collective management organisationng society, and they shall be entitled to waive the remuneration only to the extent due to them and effective from the date of apportionment.

(4) The libraries shall provide data to the collective management organisation and the minister on the identification data of copies of creations/works under paragraph (1) and on the number of occasions of lending by the library which are necessary to determine and apportion the remuneration, not later than the end of the first quarter following the year concerned. The scope of the data required for the determination and allocation of the remuneration and the list of libraries subject to the obligation to provide data shall be specified in a separate law.

(5) The remuneration shall be allocated according to the number of occasions of lending, and the remuneration shall be due on 1 November of the year following the year concerned.

The right of public performance

Section 24 (1) It shall be the author’s exclusive right to perform his work to the public and to authorise other persons to do so. Performance shall mean making the work perceivable to those present.

(2) Performance shall mean in particular

a) the performer's personal artistic performance of the work to an audience, such as stage performance, concert, recital, reading (“live performance”);

b) making the work perceivable by using any technical device or method, such as the projection of a cinematographic creation, making the work communicated or distributed (as a copy) to the public audible by loudspeaker or visible on screen.

(3) A performance shall qualify as public if it occurs at a place accessible to the public or in any other place where others than the user’s family and acquaintances gather or may gather.

Section 25 (1) The collective management organisation carrying out the management of rights in literary and musical works shall conclude, on behalf of writers, composers and lyricists of literary and artistic works that have already been published, a contract with the user on the

authorisation of the public performance of the works and the remuneration to be paid for it, unless the author has made a statement of objection under section 18(1) of the CRM Act.

(2)

(3) The provisions under paragraph (1) shall not apply to the performance of literary works and musico-dramatic works intended for stage, or their scenes or overviews, or to academic literature or longer fiction works not intended for stage (e.g. novels).

(4) In the cases under paragraph (1), the user shall notify the collective management organisation referred to in paragraph (1) in advance of the planned use and of any alteration of the ongoing use. The collective management organisation referred to in paragraph (1) shall be entitled to inspect the use on-site.

(5) The royalty for a live artistic performance made to an audience, with the exception of the remuneration for music services in the hospitality industry, shall be paid within three days from the date of the performance. In other cases, an advance payment of the royalty for at least a quarterly period or, in the case of shorter operation of a seasonal character, for the whole period of operation shall be required for obtaining the licence.

(6) If the user fails to meet its notification obligation specified in paragraph (4), and thus the collective management organisation becomes aware of the use only when conducting an inspection, beyond the remuneration due, a flat-rate amount of costs equalling the remuneration due shall be paid to cover the inspection costs of the collective management organisation.

The right to communicate the work to the public

Section 26 (1) It shall be the author's exclusive right to communicate his work to the public by broadcasting and to authorise other persons to do so. Broadcasting shall mean making the work perceivable to people at a distance, by transmitting sounds, images and sounds, or the technical representation of these by wireless means.

(2) Satellite broadcasting shall also qualify as broadcasting of the work if the broadcast programme can be directly received by the public. The satellite broadcast programme shall be deemed to be accessible to direct reception by the public if, subject to the responsibility and control of the radio or television organisation, programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and then to Earth for reception by the public. In the case of satellite broadcasting, the place of use of the work shall be the sole Member State of the European Economic Area where, subject to the responsibility and the control of the radio or television organisation, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to a satellite and then back to Earth for reception by the public. To satellite broadcasting, the place of use of which is a state outside the European Economic Area on the basis of the preceding rule, Article 1(2)d) of Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmissions shall apply.

(3) Encrypted broadcasting, which can be directly received by the public only after programme-carrying signals have been made suitable for reception by using a device for decryption (decoder) that was obtained on the basis of a contract concluded with the original radio or television organisation, from that organisation or, with its approval, from elsewhere, shall also qualify as broadcasting. The original radio or television organisation and the organisation using the decoder and communicating the broadcast to the public, shall be jointly and severally liable for such use.

(4) If the signals of the broadcast programme are encrypted by the organisation communicating it to the public and the work is accessible for undisturbed perception by the members of the public only by using a decoder obtained from that organisation on the basis of

a contract concluded with it or, with its approval, from elsewhere, this shall also be regarded as broadcasting of the work.

(5) A broadcast shall be considered encrypted if its programme-carrying signals are transformed in any manner in order to restrict access to a limited part of the public.

(6) The recording of the work that enables repeated broadcasting shall be subject to the author's express authorisation. Every single use of the recording shall be subject to the payment of remuneration.

(7) The provisions on broadcasting shall apply accordingly to the communication to the public of an own programme by cable or any similar device or in any like manner.

(8) The author shall also be exclusively entitled to communicate his work to the public in any manner other than broadcasting or different from the means referred to in paragraph (7) and to authorise other persons for do so. This right shall cover in particular the case when the work is made available to the public by cable or by any other means or in any other manner in a way that the members of the public can choose the place and time of access individually.

Section 27 (1) Except for the use of literary works and musico-dramatic works intended for stage, including their scenes or overviews, and works of academic literature and longer fiction not intended for stage (e.g. novels), the collective management organisation performing the management of rights in literary and musical works shall, on behalf of writers, composers and lyricists, conclude licence contracts with the users on the authorisation of the broadcasting of a work already made public and on the remuneration to be paid therefor.

(2) Paragraph (1) shall apply to satellite broadcasting if

a) the programme is simultaneously communicated to the public by the same radio or television organisation through terrestrial broadcasting, and

b) the author has not made a statement of objection under section 18(1) of the CRM Act.

(3) The collective management organisation shall conclude, on behalf of composers and lyricists, licence contracts with users for the authorisation of uses covered by section 26, other than those mentioned in paragraphs (1) and (2), of non-stage musical works and lyrics or parts of such non-stage musical works already published, except for musico-dramatic works and their scenes or overviews, and regarding the remuneration to be paid for the uses, unless the author has made a statement of objection under section 18(1) of the CRM Act.

Section 28 (1) The author shall be exclusively entitled to retransmit his work communicated to the public by broadcasting and to authorise other persons to do so.

(2) The author shall also have the exclusive right to authorise the simultaneous, unaltered and unabridged retransmission to the public of his work that was broadcast or transmitted in the programme schedule of a radio or television organisation or of an entity communicating its own programme schedule by cable or by any other means, with the involvement of another organisation other than the original one.

(3) The right holders shall be entitled to exercise their right referred to in paragraph (2) only through collective management of rights and shall be entitled to waive their right to remuneration only to the extent due to them and effective from the date of apportionment. The remuneration shall be determined by the collective management organisation carrying out the collective management of rights in literary and musical works, in agreement with the collecting societies of other right holders. The organisation undertaking retransmission shall pay the remuneration so determined to the collective management organisation performing the management of rights in literary and musical works.

(4) Unless otherwise agreed between the affected collecting societies by 31 March every year, from the amount of the remuneration received that remains after costs are deducted, thirteen per cent shall be due to film producers, nineteen per cent to cinematographic creators of films, three per cent to creators of works of fine arts, applied arts and authors of photographic works,

fourteen per cent to film script writers, fifteen and a half per cent to composers and lyricists, twenty-six and a half per cent to performers and nine per cent to producers of phonograms.

(5) The collective management organisation carrying out the collective management of rights in literary and musical works shall transfer the part of the collected remuneration due to authors and copyright holders of types of works that are not represented by it in respect of the apportionment of the remuneration and the parts due to performers and producers of phonograms to their respective collecting societies.

(6) The remuneration for the retransmission of works broadcast in the programme schedule of or communicated by cable or in any other manner by the Hungarian public media service radio and television organisation shall be paid from the Media Services and Support Trust Fund; the Fund shall be responsible for such payments.

The right of adaptation

Section 29 The author shall be exclusively entitled to adapt his work or to grant permission to other persons to do so. Adaptation of a work shall mean its translation, stage or musical arrangement, adaptation for a cinematographic production, the adaptation of the cinematographic creation, and any other alteration of the work, as a result of which another work is derived from the original one.

Works created under employment or under other similar legal relationships

Section 30 (1) In the absence of an agreement to the contrary, the employer, as the legal successor of the author, shall acquire the economic rights upon delivery of the work, if the creation of the work is the duty of the author under his contract of employment.

(2) In the event of legal succession concerning the employer, the economic rights acquired pursuant to the provision laid down in paragraph (1) shall be conveyed to the legal successor of the employer.

(3) The author shall be entitled to appropriate remuneration if the employer authorises another person to use the work or transfers the economic rights relating to the work to another person.

(4) Even after the employer's acquisition of the rights, the author shall continue to be entitled to the remuneration to which authors are entitled under this Act after the transfer of rights.

(5) If the creation of the work is the duty of the author under an employment contract, the delivery of the work to the employer shall qualify as consent for the publication of the work. If the author makes a statement withdrawing his work (section 11), the employer shall omit the author's name from the work. The author's name shall also be omitted at the request of the author if, exercising his right under the employment relationship, the employer makes modifications to the work and the author does not approve them.

(6) If the creation of the work is the duty of the author under an employment contract, legal statements regarding the work created shall be made in writing.

(7) The provisions on works created as the duty of the author under an employment contract shall apply accordingly if the work has been created by a person employed in a public service, government service, state service or public employee legal relationship or service relationship, or by a member of a co-operative working within the framework of a legal relationship of an employment nature.

The term of protection

Section 31 (1) Copyright shall subsist during the lifetime of the author and for seventy years following the author's death.

(2) The seventy years' term of protection shall be calculated from the first day of the year following the death of the author and, for works of joint authorship, from the first day of the year following the death of the joint author who died last.

(3) If the author cannot be identified, the term of protection shall be seventy years counted from the first day of the year following the year in which the work was first published. If the author presents himself during this period, the term of protection shall be calculated pursuant to paragraph (2).

(4) In the case of a work made public in instalments, the year of first publication shall be calculated separately for each part.

(5) The term of protection of a collectively created work shall be seventy years, calculated from the first day of the year following the first publication of the work.

(6) The term of protection of a cinematographic creation shall be calculated from the first day of the year following the death of whoever of the following persons died last, regardless of their being indicated as co-authors or not: the director of the film, the author of the screenplay, the author of the dialogues and the author of the music specifically created for use in that cinematographic creation.

(7) If the term of protection is to be calculated from a date other than the first day of the year following the death of the author or joint author who died last, and the work is not made public within the seventy year period following its creation, the work shall not enjoy copyright protection.

Section 32 The person lawfully publishing a work yet unpublished after the expiry of the term of protection or the period of time determined in section 31(7) shall be entitled to legal protection equal to that of the economic rights of the author. The term of such protection shall be twenty-five years from the first day of the year following the year in which the work was first published.

Chapter IV

FREE USE OF THE WORK AND OTHER LIMITATIONS TO COPYRIGHT

General rules

Section 33 (1) Use of the work qualifying as free use shall be free of charge and shall not require the consent of the author. Only published works published shall be used freely pursuant to the provisions of this Act.

(2) Using the work shall be permitted even on the basis of the provisions concerning free use and free of charge only to the extent that it does not conflict with the proper use of the work, does not unreasonably prejudice the legitimate interests of the author, is in compliance with the requirements of fairness and its aim is not incompatible with the intended purpose of free use.

(3) The provisions relating to free use shall not be construed extensively.

(4) For the purposes of the provisions of this Chapter, the use shall be regarded to serve the purposes of school education if it is implemented in accordance with the curriculum and educational requirements in kindergarten, primary school, secondary school, vocational training and technical school education, in institutions of primary education of arts, as well as in higher education falling under the scope of the Act on higher education.

The instances of free use

Section 34 (1) Anyone shall be entitled to quote, true to the original and to the extent justified by the character and purpose of the recipient work, parts of works on the condition of indicating the source and the author specified in the original work.

(2) Part of a published literary or musical work or of a film, or small entire works of such nature as well as pictures of works of fine art, architecture, applied art and industrial design creations, and photographic works may be borrowed for the purposes of illustration for school education and scientific research, while indicating the source and the author named in such work, to the extent justified by the purpose and on the condition that the recipient work is not used for commercial purposes. Borrowing shall mean the use of a work in another work to an extent exceeding quotation.

(3) The non-commercial reproduction and distribution of the recipient work mentioned in paragraph (2) shall not require the author's authorisation if the recipient work, pursuant to the relevant laws, is published as a textbook or reference book and the school educational purpose is indicated on its front page.

(4) The work may be adapted for the purposes of school education in the course of educational activity. The authorisation of the author of the original work shall also be necessary for the use of the work thus adapted.

Section 35 (1) Natural persons may make copies of the work for private purposes if these do not serve, either directly or indirectly, the purpose of earning or increasing one's income. This provision shall not apply to architectural works, technical structures, software and computer-operated databases, or to the recording of the public performance of a work on a video or audio carrier. Sheet music shall not be reproduced by means of reprography [section 21(1)] even for private purposes or in the cases mentioned in paragraph (4)*b*) to *d*).

