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**Council for Trade-Related Aspects  
of Intellectual Property Rights**

Original: English

REVIEW OF LEGISLATION ON COPYRIGHT AND RELATED RIGHTS

Iceland<sup>1</sup>

The present document reproduces the introductory statement made by the delegation of Iceland in the review of legislation on copyright and related rights at the Council's meeting of 22 to 25 July 1996<sup>2</sup>, the questions put to it and the responses given.

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**I. INTRODUCTORY STATEMENT**

The Icelandic Copyright Act was passed in 1972, taking into account the prevailing copyright legislation of our European neighbours, notably the Nordic countries. The Committee entrusted with drafting the Act also took as its point of departure the provisions of the Berne Convention of 1971, the Universal Copyright Convention of 1952 and the Rome Convention of 1961, to which Iceland is party. As regards the Berne Convention, I should inform that Iceland has of yet not ratified Articles 1-21 of the Paris text of 1971.

The Copyright Act has been amended four times, mainly in 1984 when a levy was introduced on blank audio and video tapes and measures regarding copyright infringements, sanctions and procedures were improved. The latest relevant amendment dates back to 1992, introducing improved protection for visual artists, rightholders of computer programmes and performers.

On the structure of the Act, Members will see that it is divided into eight sections. Section I relates to author's rights, Section II limitations of copyright, Section III the transfer of copyright, Section IV the duration of copyright, Section V various rights related to copyright, Section VI miscellaneous provisions, Section VII penalties, damages, claim procedures and so forth, and Section VIII defines the scope of the Act.

We have reviewed the Copyright Act as amended carefully in light of our WTO obligations and are of the view that it complies in substance with the text of the TRIPS Agreement.

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<sup>1</sup>Iceland's notification of laws and regulations in the area of copyright and related rights under Article 63.2 of the Agreement has been circulated in documents IP/N/1/ISL/1 and IP/N/1/ISL/C/1.

<sup>2</sup>The minutes of the meeting have been circulated in document IP/C/M/8.

## II. REPLIES TO QUESTIONS POSED BY THE UNITED STATES

1. *Please explain whether and how Iceland's law provides protection for works, phonograms and performances from other WTO Members, and whether and how it does so on the basis of national treatment, as required by TRIPS Article 3 (generally, with respect to all copyrights and neighbouring rights) and Article 9.1 (incorporating Berne Article 5(1)). In particular please indicate how national treatment is afforded with respect to the distribution of levies for private copying under Article 11 of the Copyright Act.*

As regards the protection of works the principle of national treatment applies. As regards the protection afforded by the TRIPS Agreement to performing artists and producers of phonograms the principle of national treatment is applied.

Unequivocal national treatment is accorded to all WTO Members as far as copyright and neighbouring rights provided for in TRIPS Agreement are concerned.

There is no compensation for private copying according to Article 11, paragraphs 1 and 2 of the Icelandic Copyright Act. No one can make a claim to receive remuneration, as no rights are involved.

Article 11, paragraphs 3 and 4 of the Copyright Act provides for a *sui generis* obligation for the manufacturers and importers of blank recording material to pay a levy, the amount of which is fixed in the Copyright Act. The levy is collected by a joint collection centre and is distributed to member societies which are responsible to the beneficiaries.

The compensation is not afforded on the basis of national treatment. Article 61. B of the Icelandic Copyright Act stipulates that compensation is afforded to beneficiaries in other countries, provided that in the country in question a remuneration scheme has been implemented for blank tapes which provides a possibility for payment of remuneration to Icelandic beneficiaries.

2. *Does Iceland apply the "rule of the shorter term" to phonograms and performances from other WTO Members? If so, please explain how you justify such action under TRIPS Article 4.*

Iceland does not apply any "rule of the shorter term" to phonograms and performances from other WTO Members concerning rights granted in the TRIPS Agreement.

3. *Please explain whether and how Iceland protects against both direct and indirect reproduction of phonograms as required by TRIPS Article 14.2, including by digital transmission in the context of subscription or interactive services.*

According to Articles 45 and 46 of the Icelandic Copyright Act a phonogram may not be copied until fifty years have elapsed from the year during which the recording took place. This right - in the same way as the right of reproduction of authors - has always been interpreted as covering both direct and indirect reproduction.

The general rule is considered to apply to reproduction by digital transmission.

According to Article 61 the protection concerning recording and copying applies to all sound recording regardless of origin.

