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## INSTRUCTIONS FOR COMPLETION

This application must be presented at the Registry of the State Agrarian Insurance Entity (Miguel Angel, number 23, 5.<sup>th</sup> planta, 28010 Madrid), at the Registries of the Provincial Directorates of the Ministry of Agriculture, Fisheries and Food, or at the other offices provided for in article 38.4 of Law 30/1992, of the Legal Regime of Public Administrations and of the Common Administrative Procedure until the date established in the text of the Order.

An application must be submitted for each municipality in which the plots of land meeting the above conditions are located.

The form shall be completed in all its sections, except in the shaded boxes.

I. Insurance Data: Correspond to numbers 3, 8, 6 and 7 of your insurance policy.

II. Data of the insured applicant: Corresponds to the number 11 of your insurance policy (it is mandatory to fill in the applicant's tax identification number).

III. Data of the insured farm (data of the attached sheet of insurance): Corresponds to number 20 of your insurance policy.

IV. Declarations of the applicant insured: Score if a declaration of loss has been filed with Agroseguro for that plot by filling in the box corresponding to this section. If the answer is affirmative, the box (NO) should be crossed out and if, on the contrary, no claims declaration has been submitted, the box (YES) should be crossed out.

V. Bank details for the payment of the indemnity: The correct completion of this section is absolutely necessary in order to be able to pay, by transfer, the amount of the indemnity that may correspond to you.

If you have any doubts when filling in the box, please contact us.

"Client Account Code (CL.C)" ie please consult the credit institution where you have opened the account to which you wish to direct debit the payment.

VI. Accompanying documentation: It is printed.

It is essential to submit, together with the application, photocopies of the applicant's national identity card and tax identification number.

This request must be signed by the insured person requesting the indemnity or by his legal representative.

It is advisable to keep a copy of the application to facilitate the valuation and settlement of the indemnity.

NOTE: Any questions or clarification in this regard may be sent to the State Agrarian Insurance Entity, Calle Miguel Angel, 23, 5th floor, 28010 Madrid, telephone (91) 308 10 30-31-32, fax (91) 308 54 46.

## "MINISTRY OF CULTURE

8930 ROYAL LEGISLATIVE DECREE 1/1996, of 12 of April, which approves the revised text of the Intellectual Property Law, regulating, harmonizing and harmonizing the legal provisions in force on the subject.

The second final provision of Law 27/1995, of October 11, 1995, transposing Council Directive 93/98/EEC, of October 29, 1995, into Spanish law,

The Government was authorized to approve, before June 30, 1996, a text consolidating the legal provisions in force in the field of intellectual property, regularizing, clarifying and harmonizing the texts to be consolidated. The temporal scope of this legislative empowerment relates to the legal provisions that will be in force on June 30, 1996.

Consequently, a revised text has been prepared and is annexed to this Royal Legislative Decree, the purpose of which is to comply with the legal mandament.

By virtue thereof, at the proposal of the Minister of Culture, in agreement with the Council of State and after deliberation of the Council of Ministers at its meeting of April 12, 1996,

I STATE :

Sole Article. *Object of the regulation.*

The revised text of the Intellectual Property Law is approved, regularizing, clarifying and harmonizing the legal provisions in force on the matter, which is annexed to this Royal Legislative Decree.

Sole derogatory provision. *Repeal of regulations.*

The following Laws are hereby repealed:

1. Law 22/1987, of November 11, 1987, on Property Intellectual.

2. Law 20/1992, of July 7, 1992, amending Law 22/1987, of November 11, 1987, on Intellectual Property.

3. Law 16/1993, of December 23, 1993, on the incorporation into Spanish law of Directive 91/250/EEC, of May 14, 1993, on the legal protection of computer programs.

4. Law 43/1994, of December 30, 1994, transposing into Spanish law Directive 92/100/EEC of November 19, 1994, on rental and lending rights and other rights related to copyright in the field of intellectual property.

5. Law 27/1995, of October 11, 1995, transposing into Spanish law Council Directive 93/98/EEC, of October 29, 1995, on the harmonization of the term of protection of copyright and certain related rights.

6. Law 28/1995, of October 11, 1995, transposing into Spanish law Council Directive 93/83/EEC, of September 27, 1995, on the coordination of certain provisions relating to copyright and related rights in the field of satellite broadcasting and cable retransmission.

Sole final provision. *Entry in 'Ley de Propiedad Intelectual'.*

This Royal Legislative Decree will enter into force on the day following its publication in the "Official Gazette of the State".

Given in Madrid on April 2, 1996.

JUAN CARLOS R.

The Minister of Culture.  
CARMEN ALBORCH BATALLER

## BOOK I

## Copyright

## TITLE I

## General provisions

Article 1. *Generative event.*

The intellectual property of a literary, artistic or scientific work belongs to the author by the mere fact of its creation.

Article 2. *Content.*

Intellectual property is composed of rights of a personal and patrimonial nature, which attribute to the author the full disposition and exclusive right to exploit the work, with no limitations other than those established by law.

Article 3. *Characteristics.*

The copyrights are independent, comparable and cumulative with:

1.° The property and other rights that have as object the material thing to which the intellectual creation is incorporated.

2.° The industrial property rights that may exist on the work.

3.° The other property rights i\* °lec;ua; recognized in Book I! üe tũ present Law.

Article 4. *Disclosure and publication.*

For the purposes of the provisions of this Law, disclosure of a work shall be understood to mean any expression of the work that, with the author's consent, makes it accessible to the public for the first time in any form, and publication shall be understood to mean disclosure by making available to the public a number of copies of the work that reasonably satisfies its estimated needs in accordance with the nature and purpose of the work.

## TITLE II

## Subject matter, purpose

## and content CHAPTER I

## Subjects

Article S. *Authors and other beneficiaries.*

1. An author is a natural person who creates a literary, artistic or scientific work.

2. However, legal persons may benefit from the protection granted by this Law to the author in the cases expressly provided for therein.

*Presumption of authorship, anonymous or pseudonymous works.*

1. The author shall be presumed, unless there is evidence to the contrary, to be the person who appears as such in the work, by means of his name, signature or sign that identifies him.

2. When the work is disclosed anonymously or under a pseudonym or sign, the exercise of the intellectual property rights shall correspond to the natural or legal person who brings it to light with the consent of the author, provided that the latter does not reveal his identity.

Article 7. *Oöra in collaboration.*

1. The rights over a work that is the unitary result of the collaboration of several authors correspond to all of them.

2. To disclose and modify the work, the consent of all co-authors is required. In the absence of agreement, the judge will decide.

Once the work has been disclosed, no co-author may unreasonably withhold consent for its exploitation in the form in which it was disclosed.

3. Subject to what has been agreed between the co-authors of the collaborative work, they may separately exploit their contributions, unless they are detrimental to the common exploitation.

4. The intellectual property rights over a collaborative work correspond to all the authors in the proportion determined by them. In matters not provided for in this Law, the rules established in the Civil Code for community of property shall apply to these works.

Article 8. *Collective work.*

A collective work is considered to be that created on the initiative and under the coordination of a person nn ý-pg' ü jurüü"ma who edits it and dī 'ulga ú under his name and is constituted by the gathering of contributions of different authors whose personal contribution is based on a unique and autonomous creation, for which it has been conceived without it being possible to attribute separately to any of them a right on the **whole** of the work produced.

Unless otherwise agreed, the rights to the collective work shall belong to the person who publishes and disseminates it under his name.

Article 9. *Composite and independent work.*

1. A new work shall be considered a composite work if it incorporates a pre-existing work without the collaboration of the author of the latter, without prejudice to the rights that correspond to the latter and his necessary authorization.

2. A work that constitutes an autonomous creation shall be considered independent, even if it is published jointly with others.

## CHAPTER II

## Object

Article 10. *Oöräs and originating titles.*

1. Intellectual property includes all original literary, artistic or scientific creations expressed by any tangible or intangible medium or support, whether currently known or to be invented in the future, including among them:

a) Books, pamphlets, printed matter, letters, writings,



forensic, lecture explanations and any other works of the same nature.

- b) Musical compositions, with or without lyrics.
- c) Dramatic and dramatic-musical works, choreographies, pantomimes and, in general, theatrical works.
- d) Cinematographic works and any other audiovisual works.
- e) Sculptures and works of painting, drawing, engraving, lithography and graphic cartoons, comic strips or comics, as well as their essays or sketches and other plastic works, whether applied or not.
- f) Projects, plans, models and designs of architectural and engineering works.
- g) Graphics, maps and designs related to topography, geography and, in general, to science.
- h) Photographic works and those expressed by a process analogous to photography.
- i) Computer programs.

2. The title of a work, when original, shall be protected as part of it.

#### Article 11. *Derivative works.*

Without prejudice to the copyright on the original work, they are also subject of intellectual property:

- 1. Translations and adaptations .
- 2. ° Revisions, updates and annotations.
- 3. The compendiums, summaries and extracts.
- 4. ° The musical arrangements.
- 5. Any transformation of a literary, artistic or scientific work.

#### Article 12. *Collections.*

Collections of other people's works, such as anthologies, and collections of other elements or data that, by virtue of the selection or arrangement of the materials, constitute intellectual creations, are also subject to intellectual property under the terms of this Law, without prejudice, where appropriate, to the rights of the authors of the original works.

#### Article 13. *Exclusions.*

Legal or regulatory provisions and their corresponding drafts, the resolutions of jurisdictional **bodies** and the acts, agreements, deliberations and opinions of public bodies, as well as the official translations of all the foregoing texts, are not subject to intellectual property.

## CHAPTERS

### Content

#### SECTION 1 MORAL LAW

#### Article 14. *Content and characteristics of the right moral.*

The following unwaivable and inalienable rights correspond to the author:

- 1. " Decide whether their work is to be disseminated and in what form.
- 2. " Determine whether such disclosure is to be made under his or her name, under a pseudonym or sign, or anonymously.
- 3. ° Demand recognition of his status as the author of the work.

4. "To demand respect for the integrity of the work and prevent any deformation, modification, alteration or attack against it that may be detrimental to its legitimate interests or detrimental to its reputation.

5. ° Modify the work respecting the rights acquired by third parties and the requirements for the protection of property of cultural interest.

6. ° Withdraw the work from commerce, due to a change in its intellectual or moral convictions. prior compensation for damages to the holders of exploitation rights.

If, subsequently, the author decides to resume the exploitation of his work, he shall preferably offer the corresponding rights to the previous owner of the rights and under conditions reasonably similar to the original ones.

7. "Access to the unique or rare copy of the work, when it is in the possession of another, in order to exercise the right of disclosure or any other corresponding right.

This right shall not allow to demand the displacement of the work and the access to the same shall be carried out in the place and manner that cause the least inconvenience to the owner, who shall be compensated, as the case may be, for the damages caused to him.

#### Article 15. *Cases of legitimization "mortis causa".*

1. Upon the death of the author, the exercise of the rights referred to in Sections 3 and 4 of the foregoing Article shall be vested, without time limit, in the natural person or legal entity to whom the author has expressly entrusted them by last will and testament. In the absence thereof, the exercise of these rights shall be vested in the heirs.

2. The same persons referred to in the preceding number and in the same order as indicated therein may exercise the right provided for in paragraph 1 of Article

14. in relation to the work not disclosed during the lifetime of its author and for a period of seventy years from his death or declaration of death, without prejudice to the provisions of Article 40.

#### *Substitution in the legitimacy "mortis causa".*

Provided that the persons mentioned in the previous article do not exist, or their whereabouts are unknown, the State, the Autonomous Communities, local corporations and public institutions of a cultural nature shall be entitled to exercise the rights provided for therein.

#### SECTION 2. EXPLOITATION RIGHTS

#### Article 7. *Exclusive right of exploitation of its modalities.*

The author has the exclusive right to exercise the rights of the

The rights of exploitation of his work in any form and, in particular, the rights of reproduction, distribution, public communication and transformation, which may not be exercised without his authorization, except in the cases provided for in this Law.

#### Article 18. *Reproduction.*

Reproduction is understood as the fixation of the work in a medium that allows its communication and the obtaining of copies of all or part of it.

## Article 19. *Distribution.*

1. Distribution means the making available to the public of the original or copies of the work through sale, rental, lending or any other form.

2. When the distribution is carried out by means of a sale within the European Union, this right expires with the first sale and only with respect to successive sales carried out within the European Union by the holder of the right or with his consent.

3. Rental is understood as the making available of originals and copies of a work for use for a limited time and with a direct or indirect economic or commercial benefit.

Excluded from the concept of rental are the making available for exhibition purposes, public communication from phonograms or audio-visual recordings, including fragments thereof, and the making available for on-site consultation.

4. Lending means the making available of the originals and copies of a work for use for a limited time without direct or indirect economic or commercial benefit, provided that such lending is carried out through establishments accessible to the public. It shall be understood that there is no direct or indirect economic or commercial benefit where the loan made by an establishment accessible to the public gives rise to the payment of an amount not exceeding the amount required for the use of the work.

sary to cover its operating expenses.

Excluded from the concept of loan are the operations mentioned in the second paragraph of paragraph 3 above and those carried out between establishments accessible to the public.

5. The provisions of this article regarding rental and lending shall not apply to *loš* buildings or works of applied arts.

## Article 20. *Public communication.*

1. Public communication shall be understood as any act by which a plurality of persons may have access to the work without prior distribution of copies to each of them.

The communication shall not be considered public when it is held within a strictly domestic environment that is not integrated or connected to a broadcasting network of any kind.

2. In particular, they are acts of public communication:

a) The scenic representations, recitations, dissertations and public performances of dramatic, dramatic-musical, literary and musical works by any means or procedure.

b) The public projection or exhibition of cinematographic and other audiovisual works.

c) The broadcasting of any works by radio broadcasting or by any other means serving for the wireless dissemination of signs, sounds or images. The concept of broadcasting includes the production of program-carrying signals to a satellite, when their reception by the public is possible only through an entity other than the originating entity.

d) The broadcasting or communication to the public via satellite of any works, i.e., the act of introducing, under *the* control and responsibility of the broadcasting entity, the program-carrying signals intended for reception by the public in an uninterrupted chain of communication to and from the satellite to the earth. The normal technical processes relating to the program-carrying

consider interruptions in the communication chain.<sup>1996</sup>

When program-carrying signals are broadcast in encoded form there shall be communication to the public via satellite provided that they are made available to the public by the broadcasting entity, or with its consent, means of decoding.

