

Act No. LXXVI of 1999 on copyright¹

(consolidated text as of 01.01. 2007)

Modern copyright legislation keeping abreast of technological development plays a decisive role in the promotion of intellectual creation and the preservation of the values of national and universal culture; it can create and maintain a balance between the interests of authors and other rightholders, users and the public at large, taking account of the requirements/demand of education, culture, scientific research and free access to information; and that it can provide for an extensive and efficient enforcement of copyright and related rights. In consideration of these aspects, the National Assembly – in accordance with the existing international obligations of the Republic of Hungary in the field of intellectual property and with the legal acts of the European Community – hereby adopts the following Act.:

PART ONE GENERAL PROVISIONS

Chapter I Introductory provisions

The Subject Matter of Copyright Protection

Article 1

(1) This Act shall provide protection for literary, scientific and art creations.

(2) All creations of literature, science and art - regardless whether or not specified by this Act - shall fall under copyright protection. Such creations are, in particular:

- a) literary works (for example fictional works, technical works, scientific works, journalistic works etc.),
- b) speeches delivered in public,
- c) computer program creations and related documentation (hereinafter referred to as 'software'), whether fixed in source code or object code or in any other form, including application programs and operation systems,
- d) dramatic works, musico-dramatic works, ballets and mimes,
- e) musical works with or without words,

¹ As it stands on January, 1, 2007.

Since its adoption the Act has been amended by the following Acts::

- Act LXXVII of 2001 on the amendment of the Act LXXVI on Copyright (aimed at the implementation of the Database Directive)
- Act CXLVIII on the protection of design (§ 67, amending the Copyright Act with regards to technical standards)
- Act No. CII of 2003 amending certain industrial property and copyright acts (entry into force of the relevant provisions: 1st May, 2004)
- Act CXXV on the „prohibition of discrimination” (amending the rule on the determination and application of tariffs of collective administration societies)
- Act No LXIX of 2004 amending certain acts with a view to legal harmonization in connection with the participation in the European Economic Area (entry into force: 10th July, 2004)
- Act XXVI of 2005 on the amendment of acts on taxes and other public dues (introduced a cap on reprographic royalties)
- Act CVIII of 2005 (on the transposition of the Resale Right Directive)
- Act CLXV of 2005 (on the transposition of the Enforcement Directive)
- Act CIX of 2006 (on amendments of acts in connection with the restructuring of the governmental administration)

- f) radio and television plays,
- g) cinematographic creations and other audiovisual works (hereinafter jointly referred to as cinematographic creations),
- h) creations produced by drawing, painting, sculpturing, engraving, lithography or in other like manner, and designs thereof,
- i) artistic photographs,
- j) maps and other cartographic creations,
- k) architectural creations and plans thereof, and plans of building complexes and town planning projects,
- l) designs of engineering structures,
- m) applied art creations and designs thereof,
- n) costume and scenery designs,
- o) industrial design creations,
- p) databases rated as collections of works

(3) The creation shall enjoy copyright protection based on its individual, original nature originating from the intellectual activity of the author. The protection shall not be subject to any quantitative, qualitative and aesthetic characteristics, or to value judgements relating to the standard of the creation.

(4) The protection provided by this Act shall not cover provisions of law, other legal instruments of state administration, judicial or authority decisions, authority or other official announcements and documents, as well as standards and other like provisions made obligatory by legislative acts.

(5) The copyright protection shall not extend to facts and daily news that serve as a basis for press information.

(6) No idea, principle, concept, procedure, method of operation or mathematical operation may be to the subject matter of copyright protection.

(7) The expressions of folklore shall not enjoy copyright protection. However, this provision does not prejudice copyright protection due to the author of a folk-art-inspired work of individual, and original nature.

(8) Achievements of performers, producers of sound recordings, radio and television organisations, film producers, and makers of databases shall enjoy protection as specified by this Act.

The Scope of the Act

Article 2

The copyright protection defined in this Act shall extend to a work first published abroad only if the author is a Hungarian national, or if the author is entitled to the protection pursuant to an international agreement or by reciprocity.

Article 3

Matters not covered by the provisions of this Act shall be governed by the provisions of the Civil Code.

Copyright

Article 4

(1) The copyright shall belong to the person who has created the work (author).

(2) Without prejudice to the rights of the author of an original work, the alteration, adaptation or translation of the original work, shall be under copyright protection if the work thus obtained is of individual, original character.

Works of Joint Authorship

Article 5

(1) The authors of a joint work, the parts of which cannot be used independently, shall enjoy the copyright protection jointly and - in case of any doubt - in equal proportions, however, any of the joint authors may take action independently in the event of the infringement of the copyright.

(2) In case a joint work is made up of parts which can be used independently (connected works), independent copyright shall belong to each of the joint authors with regard to the respective individual part. The authorization of all authors of the original joint work is required if any part of the work consisting of joint works and created jointly is wanted to be joined with a different work.

Article 6

(1) In the case of a collective work (e.g., national standard), the copyright shall be transferred by legal succession to the natural or legal person or business company without legal entity at whose initiative and under whose instructions the work was created and who published it in his own name.

(2) A work shall be regarded as a collective work if the contributions of the authors co-operating in the creation of the work are combined in the product of joint creation in a manner which makes the separate determination of the individual authors' rights impossible.

Collection of Works

Article 7

(1) A collection shall be under copyright protection if the selection, arrangement or editing of its contents is of individual and original nature (collection of works). The protection shall apply to the collection of works even if its parts or materials do not or may not enjoy copyright protection.

(2) Regarding the whole of the collection of works the copyright shall belong to the editor, however, this shall be without prejudice to the independent rights of the authors of the individual works selected for inclusion in the collection as well as of the holders of rights in neighbouring rights covered achievements.

(3) The copyright protection of a collection of works shall not extend to the materials of the collection of works.

Works Published Anonymously or Under a Pseudonym

Article 8

If a work was published anonymously or under a pseudonym, the author's rights shall be exercised, until the author becomes known, by the person who first published the work.

The Origin of Authors' Rights; Authors' Rights and their Exploitation

Article 9

(1) The entirety of authors' rights - moral rights and economic rights - shall belong to the author from the time of the creation of the work.

(2) The author may not assign his moral rights, these may not devolve on anyone else, and may not be renounced by the author.

(3) Subject to the exceptions in Paragraphs (4) to (6), the economic rights may not be assigned, may not devolve on anyone else, and may not be renounced.

(4) The economic rights shall pass by inheritance, and the author is free to dispose of them to that end for the case of his death.

(5) The persons becoming holders of economic rights by inheritance may dispose of them to each other's benefit.

(6) In the cases and under the conditions specified by this Act the economic rights may be assigned or may pass to (an)other person(s). Unless otherwise provided in the assignment contract, the acquirer of rights may dispose of the economic rights he has acquired.

Chapter II Moral Rights

Divulcation of the Work

Article 10

- (1) The author shall decide whether his work may be made public.
- (2) Before the divulcation of the work, any information on the substance of its contents may be provided for the public only subject to the author's consent.
- (3) Unless otherwise provided, the conclusion of a license agreement shall imply the author's consent to the user providing information on the contents of the work for the public in a manner complying with the purpose of the use.
- (4) As regards a work becoming known after the author's death, it shall be presumed - failing other declaration by the author or his legal successor or the introduction of evidence proving the contrary - that the author intended his work to be divulgated to the public.

Article 11

Referring to a sound reason, the author may withdraw his authorization to divulgate his work or may prohibit the continued use of his work already divulgated; however, he is obliged to repair any damage having accrued till the time of such declaration. This shall not prejudice the employer's right to exploit the work and shall not prevent, in the case of the assignment of the economic rights, the acquirer of rights from uses based on the economic rights.

Indication of the Author's Name

Article 12

- (1) The author shall have the right to have an indication on his work or in the communication on his work - subject to the scope and nature of the communication - referring to him as the author; reference shall be made to the author in the event of including part of his work in another work, and citing or reviewing his work. The author may exercise the right to have his name indicated subject to the nature of the use and in a manner complying with it.
- (2) The name of the author of a work shall be indicated on the alteration, adaptation or translation which is based on the author's work.
- (3) The author shall be entitled to have his work divulgated without the indication of his name or under a pseudonym. The author may require that his work having been divulgated to the public with the indication of his name shall, in the case of a new authorized use, be further on used without the indication of his name.
- (4) The author may demand that his author's capacity shall not be called in doubt.

Protection of the Integrity of the Work

Article 13

The distortion, mutilation or any other alteration of the work of the author which prejudices the honour or reputation of the author shall be taken to infringe his moral right.

The Exercise of Moral Rights

Article 14

- (1) After the author's death, action against the infringement of the moral rights specified in this Act can be taken within the term of protection (Article 31) by the person put in charge of the administration of the author's literary, scientific or artistic legacy by the author, and if there is no such person or the one put in charge fails to take actions, it shall be the person having acquired the economic rights by virtue of inheritance.
- (2) After the expiration of the term of protection the organization performing the collective administration of rights (Article 85 to 93) or the association representing authors' interests may take action, with reference to offence against the author's memory, against a behaviour which would be taken under the term of protection to infringe the author's right to have his name indicated on his work or in a communication related to his work.

Article 15

The user may also take action for the protection of specific moral rights of the author if this is expressly consented to by the author in the licensing agreement.

Chapter III Economic Rights

General Provisions Relating to Economic Rights

Article 16

(1) By virtue of the copyright protection, the author shall have the exclusive right to use his entire work or an identifiable part thereof in any tangible or intangible form and to authorise each and every such use. Unless otherwise provided by this Act, authorization may be obtained for the use of the work by a licensing agreement.

(2) The use of the title of the work, if it is unique, shall be subject to the author's authorization, too.

(3) The commercial utilization of any characteristic and original character in the work and the authorization of such utilization shall be subject to the exclusive right of the author.

(4) Unless otherwise provided by this Act, remuneration shall be due to the author against the licence he has given for the use of his work, which remuneration - unless otherwise agreed - shall be in proportion to the revenue earned by the use of the work. The author may waive his claim to remuneration only by an express representation to that end. Should the law stipulate a specific form for the licensing agreement to be valid, the waiver of the remuneration shall itself be valid in the specific form only.

(5) In the cases as specified by this Act, remuneration shall be due to the author for the use of his work even if he has no exclusive right to authorize the use. The law may exclude the right to waive such remuneration, and should such provision fail to obtain, the author may only waive the remuneration by an express representation to that end.

(6) A use shall be deemed unlawful in particular if no authorization has been given therefor by the statute or by the author in a contract, or if the user makes use of the work beyond the limitations of his authorization.

(7) Unless otherwise provided by this Act, the user is obliged to inform the author or his successor in title or the organization performing the collective administration of rights (Articles 85 to 93) on the manner and scope of the use.

Article 17

As uses of the work shall be rated in particular:

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

The Right of Reproduction

Article 18

(1) It shall be the author's exclusive right to reproduce his work and to grant authorization therefor. Reproduction shall be taken to mean:

- a) the direct or indirect fixation of the work in any manner on a tangible carrier, whether definitively or temporarily, and
- b) the making of one or several copies of the fixation.

(2) As reproduction of the work shall be rated in particular the fixation of the work in a mechanical, cinematographic or magnetic way and making copies of it by printing, the production of audio or video recording of the work, its fixation for purposes of communication to the public by broadcasting or by cable, the storage of the work in a digital form on electronic devices, and the production in a tangible form of the work transmitted by the computer network. In the case of architectural creations the primary and secondary construction of a creation laid down as a design shall likewise be rated as reproduction.

Article 19

(1) The producer of a sound recording, the creator of a multimedia work, and the maker of an electronic database may require that the repeated reproduction of already disclosed non-dramatic musical works and lyrics for music and parts of musico-dramatical works fixed on sound recordings and video recordings, in a multimedia work or an electronic database distributed on digital carriers, and the distribution by copies of such reproductions against the payment of a fair and equitable fee shall be authorized for them too. The licensing agreement shall be concluded with the organization performing the collective administration of rights related to literary and musical works.

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

Article 20

(1) A fair and equitable remuneration shall be due, on the private purpose copying of their works, performances, films and sound recordings, to the authors of works, the performers of performances, and the producers of films and sound recordings that are broadcast in the programmes of radio and television organizations, included in the programmes of the entities communicating their own programmes to the public by cable, and released for distribution on audiovisual or audio carriers.

(2) The remuneration referred to in paragraph (1) shall be determined by the organization performing the collective administration of rights in literary and musical works in agreement with the organizations performing collective administration of rights of other interested rightholders. At the determination of the remuneration, it shall be taken into account whether effective technological measures for the protection of copyright and related rights are applied on the works, performances, films and sound recordings concerned (Article 95). The remuneration shall be paid by the manufacturer of blank video and audio carriers, in the case of manufacture abroad by the person obliged under the law to pay customs duties, or – in the absence of obligation to pay customs duties – by the person who imports them and by their first domestic distributor, under joint liability, to the organization performing the collective administration 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 obligation to pay customs duties – from the date of putting into circulation of the carriers, or – if this is earlier – from the date of having them in stock with the intention of putting them into circulation. For the payment of the remuneration, all domestic distributors of the carriers concerned shall be jointly liable.

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

a) putting into circulation for export purposes, furthermore

b) video and audio carriers applicable exclusively with devices (e.g., studio equipment, dictaphones) which are not used in their regular application for the private-purpose making of copies of works, performances of performers, or sound recordings.

(4) In the case of sound carriers, the royalties collected, with the expenditures deducted from them, shall be distributed to the rightholders, and namely – unless otherwise agreed before 31 March every year between the affected organizations performing collective administration of rights– forty-five per cent shall be due to the music composers and writers, thirty per cent to the performers and twenty-five per cent to the producers of sound recordings.

(5) In the case of video carriers the royalties collected, with the expenditures deducted from them, shall be distributed to the rightholders, and namely - unless otherwise agreed before March 31 of every year between the affected organizations performing collective administration of rights - thirteen per cent shall be due to the producers of movie pictures, twenty-two per cent to the cinematographic creators of movie pictures, four per cent to creators of

fine arts, designs and authors of artistic photographs, sixteen per cent to script writers, twenty per cent to composers and lyricists, and twenty-five per cent to performers.