(2) The copying of complete books, periodicals or daily newspapers for private purposes shall qualify as free use only if it is done by handwriting or using a typewriter.

(3) Having a work copied by a third party using a computer or on an electronic data carrier, regardless of its private purpose, shall not qualify as free use.

(4) Public libraries, educational establishments [section 33(4)], museums, archives and video or audio archives qualifying as public collections shall be allowed to make copies of works if these do not serve, either directly or indirectly, the purpose of earning or increasing one's income and

- a*) the copy is necessary for scientific research or archiving,
- b*) the copy is made for public library supply or for a use specified in section 38(5),
- c*) the copy is made of a minor part of a published work, or of a newspaper or periodical article, for internal institutional purposes, or
- d*)

(5) Parts of a work published as a book, as well as newspaper and periodical articles may be reproduced for the purposes of school education in a number corresponding to the number of students in a respective class, or for the purposes of exams in public and higher education in a number necessary for that purpose.

(6) A temporary reproduction, which is auxiliary or interim, and is an integral and essential part of a technological process with no independent economic significance, shall qualify as free use if its sole purpose is to enable

- a*) transmission in a network between third parties by an intermediary service provider, or
- b*) the use of the work authorised by the author or authorised on the basis of the provisions of this Act.

(7) Temporary recording of a work lawfully used by a radio or television organisation for the broadcast of its own programme schedule if made by its own facilities shall qualify as free use. Unless otherwise provided by the contract authorising the broadcasting of the work, such a

recording shall be destroyed or deleted within three months calculated from the date when it was made. Temporary recordings defined in a separate Act as having an exceptional documentary value may, however, be preserved for an indefinite term in video or audio archives qualifying as public collections.

(8) The instances of free use referred to under paragraphs (1), (4), (5) and (7) shall be without prejudice to the application of sections 20 to 22.

Section 36 (1) Parts of public lectures and of other similar works, as well as political speeches, may be used freely for informatory purposes to the extent justified by the purpose. In such instances of use, the source, along with the name of the author, shall be indicated, unless it proves to be impossible. The permission of the author shall be required for the publishing of collections of such works.

(2) Articles published on current events and current economic or political topics, or works broadcast on the same topics, may be freely reproduced and communicated to the public in the press, including giving free access to the public [section 26(8)], provided the author has not made a statement prohibiting such use. In such instances of use, the source, along with the name of the author, shall be indicated.

(3) In audiovisual media services, works of fine art as well as photographic, architectural, applied art or industrial design works may be freely used as scenery. In such cases, the indication of the name of the author shall not be compulsory.

(4) The permission of the author and the indication of his name shall be required for the use of works made for purposes of scenery or costume in audiovisual media services.

(5) In the event of exhibitions of original works of art or upon their transfer for a consideration through an art dealer, the works of art may be freely reproduced and distributed for the purposes of advertising the event, to the extent justified by the promotion of the event, provided that these activities do not, either directly or indirectly, serve the purpose of earning or increasing an income. Section 70(2) and (3) shall apply for the definition of the terms “original work of art” and “art dealer.”

Section 37 Certain works may be used freely for informatory purposes on current, daily events to the extent justified by this purpose. In such instances of use, the source, along with the name of the author, shall be indicated, unless it proves to be impossible.

Section 38 (1) If the performance is not aimed, either directly or indirectly, at earning or increasing income, and the persons giving the performance do not receive remuneration, works may be performed in the following cases:

a) a stage work may be performed by amateur artistic groups if the performance is based on a published script or a lawfully used manuscript, provided that this does not violate any international treaties,

b) for the purposes of school education or at school celebrations,

c) within the framework of social care or care for the elderly,

d)

e) at religious ceremonies and religious festivities of religious communities,

f) for private purposes and at occasional private gatherings.

(1a) If the performance is not aimed, either directly or indirectly, at earning or increasing income, works may be performed at celebrations held on national holidays.

(2) The use serves the purpose of increasing income if it is capable of increasing the clientele or attendance of the user (e.g. a shop or an entertainment venue) or if it is for entertaining the guests or other customers of a shop. The collection of entrance fees, even if under a different name, shall qualify as earning income. Payments exceeding the incurred and justified costs in connection with the performance shall qualify as remuneration.

(3)

(4) A gathering held by an economic operator or a legal person other than an economic operator exclusively for its members, executive officers and employees shall be considered to be private.

(5) In the absence of an agreement on use to the contrary, works forming part of the collection of publicly accessible libraries, educational institutions [section 33(4)], museums and archives, as well as picture or audio archives qualifying as public collections, may be displayed freely on the screens of dedicated terminals on the premises of such establishments to certain individual members of the public for the purposes of scientific research or private study, and, to this end, such works may be freely communicated, including making them available to such members of the public, provided that such a use is carried out in a way and on conditions as provided for in a separate law and is not aimed, either directly or indirectly, at earning or increasing income.

Section 39 National specialised libraries shall be entitled to freely lend individual copies of a work. This provision shall not apply to software and to computer-operated databases.

Section 40 Copies reproduced within the scope of free use shall not be distributed without the author's permission, except for inter-library lending and in the case defined under section 36(5).

Section 41 (1) Any non-commercial use of a work shall fall within the scope of free use if the only purpose of use is to meet the needs of disabled persons, the needs being directly related to their disabilities, and does not exceed the extent justified by the purpose.

(2) A work may be used for the purposes of evidence in court, administrative and other official proceedings, in a manner and to an extent consistent with such purpose.

(3) For the purposes of carrying out the legislative duties of the National Assembly and performing the related parliamentary representative activities, a work may be used freely in a manner and to an extent consistent with such purpose, if the use is not aimed, either directly or indirectly, at earning or increasing income.

CHAPTER IV/A

THE USE OF ORPHAN WORKS

General provisions

Section 41/A (1) A work or subject-matter covered by neighbouring rights (for the purposes of this Chapter hereinafter "subject-matter") shall be considered an orphan work if the right holder of such work or subject-matter is not identified or could not be located despite a diligent search carried out in good faith.

(2) In the course of the search for right holders, at least the sources of information specified in the Government decree on the detailed rules on the use of orphan works shall be used, according to the type of work or subject-matter concerned.

(3) The search shall be carried out in the country where the work or subject-matter was first published or, in the absence of publication, first broadcast.

(4) By way of derogation from paragraph (3), the search relating to cinematographic or other audiovisual creations shall be carried out in the country where the seat or habitual residence of the producer is located.

(5) In the case referred to under section 41/F (3) the search shall be carried out in the territory of Hungary.

(6) If the search suggests that substantial information relating to the right holder is available in another country, such information resources available in that country shall also be used for the search.

(7) If a work or subject-matter has more than one right holder, any of whom is identified and located, the authorisation of that right holder shall be required for the use as well.

(8) The right holder of the work or subject-matter considered to be an orphan work shall be entitled to end, regarding his own rights, the orphan status of the work or subject-matter at any time and to assert his rights in relation to the use of the work.

(9) The provisions of this Chapter shall not apply to cases where authorisation of use falls within the scope of the collective management of rights.

Permitting the use of orphan works

Section 41/B (1) Upon request, the Hungarian Intellectual Property Office (hereinafter “Office”) shall, against a fee which is in accordance with the mode and extent of use, grant a licence for the use of an orphan work. The licence shall be valid for a maximum term of five years, within the territory of Hungary, shall be non-exclusive, non-transferable, and shall not confer the right for granting further licences or for the adaptation of the work (section 29).

(2) The fee referred to under paragraph (1) shall be paid to the right holder after the identity or location of the right holder becomes known, if the use is not aimed, either directly or indirectly, at earning or increasing an income. If the use is aimed at earning or increasing an income directly or indirectly, the fee shall be deposited at the Office. Depositing the remuneration shall be the condition for the commencement of use.

(3) If the identity or location of the right holder becomes known during the term of the licence, the Office shall revoke the licence at the request of the right holder or the user, effective on the date when the identity or location of the right holder became known, with the proviso that the right to use shall persist to the extent existing on the date when the identity or location of the right holder became known and for the period remaining of the term of the licence, but not longer than for one year from the date when the identity or location of the right holder becomes known.

(4) Paragraph (3) shall apply accordingly if serious preparations have been made for the use before the date when the identity or the location of the right holder became known, with the proviso that use may be commenced and continued to the extent of the preparation existing on the date when the identity or location of the right holder became known.

(5) The right holder shall be entitled to claim the remuneration due to him from the user or from the Office, if the remuneration has been deposited there for his benefit, for five years after the licence had expired or after the date when the decision on revocation became final and binding. After the expiry of the five-year period, the Office shall transfer the remuneration to the collective management organisation that authorises the other types of uses of the orphan work or, in the absence of such a society, to the National Cultural Fund (hereinafter “NCF”). If more than one collective management organisation is entitled to authorise the other uses of the orphan work, the remuneration shall be distributed to those societies in equal shares. The NCF shall use the royalty transferred to it for making cultural goods accessible.

(6) If the right holder disputes the amount of the remuneration provided for in paragraphs (3) to (5), the resolution of the dispute shall fall within the competence of the court, and the dispute shall be resolved according to the rules on copyright actions.

(7) An administrative service fee shall be paid for submitting the request under paragraph (1).

(8) Detailed rules on permission of the use of orphan works and the amount of the fee under paragraph (7) shall be specified in a Government decree.

Section 41/C (1) In the procedure specified under section 41/B, the Office shall proceed, subject to the derogations and supplementations specified in this Act, according to the provisions of the Act on the Code of General Administrative Procedure and the Act on the general rules on electronic administration and trust services.

(2) The Act on the Code of General Administrative Procedure shall apply with the following derogations:

- a) the Office shall examine the facts within the limits of the request, based on the statements and allegations of the client;
- b) the request cannot be filed at a government window;
- c) section 26 of the Act on the Code of General Administrative Procedure shall not apply;
- d) the provisions of the Act on the Code of General Administrative Procedure on public announcements, the guardian *ad litem*, the summary procedure, the exemption from costs and enforcement shall not apply;
- e) the decision of the Office shall not be contested by the intervention or action of the prosecutor according to the Act on the prosecution service; the decisions of the Office and those orders of the Office against which independent appeal lies according to the Act on the Code of General Administrative Procedure shall be reviewed by the court in non-contentious proceedings, according to section 41/D.

(3) In the procedure under section 41/B, except for the request for information, fulfilling such a request and the inspection of files, communication shall be in writing and by electronic means that require identification, with the proviso that notifications issued by other authorities on the changes in the personal data of the party shall not qualify as written requests and no information shall be requested or provided by means of a short message service. No communication shall take place by means of a short message service in the procedure. Requests for inspection of files that can be inspected upon request shall only be granted if the requesting party appears in person.

(4) The prosecutor shall also be entitled to request the review of the decision of the Office; the Budapest-Capital Chief Prosecution Office shall have exclusive territorial jurisdiction to launch the proceedings. The Office shall communicate its decision to the Budapest-Capital Chief Prosecution Office as well.

Section 41/D (1) The application for the commencement of non-contentious proceedings under section 41/C(1)e) shall be filed with the Office within thirty days after the decision is communicated; the Office, except for the case under paragraph (2), shall forward the application, attached to the documents of the case, to the court within fifteen days.

(2) If the application raises a legal issue of fundamental importance, the Office shall be entitled to make a written statement on this issue and shall forward it, attached to the application and the documents of the case, to the court within thirty days.

3 The following shall be indicated in the introductory part of the application referred to under paragraph (1):

- a) the name of the proceeding court,
- b) the identification data of the applicant and if there is a party with opposing interests, his known identification data, and
- c) the name, seat, telephone number and electronic mail address of the applicant's legal representative, and if there are several legal representatives, the name of the one vested with the right to receive the official documents.

(3a) The following shall be indicated in the substantive part of the application:

- a) the number of the decision concerned by the application, as well as the part or provision of the decision affected by the application,
- b) the express request to the court to review the decision, and
- c) the reasons justifying the need to modify the decision, together with the underlying evidence and specification of the legal grounds.

(3b) The following shall be indicated in the closing part of the application:

a) the facts and legal provisions establishing the material and territorial jurisdiction of the court,

b) the amount and mode of payment of the procedural fee, or in the absence of partial payment of the procedural fee, the request for legal aid, or in the case of a statutory exemption from the payment of procedural fees, the facts and legal provisions justifying such exemption,

c) the facts and legal provisions vesting the legal representative with the right of representation,

d) the evidence supporting the facts indicated in the closing part.

(4) If the time limit for filing the request provided for in paragraph (1) was not observed, the court shall decide on the application for relief.

