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

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**MAIN DEDICATED INTELLECTUAL PROPERTY  
LAWS AND REGULATIONS NOTIFIED UNDER  
ARTICLE 63.2 OF THE AGREEMENT**

ESTONIA

The present document reproduces the text<sup>1</sup> of the Copyright Act, as notified by Estonia under Article 63.2 of the Agreement (see document IP/N/1/EST/1).

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**Conseil des aspects des droits de propriété  
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA  
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE  
DE L'ARTICLE 63:2 DE L'ACCORD**

ESTONIE

Le présent document contient le texte<sup>1</sup> de la Loi sur le droit d'auteur, notifiée par l'Estonie au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/EST/1).

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**Consejo de los Aspectos de los Derechos de Propiedad  
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA  
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD  
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

ESTONIA

En el presente documento se reproduce el texto<sup>1</sup> de la Ley de Derechos de Autor, notificado por Estonia en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/EST/1).

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<sup>1</sup> In English only. The text in the original language is available for consultation by interested Delegations at the WTO Secretariat./En anglais seulement. Les délégations intéressées peuvent consulter le texte dans sa langue d'origine, au Secrétariat de l'OMC./En inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC el texto en su idioma original.

Amended:

21.01.1999

25.03.1998

26.06.1996 (RT I 1996, 49, 953)

## **COPYRIGHT ACT**

Adopted on 11 November 1992

### **Chapter I GENERAL PROVISIONS**

#### **Section 1 Purpose and Objectives of Copyright Law**

(1) The purpose of Copyright Law is to guarantee the continuous development of culture and the protection of cultural achievements, as well as to create conditions favourable to authors, performers of works, producers of phonograms and radio and television organisations for creation and the use of works.

(2) The Copyright Law shall establish:

- 1) the protection of the specific right (copyright) of the author of literary, artistic and scientific works to the results of their creative activities;
- 2) the circle of persons who may acquire rights in literary, artistic and scientific works, created by authors, and their rights;
- 3) the rights of performers, producers of phonograms and radio and television organizations (rights neighbouring on copyright);
- 4) the limitations on the exercise of copyright and of neighbouring rights in the use of works for the benefit of the society;
- 5) the guarantees for the exercise of copyright and neighbouring rights and the protection thereof.

(3) This Act takes account of the Council Directive of 19 November 1992 on rental right and lending right and on certain copyright related rights in the field of intellectual property (92/100/EEC) (OJ L 346 27.11.92) and Council Directive of 27 September 1993 on the co-ordination of certain rules concerning copyright and copyright related rights applicable to satellite broadcasting and cable retransmission (93/83/EEC) (OJ L 248 06.10.93).

(21.01.1999)

#### **Section 2 Copyright Acts**

(1) Copyright acts of the Republic of Estonia consist of this Law, other laws which are developed on the basis of this Law and other normative acts of the Government, the Ministries and State Boards of the Republic.

(2) In case of conflict of the copyright act with an international treaty adhered to by the Republic of Estonia, the provisions of the international treaty shall apply.

#### **Section 3 Field of Application of Copyright Law**

(1) Copyright Law shall apply to works:

- 1) the author of which is a national of or has his permanent residence in the Republic of Estonia;
- 2) first published in the territory of the Republic of Estonia or not published, but located in the territory of the Republic of Estonia, irrespective of the nationality or the permanent residence of the creator of the work;
- 3) which require protection in the Republic of Estonia by virtue of international treaties to which the Republic of Estonia is a party.

(2) The Copyright Law shall also apply to works first published in another country or to works which are unpublished, but located in the territory of another country, the author of which is a person who has his permanent residence or location in the territory of another country, and to which shall not apply Subparagraph 3 of Paragraph 1 of this Section, provided the other country guarantees similar protection to works of authors of the Republic of Estonia and to works first published in the Republic of Estonia.

(3) A work is presumed to be protected by copyright except if, based on this Act or other copyright legislation, there are apparent circumstances which preclude this. The burden of proof lies on the person who contests the protection of a work by copyright. (21.01.1999)