For the purposes of the provisions of the two preceding paragraphs, a satellite shall mean any satellite operating in frequency bands reserved by telecommunications legislation for the broadcasting of signals for reception by the public or for non-public individual communication, provided that, in the latter case, the circumstances in which the individual reception of the signals is effected are comparable to those applying in the former case.

e) The transmission of any works to the public by wire, cable, optical fiber or other analogous procedure, whether or not by means of subscription.

f) La retransmission, by any of the means mentioned in the preceding paragraphs and by an entity other than that of origin, of the broadcast work.

Cable retransmission means the simultaneous, unaltered and unabridged retransmission by cable or microwave of initial broadcasts or transmissions, including those by satellite, of broadcast or televised programs intended to be received by the public.

g) The broadcasting or transmission, in a place accessible to the public, by means of any suitable instrument, of the broadcast work.

h) The public exhibition of works of art or their reproductions.

i) Et public access to computer databases by means of telecommunication, when these incorporate or constitute protected works.

3. Communication to the public via satellite in the territory of the European Union shall be governed by the following provisions:

a) Communication to the public via satellite shall be provided only in the Member State of the European Union in which, under the control and responsibility of the broadcasting organization, the program-carrying signals are introduced into the uninterrupted communication chain referred to in paragraph 2 (d) of this Article.

b) When the communication to the public via satellite takes place in the territory of a State not belonging to the European Union where the level of protection established in this paragraph 3 does not exist for such public communication system, the following shall be taken into account:

1.If the programme-carrying signal is sent by satellite from an uplink station situated in a Member State, the communication to the public by satellite shall be deemed to have taken place in that Member State. In such a case, the rights provided for in respect of satellite broadcasting may be exercised against the person operating the uplink station.

2.If an uplink station situated in a Member State is not used but a broadcasting entity established in a Member State has commissioned satellite broadcasting, the act shall be deemed to have taken place in the Member State in which the broadcasting entity has its principal place of business. In such a case, the rights provided for in respect of satellite broadcasting may be exercised a g a i n s t the broadcasting organization.

c) The communication to the public via satellite authorized by a co-producer shall require the prior authorization of the other co-producers to whom it could be prejudicial due to linguistic or similar exclusivity if the work consists merely of images.

4. Cable retransmission as defined in the second paragraph of section 2.f) of this article, within the territory of the European Union, shall be governed by the following provisions:

a) The retransmission in Spanish territory of broadcasts, satellite broadcasts or initial transmissions of programs from other Member States of the European Union shall be carried out, as regards copyright, in accordance with the provisions of this Law and in accordance with the provisions of the individual or collective contractual agreements signed between the owners of rights and the cable retransmission companies.

b) The right of copyright owners to authorize cable retransmission shall be exercised exclusively through a collecting society.

c) In the case of owners who have not entrusted the management of their rights to an intellectual property rights management entity, the same shall be made effective through the entity that manages rights of the same category.

Where there is more than one rights management entity in the aforementioned category, the owners thereof may entrust the management thereof to any of the entities.

The holders referred to in this paragraph c) shall have the benefit of

The rights holders shall be subject to the obligations arising from the agreement concluded between the cable retransmission company and the entity to which they have delegated the management of their rights, on equal terms with the rights **holders** who have entrusted the management of their rights to such entity. They may also claim their rights from the management entity referred to in the preceding subparagraphs of this paragraph c) within three years from the date on which the protected work was retransmitted by cable.

d) When the owner of rights authorizes the broadcasting, broadcasting via satellite or initial transmission in Spanish territory of a protected work, it shall be presumed that he agrees not to exercise, on an individual basis, his rights for the retransmission of the same by cable, but to exercise them in accordance with the provisions of this paragraph 4.

e) The provisions of paragraphs b), c) and d) of this paragraph 4 shall not apply to the rights exercised by broadcasting entities in respect of their own broadcasts, satellite broadcasts or transmissions, regardless of whether the said rights are theirs or have been transferred to them by other copyright owners.

f) Where, for lack of agreement between the parties, a contract for the authorization of retransmission by cable cannot be concluded, the parties may, by way of mediation, refer the matter to the Mediation and Arbitration Commission for Intellectual Property.

The mediation referred to in the preceding paragraph shall be applicable to the provisions of Article 153 of this Law and the Royal Decree implementing said provision.

g) When any of the parties, in abuse of its negotiating position, prevents the initiation or continuation in good faith of negotiations for the authorization of cable retransmission, or obstructs, without valid justification, the negotiations or the mediation to which the parties are entitled.

The provisions of Title I, Chapter I of Law 16/1989, of July 17, 1989, on Defense of Competition shall apply.

## Article 21. *Transformation.*

1. The transformation of the work includes its translation, adaptation and any other modification in its form from which a different work is derived.

2. The intellectual property rights of the work resulting from the transformation shall correspond to the author of the latter, without prejudice to the rights of the author of the pre-existing work.

## Article 22. *Selected Collections or Complete Works.*

The transfer of the exploitation rights on his works shall not prevent the author from publishing them in a selected or complete collection.

## Article 23. *Independence of rights.*

The exploitation rights regulated in this section are independent of each other.

## SECTION 3. OTHER RIGHTS

## Article 24. *Right of participation.*

1. The authors of works of fine arts shall be entitled to receive from the seller a share in the price of any resale of such works at public auction, in a mercantile establishment, or with the intervention of a merchant or mercantile agent.

Exceptions to the provisions of the preceding paragraph are works of applied arts.

2. The aforementioned participation of the authors shall be 3 percent of the price of the resale, and the right to receive it shall arise when such price is equal to or greater than 300,000 pesetas per work sold or together that may have a unitary character.

3. The right provided for in paragraph 1 of this Article cannot be waived, shall be transmitted only by succession "mortis causa" and shall lapse after seventy years from January 1 of the year following that in which the death or declaration of death of the author occurred.

4. The auctioneers, owners of commercial establishments or commercial agents who have intervened in the resale shall notify the corresponding collecting society or, as the case may be, the author or his successors in title within a period of two months, and shall provide the necessary documentation for the practice of the corresponding liquidation. Likewise, when they act on behalf of or commissioned by the seller, they shall be jointly and severally liable with the latter for the payment of the royalty, for which purpose they shall withhold the appropriate share from the price. In any case, they shall be considered as depositaries of the amount of such participation.

5. The action to enforce the right against the aforementioned auctioneers, **owners** of commercial establishments, merchants and agents, shall lapse three years after the notification of the resale. Once this period has elapsed without the amount of the author's participation having been claimed, it shall be paid into the Fund for Assistance to the Fine Arts, which shall be established and regulated by regulation.

**Article 25.**     *Right to remuneration for private copying.*  
*vada.*

recording.

1. The reproduction made exclusively for private use, as authorized in Article 31(2) of this Law, by means of non-typographical technical apparatus or instruments, of works disclosed in the form of books or publications that for these purposes are assimilated by regulation, as well as phonograms, videograms or other sound, visual or audiovisual supports, shall give rise to a single equitable remuneration for each of the three forms of reproduction mentioned above in favor of the persons specified in paragraph (b) of Section 4 of this Article. This right shall be irrevocable and may not be waived in the case of any of the three forms of reproduction mentioned, in favor of the persons referred to in paragraph (b) of section 4 of this Article. This right shall be irrevocable for authors and artists, performers or executors.

2. This remuneration will be determined for each reproduction of a product may be carried out by means of the equipment, apparatus and materials suitable for such reproduction, whether manufactured in Spanish territory or acquired outside of it for commercial distribution or use within such territory.

3. The provisions of the preceding paragraphs shall not apply to application to computer programs.

4. In connection with the legal obligation referred to in paragraph 1 of this article shall be:

a) Debtors: manufacturers in Spain, as well as purchasers outside Spanish territory, for commercial distribution or use within it, of equipment, apparatus and materials that allow any of the forms of reproduction provided for in paragraph 1 of this article.

Distributors, wholesalers and retailers, successive purchasers of the aforementioned equipment, apparatus and materials, shall be jointly and severally liable for the payment of the remuneration with the debtors who supplied them, unless they can prove that they have actually paid the remuneration to the latter, and without prejudice to as provided for in paragraphs 13, 14 and 19 of this article.

b) Creditors: the authors of works publicly exploited in any of the forms mentioned in paragraph 1 of this Article, together in their respective cases and forms of reproduction, with publishers, producers of phonograms and videograms and performers whose performances have been fixed in such phonograms and videograms.

5. The amount of the remuneration to be paid by each debtor shall be the result of the application of the following amounts:

a) Book reproduction equipment or apparatus:

1. 7,500 pesetas for equipment or apparatus with a copying capacity of up to nine copies per minute.

2. 22,500 pesetas per equipment or device with copy capacity from 10 to 29 copies per minute.

3. 30,000 pesetas for equipment or apparatus with copying capacity from 30 to 49 copies per minute.

4. 37,000 pesetas for equipment or apparatus with a copying capacity of 50 copies per minute or more.

b) Phonographic reproduction equipment or apparatus.  
plus: 100 pesetas per recording unit.

c) Equipment or apparatus for the reproduction of video-grams: 1,100 pesetas per recording unit.

d) Sound reproduction materials: 30 pesetas per hour of recording or 0.50 pesetas per minute of

e) Visual or audiovisual **reproduction materials**:<sup>159096</sup> pesetas per hour of recording or 0.833 pesetas per minute of recording.

6. They are exempt from the payment of remuneration:

a) Producers of phonograms or videograms and broadcasters, for equipment, apparatus or materials intended for the use of their activity, provided that they have the required authorization to carry out the corresponding reproduction of works, artistic performances. This must be accredited to the debtors and, as the case may be, to their joint and several responsible parties, by means of certification from the corresponding management entity or entities, in the event of acquiring the equipment, apparatus or materials within the Spanish territory.

b) Natural persons who acquire the aforementioned equipment, apparatus and materials outside Spanish territory as travelers and in such a quantity that it may reasonably be presumed that they will use them for private use in said territory.

7. The right to remuneration referred to in paragraph 1 of this Article shall be exercised through the intellectual property rights management entities.

8. When several collecting societies concur in the administration of the same type of recovery, they may act against the debtors in all matters relating to the collection of the right in and out of court, jointly and under a single representation, the rules governing community of property being applicable to the relations between such societies. Likewise, in this case, the collecting societies may associate and constitute, in accordance with the law in force, a legal entity for the aforementioned purposes.

9. The management entities of the joint creditors shall submit to the Ministry of Culture the name or denomination and domicile of the sole representation or of the association that, as the case may be, they have constituted. In the latter case, they shall also submit the documentation accrediting the constitution of such association, with an individualized list of its member entities, indicating their name and domicile.

The provisions of the preceding paragraph shall apply to any change in the person of the sole representative or of the association constituted, in its domiciles and in the number and quality of the management entities represented or associated, as well as in the event of amendment of the association's Bylaws.

10. The Ministry of Culture shall exercise control over

the management entity or entities or, as the case may be, of the representation or association managing the collection of the right, under the terms provided for in

Article 154 of the Law, and shall publish, as the case may be, in the "Official State Gazette" a list of the representative entities or management associations with an indication of their addresses, of the respective type of remuneration in which they operate and of the management entities represented or associated. This publication shall be made whenever there is a change in the above-mentioned data. For the purposes provided for in

Article 154 of the Law, the management entity or entities or, as the case may be, the management representation or association that they have constituted, shall be obliged to submit to the Ministry of Culture, on June 30 and December 31 of each year, a detailed list of

the declarations-settlements as well as of the payments made as referred to in paragraph 12 of this article, corresponding to the previous six-month period.



complied with

11. The obligation to pay remuneration shall arise in the following cases:

a) For manufacturers and purchasers of equipment, apparatus and machinery outside Spanish territory for commercial distribution therein, at the time when the debtor transfers ownership or, as the case may be, transfers the use or enjoyment of any of them.

b) For the purchasers of equipment, apparatus and materials outside Spanish territory for use within said territory. from the moment of their acquisition.

12. The debtors mentioned in paragraph a) of paragraph 1. of this article shall present or the corresponding management entity or entities or, as the case may be, to the representation or association mentioned in paragraphs 7 to 10, both inclusive, of the same, within thirty days following the end of each calendar quarter, a declaration-settlement in which the units and technical characteristics of the equipment, apparatus and materials in respect of which the equipment, apparatus and materials have been used, as specified in paragraph 5. of this article, shall be indicated. A declaration-settlement in which the units and technical characteristics, as specified in section 5 of this article, of the equipment, apparatus and materials in respect of which the obligation of payment of the remuneration has arisen during the said quarter shall be indicated. With the same detail, they shall deduct the amounts corresponding to the equipment, apparatus and materials destined outside Spanish territory and those corresponding to those exempted by virtue of the provisions of section 6 of this article.

The debtors allJdidos in paragraph (b) of subsection 11 of the present article shall make the presentation of the declaration-settlement expressed in the previous paragraph within five days after the obligation has arisen.

13. The distributors, wholesalers and retailers referred to in the second paragraph of section 4.a) of this article must comply with the obligation provided for in the first paragraph of section 12 of this article with respect to the equipment, apparatus and materials acquired by them in Spanish territory from debtors who have not charged them and recorded the corresponding remuneration in their invoices.

14. Payment of remuneration shall be made unless otherwise agreed:

a) By the debtors referred to in paragraph a) of section 11, within the month following the date of expiration of the deadline for filing the declaration-settlement referred to in the first paragraph of section 12.

b) By other debtors and by distributors, wholesalers and retailers. in relation to the equipment. apparatus and materials referred to in paragraph 13 of this article. at the time of filing the declaration-settlement, without prejudice to the provisions of paragraph 19 of the same.

15. The debtors and, as the case may be, *the* jointly and severally liable parties shall be considered as depositaries of the accrued remuneration until the effective payment thereof, as provided for in section 14 above.

16. For the purpose of controlling the payment of the remuneration, the debtors mentioned in paragraph a) of section 11 of this article shall show separately in their invoices the amount of the remuneration, from which they shall pass on to their customers and withhold for delivery in accordance with the provisions of section 14.

17. The obligations relating to invoices and to the passing on of remuneration to customers. set forth in the preceding paragraph shall apply to distributors, wholesalers and retailers, who are jointly and severally liable for the debtors. The following must also be

In the case contemplated in paragraph 13<sup>199,6</sup>, the withholding and delivery obligations provided for in said paragraph.

18. In no case shall distributors, wholesalers and retailers, jointly and severally liable for the debtors, accept from their respective suppliers the supply of equipment, apparatus and materials subject to recovery if they are not invoiced in accordance with the provisions of paragraphs 16 and 17 of this article.

Without prejudice to the provisions of the preceding paragraph, when the amount of the remuneration is not recorded in the invoice, it shall be presumed, unless there is proof to the contrary, that the remuneration earned for the equipment, apparatus and materials comprising it has not been paid.