(5) For the procedural matters of non-contentious procedures under section 41/C(2)e) not otherwise regulated in this Act, the provisions of Act CXXX of 2016 on the Code of Civil Procedure (hereinafter “Civi Procedure Act”), together with the derogations deriving from the particular features of non-contentious procedures shall apply accordingly, along with the general provisions regarding non-contentious civil court procedures of the Act on the rules applicable in non-contentious civil court procedures and on certain non-contentious court procedures.

(6)

(7) The Budapest-Capital Regional Court shall have exclusive territorial jurisdiction to conduct the proceedings for reviewing the decision of the Office.

(8) Beyond the cases foreseen in the Civil Procedure Act, the following persons shall not take part in the disposal of the case and shall not be allowed to participate in it as a judge:

a) persons who participated in adopting the decision of the Office;

b) relatives of the person mentioned under point a) above, as defined in the Civil Code;

(9) The provisions of paragraph (8) shall apply to court reporters and to experts as well.

(10) The person who filed the request shall be a party to the court proceedings.

(11) Where an opposing party has also taken part in the proceedings before the Office, the court proceedings shall be instituted against that party.

(12) If a party with opposing interests has also taken part in the court proceedings, the provisions on litigation costs shall apply accordingly to advancing and paying the procedural costs. In the absence of a party with opposing interests, the applicant shall advance, and bear, the costs.

(13) If the Office has made a written statement concerning the request for review under paragraph (2), the chair of the proceeding chamber shall notify the party or parties thereof in writing.

(13a) The court shall take evidence and shall hold its hearings in accordance with the provisions of the Civil Procedure Act on hearings as to merits. The proceedings shall not be stayed.

(14) If the case can be adjudicated on the basis of documentary evidence, the court shall be entitled to render a decision without a hearing, but the party shall be heard at his request.

(15) If the court adjudicates the case without a hearing but finds during the proceedings that a hearing is necessary, it shall be entitled at any time to set a hearing.

(15a) If neither the applicant nor any of the parties appear at the hearing or if none of the parties respond to the invitation of the court within the fixed time limit, the court shall decide on the request on the basis of the information at its disposal.

(16) No settlement shall be allowed in the court proceedings.

(17) The court shall decide by an order both on the merits of a case and on other matters. In the event of establishing an infringement of a law, except where the infringement of the rules

of procedure does not affect the merits of a case, the court shall set aside the decision of the Office and order the Office to conduct a new proceedings if necessary.

(18) If, after forwarding the application to the court, the Office has withdrawn its decision, the court shall terminate the proceedings. If the Office has amended its decision, the court proceedings may only continue with respect to matters still in dispute.

(19) Legal representation is mandatory in court proceedings, including proceedings for legal remedy.

Section 41/E

Use of the orphan work by beneficiary institutions

Section 41/F (1) The institutions specified under section 38(5) and the public media service radio and television organisations (hereinafter jointly “beneficiary institutions”), for performing their tasks of public interest,

a) may make the orphan works in their collection or archives freely accessible to the public in such a manner that the members of the public can individually choose the place and time of access;

b) may freely reproduce the orphan works in their collection or archives for the purposes of digitalising, ensuring access pursuant to point *a)*, indexing, cataloguing, preserving or restoring them.

(2) The provisions of paragraph (1) shall apply to

a) literary works,

b) cinematographic creations and other audiovisual works,

c) phonograms, and

d) phonograms, cinematographic creations and other audiovisual works produced by the public media service radio and television organisations before 31 December 2002 and contained in their archives,

which were first published, or in the absence of publication, broadcast in the territory of the European Economic Area.

(3) Orphan works not published or broadcast but that were deposited, with the consent of the right holder, at beneficiary institutions before 29 October 2014, may be used by such beneficiary institutions under paragraph (1) if there are reasonable grounds to presume that the right holder would not object to their use.

(4) The provisions under paragraph (1) shall apply to works and subject-matters contained in or being an integral part of the works listed in paragraphs (2) to (3) as well.

Section 41/G (1) Beneficiary institutions shall be bound to maintain a record of the searches performed and to notify the Office electronically

a) of the result of the searches,

b) of the data related to use,

c) of any changes in the status of orphan works [section 41/A(8)],

d) of their contact data.

(2) The Office shall forward the data pursuant to paragraph (1) without delay to the European Union Intellectual Property Office for registration in its publicly accessible unified electronic register.

(3) Commencement of use shall be subject to the registration in the register specified in paragraph (2).

Section 41/H (1) Works or phonograms qualifying as orphan works within any member state of the European Economic Area based on the provisions of Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan

works shall qualify as orphan works in Hungary as well. The beneficiary institution shall be entitled to use the orphan works registered in the register under section 41/G(2) in accordance with the provisions under section 41/F without performing a search, provided that the work forms part of the beneficiary institution's own collection or archives. If the orphan work registered in the register specified in section 41/G(2) has more than one right holder, the provisions of section 41/A(7) shall apply.

(2) In the case of use pursuant to paragraph (1), the beneficiary institution shall be obliged to send the information specified in section 41/G *b) to d)* to the Office.

Section 41/I (1) If the right holder of the orphan work presents himself, pursuant to section 41/A (8), the beneficiary institution shall be entitled to continue the use of the orphan work only with the permission of the right holder.

(2) The right holder of the work or subject-matter shall be entitled to appropriate remuneration for the use of his work under section 41/F.

Section 41/J The beneficiary institution may use its revenue from uses under section 41/F only to cover its costs incurred by the realisation of such uses.

Section 41/K Detailed rules on the use of orphan works by the beneficiary institutions and the conditions for appropriate remuneration pursuant to section 41/I(2) shall be laid down in a Government decree.

Chapter V

LICENCE CONTRACTS

General provisions on licence contracts

Section 42 (1) In a licence contract, the author shall give permission for the use of his work and the user shall be obliged to pay a fee in return.

(2) The parties may freely agree on the content of the licence contract. They may derogate from the provisions on licence contracts by mutual consent if derogation is not prohibited by this Act or another law.

(3) If the meaning of the licence contract cannot be clearly established, it shall be construed so as is most favourable for the author.

Section 43 (1) The contract shall provide an exclusive right to use only if this is expressly stipulated therein. On the basis of an exclusive licence to use, it is solely the acquirer of the right who shall be entitled to make use of the work; the author may not grant further permission for the use of the work, and the author himself shall remain entitled to the right to make use of his work only if it is stipulated in the contract.

(2) A licence for non-exclusive use given prior to the conclusion of the exclusive licence contract shall remain effective, unless otherwise stipulated in the contract concluded between the author and the user acquiring a non-exclusive right of use.

(3) The licence to use the work may be limited to a specific territory, period of time, manner or extent of use.

(4) Unless otherwise provided for by law or a contract, the licence to use shall cover the territory of Hungary and its term shall follow the term that is customary in contracts concluded on using works similar to the subject matter of the contract.

(5) If the contract does not provide for the manner of use to which the licence applies or does not provide for the licensed extent of use, the licence shall be limited to the manner and extent of use indispensably necessary in order to realise the objectives of the contract.

Section 44 (1) The provision of a licence contract granting licence to the use of an indefinite number of future works of the author shall be null and void.

(2) Granting license for a manner of use unknown at the time of the conclusion of the contract shall not be valid. A manner of use that evolves after the conclusion of the contract shall not be considered a manner of use that was unknown at the conclusion of the contract, if it makes the application of a manner that was known at the time of the conclusion of the contract more efficient, favourable or of better quality.

Section 45 (1) Unless otherwise provided in this Act, the licence contract shall be in writing.

(2) Drawing up the contract in writing shall not be obligatory if the contract concerns publication in a daily or periodical newspaper.

(3) If the communication to the public specified in section 26(8) is performed by the author himself, the licence contract shall be deemed as having been made in writing if the author licenses further uses of the work by means of a contract concluded and recorded electronically.

Section 46 (1) The user may transfer the licence or may grant a sub-licence to a third party for the use of the work only with the express consent of the author.

(2) Upon the termination of the economic operator that is the user, or upon its organisational unit becoming the subject of equity carve-out, the licence to use shall be conveyed, without the author's consent, to the legal successor.

(3) If the user transfers its rights or grants a sub-licence without having the permission of the author, or the licence to use is conveyed without the author's consent, the user and the acquirer of rights shall be jointly and severally liable for the fulfilment of the licence contract.

Section 47 (1) A licence to use shall extend to the adaptation of the work only if expressly stipulated so.

(2) A licence to reproduce shall authorise the user to record the work in a video recording or phonogram or to copy it by computer or onto an electronic data carrier only if it is expressly stipulated so.

(3) A licence to distribute the work shall authorise the user to import copies of the work into the country in order to place them on the market only if it is expressly stipulated.

(4) A licence to reproduce the work shall, in case of doubt, extend to the distribution of reproduced copies of the work. This shall not cover the importation of copies of the work into the country for the purposes of placing them on the market.

Section 48 According to the general provisions of civil law, the court may also amend the licence contract if the contract infringes the substantial lawful interest of the author in having a proportional share in the income resulting from the use because, after the conclusion of the contract, the difference in value between the services provided by the parties became strikingly large due to a considerable increase in the demand for the use of the work.

Section 49 (1) For works delivered under a contract on the use of works to be created in the future, the user shall be obliged to make a statement on the acceptance of the work within two months after the date of delivery. If the user returns the work to the author for correction, the time limit shall be counted from the date of delivery of the corrected work. If the user fails to make a statement on the acceptance within the time limit for acceptance, the work shall be considered accepted.

(2) If the contract concerns a work to be created in the future, the user shall be, in justified cases, entitled to return the finished work for correction repeatedly, while setting an appropriate time limit.

(3) If the author refuses to make the corrections without reasonable grounds, or fails to make the corrections by the time limit set, the user may withdraw from the contract without payment of remuneration.

(4) If the work is unsuitable for use even after correction, the author shall be entitled to a reduced remuneration only.

Section 50 If the author has consented to the use of his work, he shall be obliged to carry out any alterations of lesser importance that are indispensable or obviously necessary for its use. Should the author fail or be unable to meet this obligation, the user shall be entitled to make the alterations without the author's consent.

Section 51 (1) The author shall be entitled to terminate the contract containing an exclusive licence to use if

a) the user fails to begin the use the work within the period determined in the contract or, in the absence of a stipulated period, within a reasonable period of time in the given situation; or
b) the user exercises his rights acquired by the contract in a manner obviously inappropriate for achieving the goals of the contract or in a manner that is inconsistent with the designated purpose.

(2) If the licence contract is concluded for an indefinite term or for a period longer than five years, the author shall be entitled to exercise his right of termination referred to in paragraph (1) only after two years from the date of conclusion of the contract.

(3) The author shall be entitled to exercise his right of termination only after setting an appropriate time limit for the user to fulfil the contract and it has expired without any result.

(4) The author may not waive his right of termination referred to in paragraph (1) in advance; such a waiver may be excluded by contract only for a period of five years following the conclusion of the contract or, if it occurs later, following the delivery of the work.

(5) Instead of terminating the contract, the author may terminate the exclusivity of the licence along with a proportionate reduction of the remuneration due to him for the use.

Section 52 (1) If, in a licence contract concerning works to be created in the future, works are indicated only by their type or character, either party may terminate the contract with six months' notice after the lapse of five years from the conclusion of the contract and subsequently every five years thereafter.

(2) The author may not have the right to waive his right of termination referred to in paragraph (1) in advance.

Section 53 (1) The author may terminate the licence contract if, for reasonable grounds, he withdraws his permission to publish his work or forbids the further use of his work already published.

(2) The exercise of the right of termination shall be subject to the author's providing security to compensate for the damage that occurred prior to the time at which the statement was made.

(3) If, following the termination of the licence contract as provided in paragraph (1), the author intends to give his consent for his work to be published again to be further used, the previous user shall have a right of pre-emption to use the work.

(4) The rules on the right of first refusal shall apply to the right of pre-emption in respect of the licence.

Section 54 The licence contract shall terminate upon the expiry of the period stipulated in the contract, upon the occurrence of the circumstances determined in the contract, or upon the expiry of the term of protection.

Section 55 (1) The provisions on licence contracts shall apply accordingly to contracts on transfer of economic rights of authors and, subject to the derogations set out in paragraphs (2) to (3), to contracts on the use of performers' performances and on the transfer of economic rights of performers.

(2) If, within fifty years after placing the phonogram on the market or, in the absence of such, within fifty years after its communication to the public, counted from the first day following the year when the publication or communication took place, the producer of the phonogram or any other person authorised by the producer fails to offer copies of the phonogram for placement on the market in sufficient quantities or does not make it available to the public by wire or

wireless means or in any similar manner 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 on the recording of his performance concluded with the producer of the phonogram.

