

Ministerio de Justicia



The Intellectual Property Act

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"El presente texto es una traducción de un original en castellano que no tiene carácter oficial en el sentido previsto por el apartado 1º) artículo 6 Real Decreto 2555/1977, de 27 de agosto, por el que se aprueba el Reglamento de la Oficina de Interpretación de Lenguas del Ministerio de Asuntos Exteriores y de Cooperación"

ROYAL LEGISLATIVE DECREE 1/1996, DATED 12TH APRIL, ENACTING THE CONSOLIDATED TEXT OF THE INTELLECTUAL PROPERTY ACT, REGULARISING, REMOVING AMBIGUITIES AND HARMONISING THE CURRENT LEGAL PROVISIONS ON THE SUBJECT

(Official Gazette nº 97, dated 22nd April)

The Second Final Provision of Act 27/1995, dated 11th October, of Transposition to Spanish Law of EEC Directive 93/98/EEC, of the Council, of 29th October, harmonising the term of protection of copyright and certain related rights, authorised the Government to approve, before the 30th June 1996, a text consolidating the legal provisions in force in the field of copyright, regularising, removing ambiguities and harmonising the laws to be consolidated. The temporal limitation of this legislative delegation is limited to the legal provisions in force on the 30th June 1996.

Consequently, a consolidated text has been drawn up that is attached to this Royal Legislative Decree and whose purpose is to comply with this legal mandate.

By virtue thereof, at the Minister of Culture's behest, in agreement with the Council of State and after the discussion held by the Council of Ministers at its meeting held on 12th April 1996, I do hereby decree:

Single Article. Purpose of the Decree.

The Consolidated Text of the Intellectual Property Act, regularising, removing ambiguities and harmonising the legal provisions in force on the subject and which is attached hereto is hereby enacted.

Single Repeal Provision. Acts repealed.

The following Acts are hereby repealed:

1. Act 22/1987, dated 11th November, on Intellectual Property;
2. Act 20/1992, dated 7th July, amending Act 22/1987, dated 11th November, on Intellectual Property;
3. Act 16/1993, dated 23rd December, transposing into Spanish Law EEC Directive 91/250/EEC, dated 14th May, on the legal protection of computer programs;
4. Act 43/1994, dated 30th December, transposing into Spanish Law EEC Directive 92/100/EEC, dated 19th November, on rental right and lending right on certain rights related to copyright in the field of intellectual property;
5. Act 27/1995, dated 11th October, transposing into Spanish Law of EEC Directive 93/98/EEC, of the Council, dated 29th October, harmonising the term of protection of copyright and certain related rights;
6. Act 28/1995, dated 11th October, transposing into Spanish Law EEC Directive 93/83/EEC, of the Council, dated 27th September, on the coordination of certain rights concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.

Single Final Provision. Entry into force.

This Royal Legislative Decree shall enter into force the day following the publication thereof in the Official Gazette.

CONSOLIDATED TEXT OF THE INTELLECTUAL PROPERTY ACT

BOOK I

ON COPYRIGHT

TITLE I

General Provisions

Article 1. Originating Fact.

The intellectual property in a literary, artistic or scientific work shall pertain to the author thereof by virtue of the mere fact of its creation.

Article 2. Scope.

Intellectual property shall encompass rights of personal and economic character conferring upon the author full control over and the exclusive right to the exploitation of the work, without any limitation whatsoever other than those specified at Law.

Article 3. Characteristics.

Copyright shall be independent, compatible and may be combined with:

1. The ownership of and other rights pertaining to the physical object which embodies the intellectual creation;
2. Any patents and other industrial property rights that may exist in relation thereto;
3. The other intellectual property rights recognised in Part II of this Act.

Article 4. Communication and Publication.

For the purposes of the provisions of this Act, “communication” of a work shall be construed as any expression thereof which, with the author’s consent, first makes it accessible to the public in whatever form, and “publication” shall be construed as the communication that is effected by the making available to the public of a sufficient number of copies of the work for the needs of the latter, estimated according to the nature and purpose of the work, to be reasonably satisfied.

TITLE II

Rightholder, Subject Matter and Content

CHAPTER I

Rightholder

Article 5. Authors and Other Beneficiaries.

1. The individual who creates any literary, artistic or scientific work shall be deemed the author thereof.
2. The aforesaid notwithstanding, the protection conferred under this Act on the author may be enjoyed by legal persons in the cases specifically provided for herein.

Article 6. Presumption of Authorship, Anonymous or Pseudonymous Works.

1. Unless proved otherwise, the individual who is identified as such on the work by the inclusion of his name, signature or identification mark shall be presumed the author.
2. If the work were disclosed anonymously or under a pseudonym or sign, the exercise of the intellectual property rights shall be vested upon the individual or legal person who discloses such work with the author's consent, whilst the latter does not reveal his identity.

Article 7. Works of Joint Authorship.

1. The rights in a work that is the unitary result of the collaboration of two or more authors shall pertain to all of them.
2. Communication and alteration of the work shall require the consent of all the co-authors. In the absence of agreement, a Court of Law shall decide.

Once the work has been made available to the public, none of the co-authors may unreasonably withhold his consent to its exploitation in the manner in which it has been disclosed.

3. Subject to the terms of the agreement between the co-authors of the work of joint authorship, they may exploit their contribution separately in so far as the joint exploitation is not thereby prejudiced.
4. The intellectual property rights in a work of joint authorship shall pertain to all the authors in the proportions determined by them. In the absence of provisions in this Act, the rules laid down in the Spanish Civil Code on joint ownership shall apply to such works.

Article 8. Collective Works.

A work shall be deemed a collective work if it is created on the initiative and under the direction of an individual or legal person, who edits it and publishes it under his name, and where it consists of the combination of contributions by various authors whose personal contributions are so integrated in the single, autonomous creation for which they have been conceived that it is not possible to ascribe to any one of them a separate right in the whole work so created.

In the absence of agreement to the contrary, the rights in the collective work shall vest in the person who publishes it and discloses it in his name.

Article 9. Composite Works and Independent Works.

1. A new work that incorporates a pre-existing work without the collaboration of the author of the latter shall be deemed a composite work, subject to the rights accruing to the latter and to his due licence.
2. A work that constitutes an autonomous creation, even if published in conjunction with other works, shall be deemed an independent work.

CHAPTER II

Subject matter

Article 10. Original Works and Titles.

1. The subject matter of intellectual property shall comprise all original literary, artistic or scientific productions expressed in any mode or form, whether tangible or intangible, known at present or that may be invented in the future, including the following:

- a) Books, pamphlets, printed matter, correspondence, writings, speeches and addresses, lectures, forensic reports, academic treatises and any other works of the same nature;
- b) Musical compositions with or without words;
- c) Dramatic and dramatico-musical works, choreographic works and entertainments in dumb show and theatrical works in general;
- d) Cinematographic works and any other audiovisual works whatsoever;
- e) Sculptures and works of painting, drawing, engraving and lithography, picture stories, cartoons or comics, including drafts or sketches therefore, and other works of three-dimensional art, whether applied or not;
- f) Projects, maps, models and drawings of architectural works and works of engineering;
- g) Illustrations, maps and sketches relating to topography; geography and science in general;
- h) Photographic works and works expressed by a process analogous to photography;
- i) Computer programs;

2. The title of a work shall be protected as part of the work provided it is original.

Article 11. Derived Works.

The following shall also be the subject of intellectual property, without prejudice to the copyright in the original work:

1. Translations and adaptations;
2. Revisions, updated editions and annotations;
3. Compendiums, summaries and extracts;
4. Musical arrangements;
5. All kinds of transformation of a literary, artistic or scientific work.

Article 12. Collections. Databases¹.

1. Intellectual property shall likewise subsist, as provided in Book I of this Act, in collections of the works of others, or of data or other independent elects, such as anthologies and databases, which, by reason of the selection or arrangement of their contents, constitute intellectual creations, without prejudice to any rights that might subsist in the said contents.

The protection accorded to such collections under this Article shall relate solely to their structure, meaning the form of expression of the selection or arrangement of their contents, but shall not extend to those contents.

2. For the purposes of this Act and without prejudice to the provisions of the foregoing Paragraph, collections of works, data or other independent elements systematically or methodically arranged and individually accessible by electronic or other means shall be deemed to be databases.

3. The protection conferred to databases under this Article shall not apply to the computer programs used for the manufacture or operation of electronically accessible databases.

Article 13. Exclusions.

Legal or regulatory provisions and the drafts thereof, judgments of jurisdictional bodies and acts, resolutions, discussions and rulings of public bodies, and official translations of all such texts, shall not be the subject of intellectual property.

CHAPTER III

Content

SECTION 1. MORAL RIGHTS

Article 14. Content and Characteristics of Moral Rights.

The author is hereby vested with the following rights which cannot be waived or assigned:

1. The right to decide whether his work is to be made available to the public, and if so in what form;
2. The right to determine whether such communication should be effected in his name, under a pseudonym or sign or anonymously;
3. The right to claim authorship of the work;
4. The right to demand respect for the integrity of the work and to object to any distortion, modification or alteration of it or any act in relation to it that may be prejudicial to his legitimate interests or to his reputation;
5. The right to alter the work subject to respect for the acquired rights of third parties and the protection requirements of goods of cultural interest;
6. The right to withdraw the work from circulation due to changes in his intellectual or ethical convictions, after paying damages to the holders of the exploitation rights.

If the author later decides to resume exploitation of his work, he shall give preference, when offering the relevant rights, to the previous holder thereof, and shall offer terms reasonably similar to the original terms.

¹ Article drafted pursuant to Article 1 of Act 5/1996, dated 6th March.

7. The right of access to the sole or a rare copy of the work, when it is in another person's possession, for the purpose of the exercise of the right of communication or any other applicable right.

The aforesaid right shall not allow the author to demand the moving of the work, and access to it shall take in the place and manner that cause the least inconvenience to the holder thereof, who shall be indemnified, where appropriate, for any damages caused to him.

Article 15. Entitlement to Exercise Rights *Mortis Causa*.

1. On the author's death, the exercise of the rights specified in Paragraphs 3 and 4 of the foregoing Article shall pertain, without any time limitation, to the individual or legal person, to whom the author has expressly entrusted it in his last will and testament. In the absence of such provision, the exercise of the rights shall pertain to his heirs.

2. The same persons mentioned in the foregoing Paragraph may, in the order given therein, exercise the right specified in Paragraph 1 of Article 14, in relation to the work not made available to the public during the author's lifetime and for a period of 70 years following his actual or declared death, without prejudice to the provisions of Article 40.

Article 16. Alternative Entitlement to Exercise Rights *Mortis Causa*.

Where there are no persons as mentioned in the foregoing Article, or the whereabouts of such persons is unknown, the State, the Autonomous Communities, local corporations and public bodies of a cultural character shall be empowered to exercise the rights provided for therein.

SECTION 2. EXPLOITATION RIGHTS

Article 17. Exclusive Rights of Exploitation and Forms of Exploitation.

The author is hereby vested with the exclusive exercise of the rights pertaining to the exploitation of his work in whatever form and especially the rights of reproduction, distribution, communication to the public and alteration, which may not be exercised without his authorisation, except where this Act so provides.

Article 18. Reproduction².

Reproduction shall be construed as the fixation, directly or indirectly, permanently or provisionally, in any mode or form, of all a work or part thereof, enabling it to be communicated or copied.

Article 19. Distribution.

1. Distribution shall be construed as the making available to the public of the original or of copies of the work, in a tangible support, by means of sale, rental or lending or in any other manner whatsoever³.

2. Where distribution is effected by means of sale or other title appropriate to convey property, within the area of the European Union, by the rightholder himself or with his consent, the right shall expire on the first such sale, but only in relation to successive sales and conveyances effected within the said area.

3. Rental shall be construed as the making available the originals and copies of a work for use for a limited time and for direct or indirect economic or commercial advantage.

² Article drafted pursuant to the Single Article, Paragraph 1, of Act 23/2006, dated 7th July.

³ New drafting of this Paragraph pursuant to the Single Article, Paragraph 2, of Act 23/2006, dated 7th July.

Making available for the purposes of display, communication to the public by means of phonograms or audiovisual recordings, including excerpts of either, and making available for on-the-spot consultation shall not be construed as rental.

4. Lending shall be construed as the making available for use the originals and copies of a work for a limited time and not for direct nor indirect economic or commercial advantage, when such lending is effected through establishments which are accessible to the public.

It shall be construed that there is no direct or indirect economic or commercial advantage when lending carried out by an establishment accessible to the public gives rise to the payment of a charge not exceeding that necessary to cover the operating costs thereof. This amount may not include, whether totally or partially, the amount of the right to remuneration that must be paid to the copyright holders, pursuant to the provisions contained in Paragraph two of Article 37.4.

5. The provisions of this Article relating to rental and lending shall not be applicable to buildings or to works of applied art.

Article 20. Communication to the public.

1. Communication to the public shall be construed as any act whereby more than one is afforded access to the work without prior distribution of a copy to each person.

Communication shall not be deemed public where it takes place in a strictly home environment that is not an integral part of or connected to a dissemination network of any kind whatsoever.

2. The following, in particular, shall be deemed acts of communication to the public:

- a) Stage performances, recitations, dissertations and public performances of dramatic, dramatico-musical, literary and musical works by any means or process;
- b) The public projection or showing of cinematographic and other audiovisual works;
- c) The transmission of any works by radio or any other means serving for the wireless dissemination of signs, sounds or images. Transmission shall be construed as including the production of programme-carrying signals destined for a satellite where the reception thereof by the public is not possible otherwise than through an entity different from the original one;
- d) The broadcasting or communication to the public by satellite of any work, that is, the act of emitting, subject to the control and responsibility of the broadcasting organisation, programme-carrying signals intended for reception by the public in an uninterrupted chain of communication leading to the satellite and down towards the earth. The normal technical processes relating to programme-carrying signals shall not be deemed breaks in the chain of communication.

If the programme-carrying signals are encrypted, then there is communication to the public by satellite on condition the means for decrypting are provided to the public by the broadcasting organisation or with its consent.

For the purposes of the provisions of the foregoing two Paragraphs, a satellite shall be construed as any satellite operating on frequency bands which, under telecommunications law, are reserved for the broadcast of signals for reception by the public or which are reserved for closed, point-to-point communication. In the latter case, however, the circumstances in which individual reception of the signals takes place must be comparable to those which apply in the first case;

- e) The transmission of any works to the public by wire, cable, optic fibre or other comparable process, whether on subscription or not;
- f) The retransmission of the broadcast work by any of the media mentioned in the foregoing Subparagraphs, and by a transmitting body different from the original one, of the broadcast work.

Retransmission by cable shall be construed as the simultaneous, unaltered and unabridged retransmission, by cable or microwave system of the original broadcasts or transmissions, including those effected by satellite, of radio or television programmes intended for reception by the public;

- g) The emission or transmission of the broadcast work, by means of any appropriate instrument, in a place accessible to the public;
- h) Public exhibition of works of art or reproductions thereof;
- i) Making works available to the public, through wire or wireless procedures, so that any person may access such works from the place and at the time such person may choose⁴;
- j) Any kind of public access to works incorporated in a database, even where the said database is not protected by the provisions of Book I of this Act⁵;
- k) The performance of any of the above acts in relation to a database protected by Book I of this Act⁶;

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

- a) Communication to the public by satellite shall occur only in the Member State of the European Union in which, subject to the control and responsibility of the broadcasting organisation, the programme-carrying signals are incorporated in the unbroken chain of communication referred to in Subparagraph d) of Paragraph 2 of this Article.
- b) Where communication to the public by satellite occurs on the territory of a State not pertaining to the European Union in which there is not the level of protection specified in this Paragraph 3 for such a system of communication, the following shall be taken into account:
 - 1. If the programme-carrying signal are transmitted to the satellite from an uplink signal station located in a Member State, that act of communication to the public by satellite shall be deemed as having occurred in that Member State. In such a case, the rights established in relation to the satellite broadcast shall be exercisable against the person operating the uplink station;
 - 2. If there is no use of an uplink station located in a Member State but a broadcasting organisation established in a Member State has commissioned the satellite broadcast, that act shall be deemed as having occurred in the Member State in which the broadcasting organisation has its principal establishment; in such a case the rights established in relation to the satellite broadcast shall be exercisable against the broadcasting organisation.
- c) (Repealed) ⁷.

4. The retransmission by cable defined in the second Paragraph of Paragraph 2. f) of this Article within the territory of the European Union shall be governed by the following provisions:

- a) The retransmission on Spanish territory of transmissions, broadcasts by satellite or initial transmissions of programs initiated in other Member States of the European Union shall take place, as far as the copyright is concerned, in accordance with the provisions of this Act and pursuant to the terms of contractual agreements, whether individual or collective, signed between the rightholders and cable distribution companies.
- b) The right pertaining to the copyright holders to license cable distribution shall be exercised exclusively through a copyright collecting society.

⁴ Subparagraph (i) introduced by Single Article, Paragraph 3, of Act 23/2006, dated 7th July.

⁵ This Subparagraph has been drafted pursuant to Article 2.1 of Act 5/1998, dated 6th March, and has become Subparagraph f) pursuant to the Single Article, Paragraph 3, of Act 23/2006, dated 7th July.

⁶ This Subparagraph has been introduced pursuant to Article 2.2 of Act 5/1998, dated 6th March, and has become Subparagraph k) pursuant to the Single Article, Paragraph 3, of Act 23/2006, dated 7th July.