20. In the case indicated in the preceding paragraph and in any other case of non-payment of the remuneration, the management entity or entities, or, as the case may be, the management representation or association, without prejudice to the civil and criminal actions to which they are entitled, may request the Judge, by the procedure established in Article 137 of this Law, to seize the corresponding equipment, apparatus and materials. The assets thus seized shall be subject to the payment of the remuneration claimed and the appropriate compensation for damages.

21. The debtors and their jointly and severally liable persons shall allow the management entity or entities or, where appropriate, the management representation or association, to control the operations subject to the remuneration and those affected by the obligations established in paragraphs 12 to 20, both inclusive, of this article. Consequently, they shall provide the data and documentation necessary to verify the effective fulfillment of said obligations and, in particular, the accuracy of the declarations-settlements submitted.

22. The management entity or entities or, as the case may be, the management representation or association, and the represented or associated entities themselves, shall respect the principles of confidentiality or commercial privacy in relation to any information they may become aware of in the exercise of the powers provided for in paragraph 21.

23. The Government shall establish by regulation the types of reproductions that are not to be considered for private use for the purposes of the provisions of this Article; the equipment, apparatus and materials exempted from payment of remuneration. The Government shall establish by regulation the types of reproductions that are not to be considered for private use for the purposes of this Article; the equipment, apparatus and materials exempted from payment of remuneration, taking into account the peculiarity of the use or exploitation for which they are intended, as well as the requirements that may arise from technological developments and the corresponding market sector; the distribution of the remuneration in each of the said types among the categories of creditors, so that they may, in turn, distribute it among them, in accordance with the provisions of Article 149 of this Law.

## Duration

### Article 26. *Duration and calculation.*

The exploitation rights of the work shall last for the life of the author and seventy years after his death or declaration of death.

### *Duration and computation in posthumous, pseudonymous and anonymous works.*

1. The exploitation rights of anonymous or pseudonymous works referred to in Article 6 shall last for seventy años gesde eu divulgation #cita.

## TITLE III Duration and limits

### CHAPTE R I

When the author is known before the expiration of this term, either because the pseudonym he/she has adopted leaves no doubt as to his/her identity, or because the author reveals it himself/herself, the provisions of the preceding article shall apply.

2. The exploitation rights of works that have not been disclosed shall last for seventy years from their creation, when the term of protection is not computed as from the death or declaration of death of the author or authors.

#### Article 28. *Duration / computation of the hours in cola- boration and collective.*

1. The rights of exploitation of the works in joint production defined in Article 7, including cinematographic and audiovisual works, shall last for the lifetime of the co-authors and seventy years from the death or declaration of death of the last surviving co-author.

2. The exploitation rights in collective works as defined in Article 8 of this Law shall last for 70 years from the lawful disclosure of the work protected. However, if the natural persons who have created the work are identified as authors in the versions of the work that are made accessible to the public, the provisions of Articles 26 or 28(1), as appropriate, shall apply.

The provisions of the preceding paragraph shall be without prejudice to the rights of identified authors whose identifiable contributions are contained in such works, to which Article 26 and paragraph 1 of this Article shall apply, as appropriate.

#### Article 29. *Works published in parts.*

In the case of works disclosed in parts, volumes, installments or installments that are not independent and whose term of protection begins to run when the work has been lawfully disclosed, said term shall be computed separately for each element.

#### Article 30. *Computation of the term of protection.*

The terms of protection established in this Law shall be computed as from January 1 of the year following that of the death or declaration of death of the author or that of the lawful disclosure of the work, as appropriate.

## CAPTULOM

### Gmites

#### Article 31. *Unauthorized reproduction.*

Works already disclosed may be reproduced without the author's authorization in the following cases:

1. ° As a consequence of or for the record in a judicial or administrative proceeding.

2. For the private use of the copyist, without prejudice to the provisions of Articles 25 and 99.a) of this Law, and provided that the copy is not for collective or lucrative use.

3. ° For private use of incidents. provided that the reproduction is made by means of the Braille system or other specific procedure and that the copies are not intended for lucrative use.

#### Article 32. *Citations and reviews.*

The inclusion in one's own work of fragments of other written, sound or audio-visual works, as well as isolated works of a plastic, photographic, figurative or analogous nature, is licit, as long as they are already published works and their inclusion is made by **way of** quotation or for analysis, commentary or critical judgment. Such use may only be made for teaching or research purposes, to the extent justified by the purpose of such incorporation and indicating the source and the name of the author of the work used.

Periodical compilations in the form of reviews or press reviews shall be considered as quotations.

#### Article 33. *Works on current issues.*

1. Works and articles on current affairs disseminated by the mass media may be reproduced, distributed and communicated publicly by any others of the same kind, citing the source and Aitor if the work appeared with a signature and provided that the reservation of rights had not been stated at source. All this without prejudice to the author's right to receive the agreed remuneration or, in the absence of agreement, that which is deemed equitable.

In the case of literary collaborations, the author's authorization will be required.

2. Likewise, lectures, addresses, reports before the Courts and other works of the same nature delivered in public may be reproduced, distributed and communicated, provided that such use is made for the sole purpose of reporting on current affairs. This last condition shall not apply to speeches delivered in parliamentary or public corporation sessions. In any case, the author reserves the right to publish such works in a collection.

#### Article 34. *Use of works on the occasion of current events.*

Any work likely to be seen or heard on the occasion of information on current events may be reproduced, distributed and shared publicly, but only to the extent justified by such an informative purpose.

#### Article 35. *Use of public roadside galleries.*

Works permanently located in parks, streets, squares or other public thoroughfares may be freely reproduced, distributed and communicated by means of paintings, drawings, photographs and audiovisual procedures.

#### Article 36. *Satellite and technical recordings.*

1. The authorization to broadcast a work includes the transmission or cable transmission of the broadcast, as long as it is carried out simultaneously and in its entirety by the originating entity and without exceeding the geographical area provided for in the said authorization.

2. Likewise, the referred authorization includes its incorporation into a program directed towards a satellite that allows the reception of this work through an entity different from that of origin, when the author or his right-holder has authorized the latter entity to communicate the work to the public, in which case, in addition.

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the home broadcaster shall be exempted from paying any remuneration.

3. The assignment of the right of public communication of a work, where it is made by means of radio broadcasting, shall entitle the broadcasting entity to register the same by its own means for its own wireless broadcasts for the purpose of making the authorized public communication on a single occasion. For new broadcasts of the work thus registered, the assignment of the right of reproduction and public communication shall be necessary.

4. The provisions of this article shall be understood without prejudice to the provisions of article 20 of this Law.

The extinction of the exploitation rights of the works will determine their transfer to the public domain.

#### *Free reproduction and loan in certain institutions.*

1. Copyright owners may not object to reproductions of works when they are made without lucrative purposes by museums, libraries, phonotheques, film libraries, newspaper libraries or archives, publicly owned or integrated in institutions of a cultural or scientific nature, and the reproduction is made exclusively for research purposes.

2. Likewise, museums, archives, libraries, newspaper and periodicals libraries, sound libraries or film libraries owned by the public or belonging to non-profit cultural, scientific or educational entities of general interest, or to educational institutions integrated in the Spanish educational system, shall not require authorization from the owners of these rights, nor shall they pay them any remuneration for the loans they make.

#### Article 38. *Official acts and religious ceremonies.*

The performance of musical works in the course of official acts of the State, public administrations and religious ceremonies shall not require the authorization of the owners of the rights, provided that the public may attend them free of charge and that the artists who take part in them do not receive specific remuneration for their performance at such acts.

#### Article 39. *Parody.*

The parody of the disclosed work shall not be considered a transformation that requires the author's consent, as long as it does not imply a risk of confusion with the original work or damage to the original work or its author.

#### Article 40. *Protection of the right of access to culture.*

If upon the death or declaration of death of the author, his successors in title exercise their right to non-disclosure of the work under conditions that violate the provisions of Article 44 of the Constitution, the judge may order appropriate measures at the request of the State, the Autonomous Communities, local corporations, public institutions of a cultural nature or any other person having a legitimate interest.

### TITLE IV

#### Public domain

#### Article 41. *Conditions for the use of works in the public domain.*

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Works in the public domain may be used by anyone, provided that the authorship and integrity of the work are respected, as provided for in Article 14(3) and (4).

## TITLE V

### Transfer of rights

#### CHAPTER I

##### General **Provisions**

###### Article 42. *Transfer "mortis causa".*

The rights of exploitation of the work are transferred to "mortis causa" by any of the means admitted by law.

###### Article 43. *Transmission "inter vivos".*

1. The rights of exploitation of the work may be transferred by "inter vivos" acts, the assignment being limited to the right or rights assigned, to the modes of exploitation expressly provided for and to the time and territorial scope determined.

2. The absence of a time limit limits the assignment to five years and the territorial scope to the country in which the assignment is made. If the modalities of exploitation of the work are not specifically and concretely expressed, the assignment shall be limited to that which is necessarily deduced from the contract and is indispensable to fulfill the purpose of the same.

3. The transfer of exploitation rights in respect of all the works that the author may create in the future shall be null and void.

4. Any stipulations by which the author of a contract commit not to create any work in the future.

5. The transfer of exploitation rights does not extend to methods of use or means of dissemination that did not exist or were unknown at the time of the transfer.

###### Article 44. *Independent living minors.*

Authors under eighteen years of age and over sixteen years of age, who live independently with the consent of their parents or guardians or with the authorization of the person or institution in charge of them, have full capacity to assign exploitation rights.

###### Article 45. *Written formalization.*

All assignments must be formalized in writing. If the assignee fails to comply with this requirement after a credible request, the author may choose to terminate the contract.

###### Article 46. *Proportional and lump sum remuneration.*

1. The assignment granted by the author for valuable consideration confers on him a proportional share in the income from the exploitation. *ei.* the amount agreed upon with the assignee.

2. However, a flat-rate remuneration may be stipulated for the author in the following cases:

a) When, in view of the type of operation, there is serious difficulty in determining the income from the operation.

impossible or of a cost disproportionate to the possible **retribution**.

b) When the use of *the* work is ancillary to the activity or material object for which it is intended.

c) When the work, used with others, does not constitute an essential element of the intellectual creation in which it is integrated.

d) In the case of the first or only edition of the following previously undisclosed works:

1.° Dictionaries, anthologies and encyclopedias.

2.° Prologues, annotations, introductions and introductions.

tations.

3.° Scientific works.

4.° Works of illustration of a work.

5.° Translations.

6.° Popular editions at reduced prices.

#### Article 47. *Action for review for inequitable remuneration.*

If, in the flat-rate assignment, there is a disproportion between the remuneration of the author and the profits obtained by the assignee, the latter may request a review of the contract and, failing agreement, apply to the court for the fixing of equitable remuneration, having regard to the circumstances of the case. This right may be exercised within ten years of the assignment.

#### Article 48. *Exclusive concession.*

The exclusive assignment shall be expressly granted with this character and shall confer on the assignee, within the scope thereof, the right to exploit the work to the exclusion of any other person, including the assignor himself, and, unless otherwise agreed, the right to grant non-exclusive authorizations to third parties. It also confers, ~~legitimacy, independently of that of the assigning owner,~~

to prosecute violations affecting the powers granted to him.

This assignment shall place the assignee under the obligation to provide all the means necessary for the effectiveness of the exploitation granted, according to the nature of the work and the uses in force in the professional, industrial or commercial activity in question.

#### *Transfer of the assignee's right in exclusivity.*

The exclusive transferee may transfer to another transferee his or her the express consent of the assignor.

In the absence of consent, the assignees shall be jointly and severally liable to the first assignor for the obligations of the assignment.

Consent shall not be required where the transfer is effected as a result of the dissolution or change of ownership of the transferee company.

#### Article 50. *Non-exclusive cesion*

1. The non-exclusive assignee shall be entitled to use the work in accordance with the terms of the assignment and in concurrence both with other assignees and with the assignor himself. His right shall be non-transferable, except in the cases **provided for** in the third paragraph of the foregoing Article.

2. The non-exclusive authorizations granted for The management entities for the use of their repertoires. In any case, they shall be non-transferable.

#### Article 51. *Transfer of the rights of the salaried author.*

1. The transfer to the employer of the exploitation rights of the work created by virtue of an employment relationship shall be governed by the terms of the contract, which must be in writing.

2. In the absence of a written agreement, it shall be presumed that the exploitation rights have been assigned exclusively and to the extent necessary for the exercise of the usual activity of the employer at the time of delivery of the work made under such employment relationship.

3. In no case may the employer use the work or dispose of it for purposes other than those derived from the provisions of the two preceding paragraphs.

4: The other provisions of this Law shall, where applicable, apply to such transfers. provided that this follows from the purpose and object of the contract.

5. The ownership of the rights over a computer program created by a salaried worker in the exercise of his functions or following the instructions of his employer shall be governed by the provisions of Article 97(4) of this Law.

#### *Transfer of rights for periodical publications.*

Unless otherwise stipulated, the authors of works reproduced in periodicals can exploit them in any form that does not conform to the norm of the publication in which they have been inserted.

The author may freely dispose of his work if it is not reproduced within one month of its dispatch or acceptance for daily publications and within six months for other publications, unless otherwise agreed.

The author's remuneration for the aforementioned services will be paid to will be able to ronsi.stir in a raised tanto.

#### Article 53. *Ilipoteca and embargo òe toe of. echos of author.*

1. The exploitation rights of the works provided for in this Law may be subject to mortgage in accordance with the legislation in force.

2. The exploitation rights corresponding to the author are not impoundable, but his fruits or products are, which shall be considered as wages, both as regards the order of priority for seizure and as regards withholdings or impoundable part.

#### Article 54. *Credits for the assignment of exploitation rights.*

The cash payments for the assignment of exploitation rights will have the same consideration as the ones accrued for wages or salaries in the insolvency proceedings of the assignees. with the term of two annuities.

#### Article 55. *Irrevocable benefits.*

Unless otherwise provided by law, the benefits granted in this Title to the authors and their successors in title shall be unwaivable.

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**Article 56. *Transfer of rights to owners of certain material/er supports.***

1. The acquirer of the ownership of the support to which the work has been incorporated shall not have, by this title alone, any right of exploitation over the latter.

2. However, the owner of the original of a The author of a work of visual art or a photographic work shall have the right of public exhibition of the work, even if it has not been disclosed, unless the author has expressly excluded this right in the act of enactment of the original. In any case, the author may oppose the exercise of this right by applying, where appropriate, the precautionary measures provided for in this Law, when the exhibition is made in conditions that are prejudicial to his honor or professional reputation.