(3) The right to terminate the contract referred to in paragraph (2) may be exercised if the producer fails to carry out both acts of use specified in paragraph (2) within a year from the performer's notice of his intention to terminate the contract.

(4) The performer may not waive his right to termination referred to in paragraph (2).

Publishing contract

Section 56 (1) Under a publishing contract, the author shall be obliged to make his work available to the publisher, and the publisher shall be entitled to publish the work and place the work on the market and shall be obliged to pay remuneration to the author.

(2) The right of publishing shall relate, in case of doubt, to the publication of the work in the Hungarian language. The right of publishing exercised under contract shall be exclusive, except for works made for collections and for daily and periodical newspapers.

Section 57 (1) The inclusion of pictures in the publication of literary works shall be subject to the author's consent.

(2) If the author has consented to the inclusion of pictures (illustrations) in the publication of his work, he may refuse his consent to the use of specific pictures on reasonable grounds only.

Section 57/A–57/C

Section 57/D

PART TWO

PROVISIONS RELATING TO SPECIFIC GENRES

Chapter VI

COMPUTER PROGRAM CREATION (SOFTWARE)

Section 58 (1) The provision of section 1(6) shall also apply to the idea, principle, notion, procedure, method of operation or mathematical operation on which the interface of the software is based.

(2) The provision of section 4(2) shall also apply to the transcription of the software from the original program language to a different program language.

(3) The economic rights relating to software shall be transferable.

(4) The provisions under section 30(3) and (4) shall not apply to software created by an employee as a result of fulfilling his obligation under an employment contract.

Section 59 (1) Unless otherwise agreed, the author's exclusive right shall not extend to the reproduction, adaptation, transformation, translation and any other modification of the software, including the correction of mistakes, as well as the reproduction of the results of these acts insofar as these acts of use are carried out by the person authorised to acquire the software in compliance with the designated purpose of the software.

(2) Making a back-up copy of the software, if it is necessary for its use, shall not be prohibited in the licence contract.

(3) The person entitled to use a copy of the software shall be entitled, even without the author's authorisation, to observe and study the operation of the software, and to try the software in the course of its loading, displaying on a monitor, running, transmission or storage, in order to learn the idea or principle serving as a basis for any element of the software.

Section 60 (1) No authorisation of the author shall be required for the reproduction or translation of a code that is indispensable for the acquisition of the information necessary for the combined operation of an independently created software with another piece of software, provided that

a) these acts of use are performed by an authorised user or another person entitled to use the copy of the software or a person in charge of these persons performing these acts;

b) the information necessary for the combined operation has not become easily accessible to the persons referred to in point *a)*;

c) these acts of use are limited to those parts of the software which are necessary for ensuring their combined operation.

(2) The information obtained through the application of the provision of paragraph (1)

a) shall not be used for a purpose other than the combined operation with the independently created software;

b) shall not be communicated to another person unless required for the combined operation with the independently created software;

c) shall not be used for the development, production and placement on the market of other software which is essentially the same in its form of expression, or for other acts resulting in the infringement of copyright.

(3) Section 33(2) shall apply accordingly to acts falling under the provisions of paragraphs (1) and (2).

(4) Sections 34(2) and 38(1) shall not apply to software. The time limit defined in section 49(1) shall be four months if applied to software.

(5) In the event that the copy of the software acquired is commercially distributed, drawing up the contract concerning the use of the software in writing shall not be mandatory.

Chapter VII

DATABASES

Section 60/A (1) For the purposes of this Act, “database” shall mean systematically or methodically arranged collections of independent works, data or other materials which can be individually accessed by computer devices or any other means.

(2) The provisions relating to databases shall apply accordingly to the documentation required for the operation of the database and for acquiring familiarity with its content.

(3) The provisions on databases shall not apply to software used for the creation or operation of databases accessible using computer devices.

Section 61 (1) Databases qualifying as collections of works (section 7) shall be protected by copyright.

(2) Economic rights relating to databases shall be transferable.

(3) The provisions under section 30(3) and (4) shall not apply to databases created by the author as a result of fulfilling an obligation under his employment contract.

Section 62 (1) The permission of the author shall not be required to perform the acts that are necessary to access the content of the database qualifying as a collection of works, and to use its content in accordance with its designated purpose by a person authorised to use the database.

(2) If the right has been acquired for the use of a specific part of the database only, the provision in paragraph (1) shall apply only to that part.

(3) The provision of section 33(2) shall apply accordingly to acts falling under the provisions of paragraphs (1) and (2).

(4) Any stipulations of a licence contract derogating from the provisions set out in paragraphs (1) and (2) shall be null and void.

(5) In the event that the copy of the database acquired is commercially distributed, drawing up the contract on the use of the database in writing shall not be mandatory.

Chapter VIII

WORKS COMMISSIONED FOR ADVERTISING PURPOSES

Section 63 (1) Economic rights relating to a work commissioned for advertising purposes shall be transferable to the user.

(2) In respect of the conclusion of a contract on transferring these economic rights, in particular the manner, extent, territorial scope, term of use, and description of the carrier of the advertisement, as well as the remuneration due to the author, shall be regarded as substantive issues.

(3) Such works shall not fall within the scope of collective rights management.

(4) In order to use a previously created work for advertising purposes, the author and the user may agree to consider the work, exclusively for the application of the provisions in paragraphs (1) to (3) and for the work's use in advertising, as a work ordered for advertising purposes. This contract shall become effective with respect to the collective management organisation only upon the author's written information to the collective management organisation thereof.

Chapter IX

CINEMATOGRAPHIC CREATIONS AND OTHER AUDIOVISUAL WORKS

General provisions

Section 64 (1) Works expressed by a series of motion pictures arranged in a predetermined order whether or not accompanied by sound, and irrespective of the type of carrier recording the work, shall qualify as cinematographic creations. In particular, fiction films produced for cinema projection, television films, advertising and documentary films, as well as animations and educational films shall be considered as cinematographic creations.

(2) The authors of the literary and musical works created for a film, the director of the film and all other persons creatively contributing to the creation of the entire film shall qualify as authors of the cinematographic creation. This provision shall not prejudice the rights ensured by this Act to the authors of other works used in the film.

(3) The natural or legal person who, under his or its own name, initiates and organises the creation of the film, providing the necessary financial and other conditions for it, shall be regarded as the producer of the film (hereinafter "producer").

Section 65 (1) A cinematographic creation shall be considered to be completed if its final version is accepted as such by the authors and the producer. The final version shall not thereafter be altered unilaterally by either party.

(2) The alteration of a completed cinematographic work by addition, omission or replacement or modification in any other form shall be subject to the permission of the authors and the producer.

(3) Unless otherwise agreed between the authors, the director shall represent the other authors in exercising the rights provided for in paragraphs (1) and (2).

(4) Except for the rights provided for in paragraphs (1) and (2), the producer shall also be entitled to take action to protect the moral rights of the authors.

(5) Cinematographic creations shall not be subject to the general provisions on works created as a result of fulfilling a duty under an employment contract (section 30).

Contract on adaptation for screen

Section 66 (1) Unless otherwise stipulated, under the contract concluded for the production of a cinematographic creation (hereinafter “contract for adaptation for screen”), the author, except for the composer of a musical work with or without lyrics, shall transfer the right to use the cinematographic creation and licence its use to the producer.

(2) The transfer of the right to use shall not extend to the economic rights regulated under sections 20, 23(3) and (6) and section 28.

(3) The author shall be entitled to remuneration with regard to each individual mode of use. The financial support granted to the producer for creating the film shall also be considered as income related to the use. The producer shall be liable for the payment of the remuneration to the author.

(4) The producer shall be entitled to exercise his rights under the contract jointly with another, domestic or foreign, natural or legal person.

(5) The producer shall be obliged to give a statement to the author in writing, on the income related to the use of the cinematographic creation, broken down by mode of use, at least once a year.

(6) In the event that the producer fails to start the work of adaptation for screen within four years from the acceptance of the work, or if such work is started but is not completed within a reasonable time limit, the author shall be entitled to terminate the contract unilaterally and claim the payment of proportional remuneration. In such cases, the author shall be entitled to keep the advance payments he received and may freely dispose of his work.

(7) If the contract is concluded for a work to be created in the future for a cinematographic creation, the producer shall be obliged to notify the author in writing within six months from the delivery of the work of his intention to accept the work or to have it corrected. If the work is returned to the author for corrections, an appropriate time limit shall be set for performing those corrections. The producer shall be obliged to make a statement on acceptance or rejection within three months from the delivery of the corrected work. If the producer fails to meet his obligation to make a statement on the acceptance of the work or of the corrected work, the work shall be considered accepted.

(8) Within ten years from the completion of the production, the author may not conclude another contract for adaptation for screen regarding the same work, unless it is consented to by the producer. This limitation shall extend to distinctive characters in a cartoon or puppet film and, if so agreed between the parties, to another work of the author with the same topic as that of the work created and used for the production of the film.

Chapter X

*CREATIONS OF FINE ART, PHOTOGRAPHY, ARCHITECTURE, APPLIED ART,
INDUSTRIAL DESIGN AND DESIGNS OF TECHNICAL STRUCTURES**Moral rights*

Section 67 (1) The alteration of the design of an architectural creation or technical structure that is made without the author’s consent and influences the layout or the designated use shall be considered to be an unauthorised alteration of the work.

(2) The designer shall have the right to indicate where and in what manner his name and the date of design should be indicated on the building or technical structure. However, the exercise of this right shall be without unjustified and disproportionate prejudice to the rights and lawful interests of the owner, the user, or the operator.

(3) The name of the author shall be indicated on an image if the image presents a specific work of fine architectural or applied art, industrial design creation, or technical structure. The name of the author shall also be indicated if such creations are used for scientific or educational lectures and school education purposes [section 33(4)].

(4) If the design of an architectural or technical creation is being re-used in an unaltered form, only the name of the author of the original design shall be indicated.

(5) The provision of section 34(1) shall not apply to the use of creations of fine art, photographic or applied art.

(6) The user of the work shall tolerate that persons authorised to do so make presentations, and take photos or videos of the work if this is without prejudice to the user's equitable interests.

Instances of free use

Section 68 (1) Taking and using an image of a work of fine art, architecture and applied art creation that is permanently exposed outdoors shall not require the consent of the author and shall be free of charge.

(2) For purposes of scientific and educational lectures and school education [section 33(4)], the picture of a work of fine art, architecture, applied art or an industrial design creation, and of photographic works shall not require the consent of the author and shall be free of charge.

The right of exhibition

Section 69 (1) The owner of a work of fine art, photographic or applied art or an industrial design creation shall be obliged to make the work available to the author temporarily to exercise his author's rights if doing so is without prejudice to the equitable interests of the owner.

(2) The exhibition of works of fine art, photographic, architecture and applied art creations shall be subject to the consent of the author. The exhibition of a work forming part of a public collection shall not be subject to the consent of the author, who shall not be entitled to remuneration.

(3) The name of the author shall be indicated if the work is exhibited.

Resale right

Section 70 (1) Upon the transfer for a consideration of the ownership of an original work of art with the contribution of an art dealer, the payment of remuneration to the author shall be compulsory. This provision shall only apply after the first transfer of ownership of the work of art by the author. The right to remuneration may not be waived.

(2) For the purposes of this section, original work of art shall mean creations of fine art (e.g. pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures), creations of applied art (e.g. tapestries, ceramics, glassware) and photographic works, provided that they were made by the author himself or are copies qualifying as original works of art. Copies of works of art shall qualify as original works if made in a limited number by the author himself or under his direction. Copies of works of art which are numbered, signed or otherwise marked appropriately by the author shall be considered to be such copies.

(3) For the purposes of this section, an art dealer shall mean any natural or legal person dealing in works of art.

(4) The remuneration shall be determined on the basis of the price paid for the work of art which is or can be expressed in money, net of tax and other public charges (hereinafter "purchase price"), at the following rates:

a) 4 per cent on the portion of the purchase price up to the amount in Hungarian forints equivalent to EUR 50 000;

b) 3 per cent on the portion of the purchase price in Hungarian forints equivalent to the amount from EUR 50 000.01 to EUR 200 000;

c) 1 per cent on the portion of the purchase price in Hungarian forints equivalent to the amount from EUR 200 000.01 to EUR 350 000;

d) 0.5 per cent on the portion of the purchase price in Hungarian forints equivalent to the amount from EUR 350 000.01 to EUR 500 000;

e) 0.25 per cent on the portion of the purchase price exceeding the amount in Hungarian forints equivalent to EUR 500 000.

(5) The total amount of the remuneration may not exceed the amount in Hungarian forints equivalent to EUR 12 500.

(6) The transfer referred to in paragraph (1) shall not be subject to an obligation to pay remuneration if the purchase price net of tax and other public charges (e.g. cultural contribution) does not exceed 5 000 Hungarian forints.