4. *Please explain whether and how Iceland provides full retroactive protection to works, phonograms and performances from other WTO Members, as required by TRIPS Articles 9.1, 14.6 and 70.2, each of which incorporate by reference or rely upon Berne Article 18. Please give the date back to which such protection extends with respect to each category of subject-matter.*

As regards works the protection through TRIPS Article 9.1 is guaranteed by the Icelandic Copyright Act of 1972 as amended in 1984 and 1992. As far as performers and producers of phonograms are concerned the obligations of Article 14.6, second sentence, were explicitly met in the context of the enactment of the Copyright Act. According to Article 63, the Icelandic Copyright Act applies also to works and performances and phonograms etc., made before the coming into force of the present Act in 1972.

The term of protection for works is 50 years after the year of the author's death cf. Article 43 of the Copyright Act.

The term of protection for performances and recordings is 50 years after the year the recording was made, cf. Articles 45 and 46. The protection of recordings made in 1946 will consequently expire by the end of the year 1996.

5. *Please explain the interpretation and application of the "private use" exception in Article 11 of the Copyright Act. In particular, please explain how this Article, which appears to allow three copies of a work to be made for business purposes, complies with Berne Article 9(2), as incorporated by TRIPS Article 9.1, and TRIPS Article 13, which require limitations and exceptions to exclusive rights to be limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder.*

The provisions of Article 11 are in full conformity with Berne Article 9(2) and TRIPS Article 13. The meaning of "private use" in Article 11 is subject to narrow interpretation and is limited only to natural persons allowing them only to have the advantage of making copies for strict private use. Firms, companies, associations and other legal entities as such are excluded from those who may benefit from this provision.

6. *Please describe whether and how the regulations governing photocopying of works by libraries, archives and scientific and research institutions under Article 12 of the Copyright Act are applied to ensure that this exception complies with Berne Article 9(2), as incorporated into TRIPS through Article 9.1, and TRIPS Article 13, which require limitations and exceptions to exclusive rights to be limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder.*

No regulation based on Article 12 has been issued and therefore no exception from exclusive right of the authors can be based on this Article. It should however be noted that only a narrow interpretation of Article 12 would be allowed and would be confined only to photocopying for internal purposes in libraries and not for any public dissemination.

7. *Please explain how the phrases "some other recognized purpose" and "for general information" in Article 14 of the Copyright Act have been applied and interpreted, and how this Article complies with Berne Article 10, as incorporated into TRIPS through Article 9.1, which requires that quotations be compatible with fair practice.*

Again the provisions in Article 14 is subject to narrow interpretation. "A recognizable purpose" shall be understood in the relation to the reason for the quotation in question and whether it can be regarded as fair practice. This can for example be interpreted in the light of the authors moral rights

according to Article 4.2 of the Copyright Act if quotation is not done in the context of a critical or scientific public discussion.

The meaning of "for general information" in Article 14.2 in the Copyright Act is applicable when a work of art is published in relation to a text concerning a general promotion of the arts. In such cases the author has a right to remuneration for the use of his works. This is a special provision for visual artists.

8. *Please explain how Article 15 of the Copyright Act, which allows the reproduction of pictures or drawings of art, is consistent with Berne Article 10bis, as incorporated into TRIPS through Article 9.1, which permits such reproduction only "to the extent justified by the informatory purpose".*

A reproduction of pictures or drawings of art on the basis of Article 15 of the Icelandic Copyright Act is only allowed as an inseparable part of a reproduction of other copyrightable subject matter for authorized usage under Article 10 of the Berne Convention, i.e. in relation to information of newsworthy events.

9. *Please explain how the operation of Article 17 of the Copyright Act, which permits the reproduction in composite works for use in divine services, for classroom instruction or for educational broadcasting, complies with Berne Article 9(2), as incorporated into TRIPS through Article 9.1, and TRIPS Article 13, which require limitations and exceptions to exclusive rights to be limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder.*

Article 17 of the Icelandic Copyright Act is consistent with Article 9, paragraph 2 of the Berne Convention and is strictly limited for the purpose of teaching and under such conditions as not to conflict with normal exploitation of a work or unreasonably prejudice the legitimate interests of the rightholder, i.e. the exception covers only works that have been published for teaching purposes, five years must have elapsed from publication and only works by a diversity of authors can be subjected to such use.

10. *Please describe whether and how the rules governing the making of sound recordings by educational authorities under Article 18 of the Copyright Act are applied to ensure that this exception complies with TRIPS Article 13, which require limitations and exceptions to exclusive rights to be limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder.*

The provisions of Article 18 of the Icelandic Copyright Act do not grant a right to make direct copies of phonograms intended for commercial exploitation but are strictly limited to ephemeral recordings of other publicly presented works strictly for educational purposes in a class room.

11. *Please explain whether and how, under Icelandic law, computer programmes are protected as literary works and whether and how compilations of data or other material are protected as required by TRIPS Article 10.*

Article 1.4 of the Icelandic Copyright Act stipulates that computer programmes are protected as literary works, and under Article 24.2 as amended in 1992 the rightholders of computer programmes are granted the rental rights of their work.