**Article 57. *Preferential application of other provisions.***

The transfer of copyrights for their exploitation by means of publishing, presentation or performance, or production of audio-visual works shall be governed, respectively and in all cases, by the provisions of the specific provisions of this Book, and in all matters not provided for therein, by the provisions of this Chapter.

Assignments of rights for each of the different types of exploitation must be formalized in separate documents.

## CHAPTER II

### Publishing contract

**Article 58.**

By the publishing contract, the author or his successors in title assign to the publisher, by means of economic compensation, the right to reproduce his work and the right to distribute it. The publisher undertakes to carry out these operations at his own risk and expense under the agreed conditions and subject to the provisions of this Law.

**Future works, commissioning of a work and contributions to periodicals.**

1. Future works are not subject to the publishing contract regulated in this Law.

2. The commissioning of a work is not the object of the publishing contract, but any remuneration that may be agreed upon shall be considered as an advance on the author's royalties for the publication, should it be carried out.

3. The provisions of this chapter shall also not apply to

The same shall not apply to collaborations in periodicals, unless so required by the nature and purpose of the contract, as the case may be.

**Article 60. *Training and minimum content.***

The contract of edition must be formalized in writing and must express in every house:

1.° If the assignment of the author to the publisher is exclusive.

2. "Its territorial scope.

3. "The maximum and minimum number of copies that the edition or each of the editions to be agreed upon will reach.

4. The distribution of the copies and those reserved for the author. to the criticism and promotion of the work.

5. The remuneration of the author, established in accordance with the provisions of article 46 of this Law.

6. The term for the release for circulation of copies of the sole or first edition, which may not exceed two years from the date on which the author delivers the work to the publisher in a suitable condition for its reproduction.

7. The time limit within which the author must deliver the original of his work to the publisher.

**Article 61. *Invalidity and remedy of omissions.***

1. A contract not formalized in writing shall be null and void, as shall a contract that does not express the points required in paragraphs 3 and 5 of the preceding article.

2. The omission of the points mentioned in paragraphs 6 and 7 of the preceding article shall entitle the contracting parties to compel each other to remedy the fault. In the absence of agreement, the judge will do so according to the circumstances of the contract, to the acts of the parties in its execution and to the usages.

**Article 62. *Edition in book form.***

1. In the case of the publication of a work in book form, the contract shall also state the following points:

a) The language or languages in which the work is to be published.

b) The advance, if any, to be granted by the publisher to the author on account of his royalties.

c) The modality or modalities of edition and, if applicable, the collection of which they will form part.

2. Failure to state the language or languages in which the work is to be published shall only entitle the publisher to publish it in the original language of the work.

3. When the contract provides for the publication of a work in several official Spanish languages, publication in one of them shall not release the publisher from the obligation to publish in the other languages.

If after five years from the date of delivery of the work by the author, the publisher has not published it in all the languages provided for in the contract, the author may terminate it in respect of the languages in which it has not been published.

4 The provisions of the preceding paragraph shall also apply to translations of foreign works in Spain.

**Article 63. *Exceptions to article 60.6.°.***

The time limitation provided for in Article 60(6) shall not apply to editions of the following types of works:

1. "Anthologies of other people's works. dictionaries, encyclopedias and similar collections.

2. Prologues, epilogues, introductions, introductions, annotations, comments and illustrations of other people's works.

**Article 64. *Obligations of the publisher.***

These are obligations of the publisher:

1. "Reproduce the work in the agreed form, without introducing any modification that the author has not consented to and stating on the copies the name, signature or sign that identifies it.

2.° To submit the proofs of the print run to the author, unless otherwise agreed.

3.° Proceed with the distribution of the work within the stipulated term / conditions.

4.° To ensure that the work is continuously exploited and commercially distributed in accordance with the usual practices in the professional publishing sector.

5.° To pay the author the stipulated remuneration and, where this is proportional, at least once a year, the appropriate settlement, the contents of which shall be accountable to him. He shall also make available to the author each year a certificate setting out the data relating to the manufacture, distribution and existence of copies. For these purposes, if the author so requests, the publisher shall submit to him the corresponding supporting documents.

6.° Return to the author the original of the work, object of the edition, once the editing operations have been completed.  
printing and print run.

#### Article 65. *Obligations of the author.*

These are obligations of the author:

1.° Deliver to the publisher in due form for its reprinting and within the agreed term the work to be published.

2.° To answer to the publisher for the authorship and origin of the work and for the peaceful exercise of the rights assigned to him.

3.° Correct the proofs of the run.

#### Article 66. *Modifications in the content of the work.*

The author, during the proofreading period, may make such modifications to the work as he deems necessary, provided that they do not alter its character or purpose, nor substantially increase the cost of the edition. In any case, the publishing contract may provide for a maximum percentage of corrections to be made to the work as a whole.

#### *Copyright in case of sale in balance and destruction of the edition.*

1. The publisher may not, without the author's consent, sell the edition as a remainder within two years of the initial circulation of the copies.

2. After that period, if the publisher decides to sell as balance the remaining ones, he shall notify the author in writing, who may choose to acquire them by exercising a pre-emption on the balance price or, in the case of proportional remuneration, to receive 10 percent of the price invoiced by the publisher. The option shall be exercised within thirty days of receipt of the notification.

3. If, after the same period, the publisher decides to destroy the remaining copies of an edition, he shall also notify the author, who may demand that all or part of the copies be delivered to him free of charge within thirty days of notification. The author may not use such copies for commercial purposes.

#### Article 68. *Resolution.*

1. Without prejudice to any compensation to which he/she may be entitled, the author may terminate the publishing contract in the following cases:

a) If the publisher does not publish the work within the agreed time and conditions.

b) If the publisher fails to comply with any of the obligations referred to in paragraphs 2, 4 and 5.

64. notwithstanding the author's express request for compliance.

c) If the publisher proceeds to the sale as a balance or to the destruction of the remaining copies of the edition, without complying with the requirements set forth in Article 67 of this Law.

d) If a publisher assigns its rights to a third party without notice.

e) When, after several editions have been foreseen and the last edition has been sold out, the publisher does not publish the next edition within one year of being requested to do so by the author. An edition shall be considered out of print for the purposes of this article when the number of unsold copies is less than 5 per cent of the total of the edition and, in any case, less than 100.

f) In the event of liquidation or change of ownership of the publishing company, provided that the reproduction of the work has not been started, with refund, if applicable, of the amounts received as an advance.

2. When the exploitation of the work is suspended due to cessation of the publisher's activity or as a result of a bankruptcy proceeding, the judicial authority, at the instigation of the author, may set a time limit for the resumption of the exploitation of the work, and the publishing contract shall be terminated if this is not done.

#### Article 69. *Causes of extinction.*

The publishing contract is terminated, in addition to the general causes of termination of contracts, by the following:

1.° For the termination of the agreed term.

2.° For the sale of all copies.  
if this had been the fate of the edition.

3.° After ten years have elapsed since the assignment if the remuneration has been agreed exclusively on a lump sum basis in accordance with the provisions of Article 46, paragraph 2.d) of this Law.

4.° In any case, fifteen years after the author has put the publisher in a position to make the reproduction of the work.

#### Article 70. *Effects of the extinction.*

Upon termination of the contract, and unless otherwise stipulated, the publisher may, within the following three years and regardless of the form of distribution agreed upon, dispose of the copies in his possession. The author may acquire them for 60 per cent of their sale price to the public or for such price as may be expertly determined, or may choose to exercise a pre-emption on the sale price.

Such disposal shall be subject to the conditions set forth in the terminated contract.

#### Article 71. *Music publishing contract.*

The contract for the publication of musical or dramatic works for which the publisher is also granted rights of public communication shall be governed by the provisions of this chapter, without prejudice to the following rules:

1.° The contract shall be valid even if the number of copies is not stated. However, the publisher shall make and distribute copies of the work in sufficient quantity to meet the normal needs of the exploitation granted, in accordance with the customary use in the professional music publishing sector.

2. For symphonic and dramatic-musical works, the time limit provided for in section 6O.6 shall be five years.

3. The provisions of section 1.c) of article 68, and clauses 2, 3.<sup>a</sup> and 4.\* of article 69 shall not apply to this contract.

## **Article 72. *Pulling control.***

The number of copies of each edition shall be subject to print-run control through the procedure to be established by regulation, after hearing the professional sectors concerned.

Failure by the publisher to comply with the requirements set forth to that effect shall entitle the author or his successors in title to terminate the contract, without prejudice to any liabilities that the publisher may incur.

## **Article 73. *General conditions of the contract.***

Authors and publishers, through the management entities of their corresponding intellectual property rights or, failing that, through their representative associations, may agree on general conditions for the publishing contract in compliance with the law.

## **CHAPTER III**

### **Theatrical performance and musical performance contract**

## **Article 74. *Concept.***

For the contract regulated in this chapter, the author shall

or their successors in title assign to a natural or legal person the right to publicly represent or perform a literary, dramatic, musical, dramatico-musical, pantomimic or choreographic work, by means of an economic compensation. The assignee undertakes to carry out the public communication of the work in the agreed conditions and subject to the provisions of this Law.

## **Article 75. *Modalities and maximum duration of the contract.***

1. The parties may contract the assignment for a certain period of time or for a specific number of communications to the public.

In any case, the duration of the exclusive assignment may not exceed five years.

2. The contract shall stipulate the period within which the sole or first communication of the work must be made. This period may not exceed two years from the date of the contract or, as the case may be, from the date on which the author put the entrepreneur in a position to make the communication.

If the term is not fixed, it shall be understood to be granted for one year. If the purpose of the contract is the stage performance of the work, the term shall be the duration of the season corresponding to the time of the conclusion of the contract.

## **Article 76. *Restrictive interpretation of the contract.***

If the contract does not specify the authorized modalities, these shall be limited to recitation and performance in theaters, halls or venues whose entrance requires the payment of a sum of money.

## **Article 77. *Obligations of the author.***

These are obligations of the author:

1.° Deliver to the employer the text of the work with the score, if any, fully instrumented, when it has not been published in printed form.

2.° To answer to the assignee for the authorship and origin of the work and for the peaceful exercise of the rights assigned to him.

## **Article 78. *Obligations of the assignee.***

The assignee is obligated:

1.° To carry out the public communication of the work within the term agreed or determined in accordance with Article 75, paragraph 2.

2.° To make such communication without making any variations, additions, cuts or deletions to the work that are not agreed to by the author and under technical conditions that do not prejudice the moral rights of the latter.

3.° To guarantee the author or his representatives the inspection of the public performance of the work and the attendance to it free of charge.

4.° To promptly pay the author the agreed remuneration, which shall be determined in accordance with the provisions of Article 46 of this Law.

5.° To submit to the author or his representatives the exact program of the acts of communication, and when the remuneration is proportional, a statement of income. The assignee shall also provide them with the verification of such programs and declarations.

## **Article 79. *Guarantee of payment of remuneration.***

The impresarios of public performances shall be considered depositaries of the remuneration corresponding to the authors for the communication of their works when it consists of a proportional participation in the income. The said remuneration shall be made available to the authors or their representatives on a weekly basis.

## **Article 80. *Execution of the contract.***

Unless otherwise agreed by the parties, they shall be subject to the following rules in the performance of the contract:

1.° The assignee shall be responsible for obtaining the copies necessary for public communication of the work. These must be approved by the author.

2. The author and the assignee shall select by mutual agreement the principal performers and, in the case of orchestras, choirs, dance groups and similar artistic ensembles, the conductor.

3. The author and the assignee shall agree on the wording of the publicity of the acts of communication.

## **Article 81. *Causes for termination.***

The contract may be terminated at the author's will in the following cases:

1. If the entrepreneur who has acquired exclusive rights, once the public performances of the work have begun, interrupts them for one year.

2.° If the employer fails to comply with the aforementioned obligation.

The provisions of Article 78(1).

3. If the employer fails to comply with any of the obligations mentioned in sections 2, 3, 4 and 5 of the same article 78, after having been requested by the

author to do so.

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Article 82. *Causes of extinction.*

The performance contract is terminated, in addition to the general causes of termination of contracts, when, in the case of a premiere work and its stage performance being the only form of communication contemplated in the contract, it has been clearly rejected by the public and this has been expressed in the contract.

*Public performance of musical compositions.*

A performance contract whose purpose is the public performance of a musical composition shall be governed by the provisions of this Chapter, provided that the nature of the work and the form of the authorized communication so permit.

*Special provisions for the assignment of the right of public communication by means of radio broadcasting.*

1. The assignment of the right of communication to the public of the works referred to in this Chapter, by means of broadcasting, shall be governed by the provisions of this Chapter, with the exception of the provisions of Article 81(1).

2. Unless otherwise agreed, it shall be understood that such assignment shall be limited to the broadcasting of the work on a single occasion by wireless means and broadcasting centers of the authorized broadcasting entity, within the territorial scope determined in the contract, without prejudice to the provisions of Article 20 and Article 36(1) and (2) of this Law.

*Application of the above provisions to simple authorizations.*

Authorizations granted by the author to an employer to make a public communication of his work, without any obligation to do so, shall be governed by the provisions of this **Chapter insofar as they** are applicable.

## TITLE VI

### Cinematographic and other audiovisual works

Article 86. *Concept.*

1. The provisions contained in this Title shall apply to cinematographic and other audiovisual works, understood as creations expressed by means of a series of associated images, with or without incorporated sound, that are essentially intended to be shown by means of projection apparatus or by any other means of public communication of image and sound, irrespective of the nature of the material supports of such works.

2. All the works referred to in this Article are hereinafter referred to as audiovisual works.

Article 87. *Authors*

They are authors of the audiovisual work under the terms provided for in Article 7 of this Law:

1. The director-producer.

2. The authors of the plot, the adaptation and those of the script or dialogues.

3. The authors of the musical compositions, with or without lyrics, created especially for this work.

Article 88. *Presumption of exclusive assignment and limits.*

1. Without prejudice to the rights that correspond to the authors, by the contract of production of the audiovisual work, the rights of reproduction, distribution and public communication, as well as those of dubbing or subtitling of the work, shall be presumed to be assigned exclusively to the producer, subject to the limitations established in this Title.

However, in the case of cinematographic works, the express authorization of the authors shall always be necessary for their exploitation by making copies available to the public in any system or format for domestic use, or by means of public communication through broadcasting.

2. Unless otherwise stipulated, the authors may dispose of their contribution in isolation, provided that the normal exploitation of the audiovisual work is not prejudiced.