(7) The amount in Hungarian forints shall be calculated on the basis of the official exchange rate of the Magyar Nemzeti Bank (Hungarian National Bank), effective on the first day of the calendar quarter year in which the contract was concluded.

(8) If a museum acquires the ownership of an original work of art from a person other than an art dealer, there shall be no obligation to pay the remuneration referred to in paragraph (1), provided that the operation of the museum is not intended, either directly or indirectly, to generate or increase income.

(9) The remuneration shall be paid by the art dealer to the collective management organisation performing the management of rights regarding fine art and applied art. If more than one art dealer is involved in the transaction of the transfer of ownership, they shall have joint and several liability for the payment of remuneration. In such a case, unless agreed otherwise between them, the art dealer acting as seller shall be obliged to pay the remuneration. If none of the art dealers involved in the transaction participates in the transfer as a seller, the remuneration shall be paid by the buyer, unless otherwise agreed.

(10) The art dealer shall be required to pay, on a quarterly basis, the remuneration deriving from the contracts concluded in the quarter year concerned by the twentieth day of the month following the calendar quarter concerned to the collective management organisation performing the management of rights regarding works of fine art and applied art. When paying the remuneration, the name of the author, unless it proves to be impossible, and the title, the purchase price for each work separately and the amount of the remuneration shall be indicated. The collective management organisation shall pay the collected remuneration to the author of the work of art or his legal successor.

(11) For three years after the conclusion of the contract relating to the transfer determined in paragraph (1), the collective management organisation shall be entitled to request the art dealer to provide all the information necessary for the collection of the remuneration.

(12) The provisions of paragraphs (1) to (11) shall apply to

a) any author, or his legal successor, who is a national of any of the Member States of the European Economic Area, and

b) nationals of any country outside the European Economic Area, provided that the legislation of the country of which the author or his legal successor is a national ensures resale right protection in that country for authors and their legal successors from the Member States of the European Economic Area, or

c) the author or his legal successor, who is not a national of any of the Member States of the European Economic Area but who has his habitual residence in Hungary.

(13) As regards paragraph (12)*b*), the statement of the minister responsible for justice shall prevail. As regards works of art falling under 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, the minister responsible for justice shall issue his statement, taking into account the list published by the European Commission.

Other provisions

Section 71 As regards industrial design and interior design creations intended for industrial production purposes,

a) the right to have the name indicated may be provided for by law or contract, the provisions of this Act notwithstanding;

b) the user shall have the right of exclusive use and alteration within the scope of the contract; however, the designer shall be consulted before any alteration is made;

c) the contract shall determine whether the user is entitled to use the creation with or without a limitation in time.

Section 72 For portraits made to order, the consent of the portrayed person shall also be required for the exercise of copyright.

PART THREE

RIGHTS RELATED TO COPYRIGHT

Chapter XI

THE PROTECTION OF NEIGHBOURING RIGHTS

The protection of performers

Section 73 (1) Unless otherwise provided for in this Act, the approval of the performer shall be required for

a) the recording of his unrecorded performance;

b) the broadcasting or the communication in another manner to the public of his unrecorded performance, unless the performance broadcast or communicated in another manner to the public is itself a broadcast performance;

c) the reproduction of his recorded performance;

d) the distribution of his recorded performance;

e) making his performance available to the public by cable or any other device or in any other manner in such a way that the members of the public can individually choose the place and time of access.

(2) In the case of an ensemble of performers, the performers may exercise their rights referred to in paragraph (1) through their representative.

(3) If the performer has consented to his performance being recorded in a cinematographic creation, by this consent, unless otherwise stipulated, he transfers the economic rights referred to in paragraph (1) to the producer of the film [section 63(3)]. This provision shall not prejudice performers' claims to remuneration under sections 20 and 28. Section 23(6) shall apply accordingly to performers as well.

Section 74 (1) Unless otherwise provided in this Act, the performer shall be entitled to remuneration for the uses mentioned in section 73(1).

(2) The provisions of section 27(3) shall apply accordingly in the case of performers and collecting societies performing the management of their rights to the remuneration for the

recording of a performance made for the purposes of broadcasting or communication to the public, [section 26(6)] as well as to the exercise of the right provided in section 73(1)e).

Section 74/A (1) If, upon a contract for the recording of a performance concluded with the phonogram producer, the performer holds the right to non-recurring remuneration, the performer shall have the right to obtain an annual supplementary remuneration from the phonogram producer for each full year directly following the 50th year after the phonogram was placed on the market or, in the absence of such, the 50th year after it was communicated to the public. The right to obtain such annual supplementary remuneration may not be waived by the performer. Right holders shall be entitled to exercise their rights to supplementary remuneration only through collective management of rights.

(2) Following the 50th year, the phonogram producer, in order to pay the remuneration determined in paragraph (1), shall transfer to the collective management organisation the amount that corresponds to 20% of the income not reduced by costs, which the phonogram producer has accrued during the preceding year from reproducing, distributing and making available [section 76(1)c)] the phonogram in question. The phonogram producer shall provide all information that is required for allocating the supplementary remuneration to those entitled to it and to their collective management organisations.

(3) If a performer, based on the contract for the recording of a performance concluded with the phonogram producer, is entitled to recurring remuneration proportionate to the income resulting from the use of a performance, the performer shall be entitled to remuneration following the fiftieth year after the phonogram was placed on the market or, in the absence of such, the fiftieth year after it was communicated to the public. Any stipulations aimed at reducing this remuneration either by advance payments or by deductions defined in the contract shall be null and void.

Section 75 (1) In the cases of use referred to in section 73(1), the performer shall have the moral right to have his name indicated, according to the nature of the use and in a manner consistent with it. In the case of an ensemble of performers, this right shall cover the indication of the names of the ensemble, the leader of the ensemble, and the major performers.

(2) Any distortion, mutilation, other alteration or any other misuse of the performance of a performer which is prejudicial to the honour and reputation of the performer shall qualify as infringement of the moral rights of the performer.

The protection of phonogram producers

Section 76 (1) Unless otherwise provided in an Act, the consent of the producer of a phonogram shall be required for the phonogram to be

- a) reproduced;
- b) distributed;
- c) made available to the public by cable or any other means or in any other manner in such a way that members of the public can choose the place and time of access individually.

(2) Unless otherwise provided in an Act, the producer of the phonogram shall have a right to remuneration for the uses referred to in paragraph (1).

Section 77 (1) For the broadcast or communication in any other manner of phonograms or their copies released for commercial purposes to the public, beyond the remuneration to be paid for using the works under copyright protection, the user shall be obliged to pay additional remuneration, to which the producer of the phonogram and the performer shall be entitled in equal shares, unless otherwise agreed between the right holders.

(2) For the purposes of the provision in paragraph (1), a phonogram shall be considered as released for commercial purposes if it is made available to the public in the manner provided for in section 73(1)e) or section 76(1)c). For the purposes of the provision in paragraph (1) and

section 73(1) *b*), the use referred to in section 28(2) shall also qualify as communication to the public. For the purposes of the provision in paragraph (1), making phonograms available to those being present [section 24(2)*b*] shall also qualify as communication to the public.

(3) The right holders may enforce their claim to remuneration only through the collecting societies performing the management of their rights and they shall be entitled to waive their right to remuneration only to the extent due to them and effective from the date of the allocation.

Section 78 (1) The public lending and rental of copies of a phonogram that was placed on the market shall be subject to the consent, beyond that of the author of the work included in the phonogram, of the phonogram producer and, for the phonograms of performances, to that of the performer.

(2) The use determined in paragraph (1) shall be subject to the payment of remuneration, which shall be, unless agreed otherwise by the right holders, distributed in equal shares between the right holders. The authors and the performers may enforce their claim to remuneration through the collecting societies performing the management of their rights, and may waive such remuneration following the date of its allocation only and to the extent of the amount due to them.

Section 78/A If the performer unilaterally terminates the contract for the recording of a performance concluded with the phonogram producer pursuant to section 55(2) to (3), all the rights held by the phonogram producer related to the phonogram shall cease.

Section 79 The producer of the phonogram shall have the right to have his name indicated on the copies of the phonogram.

The protection of radio and television organisations

Section 80 (1) Unless otherwise provided in an Act, the consent of the radio or television organisation shall be required for its programme to be

a) broadcast or communicated to the public by other radio or television organisations or by entities engaged in communication by cable to the public;

b) recorded;

c) reproduced after recording, if the recording was made without consent, or the recording was made pursuant to section 83(2), and the reproduction is made for a purpose other than that to which section 83(2) relates;

d) made available to the public by cable or any other means or in any other mode in such a way that members of the public can individually choose the place and time of the access.

(2) Unless otherwise provided in an Act, the consent of the television organisation shall be required for its programme to be communicated to the public in premises where the programme is accessible to the public for payment of an entrance fee.

(3) The uses referred to in paragraphs (1) and (2) shall be subject to the payment of remuneration, unless otherwise provided in an Act.

(4) The provisions of paragraphs (1) to (3) shall apply accordingly to its own programmes communicated to the public by cable.

Section 81 In the cases of use referred to in section 80, radio or television organisations or organisations communicating their own programmes to the public by cable shall have the right to have their names indicated.

The protection of film producers

Section 82 (1) The consent of the film producer [section 64(3)] shall be required for the film to be

a) reproduced;

- b) distributed, including lending to the public;
 - c) made available to the public by cable or any other means or in any other mode in such a way that members of the public can individually choose the place and time of access.
- (2) Unless otherwise provided for in an Act, the uses referred to in paragraph (1) shall be subject to the payment of remuneration.
- (3) Section 2 shall apply accordingly to the protection of film producers.

The relationship between authors' rights and neighbouring rights

Section 83 (1) The protection of the rights under this Chapter shall be without prejudice to the protection of authors' rights on literary, scientific and artistic creations.

(2) The consent of the holders of neighbouring rights shall not be required in cases where the author's consent is not required by an Act for the use of such creations under copyright protection. If, under this Act, the holders of neighbouring rights are entitled to remuneration for the use, the provisions of the first sentences of section 16(4) and (5) on the proportional extent of the remuneration shall also apply to the holders of neighbouring rights.

Term of protection

Section 84 (1) The subject-matters covered by the provisions of this Chapter, with the derogations set out in paragraph (2), shall enjoy protection for the following periods of time:

- a) unrecorded performances, for fifty years from the first day following the year of the performance;
- b) performances recorded by means other than phonograms, for fifty years from the first day following the year in which the performance was first placed on the market, or in the absence of such, within that term, for fifty years from the first day following the year in which the recording was made;
- c) performances recorded in phonograms, for seventy years from the first day following the year in which the phonogram was first placed on the market, or in the absence of such, within that term, for seventy years from the first day following the year in which the phonogram was fixed;
- d) phonograms, for seventy years from the first day following the year in which the phonogram was first placed on the market, or in the absence of such, within that term, for fifty years from the first day following the year in which the phonogram was recorded;
- e) broadcast programmes or own programmes transmitted by cable to the public, for fifty years from the first day following the year in which the programmes were first broadcast or transmitted;
- f) films, for fifty years from the first day following the year in which the film was placed on the market or, in the absence of such, within that term, for fifty years from the first day following the year in which the production of the film was completed.

(2) The fifty year term regulated under paragraph (1)b) and f), and the seventy year term set out in point c) shall be calculated from the first day following the year in which the subject-matter was first communicated to the public, if the subject-matter was not placed on the market within fifty years from the date it was made, but it has been communicated to the public or its communication to the public preceded its placement on the market. For phonograms [paragraph (1)d)] the term of seventy years shall be calculated from the first day following the year in which the phonogram was first communicated to the public, if it was not placed on the market within fifty years after it was made, but it was communicated to the public during that time.

PROTECTION OF MAKERS OF DATABASES

Section 84/A (1) Unless otherwise provided for in an Act, the consent of the makers of databases (section 60/A) shall be required for

a) the reproduction of all or a substantial part of the contents of a database by making copies of it [section 18(1)b)] (hereinafter “extraction”);

b) making all or a substantial part of the contents of a database available to the public through distribution of copies of the database or through communication to the public, as provided by section 26(8) (hereinafter “re-utilisation”).

(2) The distribution referred to in paragraph (1)*b)* shall be construed to cover the following cases of distribution: placement on the market through sale or by the transfer of ownership in a different mode, importation into the country for purposes of placement on the market and rental. The provision of section 23(5) shall apply accordingly to the rights of the maker of the database.

(3) The consent of the maker of the database shall be required for the repeated and systematic extraction or re-utilisation of even an insubstantial part of the content of the database if it prejudices the proper use of the database or unreasonably harms the lawful interests of the maker of the database.

(4) Unless otherwise provided in an Act, remuneration shall be paid for the uses specified in paragraphs (1) to (3).