(6) The organization performing the collective administration of rights in literary and musical works shall remit the part of the royalties, due to authors and copyright rightholders, performers and producers of sound recordings who are not represented by the said organization regarding the distribution of royalties, to the organizations performing the collective administration of rights for the rightholders involved.

(7) The rightholders may enforce their claims to remuneration only by the organizations performing the collective administration of their rights (Articles 85 to 93), and they may renounce the remuneration only with effect following the date of the distribution and to the extent of the amount due to them.

Article 21

(1) The authors of the works and the publishers thereof in the form of book, or in periodicals which are reproduced by photocopying or in like manner on paper or on like carrier (hereinafter jointly referred to as by reprography) shall be due to be paid fair and equitable remuneration on private-purpose copying. The remuneration shall be paid, within the deadline indicated in the third sentence of Article 20(2), by the manufacturer of the device suitable for reprography, in the case of manufacture abroad by the person obliged under the law to pay customs duties, or – in the absence of obligation to pay customs duties – by the person who imports the device and by its first domestic distributor under joint liability. For the payment of the remuneration all domestic distributors of the device concerned shall be jointly liable. In addition, the person operating the reprographic device for a consideration is also obliged to pay remuneration. In both cases the remuneration shall be paid to the organization performing the collective administration of rights.

(2) The specification of the devices that may be used for reprography shall be determined by a special regulation.

(3) The remuneration referred to in Paragraph (1) shall be set by the organization performing the collective administration of rights. When determining the said remuneration, it shall take due account of, in particular, the manner of the use of the device and its output characteristics, as well as the place of the operation in the case of its use for a consideration.

(4) The remuneration referred to in paragraph (1) shall not exceed 2% of the manufacturing issue price of the device suitable for reprography, or, in case of a device manufactured abroad, 2% of the value for customs according to applicable legal regulations.

(5) The obligation to pay remuneration shall not apply to the case where the device is put into circulation for export purposes.

(6) Of the amount of the royalties collected that remains after the deduction of the expenses, forty per cent shall be due to the publishers of books and periodicals. Of the remaining sixty per cent, twenty-five per cent shall be due to the authors of non-fiction and scientific works, twenty-five per cent to the authors of other literary works and ten per cent to the authors of works of fine arts and artistic photographs. These shares of the remuneration shall be transferred to the organizations performing the collective administration of rights of the interested rightholders.

(7) The distribution proportions determined in Paragraph (5) shall be applied unless otherwise agreed between the affected organizations performing the collective administration of rights and the trade organizations of the rightholders concerned before March 31 of every year.

(8) The authors and publishers may only enforce their claims to remuneration by the organizations performing the collective administration of their rights, and they may renounce their remuneration only with effect following the date of distribution and to the extent of the amount due to them.

Article 22

(1) The commercial manufacturer of the blank audiovisual and audio carrier as defined in Article 20 and of device as defined in Article 21, the person obliged under the law to pay custom duties for importing such carrier and device, as well as the importer and the first domestic distributor of such carrier and device, is obliged, before the tenth day of every calendar month, but at the latest within the deadline provided for by Art. 20 (2), to inform the organization performing collective administration of rights on the quantity imported or put into circulation, as well as

about the types of such carriers and devices. The organization performing the collective administration of rights may request further information on the figures relating to the putting into circulation and on the sources of procurement; and it may request those operating reprographic devices for a consideration to provide further particulars necessary for determining the fair amount of remuneration.

(2) The failure to meet, and even the incomplete meeting of, the obligation to provide information or particulars and to supply data as required by the provision of Paragraph (1) a lump sum for covering the expenses of the organization performing the collective administration of rights is to be paid in addition to the remuneration due, which lump sum shall be of the same amount as the remuneration due to be paid.

The Right of Distribution

Article 23

(1) The author shall have the exclusive right to distribute his work and to authorize others therefor. The making accessible to the public of the original copy or the reproduced copies of the work through putting into circulation or their offer for putting into circulation shall be taken to mean distribution.

(2) The distribution shall in particular imply the transfer of the title of ownership of the copy of the work and the rental of the copy of the work as well as the importation into the country of the copy of the work with the purpose of putting it into circulation. The possession of an infringing copy of a work for commercial purposes shall also be regarded as an infringement of the right of distribution, if the person concerned knows, or has reasonable grounds to know, that the copy is the result of infringement.

(3) In the case of cinematographic creations, works included in sound recordings and software, the lending to the public of individual copies of the work shall likewise be covered by the right of distribution.

(4) The right of distribution through rental shall only cover the designs within the domains of architecture, applied arts and industrial designing.

(5) If the copy of the work has been put into circulation by the rightholder or by another person expressly authorized therefor by the rightholder through sale or the transfer of proprietary rights in any other manner in the European Economic Area, the right of distribution – with the exception of the right of rental, lending and importation – shall further on be exhausted with regard to the copy of the work thus put into circulation.

(6) If the right of rental relating to a cinematographic creation or a work included in a sound recording has been transferred, or otherwise licensed, by the author to the producer of the film or sound recording, the author shall retain a claim to the producer of the film or sound recording for a fair and equitable remuneration regarding the distribution of the work through rental. This right may not be waived by the author, however, he may enforce his claim to a remuneration only via an organization performing the collective administration of rights (Articles 85 to 93).

(7) In the case of the lending to the public of works not referred to in Paragraph (3) - as far as architectural, applied art and industrial creations are concerned, of their design -, a fair and equitable remuneration shall be due to the authors. This claim to a remuneration may be enforced only via the collective administration of rights and the rightholders may waive such remuneration only following the date of its distribution and to the extent of the amount due to them.

The Right of Public Performance

Article 24

(1) The author shall have the exclusive right to perform his work to the public and to authorize another person therefor. The making of the work perceptible to those present shall be taken to mean performance.

(2) As performance shall be rated in particular

a) the performance of the work to the public by a performer in person, including stage performance, concert, recital, reading out ("live performance");

b) making the work perceptible by any technical device or manner, including the projection of a cinematographic creation, making the work communicated or distributed (as a copy) to the public become audible by loudspeaker or visible on a screen.

(3) A performance shall be taken to be public if it occurs in a place accessible to the public or in any other place where people other than the members of the family of the user and their acquaintances gather or may gather.

Article 25

(1) In the name of writers, composers and lyricists, the organization performing collective administration of rights in literary and musical works shall conclude licensing agreements with user on the authorization of the public performance of an already disclosed literary and artistic work and on the royalty to be paid for this, unless the author has made a declaration defined in Article 91(2).

(2)²

(3) The provisions of paragraph (1) shall not apply to the performance of literary works written for dramatic purposes and musico-dramatic works, or scenes or overviews thereof, and of non-fiction works and longer fiction works written for non-dramatic purposes (such as novels).

(4) In the cases covered by Paragraph (1) the planned use and the alteration of the current use have to be notified to the organization performing collective administration of rights mentioned in Paragraph (1) by the user in advance. The organization performing the collective administration of rights referred to in Paragraph (1) may inspect the use on the spot.

(5) The royalty due on a public performance realized by the performer's personal acting - except for the royalty due on the supply of music in a catering establishment - has to be paid within three days from the date of the performance. In other cases an advance payment of the royalty for at least a quarter of a year's period - or for the whole period if it is shorter than a quarter of a year and the operation of the establishment is of seasonal character - is required for obtaining the licence.

(6) In case the user fails to meet its obligation of notification required by the provision of Paragraph (4) and in consequence of this the organization performing the collective administration of rights gets knowledge of the use only by conducting its inspection, a flatrate amount covering the organization's inspection costs has to be paid in addition to the royalty due to be paid. The flatrate amount shall be of the same size as is that of the royalty due.

The Right of Communication of the Work to the Public

Article 26

(1) The author shall have the exclusive right to have his work communicated to the public by broadcasting and to authorize another person therefor. The making of the work perceptible to people at a distance by the transmission of sounds or pictures and sounds or the technical presentation of these without the use of cable or other like device shall be taken to mean broadcasting.

(2) Satellite broadcasting shall be taken to be covered by the broadcasting of the work in case the programme broadcast can directly be received by the public. The programme broadcast by satellite shall be regarded to be accessible to direct reception by the public if, under the responsibility and control of the radio or television organization, signals carrying the work are uplinked to the satellite and from there back to the ground by uninterrupted transmission with the purpose that the signals can be received by the public. In the case of broadcasting by satellite, the place of the use of work shall be solely in the Member State of the European Economic Area where, under the control and responsibility of the radio or television organization, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth for reception by the public. For broadcasting by satellite in the case of which the place of use of work is, on the basis of the preceding rule, a state outside the European Economic Area, 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) As broadcasting of the work shall further be rated an encrypted broadcasting which can be directly received by the public only after the organization concerned with the communication to the public has made the signals carrying the programme suitable for reception by the use of a device for decryption procured from the original radio or

² End of validity: 1st May 2004 by virtue of Act No. CII of 2003.

television organization on the basis of an agreement concluded with it or from another organization authorized by the original one to sell the said device. The original radio or television organization and the organization concerned with communication to the public and using the device for decryption shall jointly and severally be held liable for such use.

(4) As broadcasting of the work shall also be rated if the signals of the broadcast programme are encrypted by the organization concerned with communication to the public and the work is accessible for undisturbed perception by the members of the public only by the use of a device for decryption procured from the said organization on the basis of an agreement concluded with it or from another organization authorized for the sale of the said device by the original organization.

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

(6) The fixation of the work permitting its repeated broadcasting is subject to the author's special licence. Each and every use of the recording is subject to the payment of remuneration.

(7) The communication to the public of an own programme by cable or any like device or in any like manner shall be subject, *mutatis mutandis*, to the provisions relating to broadcasting.

(8) The author shall further have the exclusive right to communicate his work to the public in a manner other than broadcasting or the means referred to in Paragraph (7) and to authorize another person therefor. This right shall in particular cover the case when the work is made available to the public by cable or any other means or in any other manner so that the members of the public can choose the place and time of the availability individually.

Article 27

(1) In the name of writers, composers and lyricists – with the exception of the use of literary works written for dramatic purposes and musico-dramatic works, or scenes or overviews thereof, and of non-fiction works and longer fiction works written for non-dramatic purposes (such as novels) – the organization performing collective administration of rights in literary and musical works shall conclude licensing agreements with the user on the authorization of the broadcasting of an already disclosed work and on the remuneration to be paid for it.

(2) In the case of broadcasting by satellite, paragraph (1) shall apply only if

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

b) the author has not made a declaration defined in Article 91(2).

(3) In the name of composers and lyricists – with the exception of musico-dramatic works, or scenes or overviews thereof – the organization performing collective administration of rights in literary and musical works shall conclude licensing agreements with users on the authorization of uses covered by Article 26 – other than those mentioned in paragraphs (1) and (2) – of already disclosed non-dramatic musical works with or without words and excerpts of such musico-dramatic works and on the royalty due to be paid, unless the author has made a declaration defined in Article 91(2).

Article 28

(1) The author shall have the exclusive right to rebroadcast his work communicated to the public by broadcasting and to authorize another person therefor.

(2) The author shall also have the exclusive right to authorize the retransmission to the public of his work broadcast or transmitted in the programme of a radio or television organization or of an entity communicating its own programme by cable or by any other means to the public, simultaneously and in an unaltered manner via an organization other than the original one.

(3) The rightholders may exercise their right referred to in paragraph (2) only through collective administration and may waive their remuneration only with effect following the date of its distribution and to the extent of the amount due to them. The remuneration shall be determined by the organization performing collective administration of rights in literary and musical works in agreement with the organizations performing collective administration of rights of other rightholders. The organization executing retransmission shall pay the remuneration determined to the organization performing collective administration of rights in literary and musical works.

(4) The collected remuneration, with the expenditures deducted from them, shall be distributed to the rightholders, and – unless otherwise agreed between the interested organizations performing collective administration of rights before March 31 of every year, – thirteen percent shall be due to film producers, nineteen percent to cinematographic creators of movie pictures, three percent to creators of works of fine arts, designs and authors of artistic photographs, fourteen percent to script writers, fifteen and a half percent to composers and lyricists, twenty-six and a half percent to performers, and nine percent to producers of sound recordings.

(5) The organization performing collective administration of rights in literary and musical works shall remit the part of the collected remuneration due to authors and other copyright holders of the genres of works which are not represented by the said organization regarding the distribution of the remuneration, and to performers and producers of phonograms, to the organizations performing collective administration of rights of those rightholders.

(6) The royalties due on the retransmission of the works broadcast in the programme of, or communicated by cable or in any other manner by, the Hungarian public radio and television broadcasting organization shall be paid from the Broadcasting Fund, and this payment shall be the responsibility of the administrator of the Fund.

The Right of Alteration

Article 29

The author shall have the exclusive right to alter his work or to authorize another person therefor. The translation of the work, its dramatic or musical adaptation, its 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 shall be taken to mean alteration.

Work Created Under Employment or Other Service Relations

Article 30

(1) Unless otherwise agreed, the delivery of the work to the employer shall imply the transfer of the economic rights upon the employer as successor in title to the author, if the creation of the work is the author's duty under an employment contract.

(2) The economic rights acquired pursuant to the provision of Paragraph (1) shall be transferred upon the successor in title to the employer if there has occurred such succession in title.

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

(4) The author shall continue, even in the case of the acquisition of rights by the employer, to be entitled to the remuneration which is due to him even after the transfer of the right of use pursuant to this Act.

(5) If the creation of the work is the author's duty under an employment contract, the delivery of the work to the employer shall be considered as an act of consent to the disclosure of the work to the public. In the case of the author's declaration aimed at withdrawing his work (Article 13 11) the employer is obliged to make no mention of the author's name. The author's name shall likewise be left unmentioned, at the author's request, if availing himself of his employer's rights the employer makes alterations in the work without the author's agreement.

(6) Declarations of legal nature made with regard to the work created by way of fulfilment of the author's duty under an employment contract shall be laid down in writing.