⁷ Repealed by 1st Repealing Provision of Act 5/1998, dated 6th March.

- c) In the case of rightholders who have not assigned the management of their rights to a collecting society, the collecting society that manages rights of the same category shall be deemed mandated to manage their rights.

When more than one collecting societies manages rights of that category, rightholders shall be free to choose which of those collecting societies is deemed to be mandated to manage their rights.

The rightholders referred to in the present Subparagraph c) shall have the same rights and obligations resulting from the agreement between the cable operator and the collecting society that is deemed to be mandated to manage their rights as the rightholders who have mandated that collecting society. They may likewise claim their rights from the collecting society referred to in the foregoing Paragraphs of the present Subparagraph c) within the three years following the date of the cable retransmission of their protected work .

- d) When the rightholder authorises the initial emission, satellite broadcast or transmission on Spanish territory of a protected work, he shall be deemed to have agreed not to exercise his rights cable retransmission rights on an individual basis but to exercise them in accordance with the provisions of the present Paragraph 4.
- e) The provisions of Subparagraphs b), c) and d) of the present Paragraph 4. shall not apply to the rights exercised by a broadcasting organisation in respect of its their own emissions, satellite broadcasts or transmissions, irrespective of whether the rights concerned arte its own or have been assigned to it by other copyright holders.
- f) Where, for want of agreement between the parties, it is not possible to enter into a contract for the licence of cable distribution, the parties may apply to the Intellectual Property Mediation and Arbitration Board for mediation.

The provisions of Article 158 8of this Act and those of the Royal Decree implementing those provisions shall be applicable to the mediation provided for in the foregoing Paragraph.

- g) Where either of the parties abuses his negotiating position to prevent the initiation or prosecution in good faith of negotiations for the authorisation of cable distribution, or without valid justification obstructs the negotiations or mediation referred to in the foregoing Subparagraph, the provisions of Title I, Chapter I of Act 16/1989, dated 17th July, on the Defence of Competition shall apply.

Article 21. Transformation⁸.

1. The transformation of a work shall include its translation, adaptation and any other alteration of its form from which a different work is derived.

In the case of a database as referred to in Article 12 of this Act, the arrangement thereof shall likewise be deemed transformation.

2. The intellectual property rights in the work resulting from the transformation shall pertain to the author of the latter, without prejudice to the author of the pre-existing work's right to license, throughout the term of protection of his rights therein, the exploitation of those results in any form, and especially by reproduction, distribution, communication to the public or further transformation.

Article 22. Selections or Complete Works.

The licensing of the exploitation of his works shall not prevent the author from publishing them together in a selection or complete collection.

Article 23. Independence of Rights.

The exploitation rights provided for in this Section shall be independent of each other.

⁸ New numbering pursuant to Article 6.4 of Act 5/1998, dated 6th March.

⁹ Drafted pursuant to Article 3 of Act 5/1998, dated 6th March.

SECTION 3. OTHER RIGHTS

Article 24¹⁰.

(Repealed).

Article 25. Equitable compensation for private copying¹¹.

(Repealed).

TITLE III

Term, Limits and Safeguarding of Other Legal Provisions¹²

CHAPTER I

Duration

Article 26. Duration and Calculation.

The exploitation rights in the work shall run for the life of the author and for seventy years after his actual or declared death.

Article 27. Duration and Calculation in the Case of Posthumous, Pseudonymous and Anonymous Works.

1. The exploitation rights in anonymous or pseudonymous works referred to in Article 6 shall run for seventy years after the work is lawfully made available to the public.

When, before the said period expires, the author becomes known because either the pseudonym adopted by him leaves no doubt as to his identity or because he himself discloses his identity, the provisions of the foregoing Article shall apply.

2. The exploitation rights in works that have not been lawfully made available to the public shall run seventy years following the creation thereof in cases where the term of protection is not calculated as from the actual or declared death of the author or authors.

Article 28. Duration and Calculation in the Case of Works of Joint Authorship and Collective Works.

1. The exploitation rights in works of joint authorship as defined in Article 7, including cinematographic and audiovisual works, shall run for the lifetime of the co-authors and seventy years following the natural or declared death of the last surviving co-author.

2. The exploitation rights in collective works as defined in Article 8 of this Act shall run for seventy years after the protected work is lawfully made available to the public. The aforesaid notwithstanding, if the individuals who 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 shall be applied, as appropriate.

¹⁰ Article repealed by the Repealing Provision of Act 3/2008, dated 23rd December.

¹¹ Repealed by Additional Provision 10.1 of Royal Decree-Law 20/2011, dated 30th December.

¹² New name pursuant to Article 4.1 of Act 5/1998, dated 6th March.

The provisions of the foregoing Paragraph shall be without prejudice to the rights of identified authors whose identifiable contributions are contained in the said works, to which contributions Article 26 and Paragraph 1 of this Article shall be applied as appropriate.

Article 29. Works Published in Parts.

In the case of works made available to the public in parts, volumes, instalments or separate issues that are not independent and the protection terms of which start when the work has been lawfully made available to the public, the said term shall be calculated separately for each such component.

Article 30. Calculation of the Term of Protection.

The terms of protection laid down in this Act are calculated from the first day in January of the year following that of the author's actual or declared or that of the lawful communication of the work, as appropriate.

CHAPTER II

Limitations

Article 31. Provisional reproductions and private copy¹³.

1. The provisional reproductions acts to which Article 18 refers shall not require the author's licence if, apart from lacking in themselves an independent economic significance, are transitory or accessory and form an integral and essential part of a technological process and if their only purpose consists in facilitating either a network transmission between third parties via an intermediary or a lawful use, deeming this to be one either licensed by the author or authorised at law.

2. The author's licence shall not be required for the reproduction, in any support, of works already made available to the public, if carried out by an individual for his private use on the basis of works to which he has lawfully acceded and provided the copy so obtained is not the object of a collective or profit-making use, without prejudice to the equitable remuneration to which Article 25 refers, which shall bear in mind of the measures foreseen in Article 161 are it be applied to such works. The provisions of this Paragraph shall not be applicable to electronic databases and, pursuant to Article 99.a) to computer programs.

Article 31 bis. Security, official procedures and disabilities¹⁴.

1. The author's licence shall not be required when a work is reproduced, distributed or made available to the public for public security purposes or for the correct carrying out of administrative, judicial or parliamentary proceedings.

2. Nor shall a licence be required for acts of reproduction, distribution and public communication of works already made available to the public carried out for the benefit of individuals with disabilities, provided this is done with non-profit making purposes, is directly related to the disability involved, is carried out by means of a procedure or medium adapted to the disability and is limited to what such disability entails.

Article 32. Quotations and Summaries¹⁵.

1. It shall be lawful to include in one's own work excerpts of the works of others, whether of written, sound or audiovisual character, and also to include isolated works of three-dimensional or photographic, figurative character,

¹³ New drafting pursuant to the Single Article, Paragraph 5, of Act 23/2006, dated 7th July.

¹⁴ New Article introduced pursuant to the Single Article, Paragraph 6, of Act 23/2006, dated 7th July.

¹⁵ New drafting of this Article pursuant to the Single Article, Paragraph 7, of Act 23/2006, dated 7th July.

provided that the works concerned have already been made available to the public and that they are included by way of quotation or for analysis, comment or critical assessment. Such use may only be made for teaching or research purposes and to the extent justified by the purpose of the inclusion, and the source and the author of the work's name shall be stated.

Periodical compilations made in the form of press summaries or reviews shall be deemed quotations. The aforesaid notwithstanding, if compilations of press articles are carried out basically consisting in the mere reproduction thereof and such an activity is carried out for commercial purposes, the author who has not expressly shall be entitled to receive an equitable remuneration. In case the author expressly indicates his opposition shall an activity shall not be deemed covered by this limitation.

2. The author's licence shall not be required by teachers in official education programs to carry out reproduction, distribution and public communication of small excerpts of works or isolated works of three-dimensional or photographic, figurative character, excluding school and university textbooks, when such acts are done merely to illustrative educational activities in the classroom, to the degree justified by the non-commercial purpose sought, provided works already made available to the public are involved and, except if impossible, the author's name and the source are mentioned.

The reproduction, distribution and public communication of compilations or groupings of excerpts of works or of isolated works of three-dimensional or photographic, figurative character shall not be deemed encompassed by the preceding Paragraph.

Article 33. Articles on Topical Subjects.

1. Studies and articles on topical subjects disseminated by the media may be reproduced, distributed and communicated to the public in any other media of the same type, subject to a mention of the source and of the author if the study was published under a by-line and provided that no reserved copyright notice appeared on the original. All the foregoing shall be without prejudice to the author's right to collect the agreed remuneration or, in the absence of agreement, such remuneration as is deemed equitable.

In the case of literary collaboration, it shall in all cases be necessary to secure the due licence of the author.

2. Lectures, addresses, forensic reports and other works of the same character that have been delivered in public may also be reproduced, distributed and communicated, provided that such uses are made for the sole purpose of informing on current events. The latter condition shall not apply to speeches made at parliamentary sessions or meetings of public bodies. In any case, the author's right to publish such works in a collection shall be reserved.

Article 34. Use of Databases by the Lawful User, and Limitations on the Exploitation Rights of the Owner of a Database¹⁶.

1. The lawful user of a database protected under Article 12 of this Act, or copies thereof, may, without licence from the author of the database, engage in whatever acts may be necessary for access to be had to the contents of the database and for its normal use by the user himself, even where they are subject to an exclusive right of the author. Insofar as the lawful user is licensed to use only a part of the database, this provision shall be applicable only to that part.

Any agreement contrary to the terms of this provision shall be *ipso iure* null and void.

2. Without prejudice to the provisions of Article 31, licence from the author of a database that is protected under Article 12 of this Act and has been made available to the public is not necessary:

- a) If, in the case of a non-electronic database, a copy is made for private purposes;
- b) If the use made is for the purposes of illustration in teaching or scientific research, provided that it is made to the extent justified by the non-commercial purpose pursued, and that in all cases the source is mentioned;

¹⁶ New drafting pursuant to Article 4.2 of Act 5/1998, dated 6th March.

- c) If the use is for purposes of public security or for the purposes of an administrative or judicial procedure.

Article 35. Use of Works in the Reporting of Current Events and of Works Located on Public Thoroughfares¹⁷.

1. Any work liable to be seen or heard in the reporting of current events may be reproduced, distributed and made available to the public, but only to the extent justified by the information purpose.
2. Works permanently located in parks, streets, squares or other public thoroughfares may be freely reproduced, distributed and communicated by painting, drawing, photography and audiovisual processes.

Article 36. Cable, Satellite and Recording for Technical Purposes.

1. The licence to broadcast a work shall include cable transmission if such transmission is effected simultaneously and entirely by the original body and without exceeding the bounds of the geographical area specified in the said licence.
2. The said licence shall likewise include the incorporation of the work in a programme beamed to a satellite whereby the work may be received through a body different from the original one, provided that the author or rightholder has authorised the latter body to communicate the work to the public, in which case the original broadcaster shall in addition be exempted from the payment of any remuneration.
3. The licensing of the public communication of a work, where such communication is effected by means of broadcasting, shall entitle the broadcasting organisation to record the work using its own facilities and for its own wireless broadcasts, in order to achieve its purpose of effecting, once only, the authorised communication to the public. Further broadcasts of the works so recorded shall require the licensing of the reproduction and the communication to the public.
4. The provisions of this Article shall be construed as being without prejudice to those of Article 20 of this Act.

Article 37. Reproduction, lending and consultation by means of specialised terminal in Specific Establishments.

1. The copyright holders may not object to reproductions of works where they are made without economic advantage by museums, libraries, record libraries, film libraries, newspaper libraries or archives which are publicly -owned or form part of institutions of a cultural or scientific character, provided the reproduction is effected solely for research or conservation purposes¹⁸.
2. Likewise, museums, archives, libraries, newspaper libraries, record libraries or film libraries in public ownership or pertaining to institutions of general cultural, scientific or educational interest not trading for profit, or to teaching institutions integrated in the Spanish educational system, shall not require the licence of the copyright holders or to pay remuneration to them for the loans that they make¹⁹.

The owners of these institutions shall remunerate the authors for the loans made in the amount to be set by Royal Decree. Remuneration shall be effected via the copyright collecting societies.

Publicly- owned institutions providing their services in municipalities with less than 5,000 inhabitants shall be exempt from this obligation, as well as libraries of teaching institutions forming part of the Spanish educational system.

The Royal Decree setting the amount shall also lay down the collaboration mechanisms between the State, the Autonomous Communities and the local corporations in order to comply with the obligations of remuneration affecting publicly owned establishments.

¹⁷ New drafting pursuant to Article 4.2 of Act 5/1998, dated 6th March.

¹⁸ New title and drafting of this Paragraph pursuant to the Single Article, Paragraph 8, of Act 23/2006, dated 7th July.

¹⁹ New drafting of this Paragraph pursuant to the 1st Final Provision, Paragraph 2, of Act 10/2007, dated 22nd June.

3. The author's licence shall not be required for the communication of a work or making available to specific persons for research purposes when carried out through a closed and internal network via specialised terminals installed for such purposes on the premises of the institutions mentioned in the preceding Paragraph and provided such works appear in the institution's own collection and are not the object of licensing or purchase conditions. All the foregoing without prejudice to the author's right to an equitable remuneration.²⁰

Article 38. Official Acts and Religious Ceremonies.

The performance of musical works in the course of official State events or those of the Public Administrations or religious ceremonies shall not require the licence of the holders of the rights, provided that the public may attend them free of charge and that the performers who take part in them do not collect specific remuneration for their performances.

Article 39. Parodies.

The parody of a work made available to the public shall not be deemed a transformation that requires the author's consent, provided that it involves no risk of confusion with that work and does no harm to the original work or the author thereof.

Article 40. Protection of the Right of Access to Culture.

If, on the author's actual or declared death, his successors in title exercise his right of non-communication of the work in a manner contrary to the provisions of Article 44 of the Spanish Constitution, a Court may order appropriate measures at the instigation of the State, the Autonomous Communities, local corporations, public institutions of cultural character or any other person having a legitimate interest.

Article 40 bis. Provision Common to all the Provisions of this Chapter²¹.

The Articles of this Chapter shall not be construed so that their implementation is capable of unreasonably prejudicing the author's legitimate interests or adversely affecting the normal exploitation of the works to which they refer.

CHAPTER III ²²

Safeguarding the Implementation of Other Legal Provisions

Article 40 ter. Safeguarding of the Implementation of Other Legal Provisions.

The provisions of the Articles of this Book I on the protection of databases shall be construed as being without prejudice to other legal provisions that might affect the structure or content of any such database, including provisions on other intellectual property rights, *sui generis rights* in a database, patents and other industrial property rights, fair competition law, contractual provisions, secrets, the protection of personal data, the protection of national treasures or access to public documents.

²⁰ Paragraph 3 pursuant to the Single Article, Paragraph 8, of Act 23/2006, dated 7th July.

²¹ Added pursuant to Article 4.3 of Act 5/1998, dated 6th March.

²² Added this only Article 40 ter pursuant to Article 4.4 of Act 5/1998, dated 6th March.

TITLE IV

Public Domain

Article 41. Conditions Governing the Use of Works in the Public Domain.

The expiration of the exploitation rights in works shall cause the works to come into the public domain.

Works in the public domain may be used by any person provided that the authorship and integrity of the work are respected in the manner specified in Paragraphs 3 and 4 of Article 14.

TITLE V

Transfer of Rights

CHAPTER I

General Provisions

Article 42. Transfer Mortis Causa.

The exploitation rights in the work shall be transferred *mortis causa* by any of the means recognised at Law.

Article 43. Transfer Inter Vivos.

1. The exploitation rights in the work may be assigned by inter vivos transactions, the assignment being limited to the right or rights assigned, to the means of exploitation expressly provided for and the time and territorial scope specified.

2. Failure to mention the time shall limit the assignment for five years, and failure to mention the territorial scope shall limit it to the country in which it is effected. Where the conditions governing the exploitation of the work are not mentioned specifically and in detail, the assignment shall be limited to such exploitation as is necessarily deduced from the contract itself and is essential to the fulfilment of the purpose of thereof.

3. Any general assignment of exploitation rights in all the works that the author may create in the future shall be null and void.

4. Any stipulations whereby the author undertakes not to create any work in the future shall be null and void.

5. The assignment of exploitation rights shall not cover methods of use or means of dissemination that did not exist or were unknown at the time of the assignment.

Article 44. Minors Living Independently.

Authors under eighteen but over sixteen years of age who live independently with the consent of their parents or guardians or with the authorisation of the person or institution responsible for them shall be fully capable of assigning exploitation rights.

Article 45. Written Form.

Any assignment shall be formalised in writing. If, after having been formally called upon to do so, the assignee fails to meet this requirement, the author may choose to terminate the contract.

Article 46. Proportional and Lump Sum Remuneration.

1. The assignment granted by the author for a consideration shall entitle him to a proportional share in the proceeds of exploitation, the amount thereof being agreed upon with the assignee.