*Presumption of assignment in the event of transfer of a pre-existing work.*

1. By means of a contract for the transformation of a pre-existing work that is not in the public domain, it shall be presumed that the author thereof assigns to the producer of the audiovisual work the exploitation rights therein under the terms provided for in Article 88.

2. Unless otherwise agreed, the author of the pre-existing work shall retain his rights to exploit it in the form of graphic publishing and stage representation and, in any case, may dispose of it for another audiovisual work fifteen years after having made his contribution available to the producer.

Article 90. *Remuneration of authors.*

1. The remuneration of the authors of the audiovisual work for the assignment of the rights referred to in Article 88 and, as the case may be, that corresponding to the authors of preexisting works, whether or not they have been transformed, shall be determined for each of the forms of exploitation granted.

2. Where the authors referred to in the preceding paragraph enter into contracts with a producer of audiovisual recordings for the production thereof, it shall be presumed that, unless otherwise agreed in the contract and subject to the unwaivable right to equitable remuneration referred to in the following paragraph, they have transferred their rental right.

An author who has transferred or assigned to a producer of phonograms or audiovisual recordings his rental right in respect of a phonogram or an original or a copy of an audiovisual recording shall retain the unwaivable right to obtain equitable remuneration for the rental thereof. Such remuneration will be demandable from those who carry out the operations of rental to the public of phonograms or audiovisual recordings in their capacity as rightholders of the owners of the corresponding right to authorize such rental and will become effective as from January 1, 1997.

3. In any case, and regardless of what is agreed in the contract, when the audiovisual work is screened in public places against payment of an entrance fee, the authors mentioned in paragraph 1 of this article shall

be entitled to receive a copy of the audiovisual work.

The exhibitors shall be entitled to receive from those who publicly exhibit the said work a percentage of the proceeds from such public exhibition. The amounts paid in this connection may be deducted by the exhibitors from those payable to the licensors of the audiovisual work.

In the case of export of the audiovisual work, the authors may assign the aforementioned right for a lump sum, when in the country of destination it is impossible or seriously difficult for them to exercise the right effectively.

The owners of public theaters or exhibition premises shall periodically make available to authors the amounts collected by way of such remuneration. For these purposes, the Government may establish by regulation the appropriate control procedures.

4. The duly authorized projection, showing or transmission of an audiovisual work by any process without requiring payment of an entrance fee shall entitle the authors to receive the appropriate remuneration in accordance with the general rates established by the corresponding collecting society.

5. In order to facilitate the author's exercise of the rights to which he is entitled for the exploitation of the audiovisual work, the producer shall, at least once a year, provide the necessary documentation at the author's request.

6. The rights provided for in paragraphs 3 and 4 of this Article shall be unwaivable and non-transferable by inter vivos acts and shall not apply to authors of audiovisual works of an advertising nature.

7. The rights referred to in paragraphs 2, 3 and 4 of this Article shall be enforceable through the intellectual property rights management entities.

#### *Insufficient contribution of an author.*

When an author's contribution is not completed due to his unjustified refusal or for reasons of force majeure, the producer may use the part already made, respecting the author's rights over it, without prejudice, as the case may be, to any compensation that may be due.

#### *Article 92. Final version and its modifications.*

1. The audiovisual work shall be considered completed when the final version has been established, in accordance with the terms of the contract between the director-producer and the producer.

2. Any modification of the definitive version of the audiovisual work by adding, deleting or changing any element thereof shall require the prior authorization of those who have agreed upon said definitive version.

However, in contracts for the production of audiovisual works intended essentially for public communication by broadcasting, the authors shall be presumed to have granted, unless otherwise stipulated, authorization to make such modifications to the form of broadcasting of the work as are strictly required by the programming mode of the medium, without prejudice in any case to the right recognized in Article 14(4).

#### *Moral rights and destruction of original support.*

1. The moral rights of authors may only be exercised on the final version of the audiovisual work.

2. The destruction of the original support of the audiovisual work in its final version is prohibited.

#### *Article 94. Radiotones.*

The provisions contained in this Title shall apply, as appropriate, to radiophonic works.

## TITLE VII

### Computer software

#### *Article 95. Legal Regime.*

Copyright in computer programs shall be governed by the provisions of this Title and, insofar as not specifically provided for herein, by the applicable provisions of this Law.

#### *Article 96. Object of protection.*

1. For the purposes of this Law, a computer program shall mean any sequence of instructions or indications intended to be used, directly or indirectly, in a computer system to perform a function or task or to obtain a specific result, whatever its form of expression and fixation.

For the same purposes, the expression computer programs shall also include their preparatory documentation. The technical documentation and user manuals of a program shall enjoy the same protection that this Title grants to computer programs.

2. The computer program will be protected only by the author's own intellectual creation, in the sense of being original.

3. The protection provided for in this Law shall apply to any form of expression of a computer program. This protection shall also extend to any form of expression of a computer program.

to any successive versions of the program as well as to derivative programs, except those created with the purpose of causing harmful effects to a computer system.

Where computer programs form part of a patent or utility model, they shall, without prejudice to the provisions of this Law, enjoy the protection to which they may be entitled by application of the legal regime governing industrial property.

4. The ideas and principles underlying any of the elements of a computer program, including those underlying its interfaces, shall not be protected by copyright under this Law.

#### *Article 97. Ownership of rights.*

1. The author of the computer program shall be considered the person or group of natural persons who have created it, or the legal person who is considered the owner of the copyright in the cases expressly provided for in this Law.

2. In the case of a collective work, the natural or legal person who publishes and disseminates it under his name shall be considered the author, unless otherwise agreed.

3. The copyright on a computer program that is the unitary result of collaboration between several authors shall be common property and shall correspond to all of them in the proportion determined by them.

4. When a salaried employee creates a computer program in the performance of the duties entrusted to him or her or following the instructions of

The ownership of the exploitation rights corresponding to the computer program as well as the .created. both the source program and the target program shall belong exclusively to the employer, unless otherwise agreed.

5. The protection shall be granted to all natural and legal persons that meet the requirements established in this Law for the protection of copyrights.

#### Article 98. *Duration of protection.*

1. When the perpetrator is a natural person, the duration of the

the rights to exploit a program, the rights to exploit a program

The computer *will be*. according to the different assumptions that

The procedure provided for in Chapter I of Title III of this Book may be considered.

2. Where the author is a legal entity, the duration of the rights referred to in the preceding paragraph shall be seventy years, counted from January 1 of the year following that of the lawful disclosure of the program or that of its creation if it has not been disclosed.

#### Article 99. *Content of the exploitation rights.*

Without prejudice to the provisions of Article 100 of this Law, the exclusive rights of the owner of a computer program in accordance with Article 97 shall include the right to make or authorize:

a) The total or partial reproduction, even for personal use, of a computer program, by any means and in any form whatsoever, whether permanent or temporary. When the loading, presentation, execution, transmission or storage of a program requires such reproduction, authorization must be granted by the owner of the right.

b) The translation, adaptation, arrangement or any other transformation of a computer program and the reproduction of the results of such acts, without prejudice to the rights of the person transforming the computer program.

c) Any form of public distribution including the rental of the original computer program or copies thereof.

For these purposes, where the right to use a computer program is assigned, it shall be understood, unless there is proof to the contrary, that such assignment is non-exclusive and non-transferable, it being presumed, likewise, that it is for the sole purpose of satisfying the user's needs. The first sale in the European Union of a copy of a program by the rightholder or with his consent shall exhaust the right of distribution of that copy, except for the right to control the subsequent rental of the program or a copy thereof.

#### Article 100. *Limits to exploitation rights.*

1. The reproduction or transformation of a computer program, including the correction of errors, when such acts are necessary for the use of the same by the legitimate user, in accordance with its proposed purpose, shall not require the authorization of the owner, unless there is a contractual provision to the contrary.

2. The making of a backup copy by the person entitled to use the program may not be prevented by contract insofar as it is necessary for such use.

3. The **legitimate** user of the copy of a program shall be entitled to observe, study or verify its

The user may not, without prior authorization from the owner, use the program to determine the ideas and principles implicit in any element of the program, provided that he does so during any of the operations of loading, viewing, execution, transmission or storage of the program that he is entitled to do.

4. The author, unless otherwise agreed, may not oppose that the assignee holder of the exploitation rights perform or authorize the performance of successive versions of his program or of programs derived therefrom.

5. The authorization of the right holder shall not be required when the reproduction of the code and the translation of the code into the language of the country of origin.

the form in the sense of paragraphs a) and b) above.

of Article 99 of the present Law, it is indispensable to

to obtain the necessary information for the interoperability of an independently created program with other programs, provided that the following requirements are met:

aj That such acts are performed by the legitimate user or by any other person entitled to use a copy of the program, or, on his behalf, by a duly authorized person.

b) The information necessary to achieve interoperability has not previously been made readily and easily available to the persons referred to in the preceding paragraph.

c) That such acts are limited to those parts of the original program that are necessary to achieve interoperability.

6. The exception referred to in paragraph 5 of this article shall be applicable provided that the information thus obtained:

a) It is used only to achieve the inter- perability of the independently created program.

b) Only communicate to third parties when necessary for the interoperability of the independently created program.

c) Not be used for the development. production or marketing of a program substantially similar in expression, or for any other act that infringes copyright.

7. The provisions contained in paragraphs 5 and 6 of this Article may not be interpreted in such a way as to allow their application to unreasonably prejudice the legitimate interests of the rightholder or be contrary to the normal exploitation of the computer program.

#### Article 101. *Registry protection.*

The rights on computer programs, as well as on their successive versions and derived products, may be subject to registration in the Intellectual Property Registry.

The regulations shall determine which elements of the registered programs shall be open to public consultation.

#### *Infringement of rights.*

For the purposes of this Title and without prejudice to the provisions of Article 100, those who, without the authorization of the copyright owner, carry out the acts referred to in Article 99 and in particular, shall be considered infringers of copyright:

a) Those who put into circulation one or more copies of a computer program knowing or being able to presume its illegitimate nature.

b) Those who have for commercial purposes one or more copies of a computer program, knowing or being able to presume its illegitimate nature.

c) Whoever puts into circulation or has for commercial purposes any instrument whose only use is to facilitate the unauthorized suppression or neutralization of any technical device used to protect a computer program.

#### Article 103. *Protective measures.*

The holder of the rights recognized in this Title may initiate the actions and procedures generally provided for in Title I, Book III of this Law and, specifically, the measures contained in Article 137.3, second paragraph, and in Article 137.3.1, second paragraph, and in Article 137.3.2, second paragraph, of this Law. 136.3 in relation to 134.2 of this Law.

#### Article 104. *Safeguarding the application of other legal provisions.*

The provisions of this Title shall be without prejudice to any other legal provisions such as those relating to patent rights. marks. unfair competition. trade secrets. protection of semiconductor products or right of obligations.

## BOOK II

### Other intellectual property rights

#### TITLE I,

#### Performers' rights

#### Article 105. *Definition of performers or performers.*

A performer is understood to be a person who represents, sings, reads, recites, interprets or executes in any form a work. The conductor and the orchestra conductor shall have the rights granted to performers in this Title.

#### Article 106. *Fixing.*

1. The performer has the exclusive right to authorize the fixation of his performances.
2. Such authorization must be given in writing.

#### Article 107. *Reproduction.*

1. The performer has the exclusive right to authorize the direct or indirect reproduction of fixations of his performances.
2. Such authorization must be given in writing.
3. This right may be transferred, assigned or be subject to contractual licensing.

#### Article 108. *Public communication.*

1. The performer has the exclusive right to authorize the public communication of his performances, except when the performance consists of the following: (a) The performer has the exclusive right to authorize the public communication of his performances.

The broadcast performance itself or is based on a previously self-recorded fixation.

Such authorization shall be granted in writing. When the communication to the public is made via satellite, such authorization must be given in writing.

The provisions of the aforementioned paragraphs 3 and 4 of Article 20 and related provisions of this Law shall apply.

2. Users of a phonogram published for commercial purposes, or of a reproduction of such a phonogram that is used for any form of public communication, are obliged to pay a single equitable remuneration to the performers and producers of phonograms, among whom it shall be divided. In the absence of agreement between them on such distribution, it shall be made in equal shares.

3. The users of audiovisual recordings that are used for the acts of public communication provided for in paragraphs f) and g) of paragraph 2 of Article 20 of this Law are obliged to pay a single equitable remuneration to performers and producers of audio-visual recordings, among which the distribution of the same shall be made. In the absence of agreement between them on such distribution, it will be made in equal parts.

Users of audiovisual recordings that are used for any act of communication to the public, other than those mentioned in the preceding paragraph, are also obliged to pay an equitable and unique remuneration to the performers.

4. The right to equitable and equitable remuneration The only ones referred to in paragraphs 2 and 3 of this article shall be made effective through the management entities of intellectual property rights. The effectiveness of the rights through the respective management entities shall include the negotiation with the users, the determination, collection and distribution of the corresponding remuneration, as well as any other action necessary to ensure the effectiveness of those rights.

#### Article 109. *Distribution.*

1. The performer has, with respect to the fixation of his performances, the exclusive right to authorize their distribution, as defined in Article 19.1 of this Law. This right may be transferred, assigned or be the subject of contractual licensing.

2. When the distribution is carried out by means of a sale within the European Union, this right expires with the first sale and only with respect to successive sales carried out within the European Union by the holder of the right or with his consent.

3. For the purposes of this Title, the renting of fixations of the performances is understood as the making available of the same for use for a limited time and with a direct or indirect economic or commercial benefit.

The concept of rental excludes the making available for the purpose of exhibition, public communication from phonograms or audio-visual recordings, including fragments thereof, and that made for consultation "in situ".

1. When the performer enters individually or collectively with a producer of audiovisual recordings into contracts relating to the production of such recordings, it shall be presumed that, unless otherwise agreed in the contract, and subject to the unrestricted right of the producer, the performer is entitled to receive the audiovisual production of the audiovisual recordings, the performer shall be entitled to receive the audiovisual production of the audiovisual recordings, unless otherwise agreed in the contract and subject to the unrestricted right of the producer.

The Company is entitled to the equitable remuneration referred to in the following paragraph, has transferred its rights of allocation.

2. A performer who has transferred or assigned to a producer of phonograms or audiovisual recordings his right of rental in respect of a phonogram or an original or a copy of an audiovisual recording shall retain the unwaivable right to obtain equitable remuneration for the rental thereof. Such remuneration shall be payable by those who carry out the operations of rental to the public of phonograms or audiovisual recordings in their capacity as right holders of the corresponding rights to authorize such rental and shall become effective as from January 1, 1937.

The right referred to in the preceding paragraph shall be exercised through the intellectual property rights management entities.