## **Chapter II**

### **WORKS PROTECTED BY COPYRIGHT**

#### **Section 4 Works in Which Copyright Subsists**

- (1) Copyright subsists in literary, artistic and scientific works.
- (2) "Works" for the purposes of this Law mean any original results of a person's creative activities in the literary, artistic or scientific domain, which have been expressed in an objective form and in this form can be perceived and reproduced either directly or by means of a technical device.
- (3) Works in which copyright subsists are:
  - 1) written works in the field of fiction, non-fiction, politics, education, etc.;
  - 2) scientific works and works of popular science, either written or three-dimensional (monographs, articles, reports on scientific research, plans, schemes, patterns, models, tests etc.);
  - 3) computer programs, which shall be protected as written works;
  - 4) speeches, lectures, reports, sermons and other works consisting of words, which are expressed orally (oral works);
  - 5) scenarios and sketches for scenarios, librettos;
  - 6) dramatic and dramatico-musical works;
  - 7) musical compositions with and without text;
  - 8) choreographic works and pantomimes;
  - 9) audiovisual works (films for display at the cinema and on television, video films and programmes, television broadcasts);
  - 10) radio works;
  - 11) works of painting, graphic arts, typography, drawings, illustrations;
  - 12) stage productions and works of theatre design;
  - 13) works of sculpture;
  - 14) architectural graphics (drawings, sketches, schemes, figures, plans, projects etc.), explanatory letters, texts, programmes, interpreting the contents of the project, works of architectural plastic (models, patterns etc.), works of architecture and landscape design (buildings, structures, parks, green areas etc.), town layout assemblies and complexes;
  - 15) works of applied art;
  - 16) works of design and fashion design;
  - 17) photographic works and works expressed by a process analogous to photography, slides and slide films;
  - 18) cartographic works (topographical, geographical, geological etc. maps, atlases, models);
  - 19) drafts of normative acts;
  - 20) opinions, reviews, expert opinions etc.;
  - 21) derivative works, i.e. translations, adaptations of an original work, modifications (arrangements) of a work and other transformations of a work;
  - 22) collections of works and collections of information (including databases);
  - 23) other works.
- (4) The author shall enjoy copyright also in the results of intermediate stages of the creation of his work (sketches, drafts, plans, drawings, chapters etc.), provided these meet the conditions of Paragraph 2 of this Section.
- (5) The original title (heading) of the work shall enjoy protection on the same basis as the work.  
(21.10.1999;22.02.1999)

#### **Section 5 Results of Intellectual Activities to Which This Law Shall Not Apply**

This Law shall not apply to:

- 1) ideas, images, notions, theories, processes, systems, methods, conceptions, principles, discoveries, inventions and other such results of intellectual creation, described, explained or otherwise expressed in a work;
- 2) expressions of folklore;
- 3) normative acts and administrative documents (laws, decrees, regulations, statutes, instructions, orders) as well as official translations thereof;
- 4) court decisions and official translations thereof;
- 5) the official symbols of the State and symbols of organizations (flags, coats of arms, orders, medals, badges etc.) and banknotes;
- 6) news of the day;
- 7) mere facts and data.

## **Section 6 Subsistence of Copyright Irrespective of Purpose, Value, Manner of Expression and Method of Fixation of Works**

The purpose, value, specific manner of expression or method of fixation shall not provide the basis for denial of copyright.

## **Section 7 Commencement of Copyright Protection**

- (1) Copyright in a work shall commence upon the creation of the work.
- (2) The creation of a work means the moment of fixing the work in an objective form which permits it to be perceived and reproduced.
- (3) Registration or deposit of the work or the fulfilment of other formalities shall not be required in order to enjoy and exercise copyright.

## **Section 8 Copyright in Works Not Made Available to the Public and Works Made Available to the Public**

Copyright shall subsist in works not made available to the public as well as works made available to the public (published, performed in public, exhibited to the public and broadcast to the public). The public means an indeterminate circle of persons outside the family and close social acquaintances.

## **Section 9 Published Works**

- (1) A work is considered to be published if a work or copies of the work, reproduced in any form, have been made available to the public, with the consent of the author, to an extent which allows the public to become familiar with it or to acquire it. Publishing a work includes printing the work, putting copies of the work on sale, distribution, lending, renting and other ways of allowing the work to be used, either free of charge or for compensation.
  - (1<sup>1</sup>) For the purposes of this Act, "rental of a work or copies thereof" means making the work or copies thereof available for use, for a limited period of time and for direct or indirect economic advantage.
  - (1<sup>2</sup>) For the purposes of this Act, "lending of a work or copies thereof" means making the work or copies thereof available for use, for a limited period of time and not for direct or indirect economic advantage, when this is made through establishments which are accessible to the public.
  - (2) The work is considered to be published if it is stored in a computer system available to the public.
  - (3) The performance of a dramatic, a musical dramatic or a musical work, the demonstration of an audiovisual work, the public recitation of a literary work, the broadcasting of a literary or artistic work on radio and television or the communication of a work to the public by cable shall not constitute publication, except for cases referred to in Paragraph 2 of this Section.
- (21.01.1999)