2. The aforesaid notwithstanding, the payment of a lump sum to the author may be provided for in the following cases:

- a) When, on account of the manner of exploitation, there is great difficulty in the calculation of the proceeds, or where their verification either is impossible or would incur in disproportionate costs in view of the eventual rewards;
- b) Where the use of the work is of secondary character in relation to the activity or the material object for which it is intended;
- c) Where the work, being used with others, does not constitute an essential element of the intellectual creation in which it is embodied;
- d) In the case of the first or sole edition of the following works, previously not made available to the public:
 - 1. Dictionaries, anthologies and encyclopaedias;
 - 2. Prologues, annotations, introductions and presentations;
 - 3. Scientific works;
 - 4. Material for the illustration of a work;
 - 5. Translations;
 - 6. Reduced-price popular editions.

Article 47. Action for the Review of Non-Equitable Remuneration.

Where in the case of a assignment for a lump sum the author's remuneration is manifestly out of proportion in view of the profits obtained by the licensee, the former may apply for a review of the contract and, in the absence of agreement, may apply to a Court for the award of equitable remuneration in the light of the circumstances of the case. The aforesaid entitlement may be exercised within the ten years following the assignment.

Article 48. Assignment of Exclusive Rights.

The assignment of exclusive rights shall be granted with an express statement of that character and shall grant to the assignee, within its assigned scope, 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 licences to third parties. It shall also confer upon him the right, which shall be independent of that of the assigning rightholder, to institute proceedings for infringements that affect the rights that have been assigned to him.

The assignment shall place the assignee under the obligation to make all the necessary arrangements for the licensed exploitation to be effective, according to the nature of the work and the practices prevailing in the professional, industrial or commercial field concerned.

Article 49. Assignment of the Assignee's Exclusive Rights.

The assignee holding exclusive rights may further assign his exclusive rights to another person with the express consent of the assignor.

In the absence of such consent, the assignees shall be jointly and severally responsible to the first assignor for the obligations arising out of the assignment.

No consent shall be necessary where the assignment occurs as a result of the winding-up, or a change in the ownership, of the corporate assignee.

Article 50. Non-Exclusive Assignment.

1. The non-exclusive assignee shall have the right to make use of the work according to the terms of the assignment and in competition both with other assignees and with the assignor himself. His rights shall be non-assignable except in the circumstances provided for in the third Paragraph of the foregoing Article.

2. Non-exclusive licences granted by collecting societies for the use of works from their repertoires shall in all cases be non-assignable.

Article 51. Assignment of the Rights of an Author who is an employee.

1. The assignment to the employer of the exploitation rights in a work created by virtue of a work relation shall be governed by the terms agreed upon in the contract, which shall be made in writing.

2. In the absence of an agreement in writing, it shall be presumed that the exploitation rights have been granted exclusively and with the scope necessary for the exercise of the usual activity of the employer at the time of the delivery of the work made by virtue of the said work relation.

3. In no case whatsoever may the employer exploit the work in a manner or for purposes different from those deriving from the purposes specified in the preceding two Paragraphs.

4. The remaining provisions of this Act shall apply, insofar relevant, to the aforesaid assignments to the extent deriving from the purpose and subject matter of the contract.

5. The ownership of the rights in a computer program created by an employee in the execution of his duties or following the instructions by his employer shall be governed by the provisions of Article 97.4 of this Act.

Article 52. Assignment of Rights for Periodical Publications.

In the absence of provision to the contrary, the authors of works reproduced in periodical publications shall preserve their right to make use of those works in any form that does not prejudice the normal exploitation of the publication in which they have been inserted.

The author may make use of his work as he sees fit if it has not been reproduced within a period of one month following its dispatch to or acceptance in daily publications, or within a period of six months in the case of other publications, unless otherwise agreed.

The author's remuneration of the said works may consist of a lump sum.

Article 53. Pledging and Charging of Copyright.

1. The exploitation rights in the works protected under this Act may be encumbered in accordance with the laws in force.

2. The exploitation rights accruing to the author may not themselves be encumbered, but the profits or benefits therefrom may be encumbered, being deemed as salary for the purposes of both the order of priority for attachment and deductions or for amounts that may not be seized.

Article 54. Credits from the Assignment of Exploitation Rights.

Money credits arising from the licensing of exploitation shall be treated on the same footing as those earned by way of salary or other pay in bankruptcy proceedings brought by the licensees, subject to a limit of two annual amounts.²³

Article 55. Unwaivable Benefits.

Except as provided herein, any benefits granted to authors and to their successors in title under this Title cannot be waived.

Article 56. Assignment of Rights to the Owners of Certain Physical Media.

1. The person who secures ownership of the medium in which the work has been incorporated shall not have any exploitation right in that work by virtue of that ownership alone.

2. The aforesaid notwithstanding, the owner of the original of a work of three-dimensional art or a photographic work shall have the right to display the work in public, even if it has not been made available to the public, except where the author has expressly excluded that right in when disposing of the said original. In any event, the author may oppose the exercise of that right by applying for the precautionary measures provided for in this Act as are appropriate if the work is displayed in a manner prejudicial to his honour or professional reputation.

Article 57. Application in Preference to Other Provisions.

The licensing of copyright for exploitation by means of publication or performance or the production of audiovisual works shall in all cases be governed by such of the specific provisions in the present Book I as are appropriate and, where not so governed, by those laid down in this Chapter.

The licensing of rights for each of the various modes of exploitation shall be formalised in independent documents.

CHAPTER II

Publishing Contracts

Article 58. Definition.

Under a publishing contract the author or his successors in title assign to the publisher, for a consideration, the right to reproduce his work and the right to distribute it. The publisher undertakes to carry out those operations on his own account and at his own risk under the agreed conditions and subject to the provisions of this Act.

Article 59. Future Works, Commissioning of a Work and Contributions to Periodical Publications.

1. Future works may not be covered by the publishing contract provided for in this Act.

²³. Article repealed pursuant to the provisions contained in the Single Repealing Provision.3.9th of Act 22/2003, dated 9th July, on bankruptcy (Official Gazette number 164 dated 10th July).

2. The commissioning of a work shall not be the subject of a publishing contract, but any remuneration that may be agreed upon shall be deemed an advance on the royalties accruing to the author from publication, if it occurs.

3. The provisions of this Chapter shall likewise not apply to contributions to periodical publications, except where, as appropriate, the nature and object of the contract so dictate.

Article 60. Written Form and Minimum Contents.

The publishing contract shall be made in writing and shall in any case specify:

1. Whether the assignment by the author to the publisher is of an exclusive nature;
2. The territorial scope thereof;
3. The maximum and minimum numbers of copies constituting the print-run or each of the print-runs agreed upon;
4. The way of distribution of copies and those that are reserved for the author, for reviews and for the advertising of the work;
5. The author's remuneration, established according to the provisions of Article 46 of this Act;
6. The deadline for the putting into circulation of the copies making up the only or first edition, which may not exceed two years from the time at which the author delivers the work to the publisher in a form suitable for the reproduction thereof to be effected;
7. The deadline by which the author must deliver the original of his work to the publisher.

Article 61. Causes of Invalidity and Rectification of Omissions.

1. Any contract that is not made in writing, and a contract that does not specify the limits required under Paragraphs 3 and 5 of the foregoing Article shall be null and void.

2. Omission of the deadlines specified in Paragraphs 6 and 7 of the foregoing Article may be the subject of proceedings on the part of the contracting parties to compel each other mutually to remedy the shortcoming. In the absence of agreement, the Court shall set the appropriate deadlines, taking due account of the circumstances of the contract, the steps taken by the parties with respect to its implementation, and custom.

Article 62. Publication in Book Form.

1. In the case of the publication of a work in book form, the contract shall in addition specify the following particulars:

- a) The language or languages in which the work is to be published;
- b) Where appropriate, the advance royalties to be paid by the publisher to the author;
- c) The form or forms of publication and, where appropriate, the collection of which they are to form a part.

2. Failure to specify the language or languages in which the work is to be published shall give the publisher the right to publish it only in its original language.

3. Where the contract provides for publication of work in more than one official languages in Spain, publication in one of them shall not exempt the author from his obligation to publish it in the others.

If, after five years have elapsed since the author delivered the work to the publisher, he has not published it in all of the languages provided for in the contract, the author may terminate the contract in respect of the languages in which the work has not been published.

4. The provisions of the foregoing Paragraph shall apply also to translations of foreign works in Spain.

Article 63. Exceptions to Article 60, Paragraph 6.

The limitation of the period provided for in Paragraph 6 of Article 60 shall not apply to editions of the following types of work:

1. Anthologies of the works of others, dictionaries, encyclopaedias and equivalent compilations;
2. Prologues, epilogues, presentations, introductions, annotations, commentaries and illustrations relating to the works of others.

Article 64. Publisher's Obligations.

The publisher shall be under the obligation:

1. To reproduce the work in the agreed form, without making any alteration to which the author has not consented, and with the inclusion on the copies of the name, by-line or sign that identifies him;
2. To submit proofs from the print-run to the author, unless otherwise agreed;
3. To proceed with the distribution of the work within the period and under the conditions specified;
4. To ensure that the work is exploited continuously and that the commercial distribution thereof conforms to the usual practice in the publishing profession;
5. To pay the author the remuneration specified, and, where that remuneration is proportional, at least once a year in the appropriate final settlement, whose contents he may be asked to account for. He shall provide the author, annually, with a certificate specifying the particulars of the manufacture, distribution and stocks of copies; to that end, if the author so requests, the publisher shall submit the relevant supporting documents to him;
6. To return to the author the original of the work published under the contract once the typesetting and printing operations have been completed.

Article 65. Author's Obligations.

The author shall be under the obligation:

1. To deliver the work to be published to the publisher in the appropriate form for reproduction and within the agreed deadline;
2. To be answerable to the publisher for the authorship and originality of the work, and for the peaceful exercise of the rights assigned to him;
3. To correct the proofs of the print-run, unless otherwise agreed.

Article 66. Amendments to the Contents of the Work.

During the period of correction of proofs, the author may make such amendments to the work as he considers essential, provided that they do not alter its character or purpose or substantially increase the cost of the edition. In any event, the publishing contract may specify a maximum percentage of corrections in relation to the whole work.

Article 67. Author's Rights in the Case of Remaindering and Destruction of the Edition.

1. The publisher may not, without the author's consent, remainder the edition before two years have elapsed since the copies were first placed in circulation.

2. If, when that period has elapsed, the publisher decides to remainder the balance of the copies, he shall formally notify the author, who may choose to acquire them subject to payment of a premium over the remainder price, or, in the case of proportional remuneration, collect 10% of the amount invoiced by the publisher. The option must be exercised within the 30 days following serving of the notice.

3. If, after the same period, the publisher decides to destroy the balance of the copies of an edition, he shall also notify the author, who may demand that all or some of the copies be delivered to him free of charge within a period of 30 days following the notification. The author may not put the said copies to commercial use.

Article 68. Termination.

1. Without prejudice to the damages to which he is entitled, the author may terminate the publishing contract in the following circumstances:

- a) If the publisher fails to produce the edition of the work in the agreed time and under the agreed conditions;
- b) If the publisher fails to comply with any of the obligations specified in Paragraphs 2, 4 and 5 of Article 64, in spite of an express demand from the author calling on him to do so;
- c) If the publisher proceeds to remainder or destroy the remaining copies of the edition without meeting the requirements laid down in Article 67 of this Act;
- d) If the publisher assigns his rights to a third party without permission;
- e) If, where more than one edition has been provided for and the last edition produced is out of print, the publisher does not produce the next edition within one year of having been called upon to do so by the author; an edition shall be deemed out of print for the purposes of this Article when the number of unsold copies is less than 5% of the total number of the edition, and in any event if it is below one hundred;
- f) In the event of the winding-up, or change of ownership, of the publishing firm, insofar as the reproduction of the work has not commenced, refunding any advances already paid.

2. Where the exploitation of the work is suspended because the activity of the publisher has ceased or as a result of bankruptcy proceedings, the judicial authority may, at the author's instigation, set a period for the resumption of such exploitation, the publishing contract being terminated if that should not occur.

Article 69. Causes of Expiry.

The publishing contract shall expire on the following grounds in addition to the general grounds for the expiry of contracts:

- 1. Once the agreed period has elapsed;
- 2. Upon the sale of all the copies, if such was the purpose of the publication;
- 3. After ten years have elapsed from the assignment if remuneration has been agreed upon exclusively as a lump sum, in accordance with the provisions of Article 46.2 (d) of this Act;
- 4. In any event, fifteen years after the author has placed the publisher in a position to carry out the reproduction of the work.

Article 70. Effects of Expiry.

On the expiration of the contract and unless otherwise agreed, the publisher may, within the next three years and regardless of the manner of distribution agreed upon, dispose of any copies that he may still have in his possession.

The author may acquire them for 60 % of their public retail price or for whatever price may be decided upon by expert opinion, or he may choose to make a preferential bid for the applicable selling price.

Such disposal shall remain subject to the conditions laid down in the expired contract.

Article 71. Music Publishing Contract.

Publishing contracts for musical or dramatico-musical works, for which in addition the publisher is granted rights of communication to the public, shall be governed by the provisions of this Chapter subject to the following:

1. The contract shall be valid even if it does not specify the number of copies; nevertheless, the publisher shall manufacture and distribute copies of the work in sufficient quantity to meet the normal requirements of the exploitation agreed upon in accordance with established practice in the music publishing profession.
2. For symphonic and dramatico-musical works, the time limit provided for in Paragraph 6 of Article 60 shall be five years.
3. The provisions of Paragraph 1. c) of Article 68 and of Paragraphs 2, 3 and 4 of Article 69 shall not be applicable to this type of contract.

Article 72. Verification of Print-Runs.

A number of copies of each edition shall be subject to the verification of print- runs according to a procedure to be laid down by regulation after the professional sectors concerned have been heard.

Failure by the publisher to comply with the requirements laid down for the aforesaid purpose shall entitle the author or his successor in title to terminate the contract without prejudice to any liability that the publisher may have incurred.

Article 73. General Contract Conditions.

Authors and publishers may, through the collecting societies responsible for their intellectual property rights or, if they have none, through the associations that represent them, agree on general conditions for publishing contracts, subject to respect for the law.

CHAPTER III

Stage and Musical Performance Contracts

Article 74. Definition.

Under the contract provided for in this Chapter, the author or his successors in title assign to a individual or legal person the right to perform in public a literary, dramatic, musical, dramatico-musical, dumb or choreographic work for a consideration. The assignee shall undertake to effect the communication of the work to the public under the conditions agreed upon and subject to the provisions of this Act.

Article 75. Contractual Forms and Maximum Term.

1. The parties may enter into the contract for a fixed term or for a specified number of communications to the public. In any event, the term of the exclusive assignment may not exceed five years.
2. The contract shall specify the period within which the only or first communication of the work is to be effected. That period may not exceed two years following the date of the contract or, as appropriate, of the author having placed the producer in a position to effect the communication.

Where such a period has not been specified, a period of one year shall be deemed to have been granted. Where the subject matter of the contract is the stage performance of the work, the period concerned shall be the duration of the season relevant to the time of the conclusion of the contract.

Article 76. Restrictive Interpretation of the Contract.

Where the contract has not specified the types of performance licensed, they shall be limited to recitation and performance in theatres, halls or precincts where there is an admission charge.

Article 77. Author's Obligations.

The author shall be obliged to:

1. Deliver the text of the work to the producer, where appropriate with the fully orchestrated score, if it has not been published in printed form;
2. Answer to the licensee for the authorship and originality of the work and for the undisturbed exercise of the rights granted him.

Article 78. Assignee's Obligations.

The assignee shall be obliged to:

1. Accomplish the communication of the work to the public within the period agreed or specified under Paragraph 2 of Article 75;
2. Effect the communication without subjecting the work to alterations, additions, abridgements or deletions that have not been agreed to by the author, and under technical conditions that do not prejudice the latter's moral rights;
3. Allow the author or his representatives to inspect the public performance of the work, and to attend it free of charge;
4. Pay punctually to the author the agreed remuneration, which shall be determined according to the provisions of Article 46 of this Act;
5. Submit to the author or his representatives the exact programme of communications to the public, and, when the remuneration is proportional, a statement of proceeds. The assignee shall likewise allow them to verify the said programs and statements.

Article 79. Guarantee of Payment of Remuneration.

The producers of public entertainments shall be deemed depositaries of the remuneration payable to the authors of the communication of their works if such remuneration consists of a proportional share in the proceeds. They shall make the said remuneration available to the authors or to their representatives every week.

Article 80. Implementation of the Contract.

Except where they have agreed otherwise, the parties shall be subject to the following rules with respect to the implementation of the contract:

1. It shall be the responsibility of the assignee to secure the copies necessary for the communication of the work to the public. Those copies shall be approved by the author;

2. The author and the assignee shall agree between themselves on the selection of the main performers and, in the case of orchestras, choirs, dance ensembles and comparable groups of performers, the conductor thereof;
3. The author and the assignee shall agree on the drafting of the advertising for the communications to the public.

Article 81. Causes of Termination.

The contract may be terminated at the author's discretion in the following circumstances:

1. If the producer who has acquired exclusive rights, after having started public performances of the work, suspends them for a year;
2. If the producer fails to comply with the obligation mentioned in Paragraph 1 of Article 78;
3. If the producer fails to comply with any of the obligations specified in Paragraphs 2, 3, 4 and 5 of the said Article 78 after having been called upon to do so by the author.

Article 82. Causes of Expiry.