4. For the purposes of this Title, lending of fixations of performances is understood as making them available for use for a limited time without direct or indirect economic or commercial benefit, provided that such lending is carried out through establishments accessible to the public.

It shall be understood that there is no direct or indirect economic or commercial benefit when the loan made by an establishment accessible to the public results in the payment of an amount that does not exceed what is necessary to cover its operating expenses.

Excluded from the concept of loan are the operations mentioned in the second paragraph of paragraph 3 above and those carried out between establishments accessible to the public.

#### Article 110. *Contract of employment and lease of services.*

If the performance is made in fulfillment of a contract of employment or lease of services, it shall be understood, unless otherwise stipulated, that the employer or the lessee acquires the exclusive rights to authorize reproduction and public communication provided for in this Title and which are deduced from the nature and purpose of the contract.

The provisions of the preceding paragraph shall not apply. cation to the remuneration rights recognized in paragraphs 2 and 3 of Article 108 of this Law.

#### Article 111. *Collective representative.*

Performers who participate collectively in the same performance, such as the members of a musical group, choir, orchestra, ballet or theater company, shall designate from among themselves a representative for the granting of the authorizations mentioned in this Title. For such designation, which must be formalized in writing, the majority agreement of the performers shall be valid. This obligation does not apply to soloists or to orchestra or stage directors.

#### Article 112. *Duration of exploitation rights.*

The exploitation rights granted to performers shall have a duration of fifty years, calculated from January 1 of the year following that of the performance. However, if, within the said period, a recording of the performance is disclosed unlawfully, the said rights shall expire after fifty years, calculated from the first day of January of the year following that of the performance.

The period of time from the date of the disclosure of such recording shall commence on January 1 of the year following the date on which the recording is made.

#### Article 143. *Other rights.*

The performer shall have the right to the recognition of his name on his performances and to oppose, during his lifetime, any distortion, mutilation or any other attack on his performance that is prejudicial to his prestige or reputation. Upon his death and for a period of twenty years thereafter, the exercise of these rights shall be vested in his heirs.

The express authorization of the artist shall be required for the dubbing of his performance in his own language.

## TITLE II

### Rights of phonogram producers

#### Article 114. *Definitions.*

1. A phonogram is any exclusively sonorous fixation of the performance of a work or of other sounds.

2. The producer of a phonogram is the natural or legal person under whose initiative and responsibility the said fixation is made for the first time. If such operation is carried out within a company, the owner thereof shall be considered the producer of the phonogram.

#### Article 115. *Reproduction.*

The Producer of phonograms has the exclusive right to authorize the direct or indirect reproduction thereof.

This right may be transferred, assigned or subject to contractual licensing.

#### Article 116. *Public communication.*

1. When the communication to the public is made via satellite or cable and under the terms provided for in paragraphs 3 and 4 of Article 20 of this Law, the provisions of those paragraphs shall apply.

2. The users of a phonogram published for "commercial purposes, or of a reproduction of such a phonogram used for any form of public communication, are obliged to pay a single equitable remuneration to the producers of phonograms and to the performers, among whom it shall be divided. In the absence of agreement between them on such distribution, it shall be made in equal shares.

3. The right to the equitable and sole remuneration referred to in the preceding paragraph shall be made effective through the management entities of intellectual property rights. The effectiveness of this right through the respective management entities shall include negotiation with users, the determination, collection and distribution of the corresponding remuneration, as well as any other action necessary to ensure its effectiveness.

#### Article 117. *Distribution.*

1. The phonogram producer has the **exclusive** right to authorize the distribution, according to the definition set forth in Article 19.1 of this Law, of

phonograms and that of their copies. This right may be transferred, assigned or be the subject of contractual licensing.

2. When the distribution is carried out by means of sale, in the European Union, this right "expires with the first sale and only in respect of successive sales carried out in this area by the holder of the right or with his consent.

3. It is considered to be included in the right to distribute. The power to authorize the importation and exportation of copies of the phonogram for commercialization purposes.

4. For the purposes of this Title, "phonogram rental" means the making available of phonograms for use for a limited time and with an *eco-benefit*. direct or indirect economic or commercial activity.

Excluded from the concept of rental are the making available for the purpose of exhibition, public communication from phonograms or fragments thereof, and that made for consultation "in situ "\*\*.

5. For the purposes of this Title, the lending of phonograms is understood as the making available for use for a limited time without direct or indirect economic or commercial benefit, provided that such lending is carried out through establishments accessible to the public.

It shall be understood that there is no direct or indirect economic or commercial benefit when the loan made by an establishment accessible to the public results in the payment of an amount that does not exceed the amount required for the loan. sary to cover its operating expenses.

Excluded from the concept of loan are the operations mentioned in the second paragraph of paragraph 4 above and those carried out between establishments accessible to the public.

#### Article 118. *Lactive legitimization.*

In cases of infringement of the rights recognized in Articles 115 and 117, both the phonogram producer and the assignee of such rights shall be entitled to bring the appropriate actions.

#### Article 119. *Duration of the exploitation rights.*

The term of the exploitation rights granted to phonogram producers shall be fifty years, computed from January 1 of the year following the year of their recording.

However, if the phonogram is unlawfully disclosed within such period, the said rights shall expire fifty years from the date of disclosure, calculated from January 1 of the year following the date of disclosure.

### TITLE III

#### Rights of the producers of the recordings audiovisuals

#### Article 120. *Definitions.*

1. Audiovisual recordings are understood to be fixations of a shot or sequence of images, with or without sound, whether or not they are creations susceptible of being classified as audiovisual works within the meaning of Article 86 of this Law.

2. The producer of an audiovisual recording is understood to be the natural or legal person who has the initiative and assumes the responsibility for such audiovisual recording.

#### Article 12 1. *flioproduccióri.*

The producer of the first fixation of an audiovisual recording has the exclusive right to self-reproduce, directly or indirectly, the original and copies thereof.

This right may be transferred, assigned or subject to contractual licensing.

#### Article 122. *Public communication.*

1. The producer of audio-visual recordings shall have the right to authorize the public communication of such recordings.

When the communication to the public is made by cable and under the terms set forth in section 4 of article 20 of this Law, the provisions of said precept shall be applicable.

2. Users of audiovisual recordings that are used for the acts of public communication provided for in paragraphs f) and g) of paragraph 2 of Article 20 of this Law are obliged to pay an equitable and unique remuneration to the producers of audiovisual recordings and to the performers or performers. among which the distribution of the same shall be made. In the absence of agreement between them on such distribution, it shall be made in equal parts.

3. The right to the equitable and sole remuneration referred to in the preceding paragraph shall be made effective through the management entities of intellectual property rights. The effectiveness of this right through the respective management entities will include negotiation with users, the determination, collection and distribution of the corresponding remuneration, as well as any other action necessary to ensure the effectiveness of that right.

#### Article 123. *Distribution.*

1. The producer of the first fixation of an audiovisual recording shall have the exclusive right to authorize the distribution, as defined in Article 19.1 of this Law, of the original and copies thereof. This right may be transferred, assigned or be the subject of contractual licensing.

2. When the distribution is made by sale, Within the European Union, this right expires with the first and only with respect to successive sales made within the European Union by the holder or with his consent.

3. For the purposes of this Title, the rental of audiovisual recordings is understood as the making available for use for a limited time and for direct or indirect economic or commercial benefit.

Excluded from the concept of rental are the making available for exhibition purposes. public communication from the first fixation of an audiovisual recording and copies thereof. even of fragments of one or the other. and that which is made for consultation "in situ".

4. For the purposes of this Title, the loan of audiovisual recordings is understood as the making available for use for a limited period of time without economic or commercial benefit, directly or indirectly, provided that such loan is carried out through establishments accessible to the public.

It shall be understood that there is no direct or indirect economic or commercial benefit when the loan made by an establishment accessible to the public results in the payment of an amount that does not exceed what is necessary to cover its operating expenses.

Excluded from the concept of loan are the operations mentioned in the second paragraph of paragraph 3 above and those carried out between establishments accessible to the public.

Article 124. *Other exploitation rights.*

The producer shall also have the right to exploit the photographs taken during the production process of the audiovisual recording.

Article 125. *Duration of the operating receipts.*

The duration of the exploitation rights granted to the producers of the first fixation of an audiovisual recording shall be fifty years, calculated from January 1 of the year following that in which it was made.

However, if, within such period, the recording is disclosed unlawfully, the said rights shall expire fifty years from the date of disclosure, calculated from January 1 of the year following the date on which such disclosure occurs.

TITLE IV

Rights of broadcasters

Article 126. *Exclusive rights.*

1. Broadcasters have the exclusive right to authorize:

a) The fixation of its broadcasts or transmissions in any sound or visual support. For the purposes of this section, it is understood to include the fixation of any isolated image disseminated in the broadcast or transmission.

Cable distribution companies shall not be entitled to this right when they retransmit broadcasts or transmissions of broadcasting entities.

b) The reproduction of fixations of your broadcasts or transmissions.

This right may be transferred, assigned or subject to contractual licensing.

c) The retransmission by any technical procedure of its broadcasts or transmissions.

d) The public communication of its broadcasts or broadcasting transmissions, when such communication is made in places to which the public may have access upon payment of an admission or entrance fee.

When the communication to the public is made via satellite or cable and under the terms provided for in paragraphs 3 and 4 of article 20 of this Law, the provisions of such precepts shall be applicable.

e) The distribution of the fixations of its emissions or transmissions.

When the distribution is carried out by means of a sale within the European Union, this right expires with the first sale and only with respect to successive sales made within the European Union by the holder of the right or with his consent.

This right may be transferred, assigned or subject to contractual licensing.

2. The concepts of broadcasting and transmission include, respectively, the operations mentioned in paragraphs c) and e) of paragraph 2- of Article 20 of this Law, and that of retransmission. the broadcasting to the public by an entity that broadcasts or disseminates broadcasts of another entity. received through any of the aforementioned satellites.

Article 127. *Duration of exploitation rights.*

The exploitation rights granted to broadcasting entities shall last for fifty years, calculated from January 1 of the year following the year in which a broadcast or transmission is first made.

TITLE V

The protection of mere photographs

Article 128. *Of the mere photographs.*

Any person who makes a photograph or other reproduction obtained by a process analogous to the former, where neither the former nor the latter is a protected work under Book I, shall enjoy the exclusive right to authorize its reproduction, distribution and public communication under the same terms recognized in this Law to the authors of photographic works.

This right shall have a duration of twenty-five years from January 1 of the year following the date on which the photograph or reproduction was taken.

TITLE VI

Protection of certain publishing productions

Article 129. *Unpublished works in the public domain and unprotected works.*

1. Any person who unlawfully discloses an unpublished work that is in the public domain shall have the same exploitation rights over it as would have corresponded to its author.

2. Similarly, the publishers of works not protected by the provisions of Book I of this Law shall enjoy the exclusive right to authorize the reproduction, distribution and public communication of such editions, provided that they can be identified by their typographical composition, presentation and other editorial characteristics.

Article 130. *Duration of the rights.*

1. The rights recognized in paragraph 1 of the foregoing Article shall last for twenty-five years, calculated from January 1 of the year following that in which the work is lawfully disclosed.

2. The rights recognized in paragraph 2 of the preceding article shall last for twenty-five years, calculated from January 1 of the year following the year of publication.

TITLE VII

Common provisions

Article 13 1. *Copyright safeguard clause.*

The rights recognized in this Book II shall be without prejudice to those corresponding to the authors.

Article 132.      *Subsidiary application of provisions of Book 1.*

The provisions contained in Section 2.<sup>a</sup> of Chapter III, Title II and in Chapter II of Title III, both of Book I of this Law, shall apply, subsidiarily and as applicable, to the rights regulated in the present Book.

BOOK III

Protection of the rights recognized in this Law

TITLE I

Actions and procedures

Article 133.      *Urgent precautionary actions and measures.*

The holder of the rights recognized in this Law, without prejudice to other actions to which he is entitled, may request the cessation of the infringer's unlawful activity and demand compensation for the material and moral damages caused, under the terms provided for in Articles 134 and 135.

Likewise, it may previously request the adoption of the precautionary measures of urgent protection regulated in Article 136.

Article 134.      *Cessation of the unlawful activity.*

1. The cessation of the **illegal** activity may include:
  - a) Suspension of the infringing operation.
  - b) Prohibiting the offender from resuming it.
  - c) Withdrawal of illicit specimens from trade and its destruction.
  - d) The disabling and, if necessary, destruction of the molds, plates, matrices, negatives and other elements intended exclusively for the reproduction of illicit copies and of the instruments whose only use is to facilitate the suppression or neutralization, not self-made, of any technical device used to protect a computer program.
  - e) The removal or sealing of devices used in unauthorized public communication.
2. The infringer may request that the destruction or disabling of the said copies and material, when these are susceptible to other uses, be carried out to the extent necessary to prevent the **unlawful** exploitation.
3. The owner of the infringed right may request the delivery of the said copies and material at cost price and on account of the corresponding compensation for damages.
4. The provisions of this article shall not apply to ioE °j.mplares acquired in good faith for personal use.

Article 135.      *Indemnification.*

The injured party may choose, as compensation, between the benefit that he would presumably have obtained, had the unlawful use not occurred, or the remuneration that he would have received had he authorized the exploitation. In the case of moral damage, compensation shall be payable, even if the existence of economic loss is not proven. For its assessment, the circumstances of the infringement, the seriousness of the injury and the degree of dissemination shall be taken into account. illicit use of the work.

The action to claim the damages referred to in this article shall be barred five years after the entitled party was able to exercise it.

Article 136.      *Precautionary measures.*

In case of infringement or when there is a rational and well-founded fear that it is going to occur in an imminent way, the judicial authority may decree, at the request of the holders of the rights recognized in this Law, the precautionary measures that, according to the circumstances, may be necessary for the urgent protection of such rights, and in particular:

1. The intervention and deposit of the income obtained from the illicit activity in question or, as the case may be, the consignment or deposit of the amounts due as remuneration.
2. The suspension of reproduction, distribution and public communication activities, as appropriate.
3. The seizure of the copies produced or used and of the material used exclusively for reproduction or public communication. In the case of computer programs, the seizure of the instruments referred to in Article 102, paragraph c) may be ordered.
4. The seizure of the equipment, apparatus and materials referred to in section 20 of article 25 of this Law.

Article 137.      *Procedure.*

The precautionary measures of urgent protection provided for in the preceding article shall be processed in advance and shall be adopted in accordance with the provisions of the following rules:

- 1<sup>a</sup> The Judges of First Instance shall be competent. the jurisdiction in whose jurisdiction the infringement has effect or there are national indications that it is going to occur or in which the copies that are considered illicit have been descubed, at the choice of *the* applicant of the measures. However, once the main action has been filed, the only competent Judge for all matters relating to the measure adopted shall be the one who hears the main action.