## **Section 10 Works Performed in Public, Exhibited to the Public and Communicated to the Public**

- (1) A work shall be considered performed if it has been recited, played, danced, acted or executed in any other manner either directly or by means of a technical device or process.
  - (2) A work shall be considered exhibited if a work or a copy of the work has been demonstrated either directly or by means of a film, a slide, television or any other technical device or process.
  - (3) A work shall be considered communicated to the public if it has been made available to the public by means of radio broadcasting, television, cable network or any other means, apart from distribution of copies of the work.
  - (4) Public performance, public display or communication to the public of a work shall include:
    - 1) making the work available to the public at a place open to the public or at a place not open to the public but where a large number of persons outside the family and close social acquaintances is present;
    - 2) communication to the public of a work or retransmission of a work by means of any technical device or process, irrespective of whether it has been actually perceived by the public.
- (21.10.1999)

## **Section 10<sup>1</sup> Pirated copy**

- (1) For the purposes of this Act, "pirated copy" means a copy, in any form and whether or not with a corresponding packaging, of a work or object of copyright related rights which is reproduced without the consent of the author of the work, holder of copyright or holder of copyright related rights.

(2) A copy of a work or object of copyright related rights which has been reproduced in a foreign country with the consent of the author of the work, holder of copyright or holder of copyright related rights but is imported into Estonia without the consent of the author of the work, holder of copyright or holder of copyright related rights is also deemed to be a pirated copy.

(21.10.1999)

### **Chapter III**

#### **RIGHTS ARISING UPON CREATION OF A WORK**

##### **Section 11 Contents of Copyright**

(1) Upon creation of a work the author of the work shall enjoy copyright in it. The contents of copyright shall include moral rights and economic rights.

(2) The author's moral rights shall be inseparable from the author's person and shall not be transferable during the author's lifetime.

(3) The author's economic rights shall be transferable either as separate rights or as a collection of rights, against or without compensation.

(4) Limitation of the author's moral and economic rights may occur only in cases prescribed by this Law.

##### **Section 12 Moral Rights**

(1) The author of a work shall enjoy the right:

1) to maintain publicly that he is the creator of the work and to claim recognition of the creation of the work by attaching the authorship to his person and name in connection with any use of the work (right to authorship);

2) to decide in which manner the author's name shall be indicated on the use of his work - either by the author's citizen name, by an author mark, by a borrowed name (pseudonym) or without the indication of the name (anonymously) (right to the author's name);

3) to make or to authorize other persons to make any modifications in his work, in its title (designation) or in the indication of the author's name, as well as to object to modifications made without the author's consent (right of inviolability of the work);

4) to permit works of other authors (illustrations, prefaces, postscripts, commentaries, explanations, new parts etc.) to be added to his work (right to additions to the work);

5) to object to any distortions and other inaccuracies in the work itself, in the title thereof or in the indication of the author's name or to malrepresentation of the author and his work which would be prejudicial to his honour and reputation (right to the protection of the author's honour and reputation);

6) to determine when the work is ready to be presented to the public (right to make the work available to the public);

7) to revise and amend a work already presented to the public (right to revise a work);

8) to claim the termination of the use of the work (right to withdraw the work);

9) to demand the removal of the author's name from the work currently in use.

(2) Exercising the rights fixed under Subparagraphs 7, 8 and 9 of Paragraph 1 of this Section shall occur at the expense of the author and the author shall be obliged to compensate for the damages incurred by the person who has been using the work.

##### **Section 13 Economic Rights**

(1) The author shall enjoy the exclusive right to use his work in any manner, to authorize and prohibit the use of the work by other persons in the same manner, and to profit from such use of his work, except for cases prescribed by Chapter IV of this Law. The author's rights shall include the rights:

1) to reproduce his work (right of reproduction of the work). "Reproduction" means making either one or several copies of a work or a part of a work in any material form;

2) to distribute his work and copies thereof to the public either by sale or by other transfer of the ownership right by means of lending, renting or other authorization of the use of the work (right of distribution). On sale or other form of transfer of ownership of the original or copies of the work, the said right shall be considered exhausted, except in the cases specified in Paragraph 2 of this Section;

3) to import copies of the work published abroad for the purpose of their public distribution (sale, lending, rental and other uses);

4) to translate his work (right of translation);

5) to make adaptations, arrangements and other transformations of his work (right of adaptation of the work);

6) to compile and publish collections of his works and to systematize his works (right to collections of works);

7) to perform the work in public either by means of a live or a technically mediated performance (right of public performance);

8) to display the work to the public (right of display). "Displaying a work" means showing the work or a copy thereof either directly or by means of a film, slide, television or any other technical device or process;

9) to communicate his work to the public on radio, by television, cable, satellite and by means of other technical devices (right of communication);

10) to execute his architectural project in a manner stipulated by the laws;

11) to execute a project of his work of design, applied art etc.