(7) The provisions relating to a work created as duty under an employment contract shall be applied mutatis mutandis if the work has been created by a person employed as public or civil servant, a person belonging to the professional staff of the armed forces and police forces and being in active service, or a co-operative member employed under legal relations similar to those of employment relations.

The Term of Protection

Article 31

(1) The authors' rights shall enjoy protection during the lifetime of the author and for seventy years following his death.

(2) The seventy years' term of protection shall be counted from the first day of the year following the death of the author and, in the case of joint authors, from the first day of the year following the death of the joint author dying last.

(3) In case the person of the author is unknown, the term of protection shall be seventy years and shall be counted from the first day of the year following the first disclosure of the work. However, should the author become known during this period of time, the term of protection shall be counted as in Paragraph (2).

(4) In the case of a work disclosed to the public in several parts, the year of the first disclosure shall be counted part by part.

(5) The term of protection of a collective work shall be seventy years counted from the first day of the year following the first disclosure of the work.

(6) The term of protection of a cinematographic creation shall be counted from the first day of the year following the death of the author thereof dying last.

(7) In case the term of protection shall be counted from a date other than the first day of the year following the death of the author, the author dying last, or the joint author, and the work is not disclosed to the public within the seventy years' period following its creation, no copyright protection shall further on be due to the work.

Article 32

Copyright protection of a scope consistent with the author's economic rights shall be due to the person who, following the expiration of the term of protection or the period of time determined in Article 31 (7), discloses according to the law a work previously not disclosed to the public. The term of such protection shall be twenty-five years from the first day of the year following the first disclosure.

Chapter IV

The Free Use of the Work and Other Limitations to the Copyright

General Provisions

Article 33

(1) Uses falling within the scope of the free use shall not be subject to the payment of any consideration and to any authorization of the author. Only works disclosed to the public may be used freely pursuant to the provisions of this Act.

(2) The use under the provisions relating to free use is permitted and not subject to the payment of a fee only so far as it does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, and it is in compliance with the requirements of fairness and is not designed for a purpose incompatible with the intention of free use.

(3) The provisions relating to free use shall not be interpreted in an extensive manner.

(4) For purposes of the provisions of this chapter the use shall be taken to serve the purposes of school education if it is implemented in accordance with the requirements of education and with the curricula respectively used in kindergarten, primary school, secondary school, industrial school, vocational school education, the primary education of arts, as well as in higher education falling under the scope of the law on higher education.

Cases of Free Use

Article 34

(1) From a work any part may be cited by indication of the source and naming the author indicated therein. Such citation shall be true to the original and its scope shall be justified by the nature and purpose of the borrowing work.

(2) Part of a literary or musical work or such a type of an entire work of a minor volume disclosed to the public may be borrowed for the purposes of illustration for teaching and scientific research, with the indication of the source and the author named therein, to the extent justified by the purpose on condition that the borrowing work is not used

for commercial purposes.. Borrowing shall mean the use of a work in another work to an extent that goes beyond citation.

(3) The non-commercial reproduction and distribution of the borrowing work mentioned in paragraph (2) shall not be subject to the author's authorization where the borrowing work is, pursuant to the relevant legislation, qualified as a textbook or a reference book and the school education purpose is indicated on its front page.

Article 35

(1) A copy of the work may be made by a natural person for private purposes if it is not intended for earning or increasing income even in an indirect way. This provision shall not apply to architectural works, to engineering structures, to software and to databases operated by a computer device, as well as to the fixation of the public performance of a work on video or sound carrier. It shall not be allowed to reproduce sheet music by means of reprography [Article 21(1)] even for private purposes or in the cases mentioned in paragraph (4) b) to d).

(2) A complete book as well as the whole of a periodical or daily may be copied even for private purpose only by handwriting or typing.

(3) It shall not be considered as free use to have a work copied by someone else by means of a computer and/or on an electronic data carrier, even if it is done for private purposes.

(4) Publicly accessible libraries, educational establishments [Article 33(4)] museums and archives as well as audio and audiovisual archives shall be allowed to make a copy of a work for internal institutional purposes – outside the scope of entrepreneurial activity – to the extent and in the way justified by such a purpose if it is not intended for earning or increasing income even in an indirect way and if the copy is

- a) required for scientific research,
- b) made for archiving from an own copy of such an institution for scientific purpose or for public library supply,
- c) made of a minor part of a work made public or of an article published in a newspaper or periodical, or
- d) the copying is allowed by a separate law under certain conditions, in exceptional cases.

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

(6) A temporary act of reproduction that is transient or incidental -- and is an integral and essential part of a technological process with no independent economic significance – shall be free if its sole purpose is to enable

- a) a transmission in a network between third parties by an intermediary, or
- b) a use of the work authorized by the author or permitted pursuant to the provisions of this Act.

(7) Ephemeral recording of a work lawfully used by a radio or television organization for the broadcast of its own program if made by its own facilities shall be free. Unless otherwise provided by the contract authorizing the broadcasting of the work, such a recording shall be destroyed or erased within three months counted from its making. Those of such recordings which are specified in separate legislation may, however, be for an indefinite term. preserved on the ground of their exceptional documentary character in audiovisual and audio archives qualifying as public collections

(8) The free uses mentioned in paragraphs (1), (4), (5) and (7) shall be without prejudice to the application of Articles 20 to 22.

Article 36

(1) Parts of publicly presented lectures and similar other works, and political speeches may be freely used for the purpose of information to the extent justified by this purpose. In the case of such a use, the source – along with the name of the author – shall be indicated, unless it proves to be impossible. For the publication of collections of such works, the authorization of the author shall be required.

(2) Articles published on current economic or political topics or works broadcast on the same topics may in the press be reproduced and communicated to the public – including the making available to the public [Article 26(8)] – freely, provided that the author has not made a representation prohibiting such a use. In the case of such a use, the source – along with the name of the author – shall be indicated.

(3) Any fine art, photographic, architectural, applied art or industrial design creation may freely be used as décor in a television programme. In this case the indication of the author's name may be dispensed with.

(4) The use in a television programme of works made for purposes of décor or costume is subject to the authorization of the author and the indication of his name.

Article 37

Particular works may be used freely for the purpose of information on current events to the extent justified by this purpose. In the case of such a use, the source – along with the name of the author – shall be indicated, unless it proves to be impossible.

Article 38

(1) If the performance is not designed to earn or increase income even in an indirect manner and the participants do not receive remuneration, the works may be performed in the following cases:

a) by amateur theatre groups if a dramatic work is involved and it is performed on the basis of a text published or a manuscript lawfully used, supposing that this is not to prejudice of any international agreement,

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

c) within the framework of the care of those at social disadvantage and of aged people,

d) at celebrations held on national holidays,

e) at religious ceremonies or on religious holidays,

f) for private use and at occasionally held private social gatherings.

(2) If a use is suitable for increasing the number of customers (e.g., that of a shop or a place of amusement) or for entertaining the customers of a shop or other types of consumers, it shall be taken to serve the purpose of increasing income. The collection of entrance fees, even if a different name is used for these, shall be taken to mean earning income. Payments exceeding the incurring and justified costs in connection with the performance shall be taken to mean remuneration.

(3) A dancing party held at a school shall not be taken to mean performance for purposes of school education.

(4) A party held by an economic organization or a legal entity other than an economic organization exclusively for its members, officers and employees shall be taken to be a private event.

(5) In the absence of a contractual provision to the contrary, works forming part of the collection of publicly accessible libraries, educational establishments [Article 33(4)], museums, archives, as well as audio and audiovisual archives, may be, for the purpose of research or private study, freely displayed to individual members of the public on the screens of dedicated terminals on the premises of such establishments, and, in the interest of this, they may be in a way and on conditions as provided for in separate legislation communicated, including their making available, to such members of the public, provided that this is not for direct or indirect earning or increasing income.

Article 39

Libraries providing public services may freely lend individual copies of a work. This provision shall not apply to software and to databases operated by computer devices.

Article 40

The copies reproduced within the scope of free uses shall not be distributed without the author's authorization, except for lending between libraries.

Article 41

(1) Any non commercial use of a work shall be free if the purpose of the use is to meet demands of disabled persons that are directly related to the disability and it does not exceed the extent justified by the purpose, shall be free.

(2) In court, public administration and other authority proceedings a work may be used for purposes of evidence, in a manner and to the extent consistent with the purpose i.

Chapter V License Agreements

General Provisions for License Agreements

Article 42

(1) On the basis of a license agreement the author authorizes the use of his work and the user is obliged to pay a remuneration therefor.

(2) The parties may freely agree on the contents of the license agreement; by mutual consent they may waive the observance of the provisions relating to the license agreement if this is not prohibited by this Act or other provision of law.

(3) If the contents of the license agreement cannot be interpreted unambiguously, the interpretation most favourable for the author shall be accepted.

Article 43

(1) The license agreement shall provide exclusive right to use only by an express stipulation to that end. In case an exclusive authorization obtains, only the acquirer of right may exploit the work, the author may not grant further authorizations for the use of the work, and even he himself remains entitled to use his work only if this is stipulated in the contract.

(2) The authorization provided for non-exclusive use prior to the conclusion of the agreement in which exclusive use is authorized shall remain valid unless otherwise provided by the agreement concluded between the author and the user acquiring non-exclusive right of use.

(3) The authorization of use may be limited to a specific domain, period of time, manner of use and extent of use.

(4) Unless otherwise provided by statute or agreement, the authorization of use shall cover the territory of the Republic of Hungary and its term shall be in compliance with the period customary in agreements concluded on the use of works similar to the subject-matter of the agreement.

(5) If the agreement does not provide for the manners of use which the authorization is intended to apply to or does not provide for the authorized extent of use, the authorization shall be limited to the manner and extent of use indispensably necessary for the implementation of the objectives of the agreement.

Article 44

(1) The stipulation of the license agreement whereby the author authorizes the use of an indefinite number of works he is to create in the future shall be taken to be null and void.

(2) No authorization of a manner of use still unknown at the conclusion of the agreement may be granted. However, the method of the use evolving following the conclusion of the agreement is not to be considered a manner of use still unknown at the conclusion of the agreement if what is merely involved is that a manner of use known earlier will be possible to be applied more efficiently, in more favourable conditions or in a better quality as a result of the improvement of methods.

Article 45

(1) Unless otherwise provided by this Act, the license agreement shall be drawn up in a written form.

(2) The drawing up of the agreement in a written form shall not be obligatory if the agreement is designed for publication in a daily or periodical.

(3) If the communication to the public specified in Art 26 par (8) is carried out by the author, the license agreement shall be deemed as have been made in writing, if the author licenses further uses to the work via a contract concluded and fixed by electronic means.

Article 46

(1) The user may confer the authorization or may grant sub-licence to a third person for the use of the work only subject to the author's express consent thereto.

(2) The authorization of use shall, without the author's consent, be transferred to the successor in title in case the economic organization authorized for the use is wound up or the affected organizational unit of its is withdrawn from it.

(3) In case the user confers its rights or grants sub-licence without the author's consent or the authorization of use is transferred without the author's consent, the user and the acquirer of rights shall be jointly and severally responsible for the fulfilment of the license agreement.

Article 47

(1) The authorization of use shall cover the alteration of the work only on express stipulation to that end.

(2) The authorization of reproduction shall permit the user to fix the work in video or sound recording or to copy it by computer or onto an electronic data carrier only on express stipulation to that end.

(3) The authorization of the distribution of the work shall permit the user to import copies of the work for purposes of putting them into circulation only on express stipulation to that end.

(4) The authorization of the reproduction of the work shall, in case of doubt, cover the distribution of the reproduced copies of the work. This shall not imply, however, the importation into the country of copies of the work for purposes for putting them into circulation.

Article 48

According to the general provisions of civil law the court may alter the license agreement even if such an agreement infringes the author's substantive lawful interest in having an equitable share in the income on use for the reason that because of the considerable increase in the demand for the use of the work following the conclusion of the agreement the difference in value between the services respectively provided by the parties becomes strikingly great.

Article 49

(1) The user is obliged to make a statement on the acceptance of a work delivered to him under an agreement relating to a work to be created in the future within two months from the date of the delivery of the work to him. If the user returns the work to the author for corrections to be made in it, the term shall be counted from the date of the delivery of the corrected work. If no statement is made by the user within the term available to him for that purpose, the work shall be considered as accepted.

(2) In case the agreement was concluded on a work to be created in the future, the user shall be entitled to repeatedly return the finished work, with reference to justified grounds and by setting appropriate deadlines, to the author for purposes of correction.

(3) In case the author refuses to make corrections without reasonable grounds, or fails to make the corrections by the deadline set, the user may rescind from the agreement without the payment of remuneration.

(4) In case the work proves unsuitable for use even after the correction, only a reduced remuneration shall be paid to the author.

Article 50

If the author authorizes the use of his work, he is obliged to perform on it the alterations not affecting its essence but indispensably or obviously necessary for the use. Should he refuse or be unable to meet this obligation, the user may perform the alterations without his consent.

Article 51

- (1) The author may unilaterally terminate the agreement containing the authorization of exclusive use if
 - a) the user fails to commence the use of the work within the period determined in the agreement or - in the absence of a stipulated period - within the period reasonably to be expected in the given situation; or
 - b) the user exercises his rights acquired by the agreement in a manner obviously inappropriate for the implementation of the goals of the agreement or in a manner other than consistent with the intended purpose.
- (2) If the agreement for use is concluded with an indefinite term or for a period longer than five years, the author may exercise his right of termination referred to in Paragraph (1) only after two years have passed from the date of the conclusion of the agreement.
- (3) The author may exercise his right of termination only after he has set a deadline to the user for the fulfilment of the terms and conditions of the agreement and that deadline has expired with no result achieved.
- (4) The author may not in advance waive his right of termination referred to in Paragraph (1); such waiver may be excluded by agreement only for a five years' period following the conclusion of the agreement or the delivery of the work if this occurs at a later date than is that of the conclusion of the agreement.
- (5) Instead of termination of the agreement, the author may terminate the exclusivity of the authorization with a simultaneous proportional reduction of the fee to be paid to him for the use.