Likewise, when the measure is requested at the time of filing the lawsuit in the corresponding declaratory judgment or during the substantiation thereof, the Judge or Court that is to hear said lawsuit or the one that is already hearing the lawsuit shall be competent to resolve it, respectively.

2. The measure shall be requested in writing signed by the interested party or its legal or voluntary representative.

The following are exceptions to the second paragraph of rule 1 <sup>a</sup>.

3. Within ten days following the filing of the writ, of which the parties will be notified, the judge will hear those who attend the hearing and will rule in any event by order on the day following the expiry of the above time limit. The order will be appealable in a single effect.

No cbSt\*\*?e lo above, in the case of protection of urðei for programs and before giving notice of the writ to the parties, the Judge pOÖtä Ê want such reports or order such investigations as he deems opoi iünfis.

4. "Any of the parties may request the practice of the judicial recognition test, and if it is admitted, it shall be carried out immediately.

5. "Before or at the time of the decision, the judge, if he deems it necessary, may require the applicant to post a bond.

enough, excluding personal liability, to answer for the damages and costs that may be incurred.

6. If the measures had been requested before the application was filed, the latter must be filed within eight days of the granting of such measures. In any case, the applicant may repeat the request for precautionary measures, provided that new facts relating to the infringement appear or evidence is obtained which was previously lacking.

Article 138. Criminal cases.

The precautionary measures provided for in Article 136 may be granted in criminal cases brought for infringement of the rights recognized in this Law.

The rules of Article 137 shall be observed in the processing thereof, insofar as pertinent.

The aforementioned measures shall not preclude the adoption of any other measures established in the criminal pro- cesal legislation.

TITLE II

El Property Registry Intelectua)

Article 139. Organizati  n and operation.

1. The General Register of Intellectual Property shall have a unique character throughout the national territory. Its organization shall be regulated by law, which shall include, in any case, the organization and functions of the Central Register under the Ministry of Culture and the common rules on registration procedures and measures of coordination and information between all the competent public administrations.

2. The Autonomous Communities will determine the The structure and operation of the Registry in their respective territories. and shall assume its management, complying in all cases with the common rules referred to in the preceding paragraph.

Article 140. Regime of registrations.

1. Intellectual property rights relating to works and other productions protected by this Law may be registered in the Register.

2. The Registrar shall qualify the applications submitted and the legality of the acts and contracts relating to the registrable rights, and may refuse or suspend the practice of the corresponding entries. The corresponding actions may be brought directly before the civil jurisdiction against the agreement of the Registrar.

3. It shall be presumed, in the absence of proof to the contrary, that the registered rights exist and belong to their holder in the manner determined in the respective entry.

4. The Register shall be public, without prejudice to the limitations that may be established under the provisions of Article 101 of this Law.

TITLE III

Symbols or indications d= the reservation of rights

         141. S         or indications.

The owner or exclusive assignee of an exploitation right in a work or production protected by this Law may add to its name the symbol "...".

with the precise place and year of the disclosure of these hectares.

Likewise, on the copies of phonograms or on their wrappers, the symbol (p), indicating the year of publication, may be placed before the name of the producer or his assignee.

The aforementioned symbols and references shall be made in such a manner and placement as to show clearly that the exploitation rights are reserved.

TITLE V

Rights management entities  
recognized in the Law

Article 142. Requirements.

Legally constituted entities that intend to engage, in their own name or in the name of others, in the management of exploitation rights or others of a patrimonial nature, on behalf and in the interest of several authors or other holders of intellectual property rights, must obtain the appropriate authorization from the Ministry of Culture, which must be published in the "Bolet  n Oficial del Estado" (Official State Gazette).

These entities shall be non-profit making and. The intellectual property rights entrusted to their management may be exercised by virtue of the authorization and they shall have the rights and obligations set forth in this Title.

Article 143. Conditions of the authorization.

1. The authorization provided for in the preceding article shall only be granted if the following conditions are met:

a) That the bylaws of the applicant entity comply with the requirements established in this Title.

b) It is clear from the data provided and the information provided that the applicant entity meets the necessary conditions to ensure the effective administration of the rights whose management is to be entrusted to it throughout the national territory.

c) That the authorization favors the general interests of intellectual property protection in Spain.

2. In order to assess the concurrence of the conditions established in paragraphs b) and c) of the preceding section, particular account shall be taken of the number of right holders who have undertaken to entrust the management of their rights to it, in the event that it is self-managed, the volume of potential users, the suitability of its statutes and its means for the fulfillment of its purposes, the possible effectiveness of its management abroad and, where appropriate, the report of the management entities already authorized.

Article 144. Revocation of the authorization.

The authorization shall be revoked by the Ministry of Culture if any fact that could have led to the refusal of the authorization should occur or become apparent, or if the collecting society should seriously fail to comply with the obligations set forth in this Title. In all three cases there must be a prior warning from the Ministry of Culture, which shall set a period of not less than three months for the correction or correction of the facts indicated.

The revocation will take effect three months after its publication in the "Official Gazette of the State".

Article 145.     *Legitimacy.*

The management entities, once authorized, shall be entitled, under the terms resulting from their own bylaws, to exercise the rights entrusted to their management and to enforce them in all kinds of administrative or judicial proceedings.

For the purposes established in Article 503 of the Civil Procedure Law, the collecting society shall be obliged to provide a copy of its bylaws, as well as a certificate of its administrative authorization. The defendant will be able to oppose exclusively, duly accrediting it, the lack of representation of the plaintiff, the authorization of the holder of the exclusive right or the payment of the corresponding remuneration.

Article 146.     *Bylaws.*

Without prejudice to the provisions of other applicable rules, the bylaws of the management entities shall state:

1. The name, which may not be identical to that of other entities, nor so similar as to be misleading.
2. The object or purposes, with specification of the rights administered, not being able to dedicate its activity outside the scope of the protection of intellectual property rights.
3. The classes of right holders included in the management and, as the case may be, the different categories of such right holders for the purposes of their participation in the administration of the entity.
4. The conditions for the acquisition and loss of the quality of partner. In any case, the members must be holders of rights to be managed by the entity, and the number of members may not be less than ten.
5. The rights of the members **and, in particular**, the voting regime, which may be established taking into account weighting criteria that reasonably limit plural voting. In matters relating to sanctions for the exclusion of members, the voting regime shall be the same.
6. The duties of the partners and their disciplinary.
7. The governing and representative bodies of the entity and their respective competencies, as well as the rules relating to the convening, constitution and functioning of those of a collegiate nature, with express prohibition to adopt resolutions on matters not appearing on the agenda.
8. The procedure for electing managing partners.
9. Initial equity and economic resources expected.
10. The rules to which the systems must be submitted of revenue sharing.
11. The system for controlling the economic and financial management of the entity.
12. The destination of the net worth or assets resulting in the event of liquidation of the entity, which in no case may be subject to distribution among the partners.

Article 147.     *Obligations to administer the vested intellectual property rights.*

Management entities are obliged to accept the administration of copyrights and other intellectual property rights entrusted to them.

The Board of Directors shall perform its duties in accordance with its object or purposes. Such assignment shall be performed subject to the bylaws and other applicable rules," effect.

Article 148.     *Management contract.*

1. The management of rights shall be entrusted by the owners to the entity by means of a contract whose term may not exceed five years, indefinitely renewable, nor may it impose as compulsory the management of all forms of exploitation nor that of the whole of the work or future production.
2. Entities shall establish in their bylaws adequate provisions to ensure an influence-free management of the users of their repertoire and to avoid unfair preferential use of their works.

Article 149.     *Distribution of rights.*

1. The distribution of the collected royalties shall be carried out equitably among the owners of the works or productions used, according to a system pre-determined in the bylaws and excluding arbitrariness.
2. Collecting societies shall reserve to rightholders a share in the royalties collected in proportion to the use of their works.

Article 150.     *Social function.*

1. Management entities shall directly or through other entities, to promote activities or services of an assistance nature for the benefit of its members, as well as to attend to training and promotion activities of authors and performers.
2. The management entities shall devote to the activities and services referred to in the preceding paragraph, in equal parts, the percentage of the compensatory remuneration provided for in Article 25 of this Law, as may be determined by regulation.

Article 151.     *Accounting documentation.*

Within six months after the close of each fiscal year, the entity shall prepare the corresponding balance sheet and a report on the activities carried out during the previous year.

Without prejudice to the provisions of the applicable regulations, the balance sheet and accounting documents shall be submitted for verification by legally competent experts or firms of experts appointed at the General Meeting of the entity held in the previous year or in the year of its incorporation. The bylaws shall establish the rules in accordance with which another auditor shall be appointed by the minority.

The balance sheet, with note of whether or not the report has been obtained

It shall be made available to the members at the legal domicile and territorial delegations of the entity, at least fifteen days prior to the date of the General Assembly at which it is to be approved.

Article 152.     *Other obligations.*

1. Management entities are obliged to:
  - a) To contract with whoever requests it, except for justified reasons, the granting of non-exclusive authorizations of the rights managed, under reasonable conditions and for remuneration.

b) 4. establish the remuneration of their repertoire, which shall provide for the actions of the entities that have no lucrative purpose.

c) To enter into general contracts with associations of users of its repertoire, provided that they so request and are representative of the corresponding sector.

2. If the parties do not reach an agreement, the corresponding authorization shall be deemed to be granted if the applicant pays the amount required by the management entity at the general rates.

3. The provisions of the interior paragraphs shall not apply to the management of the rights relating to literary, dramatic, musical, choreographic, pantomime works, nor respect the singular use of one or more of the kinds that requires the individual authorization of its owner.

4. Likewise, collecting societies are obliged to enforce the rights to equitable remuneration corresponding to the various cases provided for in this Law and to exercise the right to authorize distribution by cable.

### *Mediating Commission of the Intellectual Property.*

The Mediation and Arbitration Commission for Intellectual Property is hereby created within the Ministry of Culture for the exercise of the mediation and arbitration functions attributed to it by this Law and as a national collegiate body.

1. The Commission shall act in its mediation function:

a) By collaborating in the negotiation of negotiations, after submission of the parties, in the event of failure to conclude a contract for the authorization of cable distribution of a broadcasting program, due to lack of agreement between the owners of intellectual property rights and the cable distribution companies.

b) Submitting, as the case may be, proposals to the parties. All parties shall be deemed to have accepted the proposal referred to in the preceding paragraph if none of them expresses their opposition within a period of three months. In this case, the decision of the Commission shall have the effects provided for in Law 36/1988, of December 5, 1988, on Arbitration, and shall be reviewable before the courts.

civil law.

The proposal AND any opposition thereto shall be notified to the parties, in accordance with the provisions of Articles 58 and 59 of Law 30/1992, of November 26, 1992, of the Legal Regime of the Public Administrations and of the Common Administrative Procedure.

The mediation procedure, as well as the composition of the Commission for mediation purposes, shall be determined by regulation, and in any case, two representatives of the management entities of the intellectual property rights under negotiation and two representatives of the cable distribution companies shall have the right to be part of the Commission in each case in which they intervene.

2. The Commission shall act in its arbitration function:

a) By providing a solution, after submission of the parties, to the conflicts that may arise between the collecting societies and the associations of users of their repertoire or between the former and the broadcasters, in application of the provisions of paragraph 1 of the preceding Article. The submission of the parties to the Commission shall be subject to the following conditions

The agreement shall be voluntary and must be expressly stated in writing.

b) Fixing an amount in lieu of the general tariffs, for the purposes indicated in paragraph 2 of the preceding Article, at the request of an association of users or a broadcasting organization, provided that they submit themselves to the competence of the Commission for the purpose provided for in paragraph a) of this paragraph.

3. For the exercise of its arbitration function, the procedure and composition of the Commission shall be determined by regulation, with the right, in any case, to form part of the same, in each case in which they intervene, two representatives of the management entities and another two of the association of users or of the broadcasting entity.

The decision of the Commission shall be binding and enforceable on the parties.

The provisions of this article shall be understood without prejudice to the actions that may be brought before the competent jurisdiction. However, the submission of the dispute submitted to arbitration before the Commission shall prevent the Judges and Courts from hearing the same until the decision has been rendered and provided that the interested party invokes it by way of exception.

### *Article 154. Powers of the Ministry of Culture.*

1. In addition to the power to grant or revoke the authorization regulated in Articles 143 and 144, the Ministry of Culture is responsible for overseeing compliance with the obligations and requirements established in this Law.

For these purposes, the Ministry of Culture may demand any type of information from these entities, order inspections and audits and appoint a representative to attend, with voice but without vote, their General Assemblies, Boards of Directors or similar bodies.

2. The amendments to the by-laws of the management entities, without prejudice to the provisions of other applicable regulations, once approved by their respective General Assembly, must be submitted to the Ministry of Culture for approval, which shall be deemed to have been granted, if no resolution to the contrary is notified, within three months from the date of their submission.

3. The collecting societies are obliged to notify the Ministry of Culture of the appointments and terminations of their administrators and attorneys-in-fact, the general tariffs and their amendments, the general contracts concluded with associations of users and those concluded with foreign organizations of the same kind, as well as the documents referred to in Article 151 of this Law.

## **BOOK IV**

### **Scope of application of the Law**

#### *Article 155. Authors.*

1. The intellectual property rights of Spanish authors, as well as those of authors who are nationals of other Member States of the European Union, shall be protected under this Law.

They shall also enjoy these rights:

a) **Third** country nationals with habitual residence in Spain.

b) Third-country nationals who do not have their habitual residence in Spain, with respect to their works published for the first time in Spanish territory or within thirty days after they have been published in another country. However, the Government may restrict the scope of this principle in the case of foreigners who are nationals of States that do not sufficiently protect the works of Spanish authors in similar cases.

2. All authors of audiovisual works, whatever their nationality, are entitled to receive a proportional remuneration for the screening of their works under the terms of Article 90, paragraphs 3 and 4. However, in the case of nationals of States that do not guarantee an equivalent right to Spanish authors, the Government may determine that the amounts paid by exhibitors to collecting societies for this concept are intended for purposes of cultural interest to be established by regulation.

3. In any case, nationals of third countries shall enjoy the protection that corresponds to them by virtue of the international conventions and treaties to which Spain is a party and, failing that, they shall be on an equal footing with Spanish authors when these, in turn, are on an equal footing with nationals in the respective country.