(2) The author of an audiovisual work, a work included in a phonogram, a computer program, a work which can be used by means of a computer or any other technical device shall enjoy the right to authorize the rental or any other public use of his work.

(21.01.1999)

#### **Section 14 Author's Right to Remuneration**

(1) An author has the right to obtain remuneration (author's remuneration) for the use of his or her work by other persons except in the cases prescribed by this Act.

(2) The amount of the author's remuneration, including rental fees, and the procedure for collection and payment thereof are determined by an agreement (contract) between the author and a user of the work or, by the authorisation of the author, by an agreement between an organisation representing authors or any other person and a user of the work, in which case the specifications provided for in subsections 76 (3) and 77 (3) of this Act are taken account of.

(3) It is prohibited to use a work before an agreement specified in subsection (2) of this section is not reached.

(4) If the parties agree on the remuneration but the obligated party fails to perform the party's obligation in part or in full by the due date, the obligated party must stop using the work unless otherwise agreed with the entitled party.

(5) A violation of subsection (4) of this section is deemed to be use of a work without the consent of the author or holder of copyright.

(21.01.1999)

#### **Section 15 Remuneration for Resale of Works of Fine Art**

(1) On resale of the original of a work of fine art on a public sale (auction), by a trade or art organization, the author shall enjoy the right to 5 per cent of the sum total of the sale thereof.

(2) The remuneration specified in subsection (1) of this section shall be transferred in full to the account of an organisation representing authors by the person who arranged for the resale of the work, not later than on the tenth day after the date of sale.

(21.01.1999)

#### **Section 16 Copyright and Ownership Right**

(1) Copyright in a work shall be enjoyed by the author or his heirs, irrespective of who enjoys the ownership right in the material object wherein the work has been expressed. The method of exercising economic rights by the author or his heir shall be established in an agreement between the author or his heir and the owner.

(2) In order to make a copy of his work, the author of a work of fine art shall enjoy the right to demand access to the original of his work owned by another person or which is in his possession by title.

(3) With the consent of the owner, the author may amend, complement or by another method transform his work of fine art, works of architecture, applied art, design etc.

### **Chapter IV**

## **LIMITATIONS OF THE ECONOMIC RIGHTS OF THE AUTHOR (FREE USE OF WORKS)**

### **1. BASIC PROVISIONS**

#### **Section 17 Limitations on Author's Economic Rights**

As an exception to Section 13 of this Law, but on condition that the use of the work does not occur for economic advantage and the legitimate interests of the author are not prejudiced, the use of a work without the author's

consent and without payment of remuneration shall be permitted only in cases directly prescribed by Sections 18 to 25 of this Law.  
(21.01.1999)

### **Section 18 Free Use of Works for Private Purposes**

- (1) Without the author's consent and without payment of remuneration it shall be permitted to reproduce a lawfully published work for private purposes (for purposes of scientific research, learning, etc.).
- (2) Without the author's consent and without payment of remuneration it shall not be permitted to reproduce for private purposes:
  - 1) works of architecture in the form of buildings and other similar structures;
  - 2) works of fine art of restricted edition;
  - 3) databases;
  - 4) computer programs, except for cases prescribed by Sections 24 and 25 of this Law;
  - 5) other works, in cases where such reproduction would conflict with the exploitation thereof or would prejudice the legitimate interests of the author.
- (3) It shall be permitted to use an audiovisual work or a sound recording of the work for private purposes in accordance with the provisions of Sections 26 and 27 of this Law.
- (4) Paragraph 1 of this Section shall not extend to legal entities.

## **2. USE OF WORKS WITHOUT AUTHOR'S CONSENT AND WITHOUT PAYMENT OF REMUNERATION**

### **Section 19 Free Reproduction of Works for Scientific, Educational, Informatory, Legal and Administrative Purposes**

Without the author's consent and without payment of remuneration, but subject to the obligation to indicate the name of the author of the work, if it appears in the work, the title (designation) of the work and the source in which the work has been published, it shall be permitted:

- 1) to abstract or quote lawfully published works in another work to a reasonable extent and under the obligation to communicate accurately the meaning of the work abstracted or quoted as a whole, including abstracting and quoting articles of newspapers and periodicals in order to present a report of the press;
- 2) to use a lawfully published work or parts thereof by way of illustration in publications, radio and television broadcasts, sound and video recordings for teaching purposes to the extent justified by the purposes;
- 3) to reproduce articles published in newspapers, journals or other periodicals and extracts from published works by reprographic means exclusively for purposes of teaching and scientific research in educational and research institutions the activities of which do not serve direct or indirect commercial gains;
- 4) *repealed (21.01.1999)*
- 5) *repealed (21.01.1999)*
- 6) *repealed 21.01.1999)*
- 7) to reproduce in the press, in the cinema, by radio, television or cable public speeches, lectures, sermons, speeches delivered during legal proceedings and other oral works for the purpose of communicating current information, to the extent justified by the necessity of communicating such information. The right to publish collections of publicly performed works referred to in this paragraph shall belong to the author;
- 8) to reproduce a work in the course of legal or administrative proceedings, to the extent justified by the purpose of the administration of legal and administrative functions;
- 9) to issue works, which have been made available to the public, in braille or by other technical devices for the blind, except for works which have been specially created to be reproduced by such means for the blind.

### **Section 20 Free Reproduction of Works by Libraries, Archives and Museums**

- (1) It shall be permitted, without the author's consent and without payment of remuneration, to reproduce single copies of a work, stored in the permanent collection of the library, archive or museum in order to:
  - 1) replace a work or a copy thereof which has been lost, destroyed or rendered unusable or, in case of impending danger, make a copy to guarantee its preservation;
  - 2) replace, in the permanent collection of another library, archive or museum, a work or a copy thereof which has been lost, destroyed or rendered unusable.
- (2) The reproduction of a work prescribed by Paragraph 1 of this Section shall be permitted, provided the activities of the given library, archive or museum do not serve direct or indirect commercial gain and it is impossible to obtain a new copy of the work.

**Section 21** *repealed (21.01.1999)*

**Section 22 Free Public Performance of Works**

It shall be permitted, without the author's consent and without payment of remuneration but subject to the obligation to indicate the name of the author of the work and the title thereof if it appears therein, to perform in public a work at educational institutions, in the course of the educational activities of the institution by the staff and students thereof and provided that the audience is composed of the staff and students or other persons directly connected with the educational institution where the public performance takes place (parents, guardians, tutors etc.).

**Section 23 Use of Ephemeral Recordings by Radio and Television Organizations**

(1) A radio and television organization shall be permitted, without the author's consent and without payment of separate remuneration, to make an ephemeral recording of a work which it has the right to broadcast, provided the recording is made by the facilities of the radio and television organization and for use in its own broadcasts.

(2) The radio and television organization shall be obliged to destroy a recording prescribed by Paragraph 1 of this Section within thirty days from its making, unless otherwise agreed on with the author of the work thus recorded.

(3) An ephemeral recording prescribed by this Section shall not be subject to destruction in case it is of great cultural value. In such a case the recording shall be preserved in the archive of the radio and television organization as a work of exceptional documentary character, without the author's consent having been obtained. The decision on works subject to preservation shall be taken by the radio and television organization, or, in case of dispute, by the State Archivist.

*(25.03.1998; 21.01.1999)*

**Section 24 Free Use of Computer Programs**

(1) Unless otherwise provided in contract the lawful user of a computer program shall enjoy the right, without the consent of the author of the program and without payment of separate remuneration, to reproduce, translate, adapt and otherwise transform the program and reproduce the acquired results, provided it is necessary:

1) in order to use the program for purposes, for the machine or machines and to the extent for which it was acquired;

2) in order to correct errors in the program.

(2) The lawful user of a computer program shall enjoy the right, without the consent of the author of the program and without the payment of separate remuneration, to make archive copies of the program, provided they are used only for replacing the program which has been lost, destroyed or rendered unusable.

(3) The lawful user of a computer program shall enjoy the right, without the consent of the author of the program and without the payment of separate remuneration, to study the functioning of the program in order to determine the ideas and principles which underlie any element of the program, provided that the author's rights are not violated.

(4) A person who has lost the legal basis for the use of the program shall be obliged to destroy the program referred to in Paragraphs 1 and 2 of this Section, a copy or transformation thereof.

*(21.01.1999)*

**Section 25 Free Decompilation of Computer Programs**

(1) The lawful user of a computer program shall enjoy the right, without the consent of the author and without payment of separate remuneration, to reproduce the program and make translations thereof, if it is indispensable in order to obtain the information necessary for guaranteeing the interoperability of the original program with other programs, provided the following conditions are met:

1) this is performed by the lawful user of the program or by another person authorized by the author;

2) the information guaranteeing the interoperability of programs has not been previously accessible for persons referred to in Subparagraph 1 of this Paragraph;

3) these acts are confined to the parts of the original program, necessary for guaranteeing the interoperability.