(5) The rights specified in paragraphs (1) to (3) shall apply to the maker of the database if a substantial investment has been required to obtain, verify or present the content of the database.

(6) The rights specified in paragraphs (1) to (3) shall apply to the natural or legal person qualifying as the maker of the database who initiated, under his own name and at his own risk, the creation of the database and provided for the necessary investments.

(7) The maker of the database shall be entitled to the rights specified in paragraphs (1) to (3) irrespective of whether the database is afforded copyright protection or any other legal protection. The maker of the database shall enjoy these rights even if the parts of or materials in the database are not or may not be covered by copyright protection or any other legal protection.

(8) The rights of the maker of the database shall be without prejudice to the rights of the authors of the individual works included in the database or to other rights pertaining to specific materials in the content of the database.

(9) Unless otherwise provided for by an international treaty, the maker of the database shall enjoy the protection provided by this Act, if

a) he is a national of a Member State of the European Economic Area or his habitual residence is within the territory of the European Economic Area;

b) it is a legal person registered in accordance with the legislation of a Member State of the European Economic Area, and its seat, the place of its central administration or its principal place of business as designated in its instrument of incorporation, is within the territory of the European Economic Area.

(10) In the cases referred to in paragraph (9)*b)*, legal persons only having their seats designated in their instrument of incorporation in the territory of the European Economic Area, shall exclusively be subject to the protection determined by this Act if their operations are genuinely linked on an ongoing basis to the economy of a Member State.

Section 84/B (1) Extraction or re-utilization, even repeatedly and on a regular basis, of an insubstantial part of the content of the database shall not require the consent of the maker of the database if it is made by a person lawfully using a published database.

(2) If the right to use covers only a specific part of the database, the provision under paragraph (1) shall apply only to that part.

(3) Persons lawfully using a published database shall also be prohibited from performing acts which conflict with the proper use of the database or unreasonably prejudice the legitimate interests of the maker of the database.

(4) The provisions in paragraphs (1) and (2) shall be without prejudice to the rights of the authors of the individual works included in the database, or to the neighbouring rights pertaining to other materials of the content of the database.

(5) The stipulation of a licence contract contrary to the provisions set out in paragraphs (1) to (4) shall be null and void.

Section 84/C (1) Making extracts of a substantial part of the content of the database for private purposes shall not be prohibited if it is not intended, either directly or indirectly, for earning or increasing an income. This provision shall not apply to computer-operated databases.

(2) Making a copy of a substantial part of the content of the database, in a manner and to the extent consistent with the purpose involved, shall not be prohibited if made for purposes of school education and scientific research, and if reference to the source is made and the use is not intended, either directly or indirectly, for earning or increasing an income.

(3) An extraction or re-utilisation of a substantial part of the content of the database may be made, in a manner and to the extent consistent with the purpose involved, for purposes of evidence in court, administrative or other official proceedings.

(4) The provisions of section 33 shall apply accordingly to the cases of free use provided for in paragraphs (1) to (3).

Section 84/D (1) The rights under this Chapter shall be subject to the following terms of protection: fifteen years from the first day of the year following the year in which the database was first published, or fifteen years from the first day of the year in which the database was completed if the database was not published within that term.

(2) The term of protection applying to databases calculated according to paragraph (1) shall restart if the content of the database has undergone a substantial alteration, as a result of which the altered database in itself shall be regarded as one made with substantial investment. A substantial alteration of the database may also be the result of the aggregation of successive additions, deletions and modifications.

Section 84/E (1) Section 83(1) shall apply accordingly to the rights regulated in this Chapter.

(2) If, pursuant to this Act, remuneration shall be due to the maker of the database, the provision in the first sentence of section 16(4) on proportionate remuneration shall also apply to the maker of the database.

(3) In the absence of any provision of another law to the contrary or except for a law promulgating an international treaty, wherever neighbouring right or neighbouring rights are referred to in another law, this or these shall also be construed as the right or rights of the maker of the database.

PART FOUR

THE COLLECTIVE MANAGEMENT OF RIGHTS AND THE CONSEQUENCES OF THE INFRINGEMENT OF RIGHTS

Chapter XII

COLLECTIVE MANAGEMENT OF COPYRIGHT AND RIGHTS RELATED TO COPYRIGHT

Collective management of rights

Section 85

General rules of collective management of rights

Sections 86 to 88

Operation and economic management of collecting societies

Section 89

The register of collecting societies

Section 90

Conditions of entering collecting societies into the register

Sections 91 to 92

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Sections 92/F to 92/G

The approval of tariff applied for collective rights management

Sections 92/H to 92/J

Supervision of collective management of rights

Sections 92/K to 92/P

Chapter XIII

CONSEQUENCES OF COPYRIGHT INFRINGEMENT

Civil law consequences

Section 94 (1) If his rights are infringed, the author shall be entitled, based on the circumstances of the case, to have the following civil law claims:

- a) he may request that the court establish that there has been an infringement;
- b) he may request that the infringement and all acts directly threatening with infringement cease and that the infringer be prohibited from any further infringement;
- c) he may request that the infringer make redress, by a statement or in any other appropriate manner, and that such redress, if necessary, be given appropriate publicity by the infringer and at the expense of the infringer;

d) he may request that the infringer provide information on the parties involved in the production, distribution or performance of goods or services affected by the infringement, as well as on the business relationships established by the infringing acts;

e) he may request the recovery of the enrichment achieved through the infringement;

f) he may request that the injurious state of affairs be terminated, and that the previous condition be restored, materials and devices used exclusively or primarily for the infringement be seized, delivered to a designated party, withdrawn permanently from commercial circulation or be destroyed.

(2) In case of copyright infringement, the author shall also be entitled to claim damages under the rules of civil liability. In the event of infringement of the moral rights specified in this Act, the author shall be entitled to claim a grievance award in accordance with the general rules of civil law.

(3) The author may also seek the remedy referred to in paragraph (1)*b)* against the person whose services were used for the copyright infringement.

(4) The author may seek the remedy referred to in paragraph (1)*d)* against a person who

a) was in possession of the infringing goods on a commercial scale;

b) was using the infringing services on a commercial scale;

c) provided services for the infringing activities on a commercial scale;

d) was named by the persons specified in points *a)* to *c)* as being involved in the production or distribution of the goods or the provision of the services.

(5) In the course of applying paragraph (4)*a)* to *c)*, acts shall qualify as carried out on a commercial scale if the nature and quantity of the goods or services involved obviously indicate that they are used for direct or indirect commercial or other economic advantage. Unless proven to the contrary, acts by consumers acting in good faith shall not qualify as carried out on commercial scale.

(6) Under paragraph (1)*d)* and paragraph (4), the infringer and the person referred to in paragraph (4) may be obliged to furnish in particular the following information:

a) the names and addresses of those involved in the production or distribution of goods, the supply and performance of services affected by the infringement, and of the possessors of such goods, as well as of wholesalers and retailers involved or intended to be involved in their distribution;

b) the quantities of produced, delivered, received or ordered goods or services affected by the infringement, as well as the price paid or received for them.

(7) The court, at the request of the author, may order the materials, devices or goods seized, recalled or permanently removed from commercial circulation to be deprived of their infringing nature, or if it is not possible, to be destroyed. Under justified circumstances, instead of destruction, the court may also order the sale of the seized materials and devices in accordance with the rules of judicial enforcement, and decide in a judgment on the proceeds from such a sale.

(8) Materials and devices used for copyright infringement and the infringing goods may also be seized if they are not owned by the infringer but the owner was aware of or, with the care generally expected in the given situation, should have been aware of the infringement.

(9) The court shall order the measures referred to in paragraph (1)*f)* and in paragraph (7) at the expense of the infringer, unless the circumstances of the given case justify derogations from this rule. When adopting its decision on the recall and permanent removal from commercial circulation or destruction of the infringing goods, the court shall take the interests of third parties into account and shall ensure that the measure is proportionate to the gravity of the infringement.

(10) The court may order, at the request of the author and at the expense of the infringer, the publication of the court decision. The mode of publication shall be decided by the court. Publication shall in particular mean publication in a national newspaper or on the internet.

(11) If, with regard to section 35(8), the right holder enforces a claim under paragraph (1)e) or paragraph (2), the remuneration imposed on and paid for the video or audio carrier that was used for the reproduction shall be taken into consideration when deciding on the amount of enrichment and the extent of the compensation.

Section 94/A (1) In court procedures on copyright infringement, interim measures shall be, until the contrary is rendered probable, considered to be necessary for a reason deserving specific consideration under section 103(1)d) of the Civil Procedure Act if the plaintiff proves that the work is subject to copyright protection and that he is the author, the legal successor of the author, or a user or collective society that is entitled to act against the infringement in his own name.

(2) Paragraph (1) shall not apply if six months have passed from the commencement of the copyright infringement, or if a period of sixty days has passed since the claimant became aware of the infringement and of the identity of the infringer.

(3) In the event of copyright infringement or a direct threat thereof, the request for interim measures may also be filed before the statement of claim is filed, even in the absence of the additional conditions prescribed by the Civil Procedure Act for interim measures prior to bringing an action. Unless otherwise provided in this Act, the non-contentious procedure for interim measures shall be governed by the rules of the Code of Civil Procedure, subject to the particular features of non-contentious procedures, and by the general provisions concerning non-contentious civil court procedures of the Act on the rules applicable in non-contentious civil court procedures and on certain non-contentious court procedures. If the claimant has brought an action for copyright infringement in accordance with paragraph (7), he shall be required to pay a procedural fee equivalent to the amount exceeding the fee paid for the non-contentious procedure.

(4) Beyond the civil law claims available in connection with the infringement, the author may request the court, under the conditions applicable to interim measures, to order

a) protective measures in accordance with the provisions laid down in the Act on judicial enforcement, if he is able to render it probable that the payment of damages or any subsequent attempt for the recovery of enrichment obtained through infringement is in jeopardy, and the infringement is committed on a commercial scale [section 94(5)];

b) the infringer to give notification of and to present bank, financial or commercial information and documents for the purpose of ordering the protective measures referred to in point *a)*;

c) the provision of a counter-security if, in exchange, instead of demanding the cessation of the infringement, the author gives consent to the continuation of the alleged acts of infringement.

(5) The court may also order the provision of a counter-security as referred to in paragraph (4)c) in the absence of any request by the author, provided that the author has filed a claim for the cessation of the infringement and it has been dismissed by the court.

(6) The court shall decide on the interim measures with priority, in an order brought within fifteen days from filing a request to this effect at the latest. The court of second instance shall decide on the appeal filed against the decision on the interim measures with priority, within fifteen days from filing the appeal at the latest.

(7) At the request of the party with opposing interests, the court shall set aside its order concerning a request for interim measures, including those that can be ordered under paragraphs (4) and (5), submitted before filing the statement of claim, if the author has not instituted, within

fifteen days from the communication of that order, proceedings for copyright infringement with respect to the claim enforced by the interim measures. The court shall decide on the request to set aside the interim measures as a priority, within fifteen days from the filing of the request at the latest.

(8) If one of the parties in a copyright infringement action has already rendered its allegations of facts that are probable to a reasonable extent, at the request of the party providing evidence, the court may order the party with opposing interests

a) to present the documents and other material proof in his possession and allow access to them;

b) to give notification of and present bank, financial or commercial information and documents in his possession if the infringement is carried out on a commercial scale [section 94 (5)].

(9) Preliminary production of evidence shall also be admissible before initiating proceedings if the author has indicated the likelihood of the fact or danger of copyright infringement to a reasonable extent. The court shall decide by order on the request as a matter of priority, within fifteen days from the filing of the request for this measure at the latest. Before the commencement of the action, preliminary production of evidence may be requested at the court with territorial jurisdiction over the domicile of the author or at the court in the territorial jurisdiction of which taking evidence may be carried out in the most expedient manner.

(10) At the request of the party with opposing interests, the court shall set aside its decision ordering the preliminary production of evidence, if the author has not commenced the action for copyright infringement within fifteen days from the communication of the decision ordering the preliminary production of evidence. The court shall decide on the request for setting aside the preliminary production of evidence as a matter of priority, within fifteen days from the filing of the request at the latest.

(11) Interim measures, including those measures under paragraphs (4) and (5), may be taken without the party with opposing interests having been heard if any delay would cause irreparable harm. Pursuant to section 337(1)*b)* of the Civil Procedure Act, preliminary evidence may be taken without the party with opposing interests having been heard if any delay would cause irreparable harm, or the risk of the destruction of evidence is likely. Decisions on interim measures or ordering the preliminary production of evidence taken without the party with opposing interests having been heard shall be communicated to the party immediately following their implementation. After the communication of the order, the party with opposing interests may request to be heard or to have the order ordering provisional measures or the preliminary production of evidence reviewed or set aside. If the request for interim measures or ordering the preliminary production of evidence is rejected, the court shall communicate the rejecting order together with the request for interim measures or ordering the preliminary production of evidence to the party with opposing interests.