In addition to the general grounds for the expiry of contracts, the performance contract shall expire when, in the case of the first performance of a work, stage performance being the only form of communication contemplated in the contract, the said work has been clearly rejected by the public, and where such a possibility has been provided for in the contract.

Article 83. Public Performance of Musical Compositions.

The performance contract whose subject is the public performance of a musical composition shall be governed by the provisions of this Chapter, insofar as the nature of the work and the form of communication licensed allow.

Article 84. Special Provisions for the Assignment of the Right of Communication to the public by 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 thereof, with the exception of Paragraph 1 of Article 81.
2. Unless otherwise agreed, the said assignment shall be construed to be limited to a single broadcast of the work, effected by wireless means with the transmitting facilities of the licensed broadcasting organisation and within the territorial scope specified in the contract, without prejudice to the provisions of Article 20 and Paragraphs 1 and 2 of Article 36 of this Act.

Article 85. Application of the Foregoing Provisions to Simple Licence.

The licences that the author grants to a producer so that the latter may effect a communication of his work to the public, without being obliged to effect it, shall be governed by those provisions of this Chapter as are applicable thereto.

TITLE VI

Cinematographic and Other Audiovisual Works

Article 86. Definition.

1. The provisions enacted under this Title shall be applicable to cinematographic and other audiovisual works, understood as being creations expressed by means of a series of associated images, with or without incorporated sound, that are intended essentially to be shown by means of projection apparatus or any other means of communication to the public of the images and of the sound, regardless of the nature of the physical media in which the said works are embodied.

2. All the works defined in this Article shall hereinafter be referred to as audiovisual works.

Article 87. Authors.

The following shall be the authors of the audiovisual work within the meaning of Article 7 of this Act:

1. The director or maker;
2. The authors of the script and the adaptation, and those of the staging or dialogue;
3. The authors of the musical compositions, with or without words, which are created specially for the work.

Article 88. Presumed Assignment of Exclusive Rights and Limitations.

1. Without prejudice to the rights accruing to the authors, the contract for the production of the audiovisual work shall be presumed to assign to the producer, subject to the limitations specified under this Title, the exclusive rights of reproduction, distribution and communication to the public, and also the rights of post-synchronisation or subtitling of the work.

The aforesaid notwithstanding, for cinematographic works the authors' express licence shall always be necessary for their exploitation by means of the furnishing to the public of copies in whatever mode or format for use at home, or by means of communication to the public by broadcasting.

2. Unless otherwise agreed, the authors may make use of their individual contributions separately, provided that the normal exploitation of the audiovisual work is not thereby prejudiced.

Article 89. Presumption of Assignment in the Case of Transformation of a Pre-existing Work.

1. It shall be presumed that, by virtue of the contract for the transformation of a pre-existing work that is not in the public domain, the author thereof assigns to the producer of the audiovisual work the exploitation rights therein as provided in Article 88.

2. Unless otherwise agreed, the author of the pre-existing work shall preserve his right to exploit it in the form of graphic publication and stage performance and, in any event, he may make use of it for any other audiovisual work during the fifteen years following the delivery of his contribution to the producer.

Article 90. Author's Remuneration.

1. The author's remuneration of the audiovisual work arising from the assignment of the rights specified in Article 88 and also any that may accrue to the author of the pre-existing works, whether or not they have been transformed, shall be calculated separately for each of the forms of exploitation licensed.

2. Where the authors referred to in the foregoing Paragraph have signed contracts with a producer of audiovisual recordings for the production of such recordings, 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 assigned their right of rental.

The author who has assigned or transferred to a producer of phonograms or audiovisual recordings his right of rental in relation to a phonogram or original or copy of an audiovisual recording shall preserve the unwaivable right to receive 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 successors in title to the holders of the corresponding right to license such rental, and which have been implemented since 1st January 1 with registered office in 1997.

3. In any event, and regardless of what may have been agreed in the contract, where the audiovisual work is shown in public places against payment of an admission charge, the authors mentioned in Paragraph 1 of this Article shall be entitled to collect from those who show the work in public a percentage of the proceeds from the said public showing. The organisers may deduct the amounts payable by way of such remuneration from those that have to be paid to the assignors of the audiovisual work.

Where the audiovisual work is exported, the authors may assign the said right for a lump sum if it is impossible or extremely difficult for them to exercise the right effectively in the importing country.

The operators of public halls or projection rooms shall periodically make the sums collected for the said remuneration available to the authors. For that purpose, the Government may introduce the appropriate supervisory procedures by Royal Decree.

4. The projection or exhibition without charging an admission fee, as well as transmission to the public by any means or procedure, whether wireless or not, including, inter alia, making available in the manner specified in Article 20.2.i) an audiovisual work of admission shall give the authors the right to collect such remuneration as be appropriate according to the general tariffs laid down by the relevant collecting society²⁴.

5. In order to facilitate the author's exercise of the rights pertaining to him in the exploitation of the audiovisual work, the producer shall, at least once a year and at the former's request, provide him with the necessary documents.

6. The rights provided for in Paragraphs 3 and 4 of this Article cannot be waived or assigned by inter vivos transactions, and shall not be applicable to the authors of audiovisual works of a promotional nature.

7. The rights provided for in Paragraphs 2, 3 and 4 of this Article shall be exercised through copyright collecting societies.

Article 91. Insufficient Contribution by an Author.

Where an author's contribution is not completed on account of unjustified refusal on his part or for reasons of acts of God or force majeure, the producer may make use of the part already completed, subject to respect for the said author's rights therein, and without prejudice to any damages that may be appropriate.

Article 92. Final Version and Alterations Thereto.

1. The audiovisual work shall be deemed completed when the master copy has been made in accordance with the terms of the contract between the director and the producer.

2. Any alteration of the master copy of the audiovisual work by addition, deletion or amendment of any element thereof shall require the prior authorisation of those who have agreed on the said master copy.

The aforesaid notwithstanding, in contracts for the production of audiovisual work intended essentially for communication to the public by broadcasting, it shall be presumed, unless otherwise specified, that the authors

²⁴ New drafting of this Article pursuant to the Single Article, Paragraph 9, of Act 23/2006, dated 7th July.

have assigned a licence to make such alterations to the work in the form in which it is to be broadcast as are strictly dictated by the manner of programming the medium, without prejudice in any event to the right recognised in Paragraph 4 of Article 14.

Article 93. Moral Rights and Destruction of the Original Medium.

1. The moral rights of authors may only be exercised in relation to the master copy of the audiovisual work.
2. The destruction of the original medium in which the audiovisual work in its final version is incorporated is hereby prohibited.

Article 94. Radio Works.

The provisions under this Title shall be applicable as appropriate to radio works.

TITLE VII

Computer Programs

Article 95. Legal Regime.

The copyright in computer programs shall be governed by the provisions under this Title and, where not specifically provided for herein, by such of the provisions of this Act as may be applicable.

Article 96. Subject Matter of Protection.

1. For the purposes of this Act, “computer program” shall be construed as any sequence of instructions or data intended for either direct or indirect use in a data processing system to perform a function or task or to secure a specific result, regardless of its form of expression and recording.

For the same purposes, the expression “computer programs” shall cover also the preparatory documentation thereof. The technical literature and manuals for the use of a program shall enjoy the same protection as is afforded to computer programs themselves under this Title.

2. A computer program shall be protected only if it is original in the sense that it is the author’s own intellectual creation.
3. The protection provided for in this Act shall apply to any form of expression of a computer program. The protection shall likewise extend to any successive versions of the program, and also to derived programs, with the exception of those created for the purpose of doing harm to a computer system.

Computer programs that form part of a patent or utility model shall, without prejudice to the provisions of this Act, enjoy whatever protection may accrue to them by operation of the legal regime governing patents and other forms of 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 pursuant to this Act.

Article 97. Holding of Rights.

1. The individual or group of individuals that has created a computer program, or the legal person deemed the copyright holder in the cases expressly provided for in this Act, shall be deemed the author thereof.

2. In the case of a collective work, unless otherwise agreed, the individual or legal person, who publishes and makes it available under his name shall have the status of author.

3. The copyright in a computer program that is the unitary result of collaboration between two or more authors shall be their joint property, and shall pertain to all of them in the proportions determined by them.

4. Where a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the ownership of the relevant exploitation rights in the computer program so created, including both the source program and the object program, shall pertain exclusively to the employer, unless otherwise provided by contract.

5. Protection shall be granted to all persons, whether individuals or legal persons, who meet the requirements laid down in this Act for the protection of copyright.

Article 98. Term of Protection.

1. Where the author is an individual, the term of the exploitation rights in a computer program shall, depending on the circumstances, be that provided for in Chapter I of Title III of this Book.

2. Where the author is a legal person, the copyright referred to in the foregoing Paragraph shall run for seventy, counted from 1st January of the year following that of the lawful communication of the program or that of its creation if it has not been made available to the public.

Article 99. Content of Exploitation Rights.

Without prejudice to the provisions of Article 100 hereof, the exclusive rights in the exploitation of a computer program by the person who is the holder thereof in terms of Article 97 shall include the right to do or authorise the following:

- a) Total or partial reproduction, including for personal use, of a computer program by any means and in any form, whether permanent or temporary. Where the loading, display, operation, transmission or storage of a program calls for such reproduction, the licence to do so, which is granted by the rightholder, must have been secured;
- b) 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 who transforms the program;
- c) Any form of distribution to the public, including the rental of the original computer program or of copies thereof.

For the above purposes, where assignment of the use of a computer program occurs, it shall be construed, in the absence of evidence to the contrary, that the assignment is non-exclusive and non-assignable, it being likewise presumed that assignment has taken place only to meet the needs of the user. 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 the said copy, subject to the right to control over the subsequent rental of the program or of a copy thereof.

Article 100. Limitations of the Right of Exploitation.

1. The rightholder's licence shall not be required, in the absence of a contractual provision to the contrary, for reproduction or transformation of a computer program, including the correction of errors, where those acts are necessary for the use of the program according to its intended purpose by the lawful user;

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

3. The lawful user of the copy of a program shall be entitled to observe, study or test the functioning thereof, without prior licence from the rightholder, in order to determine the ideas and principles which underlie any element of the

program, if he does so while performing any of the acts of loading, displaying, running, transmitting or storing of the program that he is entitled to do.

4. Unless otherwise agreed, the author may not object to the assignee that holds the exploitation rights carrying out or authorising the carrying out of successive versions of his program, or of programs derived therefrom.

5. The licence of the rightholder shall not be necessary where the reproduction of the code and the translation of its form as provided in Subparagraphs a) and b) of Article 99 of this Act are indispensable to obtain the information necessary to achieve interoperability of an independently created computer program with other programs, provided the following conditions are met:

- a) These acts must be performed by the licensee or by another person having a right to use a copy of the program, or on behalf of a person authorised to do so;
- b) The information necessary to achieve interoperability has not previously been made readily and rapidly available to the persons referred to in the foregoing Subparagraph;
- c) These acts are confined to those parts of the original program that are necessary to achieve interoperability;

6. The exception provided for in Paragraph 5 of this Article shall be applicable insofar as the information so obtained:

- a) Is not used for other goals other than to achieve interoperability of the independently created computer program;
- b) Is not given to others, except when necessary for the interoperability of the independently created program;
- c) Is not used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

7. The provisions contained in Paragraphs 5 and 6 of this Article may not be construed in such a way as to allow their application to be used in a manner which unreasonably prejudices the legitimate interests of the rightholder or conflicts with the normal exploitation of the computer program.

Article 101. Protection of Register Entries.

Rights in computer programs, including in successive versions and in derived programs, may be recorded in the Intellectual Property Register.

It shall be laid down by regulation what elements of registered programs may be laid open to public inspection.

Article 102. Infringement of Rights.

For the purposes of this Title and without prejudice to the provisions of Article 100, those persons who, without licence from the rightholder thereof, perform the acts provided for in Article 99 shall be deemed infringers of copyright and, in particular, those who:

- a) Put into circulation one or more copies of a computer program knowing, or having reason to believe, that it is an infringing copy or copies;
- b) Possess, for commercial purposes one or more copies of a computer program knowing, or having reason to believe, that it is an infringing copy or copies;
- c) Putting into circulation or possessing for commercial purposes any means instrument the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of any technical device that may have been applied to protect a computer program.

Article 103. Means of redress²⁵.

The rightholder recognised under this Title may bring the actions and institute the proceedings that are provided for in general terms in Title I, Book III of this Act and the relevant precautionary measures, pursuant to the provisions contained in the Civil Proceedings Act.

Article 104. Safeguarding of the Application of Other Legal Provisions.

The provisions under this Title shall be construed as being without prejudice to any other legal provisions such as those concerning patent rights, trade-marks, unfair competition, trade secrets, protection of semi-conductor products or the Law of Contract.

²⁵ Article drafted pursuant to the Final Provision.2.2. of Act 1/2000, dated 7th January, on Civil Judicial Proceedings (Official Gazette number 7, dated 8th January, correction of errors in Official Gazettes numbers 90, dated 14th April, and 180, dated 28th July 2001).

BOOK II

OTHER INTELLECTUAL PROPERTY RIGHTS AND SUI GENERIS PROTECTION OF DATABASES ²⁶

TITLE I

Rights of Performers

Article 105. Definition of Performers.

“Performer” shall be construed as the person who represents, sings, reads, recites, interprets or executes a work in any form. The director of a stage performance and the conductor of an orchestra shall have the rights conferred on performers under this Title.

Article 106. Fixation.

1. The performer shall have the exclusive right to license the fixation of his performances.
2. Such licence shall be granted in writing.

Article 107. Reproduction.

1. The performer shall have the exclusive right to license the direct or indirect reproduction of fixations of his performances, pursuant to the definition established in Article 18.²⁷
2. Such licence shall be granted in writing.
3. The said right may be assigned, transferred or be licensed by contract.

Article 108. Communication to the public²⁸.

1. The performer shall have the exclusive right to authorise the communication to the public:
 - a) Of his performances, except where any such performance constitutes in itself a performance transmitted by broadcasting or made from a previously authorised fixation;
 - b) In any case, of the fixations of his performances, by means of making available to the public in the manner laid down in Article 20.2.i);

In both cases, such licence shall be granted in writing.

If the communication to the public takes place by satellite or cable and in the manner provided for in Paragraphs 3 and 4. of Article 20 and relevant provisions of this Act, such provisions shall apply.

2. If the performer enters into contracts, either individually or collectively, with a phonogram or audiovisual recordings producer referring to the production of these it shall be assumed, except for agreement to the contrary

²⁶ Drafted pursuant to Article 5 of Act 5/1998, dated 6th March.

²⁷ New drafting of this Article pursuant to the Single Article, Paragraph 10, of Act 23/2006, dated 7th July.

²⁸ New drafting of this Article pursuant to the Single Article, Paragraph 11, of Act 23/2006, dated 7th July.

in the contract and without prejudice to the unwaivable right to equitable remuneration to which the following Paragraph refers, that he has assigned his right to making available to the public to which Paragraph 1.b) refers.

3. If the performer has assigned or transferred to a phonogram or audiovisual recordings producer his right of making available to the public to which Paragraph 1.b) refers with reference to a phonogram or an original or a copy of an audiovisual recording, he shall preserve his unwaivable right a equitable remuneration to be received by whom makes it available to the public.

4. The users of a phonogram published for commercial purposes, or of a reproduction of such a phonogram that is used for any form of communication to the public, shall be under the obligation to pay a single amount of equitable remuneration to the performers and to the producers of phonograms, which shall be shared out between them. In the absence of agreement between them on such sharing, it shall be in equal parts. This payment obligation shall not be applicable in the case of making available to the public in the manner specified in Article 20.2.i), without prejudice to the provisions contained in Paragraph 3 of this Article.

5. The users of the audiovisual recordings that are used for the acts of communication to the public provided for in Subparagraphs f) and g) of Paragraph 2 of Article 20 of this Act shall be under the obligation to pay the remuneration provided to the performers and to the producers of audiovisual recordings, pursuant to the general tariffs established by the relevant collecting societies.

The users of audiovisual recordings that are used for any act of communication to the public different from those referred to in the foregoing Paragraph shall also be under the obligation to pay an equitable remuneration to the performers, without prejudice to the provisions contained in Paragraph 3.

6. The right to the remuneration referred to in Paragraphs 3, 4 and 5 refer shall be exercised through the copyright collecting societies. The exercise of the rights through the appropriate collecting societies shall include negotiation with users, the calculation, collection and distribution of the remuneration due and any other action necessary to ensure the effectiveness of the said rights.

Article 109. Distribution.

1. The performer shall have the exclusive right, in relation to the fixation of his performances, to license the distribution thereof according to the definition laid down in Article 19.1 of this Act. That right may be assigned or transferred or be licensed by contract.

2. If the distribution takes place by means of sale or other form of conveyance of property within the area of the European Union, the said right shall be exhausted on the first such sale, but only in respect of successive sales or conveyances of property effected within the area by the rightholder or with his consent²⁹.

3. For the purposes of this Title, “rental of fixations of performances” shall be construed as making them available for use during a limited time and for direct or indirect economic or commercial advantage.