(2) It shall not be permitted to use the information obtained by acts prescribed by Paragraph 1 of this Section:

1) for goals other than guaranteeing the interoperability of the independently created program;



- 2) to be communicated to a third party unless it is necessary to guarantee the interoperability of the independently created program;
  - 3) to develop, manufacture, realize a program of similar nature or to commit other acts violating the copyright of the author of the original program.
- (21.01.1999)

### **3. USE OF WORKS WITHOUT THE AUTHOR'S CONSENT BUT AGAINST PAYMENT OF REMUNERATION**

#### **Section 26 Use of Audiovisual Works and Sound Recordings of Works for Private Purposes**

- (1) It shall be permitted, without the author's consent to reproduce an audiovisual work or a sound recording of a work for personal use (for purposes of scientific research, learning, etc.). The author, as well as the performer of a work and the producer of a phonogram shall have the right to get equitable remuneration for such use of works or phonograms (Section 27).
- (2) Paragraph 1 of this Section shall not extend to legal entities.

#### **Section 27 Remuneration for Use of Audiovisual Works and Sound Recordings of Works for Private Purposes**

- (1) In order to compensate authors, as well as performers and producers of phonograms, for the use of the works, prescribed by Section 26, appropriate remuneration shall be paid by producers and importers of technical devices for private production (sound recorders, video recorders etc.) and devices (tapes, cassettes etc.) for sound and video recordings without recordings (blank tapes), which shall be distributed equitably between the authors, performers of works and producers of phonograms, proceeding from the use of works and phonograms.
  - (2) The order of payment of the remuneration, prescribed by Paragraph 1 of this Section shall be established by the Government of the Republic.
  - (3) The Ministry of Culture shall annually establish the amount of remuneration, having previously coordinated it with organizations, representing producers and importers of technical devices for recording and devices for sound and video recordings.
- (26.06.1996)
- (4) Remuneration prescribed by Paragraph 1 of this Section shall not be collected from technical devices for recording and devices for sound and video recordings, which are without recordings (blank tapes):
    - 1) that have been exported;
    - 2) that are used for professional recording;
    - 3) that are used for making recordings for people with impaired eyesight or hearing;
    - 4) that have been exempted from the remuneration requirement as stipulated by the laws.
  - (5) The organization representing authors, which has been designated the collector of remuneration prescribed by Paragraph 1 of this Section shall have the right to obtain from customs and statistics organs as well as from organizations (enterprises) of production and import all data required for collecting the remuneration.

## **Chapter V OWNERS OF COPYRIGHT**

#### **Section 28 Author of a Work**

- (1) The author shall be the first owner of the moral rights and the economic rights in his work, unless otherwise provided in this Law as regards the economic rights of the author.
- (2) The author of a work is the physical person who has, or the physical persons who have, created the work.
- (3) A legal entity can be the owner of copyright of a work only in cases prescribed by this Law.

#### **Section 29 Presumption of Authorship**

- (1) In the absence of proof to the contrary the person who publishes a work under his name, his generally known pseudonym or author mark shall be presumed to be the author of the work. The obligation of proof shall lie with the person objecting to the authorship.
- (2) The author of a work which is communicated to the public anonymously or under a pseudonym or author's mark shall enjoy copyright in the work. Until the moment when the author reveals his or her real name and proves his or her authorship, the economic rights of the author are exercised by the person who lawfully published the work.

(3) The person representing the author in cases prescribed by Paragraph 2 of this Section shall retain the rights acquired while representing the author, unless otherwise provided in the agreement between him and the author. (21.01.1999)

### **Section 30 Joint Authorship**

(1) Copyright in a work created by two or more persons through their joint creative activities shall be enjoyed by the authors jointly.

(2) A work created by joint creation may constitute a single indivisible whole or consist of parts, each of which is independent. A part of a work is considered to be independent if it can be used separately from the other parts of the work.

(3) Each co-author shall enjoy copyright in the part of the work, having an autonomous meaning, which has been created by him and he may use the part of the work independently. However, such use must not be prejudicial to the interests of the co-authors of the work in their joint use of the work.

(4) Relationships between joint authors in exercise of copyright, including dividing the remuneration, shall be determined by an agreement between them. In the absence of such an agreement copyright in the work shall be exercised jointly by the authors and the remuneration shall be divided equally between them.

(5) Any of the joint authors may litigate or take other measures to protect the work of joint authorship and to terminate violations of copyright.

(6) Consulting the authors, fulfilling the functions of managing, revising the work, drawing graphs, schemes and the like as well as providing other technical assistance to the authors shall not be considered as basis for joint authorship.