(12) The court may make ordering the preliminary production of evidence and, with the exception of paragraph (4)*c)* and paragraph (5), any interim measures subject to the provision of security.

(13) For the cases referred to in paragraph (4)*c)*, paragraph (5) and paragraph (12), the provisions of the Civil Procedure Act on the provision or refunding of security shall apply accordingly, with the proviso that the court, beyond the judgment, may also rule on the matter of refunding or releasing the security or security in the order setting aside or pronouncing the expiry of the order on interim measures or ordering the preliminary production of evidence.

Section 94/B (1) Until proven to the contrary, the person whose name is indicated as the name of the author in the usual manner on the work shall be regarded as its author.

(2) If paragraph (1) cannot be applied, until proven to the contrary, the person who had the work registered under his own name in the voluntary register of works qualifying as a publicly

certified register held by the Office, and proves it with a public deed, shall be regarded as its author.

(3) If paragraph (2) cannot be applied either, then, until proven to the contrary, the person who holds a private deed of full probative value, issued by a collective management organisation relying on the database of works subject to the collective management of rights, subject-matters protected by neighbouring rights and right holders certifying it shall be regarded as the author. These private deeds shall only be issued by collecting societies as a voluntary service provided to their own members, at their request and in accordance with the society's rules of association.

(4) If paragraph (3) cannot be applied either then, until proven to the contrary, the person who first published the work shall be regarded as the author.

Section 94/C The Office, upon the registration of works in the voluntary register of works, shall provide electronic administration according to the rules of the Act on the general rules of electronic case administration and fiduciary services and this Act.

(2) In the proceedings under this section, except for the request for information and the fulfilment of such a request, communication shall only be acceptable using electronic means requiring identification, with the proviso that no information shall be requested or provided through short written message services. The Office shall only allow access to files that can be accessed upon request if access is made personally.

(3) Electronic case administration shall not be acceptable if no electronic copy can be made of the work which is requested to be registered or the size of the electronic copy exceeds the volume determined in the ministerial decree.

Protection against the circumvention of technological measures

Section 95 (1) The consequences of the infringement of copyright shall apply to the circumvention of effective technological measures designed to provide protection for copyright, provided that the person performing the acts referred to is aware, or, with the due care generally expected in the given situation, should be aware of the fact that the aim of that act is the circumvention of the technological measure.

(2) The consequences of the infringement of copyright shall apply to the production, importation, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which

a) are offered, advertised or distributed in order to circumvent effective technological measures, or

b) have only a limited commercially significant purpose or use other than to circumvent the effective technological measures, or

c) were primarily designed, manufactured, converted or performed in order to enable or facilitate the circumvention of effective technological measures.

(3) For the purpose of paragraphs (1) and (2), the expression “technological measures” shall mean any device, component, technological process or method which, through its proper operation, serves to prevent or impede acts which are not authorised by the copyright holder. Technological measures shall be deemed effective if the use of a work is controlled by the right holders through the application of an access control or protection process, in particular encryption or other transformation of the work or a copy control mechanism, which is suitable for achieving the protection objective.

(4) The provisions of paragraphs (1) and (2) shall not affect the application of sections 59 and 60(1) to (3). For software, paragraph (2) shall only apply to the placement on the market or possession for commercial purposes of any device, product or component, the sole intended

purpose of which is to facilitate the unauthorised circumvention or removal of a technological solution applied for the protection of the software.

Section 95/A (1) For reprographic reproduction [section 21(1)] for private purposes [section 35(1)], and for the cases of free use under sections 34(2), 35(4) and (7) and section 41, the beneficiary of such free use, if having lawful access to the work, may demand that the right holder, in spite of the protection granted under section 95 against the circumvention of technological measures, make free use possible for him. If no agreement is reached between the parties on the conditions for making free use possible, either party may initiate a procedure under section 105/A.

(2) Paragraph (1) shall not apply if, on the basis of a contract, the work is made available to the public in such a way that members of the public can individually choose the place and time of access [sections 26(8), 73(1)e), 76(1)c), 80(1)d) and 82(1)c)].

Protection of rights management information

Section 96 (1) The consequences of the infringement of copyright shall apply to the unauthorised removal or alteration of any rights management information, as well as to the unauthorised distribution, importation for distribution, broadcasting or any other communication to the public of works from which rights management information has been removed or in which it has been altered, provided that the person who commits any of such acts is aware, or if proceeding with the care that is generally expected in a given situation, should be aware of the fact that by so doing he is enabling, facilitating or concealing an infringement of copyright or inducing others to commit such an infringement.

(2) Rights management information shall mean all data provided by the right holders that identify the work, the author of the work or other holder of any right in the work, or provide information on the terms and conditions of the use of the work, including any numbers or codes that represent such information, provided that such data are attached to a copy of the work or are displayed in relation to the communication of the work to the public.

Customs law consequences of copyright infringement

Section 97 In the event of copyright infringement, the author may, with reference to the provisions of a separate law, request the customs authorities to take measures to prevent the goods affected by the infringement from being placed on the market.

The legal consequences in the case of licensed use

Section 98 (1) If the economic rights of the author are infringed, the person acquiring an exclusive licence pursuant to section 43(1) may call upon the author to take the necessary measures for the infringement to be terminated. If the author does not take any measures within thirty days from being called, the acquirer of the right shall be entitled to take action against the infringement on his own behalf.

(2) Regarding a non-exclusive licence, the acquirer of the right shall be entitled to take action under paragraph (1) only if it is expressly stipulated so in the licence contract.

The consequences of the infringement of the rights related to copyright

Section 99 The provisions of sections 94 to 98 shall apply accordingly to the infringements of the provisions of Chapters XI and XI/A, and to the protection of the technological measures and rights management information provided in those Chapters. For the purposes of Chapter XI/A, free uses defined in section 95/A(1) shall be construed to mean the reprographic

reproduction [section 21(1)] for private purposes as specified in section 84/C(1) and the cases of free use specified in section 84/C(2) and (3).

PART FIVE

MISCELLANEOUS AND FINAL PROVISIONS

Chapter XIV

PAYMENT OF CONTRIBUTION AFTER THE EXPIRY OF THE TERM OF PROTECTION

Section 100 (1) After the expiry of the term of copyright protection, upon the transfer for a consideration of the ownership of an original work of art with the participation of an art dealer, a contribution shall be paid.

(2) The amount of contribution shall be 4 per cent of the purchase price, net of tax and other public charges. The provisions of section 70 shall apply accordingly to the definition of the terms original works of art and purchase price, as well as to the person required to pay the contribution, and to the collection and transfer of the contribution, with the derogation that the collective management organisation shall use the collected contribution for the purposes of supporting creative activities and contributing to the social welfare of creative artists.

(3) No contribution shall be paid if the ownership of the original work of art is acquired by or from a museum.

(4) The collective management organisation shall be obliged to separately record and administer the amounts collected as contributions.

(5) The collective management organisation shall inform the public annually on the amount of the contribution and on its use by means of the official gazette of the Office; it shall submit its relevant communication to the Office not later than the second quarter following the actual year.

Chapter XV

ORGANISATIONS INVOLVED IN THE SETTLEMENT OF LEGAL DISPUTES ON COPYRIGHT

Council of copyright experts

Section 101 (1) In specific matters of copyright-related legal disputes, the courts and other authorities may consult the body of copyright experts attached to the Office, requesting it to give its advisory opinion. The members of the body shall be appointed for a five-year term by the minister responsible for justice in agreement with the minister responsible for culture.

(2)

(3) The council of copyright experts shall be entitled to give expert opinions upon request in non-judicial procedures, as well on issues connected with the exercise of the right to use.

(4) If a court or other authority requests an expert statement from the council of copyright experts, it shall inform the council of its decision adopted on the merits of the case by sending a copy thereof to the council.

(5) The detailed rules of the organisation and operation of the council shall be established by a separate law.

Mediation board

Section 102 If no agreement is reached between the user and the right holder, or between the users or their representative organisation and the collective management organisation of the right holders on remuneration or other terms and conditions of use, then either party may turn to the mediation board established pursuant to section 103.

Section 103 (1) The provisions of Chapter II of Act LXXI of 1994 on arbitration shall apply to the formation of the mediation board, with the proviso that the members of the mediation board shall be appointed from among the members of the council of copyright experts (section 101).

(2) The mediation board shall operate within the council of copyright experts.

Section 104 (1) The objective of the proceedings of the mediation board shall be to facilitate the conclusion of agreements on remuneration or other terms and conditions of use or other final settlements relating to disputes on collective rights management between parties. For proceedings initiated in a dispute concerning collective management of rights, the mediation board shall inform without delay the minister responsible for justice and the minister responsible for culture as well as the Office.

(2) If no agreement is reached between the parties, the mediation board shall draft a proposal for the content of the agreement and communicate it to the parties in writing.

(3) The parties may accept the agreement either explicitly or implicitly. The absence of an objection of the parties to the mediation board with regard to the proposal for agreement within three months from the date of its delivery shall qualify as implicit acceptance.

(4) If the mediation board has proceeded in violation of the provisions of section 105, the adversely affected party may challenge before the court the agreement concluded upon the decision of the mediation board within three months from its entry into force.

(5) The Budapest-Capital Regional Court shall have material jurisdiction and exclusive territorial jurisdiction in the proceedings referred to in paragraph (4).

Section 105 (1) In the proceedings of the mediation board the parties shall be given equal treatment and have the opportunity to present their positions. Unless otherwise agreed by the parties, the mediation board may not compel the parties to participate in or carry out procedural acts. In other matters, the mediation board shall be entitled to establish its own rules of procedure referred to in paragraph (2) and to determine its tariffs.

(2) The rules of procedure of the mediation board shall be drafted by the council of copyright experts and approved by the minister responsible for justice. Prior to the approval, the minister supervising the Office and the minister responsible for culture shall be consulted for their opinions.

Section 105/A (1) If no agreement is reached between the beneficiary of free use and the right holder on the conditions for making free use possible (section 95/A) despite the protection against the circumvention of technological measures (section 95), either party may resort to the mediation board.

(2) The proceedings under paragraph (1) may also be initiated by the representative organisations of the beneficiaries. In such cases, the effect of the agreement concluded on the basis of the decision of the mediation board, unless stipulated to the contrary, shall extend to those members of the organisation who are also beneficiaries of the free use.

(3) The provisions of section 103 shall apply accordingly to the formation of the mediation board with the proviso that if the parties do not reach an agreement on the members of the mediation board within eight days from the commencement of the proceedings, the members of the mediation board shall be appointed by the president of the council of copyright experts.

(4) Sections 104(1) and (2) and 105(2) shall apply accordingly to the proceedings of the mediation board.

(5) The parties may accept the agreement proposed by the mediation board either explicitly or implicitly. The absence of an objection of the parties to the mediation board with regard to the proposal for agreement within thirty days from the date of its delivery shall qualify as implicit acceptance.

(6) If the proceedings of the mediation board have violated the provisions of section 105, the adversely affected party may challenge before the court the contract concluded on the basis of the proposal of the mediation board within 30 days of its conclusion.

(7) If no agreement has been reached on the basis of paragraph (5), the beneficiary of free use may resort to the court within 15 days from the expiry of the time limit provided in paragraph (5) and may request the court to order the right holder to make the free use possible according to the conditions stipulated in the claim.

(8) The representative organisations of the beneficiaries shall also have the right to institute proceedings under paragraphs (6) and (7) within the same time limit, with the proviso that the effect of any final court decision shall extend to those members of these organisations who are beneficiaries under this Act.

(9) The Budapest-Capital Regional Court shall have exclusive territorial jurisdiction in proceedings instituted under this section.

(10) Section 95 shall apply accordingly to the technological measures to be applied on the basis of an agreement reached or of a final and binding court decision adopted under this section, provided that the technological measure fulfils the conditions under section 95(3).

Chapter XVI

FINAL PROVISIONS

Other right holders under copyright

Section 106 (1) Wherever the term author is mentioned in this Act, the legal successor of the author and other right holders under copyright shall be understood as well.

(2) If the estate of a deceased person includes copyright, the notary shall notify the collective management organisation concerned in respect of the works of the deceased of the initiation of the probate procedure. If the affected collective management organisation cannot be identified or the works do not fall within the scope of collective management of rights, the notification regarding the economic rights under section 20(1) of this Act shall be addressed to the collective management organisation performing the collective management of rights related to literary and musical works.

(3) The notary or the court shall notify the collective management organisation concerned of the transfer of the copyright that belongs to the estate to the heir by sending a copy of the abridged probate order or a copy of the abridged final judgment, respectively, to the collective management organisation concerned.