Article 52

- (1) If the agreement for use relating to works to be created in the future is concluded so that the future works are referred to only by their genre or character, either party may terminate the agreement with a six months' notice after the lapse of five years and thereafter repeatedly after the lapse of five years' terms.
- (2) The author may not in advance waive his right of termination referred to in Paragraph (1).

Article 53

- (1) The author may terminate the license agreement if, with reference to any reasonable grounds, he withdraws his authorization to publish his work to the public or forbids the further use of his work having been published.
- (2) The exercise of the right of termination is subject to the author providing a security for making up for the damage having arisen till the time of the announcement of the denunciation.
- (3) If following the termination of the license agreement as provided by Paragraph (1) the author wants again to consent to publishing his work to the public or to its continued use, the previous user shall have the right of first refusal in respect of the licence.
- (4) The rules governing the right of first refusal regarding sale of goods shall apply to the right of first refusal in respect of the licence.

Article 54

The license agreement shall cease to have effect with the lapse of the time determined in the agreement, with the emergence of the circumstances referred to in the agreement, as well as after the expiration of the term of protection.

Article 55

The provisions relating to license agreements shall apply, mutatis mutandis, to agreements aimed at assigning the author's economic rights and to licensing the use of performers' performances.

Publishing Agreement

Article 56

(1) Under a publishing agreement, the author shall be obliged to make his work available to the publisher, and the publisher shall be entitled to publish it and put it into circulation, and shall be obliged to pay remuneration to the author.

(2) The right of publishing shall - in case of any doubt - relate to the publication of the work in Hungarian. The right of publishing exercised under the agreement shall be exclusive, except in the case of works made for collections as well as dailies and periodicals.

Article 57

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

(2) In case 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 only with reference to highly reasonable grounds.

PART TWO PROVISIONS RELATING TO SPECIFIC GENRES

Chapter VI Software Program Creation

Article 58

(1) The provision of Article 1, Paragraph (6), shall apply also to the idea, principle, concept, procedure, method of operation or mathematical operation on which the interface of the software is based.

(2) The provision of Article 4, Paragraph (2), shall apply also to the adaptation of the software from the original program language to a different program language.

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

(4) The provisions of Article 30, Paragraphs (3) and (4), shall not apply to the software created by the author as a duty under an employment contract.

Article 59

(1) Unless otherwise agreed, the author's exclusive right shall not cover the reproduction, alteration, adaptation, translation and any other modification of the software, including the correction of mistakes, as well as the reproduction of the product resulting from these acts in so far as these acts of use are carried out by the person authorized to acquire the software in compliance with the intended purpose of the software.

(2) No provision in the licensing agreement shall prohibit the user from making a back-up copy of the software if it is necessary for the use.

(3) The person entitled to use a copy of the software may, without the author's authorization, observe and study the operation of the software and may make a trial use thereof in the course of its loading, displaying on a monitor, running, transmission or storage in order to get to know the idea or principle serving as a basis for any elements of the software.

Article 60

(1) No authorization of the author shall be required for the reproduction or translation of a code which is indispensable for the acquisition of the information necessary to the combined operation of an independently created software with another software supposing that

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

b) the information necessary to the combined operation has not been readily accessible to the persons referred to in Item a);

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

- (2) The information obtained through application of the provision of Paragraph (1) shall not be
- a) used for a purpose other than the combined operation with the independently created software;
 - b) communicated to another person unless this is required for the combined operation with the independently created software;
 - c) used for the development, production and putting into circulation of another software essentially similar as regards its form of expression, or for other acts resulting in the infringement of the copyright.
- (3) The provision of Article 33, Paragraph (2), shall apply, *mutatis mutandis*, to the acts falling under the provisions of Paragraphs (1) and (2).
- (4) Paragraph (2) of Article 34 and Paragraph (1) of Article 38 shall not be applicable to the software. The term defined in Article 49, Paragraph (1), shall be four months in the case of software.
- (5) In case copies of the software are procured in the course of commercial distribution, it is not obligatory to lay down in writing a contract relating to the use of the software.

Chapter VII Database

Article 60/A

- (1) For purposes of this Act database shall mean a collection of independent works, data or other material arranged in a systematic or methodical way whose materials are individually accessible by computer devices or other means.
- (2) The regulations relating to databases shall appropriately be applied also to the documentation necessary for their operation and accessing their contents.
- (3) The regulations applying to databases shall not apply to the software used in the making or operation of databases having contents accessible by computer devices.

Article 61

- (1) Copyright protection shall apply to the database rated as a collection of works (Article 7).
- (2) The economic rights relating to databases shall be assignable.
- (3) The provisions of Article 30, Paragraphs (3) and (4), shall not apply to the database created by the author as a duty under an employment contract.

Article 62

- (1) The performance of acts necessary to get access to the contents of the database rated as a collection of works and to use the contents thereof in accordance with the intended purpose by a person authorized to use the database shall not be subject to the author's authorization.
- (2) In case right has been obtained only for the use of a specific part of the database, the provision of Paragraph (1) shall apply to that specific part of the database.
- (3) The provision of Article 33, Paragraph (2), shall apply, *mutatis mutandis*, to the acts falling under the provisions of Paragraphs (1) and (2).
- (4) The stipulations of a contract on use contrary to the provisions set out in (1) and (2) shall be null and void.
- (5) No written contract on the use of a database shall be required as obligatory in case copies of the database are commercially available.

Chapter VIII Works Ordered for Publicity Purposes

Article 63

- (1) The economic rights relating to a work ordered for publicity purposes shall be assignable to the user.

(2) The mode of use, its extent, the scope of territory, the term, the specification of the carrier of the advertisement, as well as the remuneration due to the author shall be particularly essential issues when a contract on the assignment of economic rights is concluded.

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

(4) In the case of the use of pre-existing works for publicity purposes the author and the user may agree that the work shall be considered - exclusively from the aspect of the application of the provisions of Paragraphs (1) to (3) and of the use related to the domain of publicity - as a work commissioned for publicity purposes. This agreement shall become effective for the organization performing the collective administration of rights (Articles 85 to 93) only if the organization is informed of this by the author in writing.

Chapter IX Cinematographic Creations and Other Audiovisual Works

General Provisions

Article 64

(1) A cinematographic creation shall be taken to mean a work which is expressed by motion pictures arranged in a predetermined order and accompanied or not by sound, irrespective of what carrier the work has been fixed on. The feature film produced for movie projection, the television film, the publicity and documentary film as well as cartoons and educational films shall in particular be rated as cinematographic creations.

(2) The authors of the literary and musical works prepared for a motion picture, the director of the motion picture, and all other persons having made creative contributions to the production of the whole of the motion picture shall be taken to be the authors of the cinematographic creation. This provision shall not prejudice the statutory rights of the authors of other works used in producing the cinematographic creation.

(3) The natural or legal person or the unincorporated economic organization who or which on their own behalf initiates and organizes the creation of the film and provides therefor the necessary financial and other conditions shall be taken to be the producer of the film (hereinafter referred to as the producer).

Article 65

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

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

(3) Unless otherwise agreed between the authors, the director shall represent the other authors in the exercise of the rights provided in Paragraphs (1) and (2).

(4) Except for the rights provided in Paragraphs (1) and (2), the producer may take action towards the protection of the moral rights of the authors.

(5) The cinematographic creations shall not be subject to the general provisions relating to works created as duty under an employment contract (Article 30).

Synchronization Agreement

Article 66

(1) Unless otherwise stipulated, pursuant to the contract concluded on the production of a cinematographic creation (hereinafter referred to as synchronization agreement) the author - except the composer of a musical work with or without text - shall assign to the producer the right of the use of the cinematographic creation and of the authorization of its use.

(2) The assignment of the right of use shall not extend to the economic rights provided in Articles 20, 23 (6) and 28.

(3) Regarding each manner of use, remuneration shall be due to the author separately. The support made available to the producer for the creation of the film shall be considered as income related to the use. It is the producer's obligation to pay the remuneration.

(4) The producer may exercise the rights due to him under the contract jointly with another natural or legal person, whether Hungarian or foreign.

(5) The producer is obliged, at least once a year, to report in writing to the author on the incomes related to the use of the cinematographic creation by modes of use.

(6) Should the producer fail to start the work of adaptation to the screen within four years from the acceptance of the work, or if such work is started but is not completed within a reasonable deadline, the author may unilaterally terminate the agreement and may raise claim to the payment of a proportional remuneration. Any advance payment disbursed to the author shall be considered as due to him, and the author may freely dispose of his work.

(7) If the contract is concluded on a work to be created in the future for purposes of a cinematographic creation, the producer is obliged to notify the author in writing within six months from the delivery of the work whether he accepts it or requests it to be corrected. In case the work is returned to the author for corrections an appropriate deadline is to be set for performing those corrections. The producer is obliged to make it known whether he accepts the corrected work within three months from the delivery to him of the corrected work. Should the producer fail to meet his obligation to make a statement on the acceptance of the work or of the corrected work, the work shall be considered as accepted.

(8) Within ten years from the completion of the production of the film the author may not enter into another contract on the production of a new film unless this is consented to by the producer. This limitation shall also extend to characteristic figures in a cartoon or puppet film and - in case it is agreed between the parties - to another work of the author with the same topic as is that of the work created and utilized for the production of the film.

Chapter X

Creations of Fine Art, Artistic Photography, Architecture, Applied Art and Industrial Design and Designs of Engineering Structures

Moral Rights

Article 67

(1) The alteration without the author's consent of the design of an architectural creation or engineering structure which influences the appearance or the intended ordinary use shall be taken to be an unauthorized alteration of the work.

(2) The designer shall have the right to determine where and how his name and the date of designing should be indicated on the building or engineering structure. However, the exercise of this right shall be subject to the requirement that no unjustified and disproportionate infringement of the rights and lawful interests of the owner, the user or the operator shall thereby be caused.

(3) The author's name has to be indicated on a view if this is intended to present a specific fine art, architectural, applied art or industrial design creation or engineering structure. The author's name has likewise to be indicated if such creations are used for presentation in scientific educational lectures as well as for school education purposes (Article 33, Paragraph (4)).

(4) In the case of further uses in an unaltered form of the design of an architectural or engineering creation only the name of the author of the original design has to be indicated.

(5) The provision of Article 34, Paragraph (1), shall not be applicable to the use of fine art, artistic photographic and applied art creations.

(6) The user of the work shall tolerate the presentation of the work and the taking of shots thereof by persons authorized thereto if this is without prejudice to his equitable interests.

The Cases of Free Use

Article 68

(1) Of a fine art, architectural and applied art creation erected with a permanent character outdoors in a public place a view may be made and used without the authorization of the author and paying remuneration to him.

(2) For purposes of scientific educational lectures as well as of school education (Article 33, Paragraph (4)), the picture of a fine art, architectural, applied art and industrial design creation, furthermore artistic photographs may be used without the authorization of the author and paying remuneration to him.

The Right of Exhibition **Article 69**

(1) The owner of a fine art, artistic photographic, applied art or industrial design creation is obliged to make the work temporarily available to the author in order that he can exercise his author's right, if such action is without prejudice to the owner's equitable interest.

(2) The exhibition of fine art, artistic photographic, architectural and applied art creations shall be subject to the author's authorization. The exhibition of a work forming part of a public collection shall not be subject to the author's consent and no remuneration shall therefor be due to the author.

(3) The author's name shall be indicated in the case of the exhibition of the work.

Droit de Suite **Article 70**

(1) Royalty shall be paid when the ownership of an original work of art is transferred by any dealer in works of art. This provision shall only apply after the first transfer of the ownership of the work of art by the author. The right to the royalty cannot be waived.

(2) For the purposes of this §, „original work of art” means works of fine art (e.g. pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures), works of applied arts (e.g. tapestries, ceramics, glassware) and works of photographic art, provided they are made by the author himself or are copies considered to be original works of art. Copies of works of art shall be considered to be original works if they have been made in limited number by the author himself or under his authority. Copies of works of art which are numbered, signed or otherwise duly authorized by the author, shall be considered to be such copies.

(3) For the purposes of this article a dealer in works of art shall mean any natural or legal person or business organization without legal personality marketing works of art.

(4) The royalty shall be set on the basis of the exchange value, which is or can be expressed in money, of the work of art (hereinafter referred to as "sale price") net of tax and other public dues (e.g. cultural contribution) at the following rates:

- a) 5 per cent for the portion of the sale price up to the amount in HUF which is equivalent to EUR 50 000;
- b) 3 per cent for the portion of the sale price from EUR 50 000.01 to EUR 200000, expressed in HUF;
- c) 1 per cent for the portion of the sale price from EUR 200 000.01 to EUR 350000, expressed in HUF;
- d) 0.5 per cent for the portion of the sale price from EUR 350 000.01 to EUR 500000, expressed in HUF;
- e) 0.25 per cent for the portion of the sale price exceeding the amount in HUF which is equivalent to EUR 500 000.

(5) The total amount of the royalty cannot exceed the amount in HUF which is equivalent to EUR 12500.

(6) The transfer referred to in paragraph (1) shall not be subject to royalty payment if the sale price net of tax and other public dues (e.g. cultural contribution) does not exceed HUF 5000.

(7) The amount in HUF shall be calculated on the basis of the official exchange rate of the National Bank of Hungary, valid on the first day of the calendar quarter of the conclusion of the contract.

(8) Where a museum obtains the ownership of an original work of art from a person other than a dealer in works of art, there shall be no obligation to pay the royalty referred to in paragraph (1), provided that the activities of the museum do not generate or increase income in any way or form.

(9) The royalty shall be paid by the dealer in works of art to the collecting society performing the collective management of copyright in fine art and applied arts. If more than one dealer in works of art are involved in the transaction of the transfer of the ownership, they shall have joint and several liability for the royalty payment. In such a case, unless the dealers in works of art agree otherwise, the seller is obliged to pay the royalty. If none of the dealers in works of art involved in the transaction participates in the transfer as a seller the royalty shall be paid by the buyer, unless otherwise agreed.