(7) In creating a work under employment contract in the course of employment the preliminary consent of the person shall be required to include him in the group of authors when this group is formed. A well-grounded refusal to participate in the work of a group of authors shall not be considered to be a violation of the conditions of employment.

### **Section 31 Copyright in Collective Works**

(1) "Collective work" is a work consisting of contributions by different authors which have been merged into an integral whole by a physical person or legal entity on his or its initiative and under his or its direction and which has been made public under the name of the physical person or the legal entity (works of reference, scientific collections, newspapers, journals and other periodicals etc.).

(2) Copyright in a collective work shall be enjoyed by the person on the initiative and under the direction of whom such work was created and under the name of whom it was made available to the public, unless provided otherwise in contract.

(3) The authors of works (contributions) included in a collective work shall enjoy copyright in their works and may use their works independently, unless provided otherwise in contract. The authors of contributions shall not be considered to be joint authors.

### **Section 32 Copyright in Works Created under Employment Contract**

(1) The author of a work created under employment contract in the course of employment shall enjoy copyright in the work, however, the author's economic rights in the use of the work for the purposes determined by and as covered by the responsibilities of employment shall be transferred to the employer, unless provided otherwise in contract.

(2) The author may independently use his work created in the course of employment for purposes prescribed by the employment only with the preliminary consent of the employer, indicating the employer's name or designation. In such a case the author shall enjoy the right to remuneration for the use of his work.

(3) The author may independently use his work created in the course of employment for purposes not prescribed by the employment, unless provided otherwise in employment contract. On such use of a work the employer's name or designation must be indicated.

(4) In cases prescribed by normative acts the author of a work created in the course of employment shall be paid author's remuneration for the use of his work, independent of his salary payment (salary). The payment of author's remuneration may be prescribed also by an agreement between the employer and the author.

### **Section 33 Copyright in Audiovisual Works**

(1) An "audiovisual work" is any work consisting of images related in a sequence, with or without accompanying sounds, which is intended to be shown by means of appropriate technical devices (a cinematographic, television or video film etc.).

(2) Copyright in an audiovisual work belongs to its author or joint authors: the director, scriptwriter, author of the musical work, cameraman and designer. As a rule, the economic rights of the director, scriptwriter, cameraman and designer transfer to the producer of the work unless otherwise determined by contract. The economic rights of the author of a musical work used in an audiovisual work shall not transfer to the producer.

(3) The producer of a work is a natural or legal person who financed or managed the creation of the work and whose name is fixed in the audiovisual work.

(4) The person whose name is indicated in the audiovisual work shall be presumed to be the producer thereof, unless the contrary is proved. The obligation of proof shall lie with the person objecting to the producership.

(5) The director, scriptwriter and composer, as well as the authors of the plan of the scenario, of the dialogue and of the announcer's text, the designer, cameraman, choreographer, sound operator and other persons active in the creation of an audiovisual work shall enjoy copyright in their work which constitutes an independent part of the audiovisual work and can be used separately of the work as a whole. The exercise of economic rights regarding such work may be carried out independently, unless provided otherwise in a contract, but on condition that such use is not prejudicial to the use of the work as a whole.

### **Section 34 Copyright of Compilers**

(1) A person who has, as the result of his creative activities, by selecting and systematizing the material, created a collection (the compiler) shall enjoy copyright in the collection.

(2) Results of intellectual activities to which this Law shall not apply (Section 5) may be independently systematized and modified by the compiler.

(3) Works in which copyright has expired may be independently systematized and modified by the compiler, consistent with the provisions of Section 44 of this Law.

(4) Works protected by copyright may be systematized and included in a collection, either in their original form or in a modified form, only with the consent of the author or his heirs, except for the cases provided under Chapter IV of this Law. The compiler shall be obliged to respect the copyright of the author of the works included in the collection.

(5) The publishing of a collection by one person shall not restrict other persons' use of the same material in compiling independent collections, consistent with the provisions of Paragraphs 1 and 4 of this Section.

(6) The transformation of a collection, compiled by one person, by other persons may be effected, subject to the copyright of the compiler of the original collection.

### **Section 35 Copyright in Derivative Works**

(1) The author of a work derived from the work of another author shall enjoy copyright in his work.

(2) The creation of a derivative work, including the transformation of a narrative work into a dramatic work or into a scenario, the adaptation of a dramatic work or a scenario into a narrative work, the adaptation of a dramatic work into a scenario and the adaptation of a scenario into a dramatic work may be carried out only in the manner stipulated by Chapter VI of this Law and respecting the copyright of the author of the original work.