(4) The rules on probate order and judgments shall apply to the abridged probate orders and abridged judgment, with the proviso that these may only contain the particulars of the transfer of the copyright forming part of the estate to the heir.

(5) The abridged probate order and abridged judgment referred to in paragraph (3) shall contain the data, other than those defined in paragraph (4), and the abridged designation, as well as the purpose for which they can be used.

(6) The provision of paragraph (5) shall also be followed when the order would not contain any other provision than those specified in paragraph (4).

(7) The collective management organisation concerned shall keep records on the heirs and provide data from them to the users within the limits of the laws concerning the protection of personal data.

(8) The provisions of paragraphs (1) to (7) shall apply accordingly to the rights related to copyright and the holders of such rights.

Section 106/A The provisions of this Act related to the copyright protection and to the protection under Chapter XI/A of editors of databases qualifying as collections and of authors of databases shall be without prejudice to the implementation of the laws on the protection of personal data and on the publicity of data of public interest.

Rules on the entry into force of the Act and determining transitory provisions

Section 107 (1) This Act shall enter into force on 1 September 1999; its provisions shall apply to licence contracts concluded after its entry into force.

(2) The provisions of section 21 of this Act and the provisions in section 22 relating to the devices used for reprography shall apply as of 1 September 2000.

(3) The provisions established by section 111 (1) and (2) shall apply to enforcement proceedings launched following the entry into force of this Act.

Section 108 (1) The provisions of section 31 shall also apply, among others, to works the term of protection of which had expired before the entry into force of Act VII of 1994 on the amendment of certain laws relating to copyright and the protection of industrial property.

(2) Performers, producers of phonograms, radio and television organisations and those transmitting their own programmes to the public by cable shall be entitled to the rights determined in this Act even if the twenty-year term relating to them, calculated from the end of the year referred to in section 84, had expired by the time of the entry into force of Act VII of 1994.

(3) If the term of protection for authors' economic rights and the neighbouring rights related to copyright had expired by the time of the entry into force of Act VII of 1994, the uses performed in the period between the expiration and the date of entry into force of this Act shall be regarded as free use, irrespective of whether these rights will fall again under protection following the entry into force of this Act.

(4) The use referred to in paragraph (3) shall be allowed to continue; for copies of phonograms produced prior to the entry into force of this Act, for a further year following the entry into force of this Act but only to the extent existing at the time of the entry into force of this Act. The right to such a use performed within the framework of economic activity may only be transferred together with the transfer of the authorised economic organisation or its organisational unit performing the use. For the uses performed after the entry into force of this Act, the right holder shall be entitled to equitable remuneration.

(5) The provisions of paragraph (4) shall apply accordingly even if serious preparations have been made towards the use before the date of the promulgation of this Act, with the proviso that, in this case, use may be commenced and carried on to the extent of the preparation that existed at the promulgation of this Act.

(6) The adaptation, arrangement or translation performed in the period of time referred to in paragraph (3) shall be regarded as if it had been performed with the consent of the author.

(7) After the entry into force of this Act, for the use of adaptation, arrangement or translation referred to in paragraph (6), equitable remuneration shall be due to the right holder who holds copyright in the underlying work.

(8) Any disputes concerning remuneration that are due pursuant to the provisions of paragraphs (3) and (7) shall be settled in court.

(9) The user shall be entitled to the right to use, acquired through a licence contract concluded prior to the entry into force of Act VII of 1994, for the full term of protection or for an indefinite period of time under the terms and conditions of the licence contract, after the entry into force of this Act, provided that the copyright or the neighbouring right related to the copyright falls again under protection pursuant to this Act.

Section 108/A (1) The provisions of sections 31 and 84, with the exception provided in the first sentence of section 13(7) of Act LXXVII of 2001, shall also apply to works and subject-matters covered by neighbouring rights, the term of protection of which had not expired in at least one Member State of the European Economic Area by 1 July 1995.

(2) The provisions of sections 108(3) to (9) shall apply accordingly to the works referred to in paragraph (1), with the proviso that, for the purposes of paragraph (1), the entry into force and promulgation of Act VII of 1994 and of this Act shall be construed to mean the entry into force and promulgation of the Act promulgating the international treaty on the accession of the Republic of Hungary to the European Union.

Section 109 The provisions of section 31(6) of Act XVI of 2013 on the modification of certain Acts relating to intellectual property shall apply if it does not result in the shortening of the term of protection calculated according to the provisions which were in force prior to the entry into force of this Act. The provisions of section 31(6) set forth by Act XVI of 2013 on the modification of certain acts relating to intellectual property shall also apply to cinematographic creations, the term of protection of which had already expired before the entry into force of this Act. The provisions of section 108(3) to (9) shall also apply in this case, with the proviso that the entry into force of this Act shall be construed as the entry into force of Act VII of 1994.

Section 109/A Section 90(2) and (4) and section 93(4) to (6) of this Act set forth by Act CXLVIII of 2010 on the modification necessary in relation to Act XLII of 2010 on the listing of the ministries of the Republic of Hungary and on the modification of certain acts related to industrial property shall apply to the procedure on the approval of the tariffs commenced after 1 January 2011.

Section 110 (1) Section 89(13) of this Act set forth by Act CLXXIII of 2011 on the modification of certain acts relating to intellectual property shall first apply to the 2012 annual report.

(2) The collecting association shall inform the Office on the fulfilment of the conditions laid down in section 92(1) of this Act set forth by Act CLXXIII of 2011 on the modification of certain acts relating to intellectual property, not later than 1 May 2012, by sending its articles of association and the final court order taking note of the modification of its articles of association.

Section 111 (1) The provisions of this Act regarding the protection of the makers of databases that were set forth in Act LXXVII of 2001 on the amendment of Act LXXVI of 1999 on copyright shall also be applicable to the databases that were created between 31 December 1982 and 1 January 2002, provided that the database fulfilled the criteria for protection on 1 January 2002, laid down in Chapter XI/A, as set forth by Act LXXVII of 2001 on the amendment of Act LXXVI on copyright. The rights of the maker of such a database are protected from 1 January 2002 until 1 January 2013.

(2) For any acts regarding the use of the database mentioned in paragraph (1) that were performed on the basis of a contract concluded with the maker of the database before 1 January 2002, the provisions of this Act, as in force at the conclusion of the contract, shall be applicable after 1 January 2002 as well.

(3) Section 84(2) of this Act set forth by Act LXXVII of 2001 on the amendment of Act LXXVI of 1999 on copyright shall not be applicable to phonograms, the term of protection of which has expired based on provisions previously in force. This provision shall not affect the applicability of section 108.

Section 111/A Those provisions of this Act that were set forth by Act CII of 2003 on the amendment of certain acts related to industrial property and copyright shall apply to all works and subject-matters covered by neighbouring rights and database protection which, on 22 December 2002, according to the law of any of the Member States of the European Union, enjoyed protection or which fulfilled the criteria for protection laid down in Article 1(2) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, with the exception of acts of exploitation performed before 1 May 2004 and the rights acquired accordingly.

Section 111/B The provisions of this Act set forth by Act CVIII of 2005 on the amendment of Act LXXVI of 1999 on copyright, taking into account 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, shall apply to contracts concluded after 1 January 2006.

Section 111/C (1) Section 19(1) of this Act set forth by Act CXII of 2008 on the amendment of Act LXXVI of 1999 on copyright shall apply to licences to use given after 1 February 2009.

(2) The remuneration to which the author is entitled pursuant to section 23/A shall be paid upon the public lending of copies lent after 31 December 2010. The remuneration to which the author is entitled, pursuant to section 23/A, shall be distributed for the first time in 2012 based on the data provided after 1 January 2011 in accordance with section 23/A(4).

Section 111/D (1) The provisions in section 55(2) to (3), section 74/A(1) to (3), section 78/A, section 84(1)b) to d) and (2) of this Act set forth by Act XVI of 2013 on the modification of certain acts relating to intellectual property shall apply to those recorded performances and phonograms in relation to which the 50-year term of protection calculated from the first day set out in section 84 has not expired by 1 November 2013 and for recorded performances and phonograms that were created after this date.

(2) If there is no clear reference to the contrary in a contract concluded before 1 November 2013, the contract shall be effective even after the date when the 50-year term of protection defined in paragraph (1) has expired.

(3) Those contracts that were concluded with the phonogram producer before 1 November 2013 for the recording of a performance and which entitle the performer to a recurring remuneration [section 74/A(3)] can be amended in favour of the performer 50 years after the phonogram was published or, in the absence of such publication, 50 year after it was communicated to the public, even if this option had been excluded in the contract by the parties. If no contract is concluded between the phonogram producer and the performer, either party may resort to the mediation ating board set up pursuant to section 103.

Section 111/E The right of termination referred to in section 55(2) of this Act set forth by Act XVI of 2013 on the modification of certain acts relating to intellectual property in relation to contracts that were concluded after the entry into force of this Act shall also be exercised in writing only.

Section 111/F (1) The provisions in section 89(11) and (11b) of this Act set forth by Act CLIX of 2013 on the modification of certain acts relating to intellectual property shall apply to remunerations transferred to the NCF after 1 January 2014.

(2) The provisions in section 89(11a) of this Act set forth by Act CLIX of 2013 on the modification of certain acts relating to intellectual property shall be first applied to remunerations collected in 2013. The revenue which the collective management organisation collected in 2013, deriving from the remunerations defined in sections 20 and 21 and which was transferred to the NCF for using for cultural purposes before 1 January 2014, shall be set off from the amount that is due according to the obligation of transmission defined in section 89(11a).

Section 111/G Provisions 41/F to 41/K of this Act set forth by Act CLIX of 2013 on the modification of certain acts relating to intellectual property shall apply to works and phonograms which were subject to protection on or after 29 October 2014.

Section 111/H In the event that the Office has not undertaken before 1 January 2018, pursuant to section 108(2) of the Act CCXXII of 2015 on the general rules of electronic case administration and fiduciary services, to provide electronic communication, the provisions of this Act prevailing on 31 December 2016 shall apply before 31 December 2017 to such communication.

Section 111/I Provisions of this Act set forth by Act L of 2017 on the modification of certain Acts related to the entry into force of the Act on the Code of General Administrative Procedure and of the Act on the code of administrative court procedures (hereinafter “Ákr.-Kp. Amending Act”) shall be applied in proceedings commenced or repeated after the entry into force of the Ákr.-Kp. Amending Act).

Authorisations

Section 112 (1) The Government shall be authorised to determine in a decree, taking into account the opinion of the representative organisations concerned, the range of the devices used for purposes of reprography.

(2) The Government shall be authorised to determine in a decree the detailed rules on the organisation and operation of the council of copyright experts.

(3) The Government shall be authorised to determine in a decree the manner and conditions of communicating and making available to the individual members of the public the free use provided for in section 38(5) of this Act.

(4) The Government shall be authorised to determine in a decree the detailed rules on the use of orphan works, the conditions of the fair remuneration to which the right holder is entitled, the amount, the manner of collection and the refunding of the fee for administrative procedures to be paid for their use, and the detailed rules on the registration of the licences given for the use of orphan works.

(4a)

(5) The minister responsible for justice shall be authorised to determine in a decree the detailed rules on

a) the voluntary register of works kept by the Office, after obtaining the opinion of the President of the Office, and in agreement with the minister responsible for culture, as well as

b) the amount, collection and return of the fee for administrative procedures to be paid for procedures in connection with the voluntary register of works after obtaining the opinion of the president of the Office, and in agreement with the ministers responsible for tax policy, culture and the supervision of the Office.

(6)

(6) The minister responsible for justice shall be authorised to determine in a decree the amount, the collection and the refunding of the fee for administrative procedures to be paid for procedures in connection with the register of collecting societies, in agreement with the minister responsible for tax policy, culture and the supervision of the Office, after obtaining the opinion of the president of the Office.

(7) The minister responsible for culture shall be authorised to determine in a decree, in agreement with the minister responsible for justice, the scope of data required for the determination and distribution of remuneration due to the author with regard to public lending under section 23/A of this Act, as well as the list of public libraries obliged to provide data.

Compliance with the law of the European Union

Section 113 This Act serves the purpose of compliance with the following legal acts of the European Union:

- a) Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs;
- b) 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;
- c) Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases;
- d) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society;
- e) 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;
- f) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights;
- g) 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;
- h) Directive 2006/116/EC of the Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights and Directive 2011/77/EU of the Parliament and of the Council on the amendment of Directive 2006/116/EC;
- i) Sections 6(a) and (c) of Commission Recommendation 2006/585/EC of 24 August 2006 on the digitization and online accessibility of cultural material and digital preservation;
- j) Directive 2012/28/EC of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works;
- k) Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.