(10) The dealer in works of art shall be required to pay the royalty for the contracts concluded, quarterly, by the twentieth day of the month following the calendar quarter concerned to the collecting society performing the collective management of copyright of works in fine art and applied arts. When paying the royalty, the following information shall be communicated: the name of the author, unless it proves to be impossible, as well as the title, the sale price of the work of art and the amount of the royalty. The collecting society shall pay the collected royalty to the author of the work of art or his successor in title.

(11) For a period of three years after the conclusion of the contract relating to the transfer determined in paragraph (1), the collecting society may require from the dealer in works of art to furnish all the information that may be necessary in order to collect the royalty.

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

a) author or his successor in title who is national of any of the Member States of the European Economic Area, as well as

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

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

(13) As regards paragraph (12) point b), the statement of the minister responsible for the justice shall be followed. As regards the 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 of Justice shall issue his statement taking account the list published by the European Commission.

Other Provisions

Article 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 by statute or contract by derogation of the provisions of this Act;

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

c) the contract shall include a provision on whether the user may use the creation with or without limitation of time.

Article 72

As regards portraits made to order, the exercise of the author's right shall be subject to the consent of the portrayed person, too.

PART THREE RELATED RIGHTS

Chapter XI

The Protection of the Neighbouring Rights

The Protection of Performers

Article 73

(1) Unless otherwise provided by statute, the performer's consent shall be sought for:

- a) the fixation of his unfixed performance;
- b) the broadcasting or the communication in another manner to the public of his unfixed performance, unless the performance broadcast or communicated in another manner to the public is a broadcast performance itself;
- c) the reproduction of his fixed performance;
- d) the distribution of his fixed performance;
- e) making his performance available to the public by cable or any other device or in any other manner so that the members of the public can choose the place and time of the availability individually.

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

(3) In case the performer has consented to his performance being fixed in a cinematographic creation, by this consent - unless otherwise stipulated - he transfers upon the producer of the film the economic rights referred to in Paragraph (1) (Article 63, Paragraph (3)). This provision shall not prejudice the performers' claim to remuneration pursuant to Articles 20 and 28. Paragraph (6) of Article 23 shall also apply to performers, mutatis mutandis.

Article 74

(1) Unless otherwise provided by this Act, remuneration shall be due to the performer for the uses mentioned in Article 73, Paragraph (1).

(2) The provisions of Article 27(3) shall apply mutatis mutandis, also in the case of performers and the organizations performing the collective administration of their rights (Articles 85 to 93), regarding the remuneration for the fixation of a performance made for the purposes of broadcasting or communication to the public [Article 26(6)] and regarding the exercise of the right provided for in Article 73(1)(e).

Article 75

(1) In the case of the uses referred to in Article 73, Paragraph (1), the performer shall have the moral right to have his name indicated, depending on the nature of the use and in a manner consistent with it. In the case of ensembles of performers, this right shall apply to the indication of the names of the ensemble, the leader of the ensemble, and the chief performers.

(2) The distortion, mutilation or any other alteration of a performance which prejudices the honour or reputation of the performer shall be taken to infringe his moral right.

The Protection of Phonogram Producers

Article 76

(1) Unless otherwise provided by statute, the consent of the producer of a sound recording shall be required for the sound recording to be:

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

(2) Unless otherwise provided by statute, the producer of the sound recording shall have a right to remuneration for the uses referred to in Paragraph (1).

Article 77

(1) In the case of the broadcasting, or communication to the public in any other manner, of a sound recording released for commercial purposes or of its copy, the user must pay an additional remuneration, in addition to the royalty to be paid for the use of the works under copyright protection, which shall be due to the producer of the sound recording and the performer on an equal basis, unless otherwise agreed between those entitled.

(2) For purposes of the provision of Paragraph (1) a sound recording shall be considered as released for commercial purposes if it is made available to the public in the manner provided in Item e) of Paragraph (1) of Article 73 and Item c) of Paragraph (1) of Article 76. For purposes of the provision of paragraph (1) and of Article 73(1)(b), the use referred to in Article 28(2) shall also be regarded as communication to the public. Furthermore, for purposes of paragraph (1), the making available of a phonogram in the presence of, or in a place open to, the public [Article 24(2)(b)], shall also be regarded as communication to the public.

(3) The rightholders may enforce their claim to remuneration only through the organizations performing the collective administration of their rights (Articles 85 to 93) and they may renounce the remuneration only with effect following the date of the distribution and to the extent of the amount due to them.

Article 78

(1) The public lending and rental of the released copies of a sound recording shall be subject to the authorization - in addition to that of the author of the work embodied in the sound recording - of the phonogram producer and - in the case of the sound recording of a performance - to that of the performer(s).

(2) The use determined in Paragraph (1) shall be subject to the payment of remuneration, which shall be distributed on an equal basis between those entitled, unless otherwise agreed between them. The authors and the performers may enforce their claim to remuneration via the organizations performing the collective administration of their rights (Articles 85 to 93) and may renounce such remuneration only following the date of its distribution and to the extent of the amount due to them.

Article 79

The producer of the sound recording shall have the right to have his name indicated on the copies of the sound recording.

The Protection of Radio and Television Organizations

Article 80

(1) Unless otherwise provided by statute, it shall be subject to the radio or television organization's authorization that its programme can be

- a) broadcast or communicated to the public by other radio or television organizations or by entities concerned with communication by cable to the public;

- b) fixed;

- c) reproduced after fixation, if the fixation was made without its authorization, or the fixation was made pursuant to Article 83, Paragraph (2), and the reproduction is made for a different purpose than to which Article 83, Paragraph (2) relates;

- d) made available to the public by cable or any other means or in any other manner so that the members of the public can choose the place and time of the availability individually.

(2) Unless otherwise provided by statute, the television organization's authorization shall be required for its programme to be communicated to the public in a room where the programme is accessible to the public for the 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 by statute.

(4) In the case of communication by cable of an own programme to the public, Paragraphs (1) to (3) shall be enforced as applicable.

Article 81

In the case of the uses referred to in Article 80, the radio or television organization and the organization communicating by cable its own programme to the public shall have the right to have its name indicated.

The Protection of Film Producers

Article 82

(1) The consent of the film producer [Article 64, Paragraph (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 manner so that the members of the public can choose the place and time of the availability individually.

(2) Unless otherwise provided by statute, the uses referred to in Paragraph (1) shall be subject to the payment of remuneration.

(3) The protection provided pursuant to Article 2 of this Act shall apply, *mutatis mutandis*, to the producer of the film.

The Relationship Between Authors' Rights and Neighbouring Rights

Article 83

(1) The protection of the rights dealt with by this Chapter may not prejudice the protection of authors' rights in literary, scientific and art creations.

(2) No authorization of the rightholders under neighbouring rights shall be required in cases where the author's authorization shall not be required for the use of statutorily copyrighted creations. When, under this Act, a remuneration is due to the rightholders under neighbouring rights for the use, the provisions in subparagraph (4) and in the first sentence of subparagraph (5) of Article 16 on the proportional quantity of the remuneration shall also apply to the rightholders under neighbouring rights.

The Term of Protection

Article 84

(1) The rights covered by the provisions of this Chapter shall be under protection for the following periods of time:

a) rights in sound recordings and in the performances fixed therein, for fifty years from the first day of the year following the one in which the sound recording was first made public, and for fifty years from the first day of the year following the one which includes the date of completion of the sound recording if this was not made public during the term named;

b) rights in unfixd performances, for fifty years from the first day of the year following the one in which the performance was held;

c) rights in broadcast programmes or in own programmes communicated by cable to the public, for fifty years from the first day of the year following the one in which the programmes were first broadcast or the communication occurred;

d) rights in films, for fifty years from the first day of the year following the one in which the film was released for distribution or for fifty years from the first day of the year following the one in which the production of the film was completed if the film was not released during the term named.

(2) In case a sound recording was not made public through commercial distribution within fifty years from the first day of the year following the one in which the sound recording was made, however, it was communicated to the public during the term referred to, the term of protection provided for in (1) (a) shall be counted beginning with the year following the one in which the first communication to the public occurred.

(3) In case a film is communicated to the public prior to its release for distribution, the term of protection provided for in (1) (a) shall be counted by replacing the year of the first release for distribution by the year of the first communication to the public.

Chapter XI/A

THE PROTECTION OF THE MAKERS OF DATABASES

Article 84/A

(1) Unless otherwise ruled by legislation, the authorization of the maker of a database (Article 60/A) shall be required, affecting the whole or a substantial part of the the contents of the database, for

a) its reproduction by making copies of it [Article 18, Paragraph (1), Point (b)] (hereinafter referred to as extraction);

b) making it available to the public through distribution of copies of the database or through communication to the public - as provided for in Paragraph (8) of Article 26 - (hereinafter referred to as re-utilization).

(2) The distribution referred to in (1) (b) shall be understood to cover the following cases of distribution: release for commercial circulation through sale or by the transfer of the right of ownership in a different manner, and import into the country for purposes of commercial circulation and rental. The provision in Paragraph (5) of Article 23 shall apply, mutatis mutandis, to the rights of the maker of the database.

(3) The repeated and systematic extraction and/or re-utilization of even insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of the database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted in want of authorization therefor by the maker of the database.

(4) The uses provided for in Paragraphs (1) to (3) shall be subject to remuneration, unless otherwise ruled by legislation.

(5) The rights provided for in Paragraphs (1) to (3) shall apply to the maker of the database if obtaining, verifying or presenting the contents of the database have required the investment of considerable resources.

(6) The rights provided for in Paragraphs (1) to (3) shall apply to - as the maker of the database - the natural or legal person or business company without legal entity at whose initiative, in whose name and at whose risk the creation of the database occurred and who/which provided the necessary resources therefor.

(7) The rights provided for in Paragraphs (1) to (3) shall apply to the maker of the database irrespective of whether the database is under copyright protection or any other legal protection. These rights shall apply to the maker of the database even if parts of, or materials in, the database are not, or cannot be, under 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 as well as to other rights subsisting in specific materials of the contents of the database.

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

a) he is a national of a Member State of the European Economic Area or is regularly resident in the territory of the European Economic Area;

b) it is a legal person or a business company without legal entity registered in accordance with the law of a Member State of the European Economic Area, and its seat, the place of its headquarters or the main area of its business activity as named in its articles of association is in the territory of the European Economic Area.

(10) In the case referred to in paragraph (9)(b), with the protection provided for by this Act shall apply to the legal person or business company without legal entity which has just its seat in the territory of the European Economic Area only if its activity is actually and continuously related to the economy of a Member State.

Article 84/B

(1) No authorization of the maker of the database shall be required for the extraction or re-utilization - whether repeated or regular - of an insubstantial part of the contents of the database by a person authorized for the use of the database made public.

(2) In case the right acquired for the use of just a specific part of the database, the provision in (1) shall apply to only the part involved of the database.

(3) Not even the person legally authorized for the use of the database made public may perform acts which conflict with normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.

(4) The provisions in (1) and (2) shall be without prejudice to the rights of the authors of the individual works included in the database as well as to the neighbouring rights applying to other materials of the contents of the database.

(5) Any stipulations of the contract on use contrary to the provisions set out in (1) to (4) shall be null and void.

Article 84/C

(1) An extract of even a substantial part of the contents of the database may be made by anyone for private purpose if it is not designed for earning or increasing income even in an indirect way. This provision shall not apply to databases operated by computer devices.

(2) A copy of even a substantial part of the contents of the database may be made - in a manner and to the extent consistent with the use involved - for purposes of school education and scientific research subject to the requirements of reference to the source and avoidance of earning or increasing income even in an indirect way.

(3) An extraction or re-utilization of even a substantial part of the contents of the database may be made - in a manner and to the extent consistent with the use involved - for purposes of evidence in court of justice, public administration or other authority proceedings.

(4) The provisions of Article 33 shall apply, mutatis mutandis, to the cases of free use provided for in (1) to (3).

Article 84/D

(1) The term of protection applying to the rights provided for in this Chapter shall be as follows. It shall run for fifteen years from the first day of the year following the year in which the database was first made public, or for fifteen years from the first day of the year in which the database was completed in case it was not made public during the term referred to.

(2) The term of protection applying to the database as calculated according to (1) shall recommence in case the contents of the database have undergone a substantial alteration as a result of which the altered database, as such, shall be rated as one completed with substantial resources. A substantial alteration of the database may be the result of successive additions, deletions and modifications.

Article 84/E

(1) Paragraph (1) of Article 83 shall apply, mutatis mutandis, to the rights provided for in this Chapter.

(2) In case remuneration shall be due to the maker of the database according to the provisions of this Act, the provision in the first sentence of Paragraph (4) of Article 16 requiring that the remuneration shall be in proportion to the use shall apply to the maker of the database too.

(3) Wherever neighbouring right or neighbouring rights are referred to in other legal rules, this or these shall be taken to apply to the maker of the database, too, unless otherwise provided for by legal rules and except for the legal rule promulgating the international agreement.

PART FOUR
THE COLLECTIVE ADMINISTRATION OF RIGHTS
AND THE CONSEQUENCES OF THE INFRINGEMENT OF RIGHTS

Chapter XII

The Collective Administration of Authors' Rights and Neighbouring Rights

The Collective Administration of Rights

Article 85

(1) The collective administration of rights shall mean the exercise of authors' rights and neighbouring rights as well as database creators' rights respectively related to authorial works, productions of performers, sound recordings, and programmes broadcast or transmitted by cable as well as the creation of films and databases which are individually non-exercisable due to the character or circumstances of utilization and therefore exercised through organizations of rightholders established to this end whether it is legally prescribed or based on the resolution of rightholders.

(2) Wherever this Act or other legal rules refer to the collective administration of neighbouring rights, the collective administration of rights applying to makers of databases shall be implied.

Registration of the Organizations Concerned with the Collective Administration of Rights

Article 86

(1) The minister appointed by the Government (hereinafter referred to as the Minister) shall keep records of the organizations performing collective administration of rights under statutes on authors' rights and neighbouring rights. Only societies (pursuant to Articles 61 to 64 of the Civil Code) may be registered as organizations performing collective administration of rights.