Compilations of data which constitute intellectual creations are protected either as literary works under Article 1 or as a composite work under Article 6 of the Icelandic Copyright Act.

A *sui generis* right is afforded in Article 50 of the Copyright Act for catalogues, tables and other similar productions in which a large number of information items have been compiled. This *sui generis* right is for the benefit of those who have contributed to the compilation of the data. Those may not be reproduced without the authorization of the producer until 10 years have elapsed from the year in which the production was made public.

12. *Please explain whether and how Icelandic law provides a rental right for sound recordings, cinematographic works and computer programmes, as required by TRIPS Articles 11 and 14.4.*

Article 24 of the Icelandic Copyright Act stipulates that rightholders of cinematographic works and computer programmes are granted the right to control the rental of their work.

13. *Please explain whether and how Articles 45 and 46 of the Copyright Act have been amended to provide terms of protection consistent with TRIPS Article 14 and if not, when such amendments will be made.*

Article 45 of the Icelandic Copyright Act stipulates that the term of protection as regards performances is 50 years from the expiry of the year in which the recording took place. A 50-year term of protection also applies to sound fixations pursuant to Article 46. The term of protection was extended from 25 years to 50 years in 1992. (Act No. 57 of 1992).

14. *Please explain how the operation of Article 21 of the Copyright Act, which contains exceptions for public performance of works for educational, charitable, non-profit and religious purposes, complies with Berne Articles 11 and 11ter, as incorporated into TRIPS through Article 9.1 and TRIPS Article 13, which requires limitations and exceptions to exclusive rights to be limited to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder. In addition, please explain how the rules of the Minister governing use for religious purposes under Article 21.4 limit the scope of that exception.*

Articles 11 and 11ter of the Berne Convention apply to dramatic, dramatico-musical and musical works only. As stipulated in Article 21 of the Icelandic Copyright Act it only applies to published literary or musical works that are not dramatic works. The Berne Convention does not contain any articles that related to the subject of Article 21 of the Copyright Act, but in an explanatory memorandum to the Brussels text in 1948 it is observed that rules such as Article 21 of the Copyright Act are permissible. It should be emphasized that exemptions according to this Article apply only if no payment is made to the performers, which is in fact exceptional.

Iceland has been a member of the Berne Convention since 1947 and WIPO has never forwarded any complaints regarding this article or any other in the Icelandic Copyright legislation.

15. *Please explain how the provisions of Article 23 of the Copyright Act, which restrict the rights of authors not represented by a professional society or organization, comply with Berne Article 9(2) and TRIPS Article 13, which require that limitations and exceptions to exclusive rights be confined to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder.*

The clauses mentioned in the question do not grant compulsory licences but extensions of agreed collective licences for mass uses which are impossible to be licensed by individual agreement.

The condition for the application of this article is without exception an agreement between an organization representing by a mandate a large number of rightholders, and the user. The organization

has to fulfil certain requirements and on that basis be recognized by the Ministry of Culture and Education in Iceland.

The terms agreed upon by the organization apply to the use of works of rightholders not directly represented by the organization. The organization has to give those rightholders who are not represented the same treatment which the organization accords to those who have given them mandates. It should however be noted that a rightholder outside the organization has always a right to claim individual remuneration even in cases when the organization does not accord such position to the rightholder on behalf of whom it acted on the basis of mandates or transfers of rights. These rightholders can also prohibit their performance for broadcasting purposes by a written interdict.

16. *Please explain the criminal and civil remedies available for copyright infringement and the extent to which they fully implement the obligations in TRIPS Articles 41, 45, 50 and 61. In the response, please specify, inter alia, whether these remedies may include the seizure, forfeiture and destruction of infringing articles and equipment used to make the infringing articles, as required by Articles 46 and 61, and the manner in which the grant of civil provisional relief is provided in accordance with TRIPS Article 50.*

According to Article 54 of the Icelandic Copyright Act various remedies are available for copyright infringements, i.e. fines, detention and imprisonment. According to Article 55, the court may order that infringing copies be seized, transferred to the infringed party, destroyed or made available to the public against damage and compensation. The same applies correspondingly to equipment used to make infringing articles. According to Article 56 the court may order the infringer to pay reasonable remuneration, damages, compensation and tort.

The obligation to give provisional relief is met through the provisions on injunction. Judicial authorities have the authority to order search on private premises to preserve evidence or to search for objects, which are subject to seizure. Measures indicated here are ordered by the courts of law. In principle such measures shall be undertaken only after the adverse party has been given an opportunity to respond to the request.