Making available for the purposes of display, for communication to the public by means of phonograms or audiovisual recordings, including excerpts of either, and for on-the-spot consultation, shall be excluded from the concept of rental in the following circumstances:

- 1 Where the performer, either individually or with others, concludes contracts with a producer of audiovisual recordings, for the production of such recordings, 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, he has assigned his rental rights.
- 2 The performer who has assigned or transferred to a producer of phonograms or audiovisual recordings his rental rights in a phonogram, or an original or copy of an audiovisual recording, shall preserve the unwaivable right to receive equitable remuneration for the rental thereof. Such remuneration shall be payable by those who conduct

²⁹ New drafting of this Article pursuant to the Single Article, Paragraph 12, of Act 23/2006, dated 7th July.

the operations of rental to the public of phonograms or audiovisual recordings in their capacity as successors in title to the corresponding rightholders to license such rental, and shall come into effect as from 1st January 1997.

The right provided for in the foregoing Paragraph shall be exercised through societies for the collection of intellectual property rights.

4. For the purposes of this Title, “lending of fixations of performances” shall be construed as making them available for use for a limited time without direct or indirect economic or commercial advantage, provided that the said lending takes place through establishments accessible to the public.

It shall be construed that there is no direct or indirect economic or commercial advantage when the lending effected by an establishment accessible to the public gives rise to the payment of a sum not exceeding the amount necessary to cover operating expenses.

The operations mentioned in the second Paragraph of Paragraph 3 above, and those conducted between establishments accessible to the public, shall be excluded from the definition of lending.

Article 110. Employment or Free-Lance Contract³⁰.

Where the performance is given in compliance with an employment or free-lance contract, it shall be understood, unless otherwise specified, that the employer or commissioning party acquires therein such exclusive rights to license reproduction and communication to the public as are provided for under this Title and may be deduced from the nature and subject of the contract.

The provisions of the foregoing Paragraph shall not apply to the remuneration rights recognised in Paragraphs 3, 4 and 5 of Article 108 of this Act.

Article 111. Collective Representative.

Performers who collectively take part in one and the same performance, such as the members of a musical ensemble, choir, orchestra, ballet troupe or theatre company, shall designate one of their number to be their representative for the granting of the licences mentioned under this Title. For such designation, which shall be set down in writing, the majority consent of the performers shall prevail. This obligation shall not extend to soloists or to orchestra conductors or directors of stage performances.

Article 112. Term of Exploitation Rights.

The exploitation rights conferred on performers shall run for fifty years, counted from 1st January of the year following that of the performance.

The aforesaid notwithstanding, if, in the course of that period, a recording of the performance is lawfully published, the rights in question shall expire fifty years after the publication of the said recording, counted from 1st January of the year following that in which it occurred.

Article 113. Moral Rights³¹.

1. A performer shall enjoy the right which cannot be waived or assigned to have his name mentioned in connection with his performances and to object, except when the omission is a consequence of the way they are used and to oppose any distortion, mutilation or any other act in relation to his performance that might adversely affect his standing or reputation.

2. The express licence of the performer shall be necessary for the doubling of his performance in his own language.

³⁰ New drafting of this Article pursuant to the Single Article, Paragraph 13, of Act 23/2006, dated 7th July.

³¹ New drafting of this Article pursuant to the Single Article, Paragraph 14, of Act 23/2006, dated 7th July.

3. On his death, and without any time limit whatsoever, the exercise of the aforesaid rights shall correspond to the individual or legal person to whom the performer may have expressly entrusted such exercise in his last will or testament or, failing that, to his heirs.

Provided none of the persons to which the preceding Paragraph refers 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 foreseen therein.

TITLE II

Rights of Phonogram Producers

Article 114. Definitions.

1. "Phonogram" shall be construed as any exclusively sound of the performance of a work or of other sounds.
2. The producer of a phonogram is the individual or legal person on whose initiative and responsibility the aforesaid fixation is first made. If the operation takes place within a firm, the owner thereof shall be deemed the producer of the phonogram.

Article 115. Reproduction³².

The phonogram producer shall have the exclusive right to license the reproduction thereof, pursuant to the definition established in Article 18.

Such right may be assigned or transferred or be licensed by contract.

Article 116. Communication to the public³³.

1. The exclusive right to license communication to the public of phonograms and the reproductions thereof, in the manner specified in Article 20.2.i), shall pertain to the rightholder thereof.

Where communication to the public takes place by satellite or cable and in the manner provided for in Paragraphs 3 and 4 respectively of Article 20 of this Act, those provisions shall be applicable.

2. The users of a phonogram published for commercial purposes, or of a reproduction of that phonogram used for any form of communication to the public, shall be under the obligation to pay a single amount of equitable remuneration to the phonogram producers and performers, who shall share it among them. In the absence of agreement between them on such sharing, it shall be in equal parts. Communication to the public in the manner specified in Article 20.2.i) shall be exempt from such remuneration obligation, without prejudice to the provisions contained in Paragraph 3 of Article 108.

3. The right to the single amount of equitable remuneration referred to in the foregoing Paragraph shall be exercised through societies for the collection of intellectual property rights. The exercise of that right through the relevant collecting societies shall include negotiation with users, the calculation, collection and distribution of the remuneration due and any other action necessary to ensure the effectiveness of the said right.

Article 117. Distribution.

1. The phonogram producer shall have the exclusive right to license the distribution, according to the definition laid down in Article 19.1 of this Act, of phonograms and copies thereof. That right may be assigned or transferred or be licensed by contract.

³² New drafting of this Article pursuant to the Single Article, Paragraph 15, of Act 23/2006, dated 7th July.

³³ New drafting of this Article pursuant to the Single Article, Paragraph 16, of Act 23/2006, dated 7th July.

2. If the distribution takes place by means of sale or other form of conveyance of property within the area of the European Union, the said right shall be exhausted on the first such sale, but only in respect of successive sales or conveyances of property effected within the area by the rightholder or with his consent³⁴.

3. The right of distribution shall be deemed as including the right to license the importation and exportation of copies of the phonogram for marketing purposes.

4. For the purposes of this Title, "rental of phonograms" shall be construed as making the phonograms available for use for a limited period of time and for direct or indirect economic or commercial advantage.

Making available for the purposes of display, for communication to the public by means of phonograms or excerpts thereof and for on-the-spot consultation shall be excluded from the concept of rental.

5. For the purposes of this Title, "lending of phonograms" shall be construed as making them available for use for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments that are accessible to the public.

It shall be construed that there is no direct or indirect economic or commercial advantage when the lending effected by an establishment accessible to the public gives rise to the payment of a sum not exceeding the amount to cover operating expenses.

The operations mentioned in the second Paragraph of Paragraph 4 above, and those that take place between establishments accessible to the public, shall be excluded from the concept of lending.

Article 118. Right to Obtain Redress.

In cases of infringement of the rights recognised in Article 115 and 117, the right to institute the appropriate proceedings shall pertain to both the producer of phonograms and the assignee of the said rights.

Article 119. Term of Exploitation Rights³⁵.

The term of the exploitation rights conferred on producers of phonograms shall be fifty years, after the recording. The aforesaid notwithstanding, if, within the said period, the phonogram is lawfully published, the rights in question shall expire fifty years after the first lawful publication. If, during the aforesaid period, no lawful publication whatsoever is effected but the phonogram is lawfully made available to the public, these rights shall expire fifty years after the first lawful made available to the public.

TITLE III

Rights of Producers of Audiovisual Recordings

Article 120. Definitions.

1. "Audiovisual recordings" shall be construed as fixations of a scene or sequence of images, with or without sound, whether or not they constitute creations susceptible of description as audiovisual works within the meaning of Article 86 of this Act.

2. "Producer of an audiovisual recording" shall be construed as the individual or legal person, who takes the initiative of and assumes responsibility for the said audiovisual recording.

³⁴ New drafting of this Article pursuant to the Single Article, Paragraph 17, of Act 23/2006, dated 7th July.

³⁵ New drafting of this Article pursuant to the Single Article, Paragraph 18, of Act 23/2006, dated 7th July.

Article 121. Reproduction³⁶.

The producer of the first fixation of an audiovisual recording shall have the exclusive right to license the reproduction of the original and copies thereof, pursuant to the definition set out in Article 18.

Such right may be assigned, transferred or be licensed by contract.

Article 122. Communication to the public.

1. The producer of audiovisual recordings shall have the right to authorise the communication to the public thereof.

When communication to the public takes place by cable in the manner provided for in Paragraph 4 of Article 20 of this Act, that provision shall be applicable.

2. The users of audiovisual recordings that are used for the acts of communication to the public provided for in Subparagraphs f) and g) of Paragraph 2 of Article 20 of this Act shall be under the obligation to pay to the performers and producers of audiovisual recordings and to the performers the remuneration due, pursuant to the general fees established by the relevant collecting society³⁷.

3. The right to the single payment of equitable remuneration referred to in the foregoing Paragraph shall be exercised through copyright collecting societies. The exercise of the said right through the collecting societies concerned shall include negotiation with the users, the calculation, collection and distribution of the remuneration due and any other action necessary to ensure the exercise of the said rights.

Article 123. Distribution.

1. The producer of the first fixation of an audiovisual recording shall have the exclusive right to license the distribution, according to the definition laid down in Article 19.1 of this Act, of the original and of copies thereof. That right may be assigned, transferred or be licensed by contract.

2. Where distribution takes place by means of sale or other form of conveyance of property within the area of the European Union, the said right shall be exhausted on the first such sale, but only in respect of successive sales or conveyances of property effected within the area by the rightholder or with his consent³⁸.

3. For the purposes of this Title, "rental of audiovisual recordings" shall be construed as making them available for use for a limited period of time and for direct or indirect economic or commercial advantage.

Making available for the purposes of display, for communication to the public by means of the first fixation of an audiovisual recording and copies thereof, including excerpts of either, and for consultation on the spot shall be excluded from the concept of rental.

4. For the purposes of this Title, "lending of audiovisual recordings" shall be construed as making them available for use for a limited time without direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public.

It shall be construed that there is no direct or indirect economic or commercial advantage when the lending effected by an establishment accessible to the public gives rise to the payment of a sum not exceeding the amount necessary to cover operating expenses.

The operations mentioned in the second Paragraph of the foregoing Paragraph 3, and those effected between establishments accessible to the public, shall be excluded from the concept of lending.

³⁶ New drafting of this Article pursuant to the Single Article, Paragraph 19, of Act 23/2006, dated 7th July.

³⁷ New drafting of this Article pursuant to the Single Article, Paragraph 20, of Act 23/2006, dated 7th July.

³⁸ New drafting of this Article pursuant to the Single Article, Paragraph 21, of Act 23/2006, dated 7th July.

Article 124. Other Exploitation Rights.

The exploitation rights in photographs taken during the process of production of the audiovisual recording shall also pertain to the producer.

Article 125. Term of Exploitation Rights.

The term of the exploitation rights conferred on the producers of the first fixation of an audiovisual recording shall be fifty years after publication, counted from 1st January of the year following that of the making thereof.

The aforesaid notwithstanding, if during the said period the recording is lawfully published, the rights mentioned shall expire fifty years following publication, counted from 1st January of the year following the date on which the said publication took place.

TITLE IV

Rights of Broadcasting Organisations

Article 126. Exclusive Rights.

1. Broadcasting organisations shall enjoy the exclusive right to authorise:

- a) The fixation of their broadcasts or transmissions on any sound or visual medium. For the purposes of this Subparagraph, the fixation of any isolated image shown in the course of the broadcast or transmission shall be deemed included.

Cable distribution enterprises shall not enjoy this right when they retransmit the broadcasts or transmissions of broadcasting organisations;

- b) The reproduction of fixations of their broadcasts or transmissions.

This right may be assigned or transferred or be licensed by contract;

- c) Disclosing to the public, through wire or wireless procedures, the fixations of their broadcasts or transmissions, so that any person may accede to them from the place and at the time he may chose³⁹ ;

- d) The retransmission of their broadcasts or transmissions by any technical process⁴⁰ ;

- e) The communication to the public of their radio broadcasts or transmissions where such communication occurs in places to which the public may have access against payment of a sum of money as an admission charge or for a ticket⁴¹.

Where communication to the public takes place by satellite or cable and in the manner provided for in Paragraphs 3 and 4 of Article 20 of this Act, those provisions shall be applicable;

- f) The distribution of fixations of their broadcasts or transmissions⁴² :

³⁹ Subparagraph c) aggregated pursuant to the Single Article, Paragraph 22, of Act 23/2006, dated 7th July.

⁴⁰ Former Subparagraph c) became present Subparagraph d) pursuant to the Single Article, Paragraph 22, of Act 23/2006, dated 7th July.

⁴¹ Former Subparagraph d) became present Subparagraph e) pursuant to the Single Article, Paragraph 22, of Act 23/2006, dated 7th July.

⁴² New drafting of this Subparagraph and now called Subparagraph f) formerly Subparagraph e) pursuant to the Single Article, Paragraph 22, of Act 23/2006, dated 7th July.

If the distribution takes place by means of sale or other form of conveyance of property within the area of the European Union, the said right shall be exhausted on the first such sale, but only in respect of successive sales or conveyances of property effected within the area by the rightholder or with his consent.

This right may be assigned or transferred or be licensed by contract.

2. The concepts of broadcasting and transmission shall include the operations mentioned in Subparagraphs c) and e) respectively of Paragraph 2 of Article 20 of this Act, and also the concept of retransmission and dissemination to the public by an entity that relays or disseminates another's broadcasts received through any of the satellites mentioned.

Article 127. Term of Exploitation Rights.

The exploitation rights conferred on broadcasting organisations shall run for fifty years, counted from 1st January of the year following that of the first making of a broadcast or transmission.

TITLE V

Protection of Ordinary Photographs

Article 128. Protection of Ordinary Photographs.

Any person who makes a photograph or other reproduction produced by means of a process analogous to photography shall, when neither has the character of protected work in terms of Book I, enjoy the exclusive right to license its reproduction, distribution and communication to the public on the same terms as are accorded by this Act to the authors of photographic works.

That right shall run for twenty-five years counted from 1st January of the year following the date of the making of the photograph or reproduction.

TITLE VI

Protection of Specific Editorial Productions

Article 129. Unpublished Works in the Public Domain and Unprotected Works.

1. Any person who lawfully discloses an unpublished work that is in the public domain shall have the same exploitation rights in it as would have accrued to the author thereof.

2. Similarly, the publishers of works not protected by the provisions of Book I of this Act shall enjoy the exclusive right to license the reproduction, distribution and communication to the public of the said editions, provided that they can be distinguished by their typographical composition, layout and other editorial characteristics.

Article 130. Term of Rights.

1. The rights recognised in Paragraph 1 of the foregoing Article shall run for twenty-five years counted from 1st January of the year following that of the lawful communication of the work.

2. The rights recognised in Paragraph 2 of the foregoing Article shall run for twenty-five years counted from 1st January of the year following that of publication.

TITLE VII

Provisions Common to Other Intellectual Property Rights ⁴³

Article 131. Copyright Safeguard Clause⁴⁴.

The other intellectual property rights provided for in this Book II shall be construed as being without prejudice to those accruing to authors.

Article 132. Subsidiary Application of the Provisions of Book I ⁴⁵.

The provisions contained in Article 6.1, Section 2 of Chapter III of Title II and in Chapter II of Title III, excepting the provisions of the Second Subparagraph of the Second Paragraph of Article 37, both in Book I of this Act, shall be of subsidiary application, as appropriate, to the other intellectual property rights provided for in this Book.

TITLE VIII ⁴⁶

Sui Generis Rights in Databases

Article 133. Object of Protection.

1. *Sui generis* rights in a database protect the substantial investment, assessed either qualitatively or quantitatively, made by its manufacturer in the form of finance, time, effort or energy or other means of similar nature expended in either the obtaining, the verification or the presentation of its contents.

By virtue of the rights referred to in the foregoing Article, the manufacturer of a database, defined in Article 12.2 of this Consolidated Text of the Intellectual Property Act, may prohibit the extraction and/or re-utilisation of all or a substantial part of the contents thereof, evaluated qualitatively or quantitatively, provided that the obtaining, verification or presentation of the said contents represents a substantial investment in terms of quantity or quality. Those rights may be assigned, transferred or licensed by contract.

2. Notwithstanding the provisions of the second Paragraph of Paragraph 1) above, the repeated or systematic extraction and/or re-utilisation of insubstantial parts of the contents of a database implying acts that conflict with a normal exploitation of that database or unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.

3. For the purposes of this Title:

- a) "Maker of the database" shall be construed as the individual or legal person, who takes the initiative and risk of making the substantial investments for the obtaining, verification or presentation of the contents thereof;
- b) "Extraction" shall be construed as the permanent or temporary assignment of all or a substantial part of the contents of a database to another medium by any means or in any form.

⁴³ Drafted pursuant to Article 6.1 of Act 5/1998, dated 6th March.

⁴⁴ Drafted pursuant to Article 6.2 of Act 5/1998, dated 6th March.

⁴⁵ Drafted pursuant to the 1st Final Provision, Paragraph 3, of Act 10/2007, dated 22nd June.

⁴⁶ This Title VIII (Articles 133 to 137) were aggregated by Article 6.3 of Act 5/1998, dated 6th March.

- c) "Re-utilisation" shall be construed as any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, in the form of sale or other assignment of ownership or by renting, or by transmission on-line or in any other form; the provisions of Article 19(2) of this Act shall be applicable to the distribution of copies in the form of sale within the territory of the European Union.

4. The right provided for in the second Paragraph of Paragraph 1 above shall apply regardless of whether or not the said database or its contents are protected by copyright or other rights. The protection of databases provided for in the second Paragraph of Paragraph 1 above shall be construed as being without prejudice to any rights subsisting in their contents.