(2) Only one society may be registered nation-wide for the collective administration of authors' rights and neighbouring rights related to each of the following types of work and product:

- a) literary works and musical compositions,
- b) other works of the fine art,
- c) film productions,
- d) performances,
- e) sound recordings.

(3) To enforce rightholders' right of autonomy and increase efficiency in the administration of rights, the categorization contained in Paragraph 2 may be disregarded, and societies established for the collective administration of rights but not contained in Paragraph 2 may also be registered, however, only one society may be registered for the administration of the same right of the same group of rightholders.

Article 87

(1) The type of right administration provided by the society shall be indicated in the register. The disbursement of royalties to other organizations and agreements with other organizations shall not be effective for the registered society and the rightholders with respect to the actual right administration activity and shall not exempt from the legal consequences of the infringement of the copyright.

(2) The entry with respect to the right administration activity performed by the registered society may be amended by the Minister under agreement between the registered societies in case the conditions of registration continue prevailing with all affected societies following the amendment of the right administration activities in accordance with the said agreement.

Article 88

- (1) The records on the societies for the collective administration of rights is open to the registration of a society
- a) which may be joined by all those concerned who so wish and authorize the society to perform the collective administration of their rights and who prove eligible for admission according to the criteria laid down in the statutes,
 - b) which includes as members or is intended to be joined as members by a substantial part of the resident rightholders who are affected by the collective administration of rights the type of which is specified by the society,
 - c) which has a staff in reliance on which it has the appropriate expertise and experience necessary for the collective administration of rights and the maintenance of international contacts,
 - d) which is equipped for data processing related to the collective administration of rights,
 - e) which has entered into reciprocal representation agreements with organizations concerned with the collective administration of the rights of foreign rightholders and are of importance from the aspect of domestic and international utilizations, or which possesses a mutual letter of intent on the conclusion of such agreements,
 - f) the statutes of which include that the society
1. shall endeavour to collectively administer the rights and protect the interests of the affected rightholders, in particular exercising and enforcing economic rights related to the collective administration of rights in its own name before the court and other authorities,
 2. shall keep databases of the Hungarian and foreign works, and subject-matters protected by neighbouring rights subject to collective administration, as well as the respective rightholders,
 3. shall perform the collective administration of rights not as a business activity and shall use revenues from complementary activities, if any, only for the reduction of its expenditures,
 4. shall cover the expenses of its operation from the administration costs deducted by this title from the collected royalties and - if so provided by the statutes - from the membership fees it collects,
 5. shall distribute its revenues from collective administration reduced by the administration costs among the rightholders according to its rules of distribution, irrespective of whether they are or are not members of the organization.
- (2) When establishing whether a substantial part of the rightholders are members of the society or wish to join it, both the rightholders' number and their share in royalties are to be taken into account.
- (3) The society shall be considered as equipped for processing the data related to the collective administration of rights if it is able to conduct the registration of rightholders, collectively administered works, neighbouring rights related performances, and different types of utilization in a manner which allows the distribution and disbursement of royalties to the rightholders.
- (4) If several societies request to be registered for the administration of the same rights of the same group of rightholders and each of them meets the criteria for registration, the society best complying with the criteria in their totality shall be registered.

Article 89

- (1) The procedure of the registration of societies for the collective administration of authors' rights and neighbouring rights shall commence upon the receipt of relevant applications.
- (2) The documents certifying the fulfilment of registration criteria as detailed in Article 88, Paragraph (1), shall accompany the application. The documents may contain the personal particulars of only those rightholders who are members or wish to be members of the society and consent to making their personal particulars public.
- (3) The Minister shall publish the registration in the official gazette Magyar Közlöny. The Minister shall insert an announcement containing the names of the registered societies and their collective right administration activities in Magyar Közlöny.

(4) The regulations relating to the registration of the societies collectively administering authors' rights and neighbouring rights shall be determined in detail by the Minister in a decree.

General Provisions of the Collective Administration of Rights

Article 90

(1) The society collectively administering authors' rights and neighbouring rights shall regularly determine tariffs to equally apply to all users without unjustified distinction and other terms and conditions of use, to meet the requirement of equal treatment, for each mode of use within the scope of the administration of rights the society is entitled to exercise according to the registry.

(2) The determination of tariffs and other conditions are subject to the Minister's approval. Prior to its approval, the Minister shall consult with the major users and their representative organizations, and following this also with the President of the Hungarian Patent Office and – concerning the use mentioned in the second sentence of Article 26(8) – with the minister responsible for the electronic telecommunication.. In respect of the remuneration referred to in Article 21, the persons obliged to pay the remuneration and their representative organizations shall be regarded as users and their representative organizations. The approval shall only be the condition of the application of tariffs and other conditions and of their publishing in the Magyar Közlöny [the official gazette], and shall not exclude or affect the enforcement of other legal provisions concerning tariffs and other conditions.

(3) Following the Minister's approval, the society administering rights shall publish the tariffs and other conditions of use in Magyar Közlöny in its own name. Until this, the tariffs determined, approved – and previously published in the Magyar Közlöny – for the previous period shall be applied even if the period for which they have been determined has in the meantime expired.

(4) In the course of the application of tariffs the requirement of equal treatment shall be observed.

Article 91

(1) Where a society registered according to Articles 86 to 89 for the collective administration of rights authorizes the use for, or enforces a claim to remuneration against, a user, the user shall be entitled to the use the works or performances of neighbouring rights of the same genre covered by collective administration under this Act or according to the decision of the interested rightholders, provided that the user pays the remuneration for the use of the works and performances of neighbouring rights involved under the same conditions.

(2) The provisions of paragraph (1) shall not apply if a rightholder covered by the society's collective administration of rights objects beforehand in a written declaration to the authorization of the use of his works or performances of neighbouring rights within the framework of collective administration of rights. The organization performing collective administration of rights shall proceed according to such a declaration, if it is made more than three months before the end of the calendar year, with an effect not earlier than the first day of the following year. The rightholder may, however, not oppose such authorization of the use of his works or performances of neighbouring rights if collective administration is prescribed by this Act [Articles 19(1), 20(7), 21(7), 23(6), 27(1), 28(3), 70(5), 73(3), 77(3) and 78(2)].

Article 92

(1) The society exercising collective administration of rights pursuant to registration under Articles 86 to 89 shall have the legal standing of a rightholder under the authors' rights or the neighbouring rights when enforcing claims before courts falling within the scope of collective administration of rights. It is not required to have any other rightholder in the procedure as a party, for the society exercising collective administration of rights, in order to enforce its claims before courts.

(2) The royalty claims enforced through the collective administration of rights and the royalties paid or collected shall be at the disposal of the society performing the collective administration of rights pursuant to registration under Articles 86 to 89 until their distribution among the rightholders.

(3) In case of collective administration of rights – with the exception of the authorization of mechanical reproduction (Article 19) – it shall be presumed, until the contrary is proved, that the works or performances of neighbouring rights to be used are protected.

(4) The organization performing the collective administration of rights shall, within the scope of the administration of rights it is in charge of, issue a written statement on whether protection is provided for the work or the performance under neighbouring rights specifically referred to by the user.

(5) The organization performing the collective administration of rights may require in its tariffs as a criterion of eligibility for use that the user should pay the remuneration under the tariffs and should provide particulars about the used works or performances of neighbouring rights. This provision shall be applicable only to live performances (Item (a) of Paragraph (2) of Article 24) in the case of public performances.

The Supervision of the Collective Administration of Rights **Article 93**

(1) Under his obligation to supervise the collective administration of rights pursuant to Article 17 of Act II of 1989 on the Right of Association the Minister shall control whether the conditions of registration applying to the societies for the collective administration of rights are continuously observed and whether the provisions of the statutes, distribution rules and other internal regulations do not contradict the provisions of this Act and other copyright regulations in force.

(2) The society exercising collective administration of rights pursuant to registration under Articles 86 to 89 shall make the following documents available to the Minister to enable him to perform supervision:

- a) its statutes,
- b) its organizational and operational rules,
- c) its distribution rules,
- d) the list of its members who have consented to publishing their names for such purposes,
- e) the list of its members participating in its administrative and representative organizations,
- f) its annual report,
- g) its agreements on reciprocal representation concluded with foreign societies performing collective administration of rights.

(3) Should the Minister find while exercising supervision that the conditions of registration are not met or the regulations referred to in Paragraph 1 are infringed, he shall

- a) summon in writing the administrative and representative organization of the society performing collective administration of rights to fully observe the conditions of registration and restore operation in accordance with the copyright legislation and shall set an appropriate deadline therefor;
- b) contact the Prosecutor's Office for the enforcement of the measures that may be taken within the scope of the supervision of the society aimed at the observance of legality;
- c) cancel the registration of the society performing collective administration of rights from the registry and shall publish this action in the official gazette Magyar Közlöny, should the deadline referred to in (a) have passed with no result achieved or the measure aimed at restoring the observance of legality have remained or appears to remain ineffective.

(4) The Minister shall send – at his request – to the President of the Hungarian Patent Office all the documents mentioned in paragraph (2) (a) to (c) and (f) and (g), as a matter of information for the purposes of the fulfilment of the governmental functions concerning the protection of intellectual property.

Chapter XIII **The Consequences of the Infringement of Authors' Rights** **Civil Law Consequences**

Article 94

(1) In case of infringement the author may - in accordance with the circumstances of the case – have recourse to the civil law remedies as follows, demanding:

- a) a court ruling establishing that there has been an infringement;

b) to cease and desist the infringer from the infringement and from acts directly threatening with infringement and to enjoin the infringer from any further infringement;

c) that the infringer make amends for his action - by a statement or in some other appropriate manner - and, if necessary, that such amends should be made public by and at the expense of the infringer;

d) that the infringer provide information on parties taking part in the manufacture of and trade in goods or performance of services affected by the infringement, as well as on business relationships established for the infringing acts;

e) the recovery of the enrichment achieved via the infringement;

f) the injurious state of affairs be terminated, the antecedent state of affairs be restored, the seizure of materials and implements used exclusively or primarily for the infringement, as well as the seizure of goods resulted from the infringement or the delivery up thereof to a particular person, or the recall or definitive removal thereof from commercial circulation, or the destruction thereof.

(2) In the event of copyright infringement the author may demand compensation for damages in accordance with the provisions on tort liability.

(3) The author may seek the remedy referred to in Paragraph b) of Subsection (1) against a person whose services are being used in connection with the copyright infringement.

(4) The author may seek the remedy referred to in Paragraph d) of Subsection (1) against a person who:

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

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

c) was found to be providing on a commercial scale services used in infringing activities;

d) was indicated by the person referred to in Paragraphs a)-c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.

(5) In the course of application of Paragraphs a)-c) of Subsection (4), acts shall be deemed to carry out on a commercial scale if the nature and quantity of the goods or services involved clearly indicate that they are carried out for direct or indirect commercial or other economic advantage. Pending proof to the contrary, the definition of acts carried out on a commercial scale would normally exclude acts carried out by end consumers acting in good faith.

(6) The infringer under Paragraph d) of Subsection (1) and to Subsection (4) or the person referred to in Subsection (4) may be obliged to furnish the following information:

a) the names and addresses of persons involved in the manufacture, production, distribution of goods, supply and performance of services, other holders of the goods affected by the infringement involved in the copyright infringement, as well as of wholesalers and retailers involve or intended to be involved;

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

(7) Upon request by the author, the court may order that the materials, implements, goods seized, or recalled and removed from commercial circulation be deprived of the infringing nature, and that they be destroyed if such removal is not possible. Under justified circumstances the court may also order, instead of destruction, the sale of the seized materials and implements in accordance with the regulations of judicial enforcement, and in this case shall determine the disposition of the proceeds from such sale.

(8) Materials and implements used in the copyright infringement and infringing goods may also be seized if such articles are not in the possession of the infringer, but the owner of the articles was aware of the infringement or could have been aware of such with proper circumspection.

(9) The court shall order that the measures referred to in Par. f) of Subsection (1) and in Subsection (7) be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so. The courts ruling on the recall and definitive removal from the channels of commerce, or destruction of the infringing goods shall take into account the interests of third parties and be proportional according to the gravity of the infringement.

(10) The court may order, at the request of the author and at the expense of the infringer, appropriate measures for the publication of information on the decision. The mode of publication shall be decided by the court. Dissemination shall include publication in a national newspaper or posting on the internet.

Article 94/A

(1) In court actions instituted due to infringement of a copyright, temporary measures shall be considered required - unless there is any evidence presented to substantiate otherwise - for the special protection of the claimants' rights, if the claimant can prove that the work is under copyright protection and that he or she is the author, the author's heir at law or such a licensee of the work, or a collective copyright management organization, that is entitled to file an action due to the infringement in his own name.

(2) Subsection (1) shall not apply if the copyright infringement has commenced more than six months before, or if a period of sixty days has passed since the claimant gained knowledge of the infringement and of the identity of the infringer.

(3) In a copyright infringement case a request to order provisional measures may be lodged before filing the statement of claim, and it shall be adjudged by the court in a non litigious proceedings. Non litigious proceedings relating to provisional measures shall be governed by the provisions of this Act and the general rules of the CPC, subject to the exceptions stemming from the special characteristics of non litigious proceedings. If the claimant has initiated the lawsuit in accordance with Subsection (7) in connection with the copyright infringement, the court costs of the lawsuit shall be due and payable in addition to the stamp duties paid for the non litigious proceedings.

(4) The author – beyond the civil law claims available in connection with the infringement - may request the court to order, under the conditions applicable to provisional measures:

a) protective measures in accordance with the provisions laid down in the Act on Judicial Enforcement, if able to substantiate that any subsequent attempt for the recovery of enrichments made via the infringement or the payment of damages is in jeopardy, and the infringement is committed on a commercial scale [Subsection (5) of Section 94];

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 Paragraph a);

c) the provision of security if in exchange - in lieu of demanding the cease and desist from infringement - the author gives consent to the continuation of the alleged acts of infringement.

(5) The court may also order the provision of security as referred to in Paragraph c) of Subsection (4) in the absence of any request on behalf of the author, provided that the author has filed a claim to cease and desist the infringement and it is rejected by the court.