4. For works whose country of origin is in accordance with the

The term of protection shall be the same as that granted in the country of origin of the work, but in no case may it exceed that provided for in this Law for the works of the authors.

5. The moral rights of the author, whatever his nationality, are recognized.

#### Article 156. *Performers.*

1. The rights recognized in this Law for Spanish performers shall be protected, regardless of the place of their performance, as well as those corresponding to performers who are nationals of other Member States of the European Union.

2. National performers

The rights of third countries shall enjoy the same rights recognized in this Law in any of the following cases:

- a) When they have their habitual residence in Spain.
- b) When the interpretation or performance is carried out

in Spanish territory.

c) When the performance is recorded on a phonogram or audiovisual medium protected in accordance with the provisions of this Law.

d) When the performance, even if it has not been recorded, is incorporated into a radio broadcast protected under the provisions of this Law.

3. In any case, performers who are nationals of third countries shall enjoy the protection that corresponds by virtue of the international conventions and treaties to which Spain is a party and, failing that, they shall be on a par with Spanish performers when they, in turn, are on a par with nationals in the respective country.

4. The terms of protection provided for in Article 112 of this Law shall also be applicable to the aforementioned owners who are not nationals of the European Union, provided that their protection in Spain is guaranteed by means of an international Convention. However, without prejudice to the corresponding international obligations, the term of protection shall not be extended to the aforementioned holders.

It shall expire on the date provided for in the country of which the holder is a national, but in no case may the duration exceed that established in the aforementioned article.

#### Article 157. *Producers, producers, producers of mere photo- graphics AND publishers.*

1. Producers of phonograms and producers of audiovisual works or recordings, producers of mere photographs and publishers of the works referred to in Article 129 shall be protected under this Law in the following cases:

a) When they are Spanish citizens or companies domiciled in Spain, as well as when they are citizens of another Member State of the European Union or companies domiciled in another Member State of the European Union.

b) When they are nationals of third countries and publish in Spain for the first time or, within thirty days after they have been published in another country, the aforementioned works. However, the Government may restrict the scope of this principle in the case of nationals of States that do not sufficiently protect the works or publications of Spaniards in similar cases.

2. In any case, the owners referred to in paragraph (b) of the foregoing paragraph shall enjoy the protection afforded to them by virtue of the international conventions and treaties to which Spain is a party and, failing that, shall be on a par with producers of phonograms and producers of audio-visual works or recordings, producers of mere photographs and publishers of the works referred to in Article 129, where these, in turn, are on a par with nationals in the respective country.

3. The terms of protection provided for in Articles 119 and 125 of this Law shall also apply to the aforementioned owners who are not nationals of the European Union, provided that their protection in Spain is guaranteed by means of an international Convention. However, without prejudice to the corresponding international obligations, the term of protection shall expire on the date provided for in the country of which the owner is a national, without, in any case, the term of protection exceeding the duration established in the aforementioned articles.

#### Article 158. *Broadcasting entities.*

1. Broadcasting entities domiciled in Spain or in another Member State of the European Union shall enjoy with respect to their broadcasts and transmissions the protection established in this Law.

2. In any case, broadcasting entities domiciled in third countries shall enjoy the protection that corresponds to them by virtue of the international conventions and treaties to which Spain is a party.

3. The terms of protection provided for in Article 127 of this Law shall also be applicable to the said owners who are not nationals of the European Union, provided that their protection in Spain is guaranteed by means of an international Convention. However, without prejudice to the corresponding international obligations, the term of protection shall expire on the date provided for in the country of which the owner is a national, without, in any case, the duration exceeding that provided for in the aforementioned Article.

First additional provision. *Du°pó.°,ilu legal.*

The legal deposit of works of art traditionally recognized in Spain shall be governed by the regulations in force or that may be issued in the future by the Government, without prejudice to the powers that, as the case may be, correspond to the Autonomous Communities.

Second additional provision. *Re.visiÓn of the percentage and cii-antia of article 24.2.*

The revision of the percentage and amount referred to in Article 24.2 of this Law shall be made in the General State Budget Law.

Third additional provision. *Revision of the amounts of Article 25.5.*

The Ministers of Culture, of Industry and Energy and of Trade and Tourism are empowered to adjust, every two years, the amounts established in Article 25.5 of this Law to the reality of the market, to technological evolution and to the official consumer price index.

Fourth additional provision. *Periodicity of the removal of Article 90.3 and de-legalization.*

The availability to the authors of the amounts collected by way of remuneration additional to the income. established in Article 90.3. shall be made on a weekly basis.

The Government, at the proposal of the Minister of Culture, may modify this time limit.

First transitory provision. *Acquired rights.*

The amendments introduced by this Law, which affect rights acquired under prior legislation, shall not have retroactive effect, except as provided in the following provisions.

Second Transitional Provision. *Rights of legal entities protected by the Law of January 10, 1978 on Intellectual Property.*

Legal entities that, by virtue of the Law of January 10, 1879, on Intellectual Property, have originally acquired the intellectual property of a work shall exercise the exploitation rights for a period of eighty years from its publication.

Third Transitional Provision. *Acts and contracts entered into under the Law of January 10, 1879 on Intellectual Property.*

The acts and contracts entered into under the regime of the Law of January 10, 1879, on Intellectual Property shall be fully effective in accordance therewith, but the clauses of those agreements by which the assignment of exploitation rights in respect of all the works that the author may create in the future, as well as those by which the author undertakes not to create any work in the future, shall be null and void.

Fourth transitory provision. *Authors deceased before December 7, 1987.*

The exploitation rights of works created by authors who died before December 7, 1987, shall have the duration provided for in the Law of January 10,

Fifth Transitional Provision. *Application of Articles<sup>1996</sup> 38 and 39 of the Law of January 10, 1879 on Intellectual Property.*

Without prejudice to the provisions of the foregoing provision, the provisions of this Law shall apply to authors whose works are in the public domain, provisionally or definitively, in accordance with the provisions of Articles 38 and 39 of the Law of January 10, 1987, on Intellectual Property, without prejudice to the rights acquired by other persons under the previous legislation.

Sixth Transitional Provision. *Applicability of articles 14 to 16 for authors of works prior to the Law of November 11 November 1987, on Intellectual Property.*

The provisions of Articles J4 to 16 of this Law shall apply to the authors of works created before the entry into force of Law 22/1987. of November 11. on Intellectual Property.

Seventh Transitional Provision. *Reglamanto of September 3, 1880 for the execution of the Law of January 10, 1879 soöre Intellectual Property.*

The Regulation of September 3, 1880 for the execution of the Law of January 10, 187 9 on Intellectual Property and other regulatory rules on intellectual property shall remain in force, provided that *it does* not conflict with the provisions of the present Law.

Eighth transitory provision. Regulation of the situation of the  
*special requirements in terms of computer programs.*

The provisions of this Law shall be applicable to computer programs created prior to December 25, 1993, without prejudice to acts already performed and rights already acquired prior to such date.

Ninth Transitional Provision. *Application of equitable rental compensation to contracts entered into prior to July 1, 1994.*

In respect of contracts concluded before July 1, 1994, the right to equitable remuneration for rental shall only apply if the authors or performers or their representatives have made a request to that effect in accordance with the provisions of this Law prior to January 1, 1997.

Tenth Transitional Provision. *Rights acquired in relation to certain exploitation rights.*

The provisions of this Law concerning the rights of distribution, fixation, reproduction and communication to the public shall be understood without prejudice to acts of exploitation carried out and contracts entered into before January 1, 1995, as well as without prejudice to the provisions of paragraph (c) of Article 99.

Eleventh Transitional Provision. *Regulation of special situations in relation to the temporary application of the provisions relating to communication to the public via satellite.*

1. For international co-production contracts concluded before January 1, 1995, between a co-producer of a Member State and one or more co-

producers of a Member State and one or more co-producers of a Member State.

The co-producer, or his assignee, who wishes to grant self-licensing for communication to the public via satellite must obtain the prior consent of the holder of the exclusive right, regardless of whether the latter is a co-producer or an assignee. if the following circumstances are jointly met:

a) The contract shall expressly provide for a system of distribution of exploitation rights between the co-producers by geographic zones for all means of broadcasting to the public without distinguishing between the regime applicable to satellite communication and other means of communication.

b) That the communication to the public via satellite of the co-production implies a prejudice to the exclusivity, in particular to the linguistic exclusivity, of one of the co-producers or their assignees in a given territory.

2. The application of the provisions of Articles 106 to 108, 115 and 116, 122, and 126 of this Law shall be without prejudice to the operating agreements made and contracts entered into prior to October 14, 1995.

3. The provisions relating to communication to the public by satellite shall apply to all phonograms, performances, broadcasts and first fixations of audiovisual recordings which on July 1, 1994, were still protected by the legislation of the Member States on intellectual property rights or which on that date met the criteria for protection under the aforementioned provisions.

Twelfth Transitional Provision. *Temporary application of the provisions relating to satellite broadcasting.*

1. The rights referred to in Articles 106 to 108, 115 and 116, 122 and 126 of this Law shall be governed, insofar as applicable, by the transitory provision ten and by the ninth transitory provision.

2. The provisions of this Law in relation to the right of common law shall be fully applicable to the expiration of expatriation contracts on January 1, 1995. The company will be available to the public via satellite as of January 1, 2000.

3. The provisions referred to in paragraph 3 of the eleventh transitional provision shall not apply to contracts in force on 14 October 1995 whose termination is to take place before 1 January 2000. On that date the parties may renegotiate the terms of the contract in accordance with these provisions.

Thirteenth Transitional Provision. *Regulation of special situations regarding the term of protection.*

1. This Law shall not affect any act of exploitation carried out before June 1, 1995. The intellectual property rights established in application of this Law shall not give rise to any payment by those who had undertaken in good faith the exploitation of the corresponding works and performances at the time when the said works were in the public domain.

2. The terms of protection contemplated in this Law shall apply to all works and performances that are protected in Spain or in a Member State of the European Union on July 1, 1995, by virtue of the corresponding national provisions on intellectual property rights,

or that meet the criteria for protection in accordance with the provisions that regulate in this Law the right of distribution, insofar as they refer to works and performances, as well as the rights of fixation, reproduction and communication to the public, insofar as they refer to performances.

Fourteenth transitory provision. *Application of the transitory provisions of the Civil Code.*

In all matters not provided for in these provisions, the transitory provisions of the Civil Code shall apply.

Sole Repealing Provision:  
*Scope of the repeal of regulations.*

1. The provisions that oppose the provisions of this Law, and in particular the following, are hereby repealed:

a) Royal Decree of September 3, 1860, approving the Regulations for the execution of the Law of January 1, 1879 on Intellectual Property: Chapters V and VI of Title I.

b). Royal Decree 1434/1992, of November 27, 1992, implementing Articles 24, 25 and 140 of Law 22/1987, of November 11, 1987, on Intellectual Property: Articles 6.\* 11, 11, 11, 14, 16, 17, I g. 10 and fi /.1, as well as Chapters II and !!! of Title II.

2. The following provisions shall apply:

a) Law 9,' 1075. of March 12. of the Book, as amended by Law 22/1987. of November 11. of Intellectual Property. and by Royal Decree 875/1986. of March 21.

b) Royal Decree of September 3, 1880, approving the Regulations for the execution of the Law of September 10, 1879 on Intellectual Property: chapters I, II, III, IV, VII, VIII, IX, X and transitional provisions of Title I: chapters I, II and III cJG! Title II.

c) Decree 3iJ3"/,197U. of December 31, 2001, regulating the movable property taxation of companies that are not registered.

d! Decree 2084/197?. of November 2, which establishes the o\*ol!gación of designating an ISBN number for books and folios.

u) '3aal l3creto 233ž/1983, of 1 September 1983, regulating the sale, distribution and public exhibition of audiovisual material.

l) Royal Decree 449/1988, of April 22, 1988, regulating the dissemination of cinematographic films and other audiovisual works collected in video-graphic format.

g) heal Oecreic' 4-/3,' J 989. of May 5, for the Erie regulates the con- posiciton and the procedure of action of the Comisión Arbitral de la Pr cciødad 'nteler,\*ual. in lo .no modified by .el Real Decre- to 1?.18/1995, of July 14.

h) Royal Decree 4ß4/1990. of 30 June 1990, on the retail price of books.

i) Royal Decree 584/159 1, of October 18, 1959, approving the Regulations of the General Intellectual Property Registry, as declared in force in section 3 of the sole transitory provision of Royal Decree 733/1993, of May 14, 1993.

j) Royal Decree 1434/1992 of November 27, 1992, implementing Articles 24, 25 and 40 of Law 22/1967 of November 11, 1992, on Intellectual Property, in the version given to them by Law 20/1992 of July 7, 1992, as not amended by Royal Decree 325/1994 of February 25, 1994, and as not derogated from by this repealing provision.

k) Royal Decree 33/1993, of 15 May, which approves the Regulation of the General Registry of Intellectual Property.

l) Royal Decree 325/1994, of February 25, 1994, amending Article 15.2 of Royal Decree 1434/1992, of November 27, 1992, implementing Articles 24, 25 and 140 of Law 22/1987, of November 11, 1992, on Intellectual Property, as amended by Law 20/1993, of July 7, 1994.

m) Royal Decree 1654/1994, of July 22, 1994, adapting to Law 30/1992, on the Legal Regime of the Public Administrations and Common Administrative Procedure, Royal Decree 584/1991, of October 18, 1994, approving the General Intellectual Property Registry.

n) Royal Decree 1778/1994, of August 5, 1994, adapting to Law 30/1992, of November 26, 1992, on the Legal Regime of Public Administrations and Common Administrative Procedure, the rules regulating the procedures for the granting, modification and termination of authorizations.

ñ) Royal Decree 1248/1995, of June 14, 1995, by partially amending the Royal Decree

The Arbitration Commission for Intellectual Property has been established by Law 47/1993, of May 5, 1993, regulating the composition and procedure for action of the Arbitration Commission for Intellectual Property.

o) Royal Decree 1802/1995, of November 3, 1995, establishing the system for determining the compensation for private copying in the cities of Ceuta and Melilla.

p) Order of June 23, 1994 establishing the basic rules to which advertising contracts in the cinema media must conform.

q) Order of October 30, 1971, approving the Regulations of the Instituto Bibliográfico Hispánico.

r) Order of March 25, 1987, which establishes the regulated by the Spanish ISBN Agency.

s) Order of April 3, 1991, implementing the provisions of Royal Decree 2332/1983, of September 1, regulating the sale, distribution and public exhibition of audiovisual material.

Sole final provision. *Regulatory development.*

The Government is hereby authorized to issue the rules for the regulatory development of this Law.