Article 134. Rights and Obligations of the Lawful User.

1. The maker of a database, regardless of the form in which the database has been made available to the public, may not prevent the lawful user thereof from extracting and/or re-utilising insubstantial parts of its contents, evaluated qualitatively or quantitatively, for any purpose whatever.

In cases where the lawful user is licensed to extract and/or re-utilise only part of the database, the provisions of the foregoing Paragraph shall apply only to the said part.

2. The lawful user of a database, regardless of the form in which the database has been made available to the public, may not engage in the following acts:

- a) Those that conflict with normal exploitation of the said database or unreasonably prejudice the legitimate interests of the maker of the database;
- b) Those liable to prejudice the rightholder or of any of the rights recognised in Titles I to VI of Book II of this Act subsisting in works or performances contained in the said database.

3. Any agreement conflicting with the terms of this provision shall be null and void *ipso iure*.

Article 135. Exceptions to Sui Generis Rights.

1. The lawful user of a database, regardless of the form in which the database has been made available to the public, may, without licence from the maker, extract and/or re-utilise a substantial part of the contents thereof in the following cases:

- a) Extraction for private purposes from the contents of a non-electronic database;
- b) Extraction for the purposes of illustration for teaching or scientific research, to the extent justified by the non-commercial objective to be achieved and provided that the source is mentioned;
- c) Extraction and/or re-utilisation for the purposes of public security or an administrative or judicial procedure.

2. The provisions of the foregoing Paragraph may not be so interpreted that they could be applied in a manner capable of unreasonably prejudicing the legitimate interests of the rightholder or adversely affecting the normal exploitation of the protected subject matter.

Article 136. Term of Protection.

1. The right provided for in Article 133 shall come into being at the same time as the process of making the database is deemed completed, and shall run for fifteen years from 1st January of the year following the date on which the process was completed.

2. In the case of databases made available to the public before the expiry of the term provided for in the foregoing Paragraph, the term of protection shall run for fifteen years from 1st January following the date on which the database was first made available to the public.

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

Article 137. Safeguarding of the Application of Other Provisions.

The provisions of this Title shall be construed as being without prejudice to any other legal provisions that affect the structure or contents of a database, such as copyright or other intellectual property provisions, or provisions on patents and industrial property, competition law, contract law, trade secrets, protection of personal data, protection of national treasures or access to public documents.

PROTECTION OF THE RIGHTS RECOGNISED IN THIS ACT

TITLE I

Actions and Procedures

Article 138. Injunctions and Urgent Precautionary Measures⁴⁸.

The rightholder recognised in this Act may, without prejudice to any other action that may be available to him, apply for an injunction restraining the unlawful activity of an infringer and claiming reparation for material and moral damages caused, under the conditions laid down in Articles 139 and 140. He may also request the publication or dissemination, in part or in full, of the judicial resolution or arbitration award in the media at the infringer's expense.

He may likewise apply, on a prior basis, for the ordering of precautionary measures for immediate protection as provided in Article 141.

Both the specific cessation activities foreseen in Article 139.1.h) and the precautionary set out in Article 141.6 may also be requested, if appropriate, against the intermediaries whose services are used by a third party to infringe the intellectual property rights recognised under this Act, even though the acts by such intermediaries are not in themselves an infringement, without prejudice to the provisions contained in Act 34/2002, dated 11th July, on information society services and electronic commerce. Such measures shall be objective, proportional and non-discriminatory.

Article 139. Cessation of the Unlawful Activity.

1. The restraining of the unlawful activity may include⁴⁹:

- a) Suspending the infringing exploitation or the activity committing the infringement, including all those acts or activities to which Articles 160 and 162 refer;
- b) Prohibiting the infringer from resuming the exploitation or the activity committing the infringement;
- c) Withdrawing from the market and destroying unlawful copies, including those where the data for the electronic management of rights has been suppressed or altered without authorisation or whose technological protection has been eluded. This measure shall be implemented at the infringer's expense, unless grounded reasons are alleged for this to be otherwise;
- d) Withdrawing from commercial circuits, disabling, and, where necessary, destroying, any moulds, plates, printing blocks, negatives and other material, equipment or instruments intended mainly for the reproduction, creation or manufacture of unlawful copies. This measure shall be implemented at the infringer's expense, unless grounded reasons are alleged for this to be otherwise;
- e) Removing, or placing seals on, apparatus used for unlicensed communication to the public of works or services, as well as those in which the data for the electronic management of data has been erased or altered without authorisation, subject to the terms foreseen in Article 162 or which have been acceded eluding their technological protection, pursuant to Article 160;

⁴⁷ The new numbering of Articles 138 to 683 was established by Article 6.4 of Act 5/1998, dated 6th March.

⁴⁸ New drafting of this Article pursuant to the Single Article, Paragraph 23, of Act 23/2006, dated 7th July.

⁴⁹ New drafting of this Article pursuant to the Single Article, Paragraph 24, of Act 23/2006, dated 7th July.

- f) Confiscating, disabling and, if necessary, destruction of the instruments whose sole purpose is to facilitate the unlicensed removal or neutralisation of any technical device used to protect a computer program, at the infringer's expense. The same measures may be adopted in relation to the devices, products or components for the elusion of the technological measures to which Article 160 refers or to suppress or alter the data for the electronic management of rights to which Article 162 refers;
- g) Removing or sealing of instruments used to facilitate the non-authorised suppression or neutralisation of any technical device whatsoever used to protect works or services even though it is not the only use of such instruments;
- h) Suspending the services provided by intermediaries to third parties who use them to infringe intellectual property rights, without prejudice to the provisions contained in Act 34/2002, dated 11th July, on information society services and electronic commerce.

2. The infringer may request that t knowing, or having reason to believe, that it is an infringing copy or copies; he copies and material mentioned, where they are susceptible of other uses, be destroyed or disabled to the extent necessary to prevent unlawful exploitation.

3. The holder of the rights infringed may apply for the surrender to him of the copies and material referred to at their cost price, with a corresponding reduction of his damages.

4. The provisions of this Article shall not apply to copies acquired in good faith for personal use.

Article 140. Damages⁵⁰.

1. Damages due to the holder of the right infringed shall cover not only the loss suffered but also the *lucrum cessans* caused by such infringement. Damages may include, in the event, the expenses made to carry out the investigation to secure reasonable evidence of commission of the infringement that is the object of the judicial proceedings.

2. Damages shall be set, at the aggrieved party's choice, following any of the following criteria:

- a) The negative economic consequences, including the *lucrum cessans* suffered by the aggrieved party and the profits that the infringer may have obtained from his unlawful use.

Moral prejudice shall entitle to damages even where there is no evidence of economic prejudice. Damages shall be determined according to the circumstances of the infringement, the seriousness of the harm done and the extent of unlawful dissemination of the work;

- b) The money the aggrieved party would have received, if the infringer had requested a licence to use the copyright in question.

3. Claims for damages as referred to in this Article shall be barred under the statute of limitations after five years have elapsed from the time at which they could lawfully have been filed.

Article 141. Precautionary Measures.

In the event of infringement or where there are good and reasonable grounds to fear that infringement is imminent, the judicial authority may, at the request of the rightholders recognised under this Act, decree such precautionary measures as may be necessary, in the circumstances, for the immediate protection of the rights concerned, and, in particular:

1. The seizure and deposit of revenue earned through the unlawful activity concerned or, where appropriate, the posting or deposit of amounts payable by way of remuneration;

⁵⁰ Drafted pursuant to Article 2.4 of Act 19/2006, dated 5th June, increasing the means of protection of intellectual and industrial property rights and establishing procedural rules to facilitate the implementation of several European Community regulations.

2. Suspension of the work of reproduction, distribution and communication to the public, as appropriate, or any other activity which constitutes an infringement pursuant to this Act, as well as the prohibition of these activities if these are yet to be put into practice⁵¹;

3. Seizure of copies produced or used and of material used mainly for the reproduction or communication to the public. In the case of computer programs, seizure of the instruments referred to in Subparagraph of Article 102 may be allowed⁵¹;

4. Seizure of the equipment, apparatus, devices and materials referred to in Articles 120.c) and 160.2 and of those used for the suppression or alteration of the information for the electronic management of the rights referred to in Article 162.2.⁵¹

5. The distraint of the equipment, apparatus and material supports to which Article 25 refers, which shall stand encumbered for payment of the reparation claimed and the appropriate damages⁵².

6. The suspension of the services provided by intermediaries to third parties who use them to infringe intellectual property rights, without prejudice to the provisions contained in Act 34/2002, dated 11th July, on information society services and electronic commerce⁵².

The precautionary measures adopted shall cease to have effect if the relevant lawsuit is not submitted, pursuant to the provisions of Act 1/2000, dated 7th January, on Civil Judicial Proceedings⁵².

Article 142⁵³.

(Repealed)

Article 143. Criminal Proceedings⁵⁴.

The precautionary measures provided for civil proceedings pursuant to the Civil Proceedings Act may be granted in the course of criminal proceedings instituted for infringement of the rights recognised in this Act. Such measures shall not impede the adoption of such other measures as may be provided for in the legislation on criminal procedure.

TITLE II

Intellectual Property Registry

Article 144. Organisation and Operation.

1. The General Registry of Intellectual Property shall be the only such body in the entire national territory. Its organisation shall be provided for by regulation, which shall in any event include the organisation and functions of the Central Registry under the authority of the Ministry of Culture and the common provisions on registration and measures for coordination and information among all the competent public administrations.

2. The Autonomous Communities shall determine the structure and operation of the Registry in their own territories, and shall take charge of the keeping of the Register, in all cases complying with the common provisions referred to in the foregoing Paragraph.

⁵¹ New drafting of this Paragraph pursuant to the Single Article, Paragraph 25, of Act 23/2006, dated 7th July.

⁵² This Paragraph aggregated pursuant to the Single Article, Paragraph 25, of Act 23/2006, dated 7th July.

⁵³ Article repealed by Act 1/2000, dated 7th January, on Civil Judicial Proceedings (Official Gazette number 7, dated 8th January, correction of errors in Official Gazettes numbers 90, dated 14th April, and 180, dated 28th July 2001).

⁵⁴ Article drafted pursuant to the Final Provision 2.3. of Act 1/2000, dated 7th January, on Civil Judicial Proceedings (Official Gazette number 7, dated 8th January, correction of errors in Official Gazettes numbers 90, dated 14th April, and 180, dated 28th July 2001).

Article 145. Registration Procedure.

1. The intellectual property rights in works and other productions protected by this Act may be the subject of entries in the Intellectual Property Register.
2. The Registrar shall consider applications filed and the legality of instruments that can be recorded in public registers and contracts, having the right to refuse or suspend effecting the relevant entries. Appeals may be lodged against the Registrar's decisions directly at the civil courts.
3. In the absence of evidence to the contrary, it shall be presumed that the rights registered exist and pertain to their rightholder in the form specified in the relevant entry.
4. The Register shall be public, without prejudice to such limitations as may be introduced by virtue of the provisions of Article 101 of this Act.

TITLE III

Symbols or Notices of Reserved Rights

Article 146. Symbols or Notices.

The rightholder or exclusive assignee of an exploitation right in a work or production protected by this Act may place on it the symbol © before his name, together with the place and year of the communication of the said work or production.

Likewise, on copies of phonograms or on their packaging the name of the producer or his assignee may be preceded by the symbol (p) and accompanied by the year of the publication.

The symbols and references mentioned shall be so placed and presented that they show clearly that the rights of exploitation are reserved.

TITLE IV

Societies for the Management of the Rights Recognised in this Act

Article 147. Requirements⁵⁵.

Legally incorporated collecting societies established in the Spanish territory that intend to devote themselves, either in their own or in other persons' behalf, to the management of exploitation rights or other economic rights on behalf of and in the interest of two or more authors or other rightholders shall secure the appropriate licence from the Ministry of Culture, in order to guarantee adequate protection of intellectual property. This authorisation shall be published in the Official Gazette.

Such collecting societies, in order to guarantee the protection of intellectual property, may not trade for profit and, by virtue of the licence, may exercise the intellectual property rights entrusted to their administration and shall have the rights and be under the obligations laid down in this Title.

⁵⁵ Amended by Article 42.1 of Act 25/2009, dated 22nd December.
Amended and renumbered by Article 6.4 of Act 5/1998, dated 6th March.
Formerly Article 142.

Article 148. Conditions of Licence⁵⁶.

1. The licence provided for in the foregoing Article shall only be granted if the relevant application is submitted and it is accompanied with documents allowing verification that the following conditions are fulfilled:

- a) The Articles of Association of the applicant collecting society meet the requirements laid down in this Title;
- b) It is apparent from the particulars given and the information provided that the applicant collecting society fulfils the conditions necessary for it to ensure effective management, throughout Spain, of the rights to be entrusted thereto;
- c) The licence is in the general interest of intellectual property protection in Spain.

2. In determining whether the conditions laid down in Subparagraphs b) and c) of the foregoing Paragraph have been fulfilled, the following appraisal criteria shall especially be considered: the capacity to feasibly manage the rights entrusted, the suitability of its Articles of Association and its material means in fulfilling its object, and the potential effectiveness of its management abroad, paying particular attention to the compelling reasons of general interest involved in the protection of intellectual property.

3. The licence shall be deemed to have been granted, unless a decision to the contrary is notified, within a term of three months following the submission of the application.

Article 149. Revocation of Licence.

Licence may be revoked by the Ministry of Culture should any circumstance arise or become apparent that would have been a cause for denial of licence, or where the collecting society commits a serious breach of its obligations as set forth in this Title. In all three situations, prior notice shall be given by the Ministry of Culture, which shall set a deadline of at least three months for the situation reported to be remedied or rectified.

Revocation shall come into effect three months after its publication in the Official Gazette.

Article 150. Empowerment⁵⁷.

Once licensed, collecting societies shall be empowered, in such terms as are determined by their own Articles of Association, to exercise the rights entrusted to their administration and to assert them in all manner of administrative or judicial proceedings.

In order to evidence such legitimacy, the collecting society shall be obliged to provide, when commencing any proceedings, a copy of its Articles of Association and a certificate attesting its administrative licence. The defendant may only base his opposition in the defect in the representative legitimacy of the plaintiff or in non-assignment by the rightholder of the exclusive rights or in having paid the remuneration due.

Article 151. Articles of Association.

Without prejudice to the provisions of other laws and regulations that may be applicable to them, the following shall be laid down in the Articles of Association of every collecting society:

- 1. The name, which may not be either identical or confusingly similar to that of another collecting society;

⁵⁶ Amended by Article 42.2 of Act 25/2009, dated 22nd December.
Amended and renumbered by art. 6.4 of Act 5/1998, dated 6th March.
It was formerly numbered as Article 143.

⁵⁷ Article drafted pursuant to the Final Provision.2.4. of Act 1/2000, dated 7th January, on Civil Judicial Proceedings (Official Gazette number 7, dated 8th January, correction of errors in Official Gazettes numbers 90, dated 14th April, and 180, dated 28th July 2001).

2. Its object and goals, which shall be the management of intellectual property rights, with a specification of the rights to be administered⁵⁸;
3. The types of rightholders covered by the administration, and where appropriate the various categories of such rightholders for the purposes of their participation in the management of the collecting society;
4. The conditions governing the acquisition and loss of membership. In all cases, the members must be holders of the types of right that the collecting society is responsible for administering, and the membership must not be below ten;
5. The rights of members, and in particular the voting system, which may be worked out according to weighting factors that afford a reasonable limitation of multiple ballots. In matters concerning the sanction of exclusion from membership, voting power shall be equal;
6. The duties of members and the disciplinary regime governing them;
7. The governing and representative bodies of the collecting society and the competence of each such body, and also the provisions governing the convening, constitution and operation of those of collegiate character, it being expressly prohibited to adopt agreements on matters not appearing on the agenda;
8. The procedure for the election of managers from among the members;
9. The initial capital and planned economic resources;
10. The rules to which systems for the distribution of sums collected are to be subject;
11. The system for supervision of the economic and financial administration of the collecting society;
12. The manner of disposal of the capital or resulting net assets in the event of winding-up of the collecting society, which may not in any circumstances be shared out among the members.

Article 152. Obligation to Administer Intellectual Property Rights Entrusted.

Collecting societies shall be obliged to agree to administer the copyright and other intellectual property rights that are entrusted to them according to their objective or aims. They shall discharge that duty pursuant to their Articles of Association and whatever other provisions are applicable.

Article 153. Collection Contract.

1. The rightholders shall entrust the collecting society with the collection of their rights by means of a contract having a term not exceeding five years which may be renewed indefinitely; neither the administration of all forms of exploitation nor the global administration of all future works or productions may be imposed as obligations.
2. Collecting societies shall lay down adequate provisions in their Articles of Association to ensure collection that is free of influence on the part of users of its repertoire, and to avoid the giving of undue preference in the use of those works.

Article 154. Distribution of Sums Collected.

1. The distribution of sums collected shall be effected equitably among the rightholders of the works or productions used, according to a system laid down in the Articles of Association that shall rule out any arbitrary action.
2. Collecting societies shall reserve to rightholders a share in the sums collected that is proportionate to the use of their works.

⁵⁸ Paragraph 2 amended by Article 42.3 of Act 25/2009, dated 22nd December.

Article 155. Social Action⁵⁹.