(6) The court shall pass a decision on the provisional measure in expedited proceedings, not to exceed fifteen days following the lodging of the petition for such measures. The court of second instance shall adjudge appeals against court decisions on provisional measures in expedited proceedings, not to exceed fifteen days following the date of lodging the appeal.

(7) The court shall, upon request of the other party, revoke its order on the provisional measure - including measures under Subsections (4) and (5) – passed prior to the filing of the statement of claim, if the author does not initiate the lawsuit for copyright infringement concerning the claim affected by the provisional measure within fifteen days of the notification of the decision. The court shall pass a decision to revoke the provisional measures in expedited proceedings, not to exceed fifteen days following the date of filing the request.

(8) Where one of the parties in a copyright infringement lawsuit has already substantiated its statements to a reasonable extent, upon the request of the party providing evidence, the court may order the other party:

a) to present and allow for review of the documents and other material proof in his possession;

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

(9) Preliminary collection of evidence may be presented before the lawsuit is instituted if the author has already substantiated the fact of infringement or the threat thereof to a reasonable extent. If the lawsuit has not yet been commenced, preliminary collection of evidence may be requested at the county court of jurisdiction by reference to the authors' residence or at the court where the taking of evidence can be carried out most expeditiously. Orders on preliminary collection of evidence may be appealed.

(10) The court shall, upon request of the other party, revoke its decision to order preliminary collection of evidence if the author does not initiate the lawsuit for copyright infringement within fifteen days from the date of the notification of the decision to order preliminary evidence. The court shall pass a decision on the request to revoke the order on preliminary collection of evidence in expedited proceedings, not to exceed fifteen days following the date of filing of the request.

(11) Where any delay is likely to cause irreparable harm, it shall be treated as a case of extreme urgency, and provisional measures - including measures under Subsections (4) and (5) - may be ordered without the other party having been heard. Where any delay is likely to cause irreparable harm or where there is a demonstrable risk of evidence being destroyed, it shall be treated as a case of urgency, and preliminary collection of evidence may be ordered without the other party having been heard. Where any decision is passed without the other party having been heard, the other party shall be given notice when the decision is executed. Upon being notified of the decision the other party affected may request to be heard and may request that the decision ordering the provisional measures or the preliminary collection of evidence be reversed or revoked.

(12) The court may require the provision of security in connection with the ordering of preliminary collection of evidence and - with the exception of measures under Paragraph c) of Subsection (4) and Subsection (5) - of provisional measures.

(13) If, in the cases specified in Paragraph c) of Subsection (4), Subsection (5) and Subsection (12), the party who is entitled to seek satisfaction from the security fails to enforce his claim within three months from the operative date of the order to reverse or revoke the order passed in connection with preliminary collection of evidence or provisional measures or the judgement (discontinuation order), the depositor of the security may request the court to release the security.

Article 94/B.

(1) Pending proof to the contrary, for the author to be regarded as such it shall be sufficient for his/her name to appear on the work in the usual manner.

(2) Where Subsection (1) does not apply, pending proof to the contrary, the person under whose name the work is registered by the Hungarian Patent Office in the voluntary register of works shall be regarded the author, if able to substantiate it with an official deed..

(3) Where Subsection (2) does not apply, pending proof to the country, for a person to be regarded as the author it shall be substantiated with a private deed with full evidentiary force issued by a collective rights administration society relying upon the database containing works, subject-matters protected by neighbouring rights and rightholders subject to collective rights management [Section 88 (1) f) 2]. These private deeds shall be issued by collective rights administration societies as a voluntary service provided to their own members, upon request, consistent with their bylaws.

(4) Where Subsection (3) does not apply, pending proof to the contrary, the person who first published the work shall be regarded the author.

Protection Against the Circumvention of Technological Measures

Article 95

(1) The legal consequences of the infringement of copyright shall apply to the circumvention of any effective technological measures designed to provide protection for copyright, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that the aim of that act is pursuing that objective.

(2) The legal consequences of the infringement of copyright shall apply to the manufacture, import, 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 promoted, advertised or marketed for the purpose of circumvention of, or
- b) have only a limited commercially significant purpose or use other than to circumvent, or
- c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,
any effective technological measures.

(3) For the purpose of paragraphs (1) and (2), the expression “technological measures” means any device, component, method or technology that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, which are not authorized by the copyright holder. Technological measures shall be deemed effective where the use of a protected work is controlled by the rightholders through 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 to achieve the protection objective.

(4) The provisions of paragraphs (1) and (2) shall not affect the application of Articles 59 and 60(1) to (3). In the case of software, paragraph (2) shall only apply to the distribution or possession for commercial purposes of any technology, device or component whose sole intended purpose is to facilitate the unauthorized circumvention or removal of a technological measure applied for the protection of the software.

Article 95/A

(1) In the case of reprographic reproduction [Article 21(1)] for private purposes [Article 35(1)], and of the free uses provided for in Articles 34(2), 35(4) and (7) and 41, a beneficiary of such a free use may demand that the rightholder, in spite of the protection granted under Article 95 against the circumvention of technological measures, make the free use possible for him, provided that the beneficiary of the free use has got access to the work lawfully. If no agreement is reached between the parties on the conditions of the making the free use possible, either of the parties may initiate a procedure under Article 105/A.

(2) Paragraph (1) shall not apply where the work is made available to the public, on the basis of a contract, in such a way that the members of the public may access to it from a place and at a time individually chosen by them [Articles 26(8), 73(1)(e), 76(1)(c), 80(1)(d) and 82(1)(c)].

The Protection of the Rights Management Data

Article 96

(1) The legal consequences of the infringement of copyright shall apply to the unauthorized removal or alteration of any rights-management information, or to the distribution, importation for distribution, broadcasting or other communication to the public of works from which rights-management information has been removed or in which it has been altered without authorisation, if the person who commits any of such acts knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

(2) Rights management data shall mean all particulars provided by the rightholders which identify the work, the author of the work, the owner of any right in the work, or inform about the terms and conditions of the use of the work, including any numbers or codes that represent such information, when such data are attached to a copy of the work or are made perceptible in connection with the communication of the work to the public.

The Customs Law Consequences of the Infringement of Authors Rights

Article 97

In the case of the infringement of the authors' right the author may, with reference to the provisions of a special statute, require the customs authorities to take measures for preventing the dutiable goods affected by the infringement of rights from being put into circulation.

The Consequences in Case of a License Agreement

Article 98

(1) In the case of the infringement of the authors' economic right the exclusive licensee [Art. 43 (1)] may call the author to take the necessary measures to stop the infringement. The licensee is entitled to initiate such a legal action in his or her own name, when the author fails to take the measures within 30 days of the notification.

(2) In the case of a non-exclusive license the licensee is entitled to initiate a legal action under subparagraph (1) only on express authorization given in the license agreement.

The Consequences of the Infringement of the Copyright-Related Rights

Article 99

The provisions of Articles 94 to 98 shall apply, mutatis mutandis, to cases of the infringement of the provisions of Chapters XI and XI/A and to the protection of the technological measures and rights management data provided for in those Chapters. For the purposes of Chapter XI/A, free uses mentioned in Article 95/A(1) shall be construed as meaning the reprographic reproduction [Article 21(1)] for private purposes and the free uses provided for in Article 84/C(2) and (3).

PART FIVE

MISCELLANEOUS AND FINAL PROVISIONS

Chapter XIV

Payment of Contribution After the Expiration of the Term of Protection

Article 100

(1) After the expiry of the term of protection for copyright, the transfer of the ownership of an original work of art by a dealer in works of art shall be subject to payment of a contribution.

(2) The contribution shall be 5 per cent of the sale price net of tax and other public dues (e.g. cultural contribution). The provisions of § 70 shall apply mutatis mutandis to the definition of the scope of original works of art and to the sale price, as well as to the person required to pay the contribution, to the collection and transfer of the contribution, save that the collecting society shall use the collected contribution for the purposes of supporting artistic activities and contributing to the social welfare of creative artists .

(3) There shall be no obligation to pay the contribution if the ownership of the original work of art is obtained by or from a museum.

(4) The organization performing the collective administration of rights shall be obliged to record and administer under a separate head the amount collected as contributions.

(5) The organization performing the collective administration of rights shall annually inform the public on the amount of the contribution, and on the uses thereof by means of the official gazette of the ministry headed by the minister referred to in Article 86.

Chapter XV

Organizations Co-operating in the Settlement of Copyright Related Legal

Disputes

Body of Experts in Copyright

Article 101

(1) Concerning specific issues arising in copyright related legal disputes the courts of justice and other authorities may consult the Body of Experts in Copyright attached to the Hungarian Patent Office requesting them to give their opinions. The members of the Body shall be appointed for a five years' term by the minister responsible for justice in agreement with the minister responsible for the culture.

(2) The Body shall set up a three- or five-member panel to formulate its advisory opinion by majority.

(3) Upon request, the Body may give advisory opinions also in extrajudicial procedures on issues connected with the exercise of the right of use.

(4) Where a court or other authority requests an opinion from the Body of Experts in Copyright, the Body shall be informed about the decision on merits, along with sending it a copy thereof.

(5) The detailed rules of the Body's organization and operations shall be established by a special statute.

Mediation Board

Article 102

(1) In case no agreement on remuneration and other terms and conditions of uses is reached between the user and the rightholders or the organization performing the collective administration of their rights in connection with the simultaneous and unaltered retransmission to the public of the broadcast work with the involvement of another organization than the original one, either party may contact the Mediation Board set up pursuant to Article 103.

(2) If no agreement is reached about the remuneration to be paid and the conditions of the use between the user and the rightholder or between the users and their representative organizations, on the one hand, and the collective administration organization of the rightholders, on the other hand, the parties, by common agreement, may turn to the Mediation Board.

Article 103

(1) The provisions of Chapter II of Act LXXI of 1994 on Arbitration shall apply to the setting up of the Mediation Board on the understanding that the members of the Mediation Board shall be appointed from among the members of the Body of Experts in Copyright (Article 101).

(2) The Mediation Board shall operate within the Body of Experts in Copyright.

Article 104

(1) The objective of the procedure of the Mediation Board is the facilitation of an agreement between the parties. In the case of a procedure initiated in a dispute concerning collective administration of rights, the Mediation Board shall inform the Minister [Article 86(1)] immediately.

(2) In case no agreement is established between the parties, the Mediation Board shall draft a proposal concerning the contents of the agreement which it makes known to the parties in writing.

(3) The parties may accept the agreement expressly or tacitly. If no objection is made by the parties to the Mediation Board with regard to the proposal for agreement within three months from the date of its delivery, a case of tacit understanding obtains.

(4) In case the Mediation Board has proceeded by infringing the provisions of Article 105, the party having sustained injury may bring an action before the Court against the agreement established by the decision of the Mediation Board within three months from its entry into force.

(5) In the procedure referred to in paragraph (4), the Metropolitan Court shall have jurisdiction and exclusive competence.

Article 105

(1) Equal treatment shall be given to the parties during the proceedings of the Mediation Board and either party shall have the possibility to present his position. The Mediation Board may not oblige the parties to get involved in the proceedings and carry out acts of proceedings unless the parties have agreed thereto. As regards other matters, the Mediation Board shall itself establish its rules of proceedings - within the frameworks of the statutes referred to in Paragraph (2) - and determine its tariffs.

(2) The statutes of the Mediation Board shall be elaborated by the Body of Experts in Copyright and approved by the minister responsible for justice. Prior to the approval, the minister supervising the Hungarian Patent Office and the minister responsible for the culture have to be consulted as regards their opinions.

Article 105/A.

(1) If no agreement is reached between the beneficiary of a free use and the rightholder about the conditions of making the free use possible (Article 95/A) in spite of the protection against the circumvention of technological measures (Article 95), any of the parties may turn to the Mediation Board.

(2) The procedure may also be initiated by the representative organizations of the beneficiaries. In such a case, the effect of the award of the Mediation Board – in the absence of a stipulation to the contrary – shall extend to all members of such organization who are beneficiaries of the free use.

(3) The provisions of Article 103 shall apply to the establishment of the Mediation Board *mutatis mutandis*, on the understanding that the members of the acting panel of the Mediation Board shall be appointed by the President of the Body of Experts in Copyright, where the parties do not reach an agreement – within eight days from the beginning of the procedure – about the composition of the panel.

(4) Articles 104(1) and (2) and 105(2) shall apply to the procedure of the Mediation Board *mutatis mutandis*.

(5) The parties may accept the agreement proposed by the Mediation Board either explicitly or implicitly. It shall be regarded as an implicit acceptance if none of the parties oppose the proposed agreement at the Mediation Board within 30 days from its delivery.

(6) Where the Mediation Board has proceeded by violating the provisions of Article 105, the injured party may oppose the award of the Mediation Board in a lawsuit at the court within 30 days of its adoption.

(7) If no agreement has been reached on the basis of paragraph (5), the beneficiary of the free use may turn to the court within 15 days after the expiry of the deadline provided for in paragraph (5) and may demand in a lawsuit that the court oblige the rightholder to make the free use possible according to the conditions indicated by him.

(8) The representative organizations of the beneficiaries shall also have the right to initiate lawsuits under paragraphs (6) and (7) – within the deadline mentioned there – on the understanding that the effect of any final court decision shall extend to all those members of the organization who are beneficiaries under this Act.

(9) In lawsuits initiated under this Article, the Metropolitan Court shall have exclusive competence.

(10) Article 95 shall apply *mutatis mutandis* to the technological measures to be applied on the basis of an agreement or final court decision according to this Article, provided that such a technological measure fulfils the conditions under Article 95(3).

Chapter XVI Final Provisions

Other Rightholders Under the Authors' Right Article 106

(1) Wherever author is mentioned in this Act, the successor in title of the author and other rightholders under the copyright shall be understood to be, *mutatis mutandis*, included.

(2) In case the legacy of a deceased person includes copyright, the notary public shall notify on the institution of the execution of the will the organization performing the collective administration of rights related to the works of the deceased person. If the affected organization performing the collective administration of rights cannot be identified or the works do not fall within the scope of collective administration of rights, the notification shall be addressed to the organization performing the collective administration of rights related to literary and musical works.

(3) In appropriate consideration of the provision of Paragraph (2), the notary public shall send a copy of the abridged certificate of inheritance and the Court a copy of the abridged definitive judgement to the affected organization performing the collective administration of rights notifying it of the transfer to the heir of the copyright forming part of the legacy.

(4) The rules relating to certificates of inheritance and definitive judgements shall apply to the abridged certificate of inheritance and abridged definitive judgement on the understanding that they may only include particulars of the transfer to the heir of the copyright forming part of the legacy.

(5) The abridged certificate of inheritance and abridged definitive judgement referred to in Paragraph (3) shall include, over and above what is ruled by the provision of Paragraph (4), the indication "abridged" as well as the purpose for which they can be used.

(6) The provision of Paragraph (5) shall be taken as a basis for proceedings also when the certificate would not include any other provision than what is ruled by Paragraph (4).

(7) The affected organization for the collective administration of rights is obliged to keep records on the heirs and to provide therefrom data to the users in consideration of the legal rules relating to the protection of personal particulars.

(8) The provisions of Paragraphs (1) to (7) shall apply, mutatis mutandis, to the rights related to copyrights and the holders of such rights..

Article 106/A

The provisions of this Act related to the copyright protection of, as well as the protection provided for in Chapter XI/A affecting, the editors of the databases rated as collections of works as well as the makers of the databases shall be without prejudice to the legal rules respectively providing protection for personal data and requiring publicity for data of public interest.

Provisions Relating to the Entry Into Force of the Act and Determining the Transitory Provisions Article 107

(1) This Act shall enter into force on September 1, 1999; its provisions shall apply to the agreements for use concluded after its entry into force.

(2) The provisions of Article 21 of this Act and the provisions in Article 22 related to the devices used for reprography shall apply after the September 1, 2000.

(3) The provisions established by Paragraphs (1) and (2) of Article 111 shall apply to the proceedings of execution instituted following the entry into force of this Act.

Article 108

(1) The provisions of Article 31 shall, among others, apply to the works whose term of protection calculated according to the provisions previously in force had expired before the entry into force of Act No. VII of 1994 on the amendment of specific legal rules relating to copyright and the protection of industrial property.

(2) The rights determined by this Act shall be due to performers, the producers of sound recordings, the radio and television organizations and those transmitting by cable their own programmes to the public even if the twenty years' term - relating to them - calculated from the end of the year referred to by Article 84 had expired by the time of the entry into force of Act No. VII of 1994.

(3) In case the term of protection relating to the authors' economic rights and the neighbouring rights related to the copyright had expired by the time of the entry into force of Act No. VII of 1994, the uses performed in the period between the expiration and the time of the entry into force of this Act shall be rated as free uses, irrespective of whether these rights will again, or will not, fall under protection following the entry into force of this Act.

(4) The uses referred to in Paragraph (3) will be possible to be continued - in the case of sound recordings regarding copies manufactured before the entry into force - for one year more following the entry into force of this Act, but only to the extent existing at the time of the entry into force. The right of such uses performed within the framework of economic activity may be transferred only jointly with the authorized economic organization or its organizational unit performing the use. An equitable remuneration shall be due to the rightholder on any use performed even after the entry into force of this Act.

(5) The provisions of Paragraph (4) shall be applied as appropriate even if definite preparations have been made towards the use before the date of the promulgation of this Act, on the understanding that in this case the use may be begun and carried on to the extent of the preparation that existed at the promulgation of this Act.

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

(7) On the use after the entry into force of this Act of the alteration, adaptation or translation referred to in Paragraph (6) an equitable remuneration shall be due to the rightholder who holds copyright in the work serving as a basis for the action mentioned.

(8) Any debates concerning remuneration considered as due on the basis of the provisions of Paragraphs (4) and (7) shall be settled through judicial procedure.

(9) The right of use acquired through an agreement for use concluded prior to the entry into force of Act No. VII of 1994 for the full term of protection or for an indefinite period of time shall be due to the user - under the terms and conditions of the agreement for use - after the entry into force of this Act, if the copyright or the neighbouring right related to the copyright falls again under protection pursuant to this Act.

Article 108/A.

(1) The provisions of Articles 31 and 84 – with the exception regulated in the first sentence of Article 13(7) of Act LXXVII of 2001 – shall also apply to works and performances of neighbouring rights, the term of protection of which had not expired at least in one Member State of the European Economic Area until 1 July 1995.

(2) The provisions of Article 108(3) to (9) shall be applied *mutatis mutandis* to the works referred to in paragraph (1), on the understanding 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 as meaning 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.

Article 109

The provision of Paragraph (6) of Article 31 shall be applied in case it does not result in shortening of the term of protection calculated according to the provisions previously in effect. The provision of Paragraph (6) of Article 31 shall be applied also to cinematographic creations of which the term of protection had already expired before the entry into force of this Act. The provisions of Paragraphs (3) to (9) of Article 108 shall, *mutatis mutandis*, apply in this case, too, on the understanding that the entry into force of this Act shall replace the entry into force of Act No. VII of 1994.

Provisions Losing Their Effect

Article 110

(1) Simultaneously with the entry into force of this Act, the following Acts and Decrees shall lose effect:

a) Act No. III of 1969 on Copyright and Law-Decree No. 27 of 1978, Articles 13 to 19 and Article 29 of Act No. VII of 1994, Act No. LXXII of 1994, Article 151 and Item (e) of Article 161 of Act No. I of 1996, and Items (b) and (c) of Article 120 of Act No. XI of 1997;

b) The second sentence of Paragraph (2) of Article 117, Paragraph (4) of Article 139, Article 151 and subparagraph e) of Article 161 of Act No. I of 1996 on radio and television broadcasting;

c) Government Decree 146/1996. (IX. 19.) on the collective administration of copyright and neighbouring rights and Government Decree 239/1997. (XII. 18.) amending it;

d) Decree No. 9/1969. (XII.29.) MM on the implementation of the Copyright Act and the Decrees No. 4/1978. (XII.7.) KM and No. 15/1982. (IX.20.) MM modifying and amending it, as well as Decree No. 15/1983. (VII.12.) MM, Decree No. 18/1988. (VIII. 24.) MM, Decree No. 6/1992. (IV.8.) MKM, Article 2 of Decree No. 12/1992. (VII.29.) MKM, Subparagraph a) Paragraph 2 of Article 33 of Decree No. 8/1994. (IV.26.) MKM, Decree No. 24/1994. (XII.28.) MKM.

e) Decree No. 1/1970. (III. 20.) MM on the terms and conditions of contracts for publishing and on royalties, and the decrees amending it, namely Decree No. 2/1980. (IX. 15.) MM, Decree No. 13/1982. (X. 18.) MM, Decree No. 21/1984. (XII. 28.) MM, Decree No. 14/1985. (XII. 22.) MM, Decree No. 15/1987. (VIII. 9.), and Decree No. 19/1996. (XII. 26.) MKM;

f) Decree No. 2/1970. (III. 20.) MM on the terms and conditions of the contracts for the use of dramatic works, and Decree No. 7/1992. (IV. 8.) MKM amending it;

g) Decree No. 3/1970. (III. 20.) MM on the contracts for the composition of musical works and their first public performance;

- h) Decree No. 5/1970. (VI. 12.) MM on the terms and conditions of the contracts for use by the Hungarian Radio and Television and on royalties, and the decrees amending it, namely Decree No. 15/1985. (XII. 28.) MM, Decree No. 16/1988. (VIII. 11.) MM, Decree No. 13/1992. (VIII. 26.) MKM, and Decree No. 23/1994. (XII. 26.) MKM;
- i) Decree No. 4/1988. (II. 12.) MM amending the provisions relating to remuneration under the various contracts for use;
- j) Decree No. 6/1970. (VI. 24.) MM on the terms and conditions of the contracts for the use of applied graphic works and on royalties;
- k) Decree No. 7/1970. (VI. 24.) MM on the terms and conditions of the contracts for the use of small sculpture, medals and plaques and on royalties;
- l) Decree No. 8/1970. (VI. 24.) MM on the terms and conditions of the contracts for the use of artistic photographs and on royalties;
- m) Decree No. 9/1970. (VI. 25.) MM on the terms and conditions of the contracts for the use of applied art and industrial design creations and on royalties, and Decree No. 14/1989. (V. 13.) MM amending it;
- n) Decree No. 10/1970. (VI. 25.) MM on the terms and conditions of the contracts for the use of scenic graphic creations and on royalties;
- o) Non-numbered Paragraphs 4 to 9 of Article 11 of Decree No. 16/1982. (XII. 29.) MM on the implementation of Decree No. 83/1982. (XII. 29.) MT on the regulation of various issues relating to fine arts and applied art;
- p) Decree No. 12/1970. (VI. 30.) MM on the terms and conditions of the contracts for the adaptation to the screen and on royalties, and Decree No. 2/1983. (III. 23.) MM amending it;
- r) Decree No. 6/1972. (VIII. 19.) on the terms and conditions of the contracts for the publication of musical works, other contracts connected with the publication of musical works, and on remunerations due to authors and on other activities.

Provisions Amended

Article 111

(1) The following subtitle and Article 184/A shall be inserted in Act No. LIII of 1994 on judicial execution (Vht.):

"Execution of the decision passed in a lawsuit instituted by reason of the infringement of intellectual property rights

Article 184/A (1) In case of execution of the decision of the Court passed in a lawsuit instituted by reason of the infringement of a patent, infringement of a utility model protection, infringement of the protection relating to the topography of a microelectronic semiconductor product, infringement of a trademark protection, infringement of the protection of an industrial design, infringement of the provisions on the prohibition of unfair market practices and of restrictions of competition, or infringement of author's rights, if the execution relates to the performance of certain act, the Court summons in its executory deed the obligor to voluntarily execute the decision with the deadline set at the end of a three days' period. In case the act involved relates to the transfer or delivery of movable effects, the Court summons the obligor to execute the decision with immediate effect.

(2) The executor shall forward the executory deed, with no delay upon its receipt, to the petitioner of the execution, simultaneously summoning him to make with no delay an advance payment of the costs of the proceeding of execution. In the case of the execution of a temporary measure, the executor shall be entitled to receive by advance payment, at the beginning of the proceeding, the amount of the full cost of execution and of the disbursements and fees liable to arise or a lump-sum expected to cover the latter.

(3) Upon receipt of the advance payment, the executor shall with no delay deliver the executory deed to the obligor on the spot and shall summon him to perform the execution. Should the obligor not act immediately upon the executor's summons, the executor shall control on the spot the performance of the execution at the expiry of the deadline for the execution.

(4) Should the execution fail to be performed, the executor shall submit with no delay the minutes drawn up on the control on the spot to the Court having ruled the execution, which shall with special promptness take decision pursuant to Articles 174 to 177 on the method of execution.

(5) The Court can impose a fine up to 500 000 Hungarian Forints on the obligor during the execution of the decisions passed in the lawsuits defined in Paragraph (1), based on Subparagraph c) of Article 174. In case of non-payment, the amount of the fine increases by the double of the prime rate from the date of the time of performance on.

(6) In case the execution provided under this title implies the surrender, delivery or distraint of specific movable effects, upon delivery of the executory deed the executor shall distraint upon the movable effects and make arrangement for their forwarding to the person named in the decision. In case the obligor refuses to surrender or deliver the movable effects or prevents their distraint, the executor shall carry out the execution with the direct involvement of the police.

(7) In case the Court rules the sale of the effects and materials distrained upon pursuant to the rules of judicial execution, the executor shall act according to the rules governing the auction of movable effects on the understanding that no evidence shall be admissible regarding the return of the movable effects to the obligor as provided by Paragraphs (1) and (2) of Article 135.

(8) In case the decision passed in the lawsuit referred to in Paragraph (1) rules exclusively money payment, the decision shall be executed according to the rules relating to the execution of pecuniary claims."

(2) Paragraph (4) of Article 190 of Vht. shall be replaced by the following provision:

"(4) Upon receipt of the decision ruling the insurance measure the executor shall without delay summon the petitioner of the execution to make an advance payment at short notice and upon receipt of the advance payment he shall without delay initiate the execution of the insurance measure. In the case of the execution of an insurance measure, the executor shall be entitled to receive by advance payment, at the beginning of the proceeding, the amount of the full cost of execution and of the disbursements and fees liable to arise or a lump-sum expected to cover the latter."

(3) The following sentence shall be inserted, as second sentence, in Paragraph (7) of Article 75 of Act No. I of 1996 on radio and television broadcasting:

"This provision shall not prejudice the application of copyright statutes, except for the entitlements due under the neighbouring rights to the Hungarian Radio Organization, the Hungarian Television Organization and the Duna Television Organization."

(4) The following Paragraph (7) shall be added to Article 78 of Act No. I of 1996 on radio and television broadcasting:

"(7) In the case of the supply of programmes as determined in Paragraph (1) of Article 117, the administrator of the Fund, instead of the operator, shall pay from the Fund the remunerations due on the basis of copyright statutes."

Authorizations

Article 112

(1) The Government shall be authorized to determine - taking into account the opinion of the representative organisations concerned - by a decree the range of the devices used for purposes of reprography.

(2) The Government shall be authorized to determine by a decree the detailed rules of the organization and operation of the Body of Experts in Copyright.

(3) The Government shall be authorized to determine by decree the manner and conditions of the communication and making available to the individual member of the public in the case of the free use provided for in Article 38(5).

(4) The minister responsible for the culture shall be authorized to determine by a decree the detailed rules governing the records on the societies concerned with the collective administration of authors' rights and neighbouring rights.

(5) The Minister responsible for justice shall be authorized to determine by decree, in agreement with the President of the Hungarian Patent Office, the detailed regulations relating to the voluntary register of works maintained by the Hungarian Patent Office.

Approximation to the Legislation of the European Communities

Article 113

This Act ensures compliance with the following acts of the European Union:

- a) Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs;
- b) Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
- c) 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;
- d) Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights;
- e) Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases;
- f) 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;
- g) 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.
- h) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.