1. Collecting societies shall promote welfare activities or services for the benefit of their members, either themselves or through other societies, and shall arrange activities for the training and promotion of authors and performers.
2. Collecting societies shall devote to the activities and services referred to in the foregoing Paragraph, in equal shares, the percentage of the remuneration referred to in Article 25 of this Act that is determined by regulation.

Article 156. Accounts.

Within the six months following the close of each tax year, the collecting society shall draw up a balance sheet covering that period and an account of activities engaged in during it.

Without prejudice to the provisions contained in applicable laws and regulations, the balance sheet and accounting documents shall be audited by legally competent accountants or accounting firms appointed by the General Meeting of the collecting society held in the previous year or in the year of its establishment. The Articles of Association shall lay down the procedure for the appointment of another auditor by the minority.

The balance sheet, bearing a note to the effect that it has or has not been given a favourable report by the auditor, shall be placed at the disposal of the members at the registered office and at the regional branches of the collecting society not less than fifteen days in advance of the appointed date for the General Meeting at which it is to be approved.

Article 157. Other Obligations.

1. Collecting societies shall be obliged
 - a) To enter into a contract with any person who so requests, unless there is good reason for not doing so, for the grant of non-exclusive licences in respect of the rights under administration, on reasonable terms and subject to remuneration;
 - b) To lay down general tariffs to determine the remuneration payable for the use of its repertoire, which shall include rebates for the benefit of non-profit making cultural bodies;
 - c) To enter into general contracts with associations of users of its repertoire whenever such associations request and are representative of the sector concerned.
2. Insofar as the parties fail to reach agreement, the relevant licence shall be deemed granted if the applicant pays subject to reservations, or lodges with a court, the amount charged by the collecting society in conformity with the general tariffs.
3. The provisions of the foregoing Paragraphs shall not be applicable to the collection of rights relating to literary, dramatic, dramatico-musical, choreographic or dumb works, or to single uses of one or more works of any kind, which require separate licence by the rightholder.
4. Collecting societies shall likewise be obliged to assert the right to equitable remuneration pertaining to the various circumstances provided for in this Act, and to assert the right to license cable distribution.

Article 158. Intellectual Property Commission⁶⁰.

1. An Intellectual Property Mediation and Arbitration Commission is hereby created at the Ministry of Culture for the exercise of the mediation and arbitral functions, as well as for safeguarding intellectual property rights, entrusted thereto by this Act.

⁵⁹ Paragraph 1 amended by Article 42.4 of Act 25/2009, dated 22nd December.

⁶⁰ The powers of the Ministry of Culture have been taken on by the Secretariat of State of Culture, pursuant to the provisions contained in the 11th Additional Provision of Royal Decree-Law 20/2011, dated 30th December.
Amended by Final Provision 43.4 of Act 2/2011, dated 4th March.

2. The Commission shall act by means of two Sections.

The First Section shall perform the mediation and arbitral functions entrusted thereto by this Act.

The Second Section, within the scope of powers of the Ministry of Culture, shall see to the safeguarding of intellectual property rights against the infringement thereof, by those responsible for information society services pursuant to the terms provided in Articles 8 and related Articles of Act 34/2002, dated 11th July, on Information Society Services and Electronic Commerce.

3. The First Section shall perform the mediation and arbitral functions, pursuant to the following rules:

1. In the mediation function:

- a) Collaborating in negotiations, prior reference thereto by the parties, where they have not succeeded in concluding a contract, in respect of matters directly related to the collective management of intellectual property rights, and for the authorisation of the cable distribution of a broadcast, owing to a failure to agree on the part of the copyright holders and cable distribution firms;
- b) Submitting proposals to the parties, where appropriate.

All the parties shall be deemed as agreeing to the proposal referred to in the foregoing Paragraph if none of them expresses an objection within a period of three months. In such a situation, the finding of the Commission shall produce the effects provided for in Act 60/2003, dated 23rd December, on Arbitration, and may be appealed before the civil courts. The proposal and any objections thereto shall be notified to the parties in accordance with the provisions of Articles 58 and 59 of Act 30/1992, dated 26th November, on the Legal Regime for Public Administrations and on Common Administrative Procedure.

The mediation procedure shall be laid down in the implementing regulations.

2. The Commission shall act in its arbitral function:

- a) Resolving, upon submission by the parties, any conflicts which may occur between collecting societies, between the holders of rights and the collecting societies, or between the latter and associations of users of their repertoires or broadcasting or cable distribution organisations. Reference to the Commission by the parties shall be voluntary and shall be expressly recorded in writing.
- b) Setting an amount in lieu of the general tariffs, for the purposes specified in Paragraph 2 of the foregoing Article, at the request of the collecting society involved, an association of users or a broadcasting organisation, provided that said association or organisation submits, for its part, to the jurisdiction of the Commission with the aim specified in Subparagraph a) of this Paragraph.

The procedure for the exercise of its arbitral function shall be laid down by implementing regulation.

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

The provisions of this Article shall be without prejudice to any actions that may be brought before the competent jurisdiction. The aforesaid notwithstanding, reference to the Commission shall prevent the courts of law from deciding on the dispute submitted to arbitration until such time as the arbitral award has been handed down, and then only when the party concerned applies for a judicial ruling by filing the appropriate objection.

3. In the performance of its function of setting tariff substitution amounts, the Commission shall bear in mind the criterion of the actual utilisation by the user of the actual repertoire of holders and works or services managed by the collecting societies and the relevance and utilisation in the entire activity of the user.

The Commission may also bear in mind, among other criteria or findings, the existing tariffs for the exploitation of those same rights and those established by the Commission or in agreements and contracts signed by the collecting society itself for similar situations.

- 4) The First Section of the Commission shall consist of three members appointed by the Ministry of Culture, following proposals by the Under-Secretaries of the Ministries of Economy and Finance, of Culture and of Justice, for a three-year period renewable only once, from among experts of renowned competence in the field of intellectual property. The Ministries of Culture and of Economy and Finance together shall appoint the Chairperson of the First Section. The Section shall be governed by the provisions herein and, in ancillary fashion, by the provisions contained in Act 30/1992, dated 26th November, on the Legal Regime Governing the Public Administrations and on Common Administrative Procedure, and of Act 60/2003, dated 23rd December, on Arbitration.

4. The Second Section, which shall act according to the principles of objectivity and proportionality, is hereby entrusted with the performance of the functions provided in Articles 8 and related Articles of Act 34/2002, for the safeguarding of intellectual property rights against the infringement thereof, by those responsible for information society services.

The Section may adopt the measures for interrupting provision of an information society service that infringes intellectual property rights or to withdraw contents infringing said rights whenever the provider directly or indirectly acts for a profit or has caused or is susceptible of causing damage to property.

Before adopting these measures, the information society service provider shall be demanded to voluntarily withdraw the contents that are declared as infringing within a term of not more than 48 hours or, as the case may be, to submit the pleadings and propose the evidence the provider may deem appropriate regarding authorisation for the use or the applicability of limits to Intellectual Property rights. Once the aforesaid term has elapsed, as the case may be, the evidence shall be gathered in two days and the conclusions shall be notified to the parties involved within a maximum term of five days. The Commission shall hand down a decision within a maximum term of three days. The voluntary withdrawal of contents shall put an end to the procedure. In any event, the enforcement of the measure owing to non-compliance with the demand shall require prior authorisation by a court of law, pursuant to the procedure regulated in the Second Paragraph of Article 122 bis of the Act regulating the Contentious-Administrative Jurisdiction.

The provisions in this Paragraph are deemed to be notwithstanding any civil, criminal and administrative actions that may be appropriate, as the case may be.

A member of the Ministry of Culture, a member of the Ministry of Economy and Finance, and a member of the Ministry of the Presidency shall compose the Section, chaired by the Under-Secretary of the Ministry of Culture or the person to whom he delegates.

The functioning of the Section and the procedure for the performance of the functions entrusted thereto shall be determined by implementing regulation. The procedure for re-establishing legality, which shall always commence at the initiative of the holder of the intellectual property rights deemed violated or of the person to whom the exercise thereof is entrusted and where the rights of defence provided in Article 135 of Act 30/1992 shall be applicable, shall be based on the principles of expediency, proportionality and others provided in Act 30/1992, dated 26th November, on the Legal Regime Governing the Public Administrations and on Common Administrative Procedure. The lack of a decision within the term established in the implementing regulation shall have the effect of deeming the application refused. Any decisions handed down by this Commission in this procedure shall put an end to administrative channel.

Article 159. Powers of the Ministry of Culture.

1. In addition to having the power to grant or revoke licence as provided in Articles 148⁶¹ and 149⁶¹, the Ministry of Culture shall be responsible for ensuring compliance with the obligations and requirements laid down in this Act.

To such ends, the Ministry of Culture may demand any kind of information from collecting societies, order inspections and audits and appoint a representative to attend their General Meetings, administrative boards or equivalent bodies with the right to speak but not to vote.

⁶¹ New numbering pursuant to Article 6.1 of Act 5/1998, dated 6th March.

2. Without prejudice to the provisions of other applicable laws and regulations, amendments to the Articles of Association of collecting societies shall be submitted, once they have been approved by the relevant General Assembly, to the Ministry of Culture for approval, which shall be deemed granted if no decision to the contrary is notified within three months following submission.

3. Collecting societies shall be obliged to communicate to the Ministry of Culture the appointment and the termination of the appointment of their administrators and agents, the general tariffs and amendments thereto, general contracts entered into with associations of users and those concluded with foreign organisations of the same type, and the documents mentioned in Article 156⁶¹ of this Act.

TITLE V ⁶²

Protection of technological measures and information for management of rights

Article 160. Technological measures: acts of elusion and preparatory acts⁶³.

1. The holders of intellectual property rights recognised under this Act may exercise the actions foreseen under Title I of its book III against those who, knowingly or having due reason to know, elude any effective technological means.

2. The same actions may be brought against those who manufacture, import, distribute, sell, rent, publicise for sale or rental or possess for commercial purposes, any device, product or component, as well as against those who provide any service that, with regard to any effective technological measure:

- a) Is subject to promotion, publicity or marketing with the purpose of eluding the protection; or
- b) Only has a purpose or commercial use limited to eluding the protection; or
- c) That is principally conceived, produced, adopted or realised with the purpose of allowing or facilitating elusion of the protection.

3. A technological means is understood as all techniques, devices or components that, in their normal operation, are intended to prevent or restrict acts related to protected works or provisions, which do not have the authorisation of the holders of the relevant intellectual property rights.

Technological means are deemed effective when use of the protected work or service is controlled by the holders of the rights, by implementation of an access control or a protection procedure such as, for example, encrypting, randomisation or other transformation of the work, or provision or mechanism for copy control that achieves that objective of protection.

4. The terms set forth in the preceding sections are not applicable to the technological measures used to protect computer programs, which will be subject to their own provisions.

Article 161. Limits to intellectual property and technological measures⁶⁴.

1. Holders of rights to works or services protected by effective technological measures must provide the beneficiaries of the limits hereinafter stated the adequate means to enjoy them, according to their purpose, as long as those beneficiaries have legal access to the works or service concerned. Those limits are the following:

⁶² This Title and the Articles comprising it were introduced pursuant to the Single Article, Paragraph 27, of Act 23/2006, dated 7th July.

⁶³ Introduced pursuant to the Single Article, Paragraph 27, of Act 23/2006, dated 7th July.

⁶⁴ Introduced pursuant to the Single Article, Paragraph 28, of Act 23/2006, dated 7th July.

- a) Limit on private copying under the terms foreseen in Article 31.2;
- b) Limit on purposes of public security, official procedures or to benefit handicapped persons under the terms foreseen in Article 31 bis;
- c) Limit on illustration for teaching under the terms foreseen in Article 32.2;
- d) Limit concerning illustration for teaching or scientific research, or for purposes of public security or for use in administrative or judicial proceedings, all in relation to databases and under the terms foreseen in Article 34.2.b) and c);
- e) Limit on registration of works by radio broadcasting companies under the terms foreseen in Article 36.3;
- f) Limit on reproductions of works for the purposes of research or conservation, performed by certain institutions under the terms foreseen in Article 37.1;
- g) Limit related to extraction for the purposes of illustration in teaching or scientific research of a substantial part of the content of a data base, and of extraction or re-use for the purposes of public security or for use in administrative or judicial proceedings of the content of a data base protected by the sui generis right, under the terms foreseen in Article 135.1.b) and c).

2. When the holders of intellectual property rights have not adopted voluntary measures, including agreements with other parties concerned, for fulfilment of the duty foreseen in the preceding section, the beneficiaries of those limits may resort to the civil courts.

When the beneficiaries of those limits are consumers or users, under the terms defined in Article 1.2 and 3 of Act 26/1984, dated 19th July, General for Defence of Consumers and Users, the entities empowered in Article 11.2 and 3 of Act 1/2000, dated 7th January, on Civil Judicial Procedure, may act in their defence.

3. The legal protection foreseen in Article 160.1 shall cover both to the technological measures adopted voluntarily by the holders of intellectual property rights, including those arising from agreements with other parties concerned, as well as, when appropriate, those included in the relevant court order.

4. The terms set forth in the preceding sections shall not prevent the holders of rights to works or services adopting the solutions they deem appropriate including, *inter alia*, technological measures, with regard to the number of reproductions made as private copies. In these cases, the beneficiaries of the terms foreseen in Article 31.2 may not demand removal of the technological measures that, when appropriate, have been adopted by the holders of rights by virtue of this section.

5. The terms established in the preceding sections of this Article will not be applicable to works or services that have been made available to the public according to contractually agreed terms, so that any.

Article 162. Protection of information for management of rights⁶⁵.

1. Holders of intellectual property rights may exercise the actions foreseen in Title I of Book III against those who, knowingly and without authorisation, perform any of the actions that are listed here below, and who know or have reasonable motives to know that, by doing so, they induce, permit, facilitate or conceal the infringement of any of those rights:

- a) Suppression or alteration of all information for electronic management of rights;
- b) Distribution, importation for distribution, radio-broadcasting, communication or making available to the public of protected works or services in which the information for electronic management of the rights has been suppressed or altered without authorisation.

⁶⁵ Introduced pursuant to the Single Article, Paragraph 29, of Act 23/2006, dated 7th July.

2. For the purposes of the preceding Paragraph, information for management of the rights shall be construed as all information provided by the holders that identifies the protected work or service, the author or any other right holder, or that indicates the conditions of use of the protected work or service, as well as any numbers or codes that represent that information, as long as those elements of information are linked to a copy of the protected works or service or appear in relation to their public communication.

BOOK IV

SCOPE OF THE ACT

Article 163. Authors⁶⁶.

1. The intellectual property rights of Spanish authors and also those of authors who are nationals of other Member States of the European Union shall be protected pursuant to this Act.

The following shall also enjoy the same rights:

- a) Nationals of third countries ordinarily resident in Spain;
 - b) Nationals of third countries not ordinarily resident in Spain for those of their works that are published on Spanish territory for the first time or within thirty days of having been published in another country. The aforesaid notwithstanding, the Government may restrict the scope of this principle in the case of nationals of States that do not afford sufficient protection to the works of Spanish authors in comparable circumstances.
2. All authors of audiovisual works, whatever their nationality, shall have the right to collect proportional remuneration for the showing of their works as provided in Article 90.3 and 4. The aforesaid notwithstanding, in the case of nationals of States that do not afford an equivalent right to Spanish authors, the Government may rule that the sums paid by exhibitors to collecting societies in that connection shall be used for purposes of cultural interest to be laid down by regulation.
3. Nationals of third countries shall in all cases enjoy the protection available under the international conventions and treaties to which Spain is a party and, should there be none, shall be treated in the same way as Spanish authors when Spanish authors are themselves treated in the same way as nationals in the country concerned.
4. For works whose country of origin is another country in terms of the Berne Convention and whose author is not a national of a Member State of the European Union, the term of protection shall be the same as that granted in the country of origin of work, provided that it may not in any case exceed that granted under this Act for the works of authors.
5. The author's moral rights, whatever his nationality, are hereby recognised.

Article 164. Performers⁶⁷.

1. The rights recognised under this Act to Spanish performers shall be protected regardless of the place in which their performances take place, as shall those accruing to performers who are nationals of other Member States of the European Union.
2. Performers who are nationals of third countries shall enjoy the same rights as those recognised in this Act in any of the following cases:
- a) Where they are ordinarily resident in Spain;
 - b) Where their performances take place on Spanish territory;
 - c) Where their performances are recorded on phonograms or audiovisual materials that are protected under this Act;

⁶⁶ Numbering amended pursuant to the Single Article, Paragraph 30 a), of Act 23/2006, dated 7th July.

⁶⁷ Numbering amended pursuant to the Single Article, Paragraph 30 b), of Act 23/2006, dated 7th July.

d) Where their performances are incorporated, without having been recorded, on radio broadcasts that are protected under this Act.

3. Performers who are nationals of third countries shall in all cases enjoy the protection available under the international conventions and treaties to which Spain is a party and, should there be none, shall be treated in the same way as Spanish performers when Spanish performers are themselves treated in the same way as nationals of the country concerned.

4. The terms of protection provided for in Article 112 of this Act shall likewise be applicable to the rightholders mentioned who are not nationals of the European Union, provided that their protection in Spain is guaranteed by an international convention. The aforesaid notwithstanding, without prejudice to the international obligations that are applicable, the term of protection shall expire on the date provided for in the country of which the rightholder is a national, provided that the term may not in any case exceed that laid down in the aforementioned Article.

Article 165. Producers, Makers of Ordinary Photographs and Publishers⁶⁸.

1. The producers of phonograms and of audiovisual works or recordings, the makers of ordinary photographs and the publishers of the works mentioned in Article 129 shall be protected under this Act in the following cases:

- a) Where they are Spanish citizens or companies with registered office in Spain, and also where they are citizens of another Member State of the European Union or companies with registered office in another Member State of the European Union;
- b) Where they are nationals of other countries and the said works are published in Spain for the first time or within thirty days of having been published in another country. The aforesaid notwithstanding, the Government may restrict the scope of this principle in the case of nationals of States that do not afford sufficient protection to the works or publications of Spaniards in comparable circumstances.

2. In all cases the rightholders referred to in Subparagraph b) of the foregoing Paragraph shall enjoy the protection accruing to them under the international conventions and treaties to which Spain is a party and, should there be none, shall be treated in the same way as the producers of phonograms and those of audiovisual works or recordings, the makers of ordinary photographs and the publishers of the works mentioned in Article 129 when they in turn are treated in the same way as nationals in the country concerned.

3. The terms of protection provided for in Articles 119 and 125 of this Act shall likewise be applicable to the rightholders mentioned who are not nations of the European Union, provided that their protection is guaranteed in Spain by an international convention. The aforesaid notwithstanding, without prejudice to the international obligations that are applicable, the term of protection shall expire on the date provided for in the country of which the rightholder is a national, provided that the term may not in any case exceed that laid down in the foregoing Articles.

Article 166. Broadcasting Organisations⁶⁹.

1. Broadcasting organisations with registered office in Spain or in another Member State of the European Union shall enjoy the protection provided for in this Act in respect of their broadcasts and transmissions.

2. Broadcasting organisations with registered office in third countries shall in all cases enjoy the protection available under the international conventions and treaties to which Spain is party.

3. The terms of protection provided for in Article 127 of this Act shall likewise be applicable to the rightholders mentioned who are not nationals of the European Union, provided that their protection in Spain is guaranteed by an international convention. The aforesaid notwithstanding, without prejudice to the international obligations that are applicable, the term of protection shall expire on the date provided for in the country of which the rightholder is a national, provided that the term may not in any case exceed that laid down in the aforementioned Article.

⁶⁸ Numbering amended pursuant to the Single Article, Paragraph 30 c), of Act 23/2006, dated 7th July.

⁶⁹ Numbering amended pursuant to the Single Article, Paragraph 30 d), of Act 23/2006, dated 7th July.

Article 167. Beneficiaries of Protection by *Sui Generis* Rights⁷⁰.

1. The rights provided for in Article 133 shall be applicable to databases whose makers, or their successors in title, are nationals of a Member State of the European Union or have their ordinary residence on the territory of a European Union country.

2. Paragraph 1 of this Article is likewise applicable to companies and businesses incorporated pursuant to the legislation of a Member State of the European Union and having their official headquarters, central administration or main centre of activity in the European Union; nevertheless, if the company or business has only its registered office on the said territory, its operations must be effectively and continuously linked to the economy of a Member State.

First Additional Provision. Legal Deposit.

The legal deposit of works of creation as traditionally recognised in Spain shall be governed by such regulatory provisions as are in force or may be approved in the future by the Government, without prejudice to the powers pertaining to the Autonomous Communities in appropriate cases.

Second Additional Provision⁷¹.

(Repealed)

Third Additional Provision. Revision of the Amounts under Article 25.5.

The Ministries of Culture, of Industry and Energy, and of Commerce and Tourism shall be authorised to adjust the amounts laid down in Article 25.5 of this Act every two years to prevailing market conditions, technological development and the official consumer price index.

Fourth Additional Provision. Frequency of the Remuneration Under Article 90.3 and possibility of amendment by a mere Royal Decree.

Amounts collected in remuneration proportional to proceeds as provided for in Article 90.3 shall be made available to the authors weekly.

The Government may amend the said period on a proposal by the Ministry of Culture.

Fifth Additional Provision⁷².

The Ministry of Culture, within the scope of its powers, shall see to the safeguarding of intellectual property rights against the infringement thereof, by those responsible for information society services pursuant to the terms provided in Article 8 and related articles of Act 34/2002, dated 11th July, on Information Society Services and Electronic Commerce.

First Transitional Provision. Acquired Rights.

Changes introduced by this Act that prejudice rights acquired under the former legislation shall not have retroactive effect, unless the following provisions enact otherwise.

⁷⁰ This Article aggregated pursuant to Article 6.5 of Act 5/1998, dated 6th March. New numbering pursuant to the Single Article, Paragraph 30.e), of Act 23/2006, dated 7th July.

⁷¹ Provision repealed pursuant to the Repealing Provision of Act 3/2008, dated 23rd December.

⁷² Added by Final Provision 43.3 of Act 2/2011, dated 4th March

Second Transitional Provision. Rights of Legal Collecting Societies Protected by the Act dated 10th January 1879, on Intellectual Property.

Those legal collecting societies that under Act dated 10th January 1879, on Intellectual Property, had acquired original ownership of intellectual property rights in a work shall exercise the exploitation rights within a period of 80 years following the publication thereof.

Third Transitional Provision. Acts and Contracts Under the Act dated 10th January 1879, on Intellectual Property.

Acts performed and contracts entered into under Act dated 10th January 1879, on Intellectual Property, shall be fully effective in accordance therewith, but any clauses thereof by which exploitation rights are assigned in respect of all works that the author may create in the future, and also those by which the author undertakes to create no works in the future, shall be null and void.

Fourth Transitional Provision. Authors Deceased Before 7th December, 1987.

The exploitation rights in works created by authors deceased before 7th December 1987, shall run for the term provided for in the Act dated 10th January 1879, on Intellectual Property.

Fifth Transitional Provision. Application of Article 38 and 39 of Act dated 10th January, 1879, on Intellectual Property.

Without prejudice to the foregoing provision, authors whose works were provisionally or finally in the public domain in accordance with the provisions of Articles 38 and 39 of Act dated 10th January 1879, on Intellectual Property, shall be subject to the implementation of the provisions of this Act, without prejudice to the rights acquired by other persons under the earlier legislation.

Sixth Transitional Provision. Applicability of Articles 14 to 16 to Authors of Works Created Prior to the Act dated 11th November 1987, on Intellectual Property.

The provisions of Articles 14 to 16 of this Act shall be applicable to the authors of works created prior to the entry into force of Act dated 11th November 1987, on Intellectual Property.

Seventh Transitional Provision. Regulations of September 3, 1880, for the Implementation of the Act dated 10th January 1879, on Intellectual Property.

The Regulations of September 3, 1880, for the implementation of Act dated 10th January 1879, on Intellectual Property, and any other regulatory provisions on intellectual property shall remain in force insofar as they do not conflict with the provisions of this Act.

Eighth Transitional Provision. Regulation of Special Situations Regarding Computer Programs.

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

Ninth Transitional Provision. Application of the Equitable Remuneration for Rental to Contracts Entered into Prior to 1st July 1994.

With regard to contracts entered into prior to 1st July 1994, the right to equitable remuneration for rental shall apply only if the authors or performers, or their representatives, have filed a request to that end, in accordance with the provisions of this Act, prior to 1st January 1997.

Tenth Transitional Provision. Rights Acquired in Relation to Certain Exploitation Rights.

The provisions of this Act on the rights of distribution, fixation, reproduction and communication to the public shall be construed as being without prejudice to acts of exploitation performed and contracts entered into prior to 1st January 1995, or to the provisions of Subparagraph c) of Article 99.

Eleventh Transitional Provision. Settlement of Special Situations Concerning the Temporary Application of the Provisions on Communication to the public by Satellite.

1. For international co-production contracts entered into prior to 1st January 1995, between a co-producer from a Member State and one or more co-producers from other Member States or from third countries, the co-producer who wishes to give licence for communication to the public by satellite, or his assignee, shall secure the prior consent of the rightholder of the exclusive rights, regardless of whether the latter is a co-producer or an assignee, if all the following circumstances are applicable:

- a) The contract provides expressly for a system of division of the exploitation rights among the co-producers by geographical areas for each of the means of dissemination to the public, without making a distinction between the regime applicable to communication by satellite and that applicable to other communication media;
- b) Communication to the public by satellite of the joint production is implicitly prejudicial to the exclusive rights, notably regarding linguistic exclusiveness, of one of the co-producers or his assignees in a particular territory.

2. The implementation of the provisions of Articles 106 to 108, 115 and 116, 122 and 126 of this Act shall be construed to be without prejudice to exploitation arrangements made and contracts entered into prior to 14th October 1995.

3. The provisions concerning communication to the public by satellite shall be applicable to all phonograms, acts, broadcasts and first fixations of audiovisual recordings that on 1st July 1994, were still protected by the legislation of Member States on intellectual property rights, and which on that date met the criteria to which protection under the provisions concerned was subject.

Twelfth Transitional Provision. Temporary Application of the Provisions on Satellite Broadcasting.

1. The rights referred to in Articles 106 to 108, 115 and 116, 122 and 126 of this Act shall be governed where applicable by the Tenth Transitional Provision and by the Ninth Transitional Provision.

2. The provisions of this Act concerning the right of communication to the public by satellite shall be fully applicable to exploitation contracts in force on 1st January 1995, as from 1st January 2000.

3. The provisions referred to in Paragraph 3 of the eleventh transitional provision shall not apply to contracts in force on 14th October 1994, that are due to expire before 1st January 2000. On that date, the parties may renegotiate the contract conditions according to the said provisions.

Thirteenth Transitional Provision. Settlement of Special Situations Regarding the Term of Protection.

1. This Act shall not affect any act of exploitation engaged in prior to 1st July 1995. The intellectual property rights established under this Act shall not give rise to payments on the part of persons who have, in good faith, undertaken the exploitation of works and corresponding acts during the time at which the said works were in the public domain.

2. The terms of protection provided for in this Act shall apply to all works and acts that were protected in Spain or at least in a Member State of the European Union on 1st July 1995, by virtue of the relevant national provisions on intellectual property rights, or those that meet the criteria determining qualification for protection under the provisions of this Act governing the right of distribution as far as works and performances are concerned, and the rights of fixation, reproduction and communication to the public as far as performances are concerned.

Fourteenth Transitional Provision. Application of the Transitional Provisions of the Spanish Civil Code.

The transitional provisions of the Spanish Civil Code shall be applicable to matters not covered by these provisions.

Fifteenth Transitional Provision⁷³. Application of the Protection Provided for in Book to Databases Completed Before 1st January 1998.

The protection provided for in this Act, with respect to copyright, shall apply likewise to databases completed before 1st January 1998, if they comply on the said date with the requirements laid down in this Act regarding the copyright protection of databases.

Sixteenth Transitional Provision⁶⁷. Application of the Protection Provided for in Book II, Concerning *Sui Generis* Rights, to Databases Completed Within the 15 Years Before 1st January 1998.

1. The protection provided for in Article 133 of this Act with respect to *sui generis* rights shall likewise apply to databases the making of which was completed during the 15 years prior to 1st January, 1998, provided that they comply on that date with the requirements laid down in Article 133 of this Act.

2. The 15-year period of protection of databases referred to in the foregoing Paragraph shall be counted from 1st January 1998.

Seventeenth Transitional Provision⁷⁴. Acts Completed and Rights Acquired Before 1st January 1998, in Relation to the Protection of Databases.

The protection provided for in the Fifteenth and Sixteenth Transitional Provisions shall be construed as being without prejudice to acts completed and rights acquired before 1st January 1998.

Eighteenth Transitional Provision⁶⁸. Application to Databases Completed Between 1st January and 1st April 1998, of the Protection Provided for in Book I and Book II with respect to *Sui Generis* Rights.

The protection provided for in this Act and governed by copyright, as well as that laid down in Article 133 and governed by the provisions on *sui generis* rights, shall also apply to databases completed during the period between 1st January and 1st April 1998.

Nineteenth Transitional Provision⁷⁵. Duration of the rights of phonogram producers.

The rights of phonogram producers in force on the 22nd December 2002, pursuant to the legislation applicable at that time, shall last for the time foreseen in Article 119.

Twentieth Transitional Provision⁷⁶.

The Royal Decree to which the Second Paragraph of Article 37 of the Consolidated Text of the Intellectual Property Act shall be published within a year of the entry into force of this Act.

Until the approval of the Royal Decree to which the preceding Paragraph refers, the amount of remuneration shall be € 0.21 for each copy of the work acquired to be lent by the institutions referred to therein.

⁷³ Provision aggregated pursuant to the provisions of Article 7 of Act 5/1998, dated 6th March.

⁷⁴ Provision aggregated pursuant to the provisions of Article 7 of Act 5/1998, dated 6th March.

⁷⁵ Provision aggregated pursuant to the Single Article, Paragraph 31, of Act 23/2006, dated 7th July.

⁷⁶ Provision aggregated pursuant to the 1st Final Provision, Paragraph 4, of Act 10/2007, dated 22nd June.

Likewise, during such period, the State, the Autonomous Communities and local corporations may agree on the collaboration mechanisms required to fulfil their remuneration obligations affecting publicly owned establishments.

Sole Repealing Provision. Scope of Repeal Provisions.

1. Provisions contrary to this Act are hereby repealed, including the following in particular:

- a) Royal Decree dated 3rd September 1880, approving the Regulations for the implementation of Act dated 10th January, 1879, on Intellectual Property: Chapters V and VI of Title I;
- b) Royal Decree 1434/1992, dated 27th November 1992, detailing Articles 24, 25 and 140 of Act dated 22nd November, 1987, on Intellectual Property: Articles 9.1, 11, 12, 14, 16, 17, 18, 19 and 37.1, and also Chapters II and III of Title II.

2. The following provisions remain in force:

- a) Act dated 9th March 1975, on Books, where not repealed by Act dated 22nd November, 1987, on Intellectual Property or by Royal Decree 875/1986, dated 21st March;
- b) Royal Decree of 3rd September 1880, approving the Regulations for the Implementation of Act dated 10th January 1879, on Intellectual Property: Chapters I, II, III, IV, VII, VIII, IX, X and the Transitional Provision of Title I; Chapters I, II and III of Title II;
- c) Decree 3837/1970, dated 31st December, on mortgages of cinematograph film;
- d) Decree 2984/1972, dated 2nd November, introducing the obligation to affix the ISBN number on all types of book and pamphlets;
- e) Royal Decree 2332/1983, dated 1st September, regulating the sale, distribution and display to the public of audiovisual material;
- f) Royal Decree 448/1988, dated 22nd April, regulating the dissemination of cinematograph film and other audiovisual works embodied in videographic media;
- g) Royal Decree 479/1989, dated 5th May, regulating the composition and operating procedure of the Arbitration Commission on Intellectual Property, where not amended by Royal Decree 1248/1995, dated 14th July;
- h) Royal Decree 484/1990, dated 30th March, on the public selling price of books;
- i) Royal Decree 1584/1991, dated 18th October, approving the rules of the General Registry of Intellectual, insofar as it was declared in force in Paragraph 3 of the sole transitional provision of Royal Decree 733/1993, dated 14th May;
- j) Royal Decree 1434/1992, dated 27th November, implementing Articles 24, 25 and 140 of Act 22/1987, dated 11th November, on Intellectual Property, in the drafting given to them by Act 20/1992, dated 7th July; where not amended by Royal Decree 325/1994, dated 25th February, or is repealed by this Repealing Provision;
- k) Royal Decree 733/1993, dated 14th May, approving the rules of the General Registry of Intellectual Property;
- l) Royal Decree 325/1994, dated 25th February, amending Article 15.2 of Royal Decree 1434/1992, dated 27th November, implementing Articles 24, 25 and 140 of Act 22/1987, dated 11th November, on Intellectual Property, in the drafting given to them by Act 20/1992, dated 7th July;
- m) Royal Decree 1694/1994, dated 22nd July, on the adaptation to Act 30/1992 on the Legal Regime Governing the Public Administrations and Common Administrative Procedure, of Royal Decree 1584/1991, dated 18th October, approving the Rules of the General Registry of Intellectual Property;

- n) Royal Decree 1778/1994, dated 5th August 1994, of adaptation to Act 30/1992, dated 26th November, on the Legal Regime Governing the Public Administrations and the Common Administrative Procedure, of the regulatory provisions concerning the procedures of grant, amendment and expiry of licences;
- ñ) Royal Decree 1248/1995, dated 14th July, partially amending Royal Decree 479/1989, dated 5th May, regulating the composition and operating procedure of the Arbitration Commission on Intellectual Property;
- o) Royal Decree 1802/1995, dated 3rd November, introducing the system for the calculation of the compensatory remuneration for private copying in the cities of Ceuta and Melilla;
- p) Order 23rd June 1966, introducing the basic provisions to which advertising contracts in the cinema medium have to conform;
- q) Order dated 30th October 1971, approving the rules of the Hispanic Bibliographic Institute;
- r) Order dated 25th March 1987, regulating the Spanish ISBN Agency;
- s) Order dated 3rd April 1991, implementing the provisions of Royal Decree 2332/1983, dated 1st September, regulating the sale, distribution and display to the public of audiovisual material.

Sole Final Provision. Implementation.

The Government is hereby authorised to approve the regulations to implement this Act.