(3) A person who, on the basis of a work of another author (the original work), has created a new, creatively autonomous work independent of the original work shall enjoy copyright in this work. In this case the name of the author of the original work, the title (designation) of the work and the source in which the work was published must be indicated.

(4) The provisions of Paragraph 1 of this Section shall apply also to works the authors of which are unknown (works of popular art, anonymous works etc.), to works in which copyright has expired and results of intellectual activities to which this Law shall not apply (Section 5).

### **Section 36 Rights of Heirs**

(1) Copyright shall be inherited consistent with the general provisions of the law of inheritance, either by the law or by the will.

(2) The economic rights of the author, fixed in Sections 13 to 15 of this Law shall be transferred to the heir at law until the expiration of the term of copyright, unless provided otherwise in will.

(3) If not prescribed otherwise by the author in his lifetime, the following of his moral rights shall be transferred to the heir:

1) right to authorize the addition of works of other authors (illustrations, prefaces, postscripts, commentaries, explanations, new parts etc.) to the work of the author (right to additions to the work);

2) right to object to any distortions, alterations and other inaccuracies in the work, in the title (designation) thereof or in the indication of the author's name, as well as to malrepresentation of the author or his work which would be prejudicial to the author's honour and reputation (right to the protection of the author's honour and reputation);

3) right to make available to the public an unpublished work (right to make the work available to the public).

(4) The author may, in the same manner prescribed for designating the executor of a will, designate the person upon whom he confers the protection of the inviolability of his work, as well as of his honour and reputation, after his death. This person shall carry out the authorization during his entire lifetime.

### **Section 37 Copyright of Successors in Title Not Heirs to Author**

Only the economic rights of the author can be transferred to physical persons who and legal entities which are not heirs of the author, on the basis of a contract concluded with the author or in cases directly prescribed by this Law.

## **Chapter VI DURATION OF COPYRIGHT**

### **Section 38 Term of Copyright Protection**

(1) Copyright shall subsist for the life of the author and 50 years after his death, except for cases prescribed by Sections 39 to 42 of this Law.

(2) Copyright in a work first made available to the public within 50 years after the death of the author shall subsist for 50 years after the lawful making available to the public of the work.

### **Section 39 Duration of Copyright in Works of Joint Authorship**

Copyright in a work created by two or more persons by joint creation (Section 30) shall subsist for the life of the last surviving joint author and 50 years after his death.

### **Section 40 Duration of Copyright in Anonymous Works or in Works Made Available to the Public Under Pseudonym**

Copyright in a work made available to the public anonymously or under a pseudonym shall subsist for 50 years after the work has been lawfully made available to the public. If during this term the author of the work reveals his citizen name or the connection between the authorship of the work and the person who has created the work leaves no doubt, the provisions of Sections 38 and 39 shall be applied.

### **Section 41 Duration of Copyright in Collective Works, Audiovisual Works and Photographic Works**

(1) Copyright in a collective work (Section 31), the producer's copyright in an audiovisual work (Section 33) and copyright in a photographic work (Subparagraph 17 of Paragraph 3 of Section 4) shall subsist for 50 years after the work has been lawfully made available to the public.

(2) If a work fixed in Paragraph 1 of this Section has not been made available to the public for 50 years after the creation thereof, copyright therein shall subsist for 50 years after the creation of the work.

(3) If a work fixed in Paragraph 1 of this Section is published as a sequel, copyright therein shall subsist for 50 years after each part has been lawfully made available to the public. =

(4) Copyright in independent works, included in a collective work and an audiovisual work shall subsist during the term provided by Paragraph 1 of Section 38 of this Law.

### **Section 42 Duration of Copyright in Works of Applied Art**

Copyright in works of applied art shall subsist for 25 years after the work has been created.

### **Section 43 Commencement Date of Copyright Protection**

The term prescribed by this Chapter shall run from the first of January of the year following the date of death of the author (Paragraph 1 of Section 38 and Section 39) or following the date of lawfully making available to the public or the creation of the work (Paragraph 2 of Section 38, Sections 40, 41 and 42).

### **Section 44 Protection of Authorship, Author's Name, Author's Honour and Reputation and Titles of Works of Unlimited Duration**

(1) The fact of a person being the author of a particular work (the authorship of the work), the author's name and the author's honour and reputation shall enjoy protection of unlimited duration.

(2) On the expiration of the term of copyright the use of the title (designation) of the work by another author on a work of the same kind shall not be permitted, if such use may result in the identification of the authors, misleading to the public.

### **Section 45 Use of Works after Expiration of Term of Copyright**

A work in which the term of copyright has expired may be used freely by all persons, consistent with the provisions of Section 44 of this Law and the Law of the Estonian Republic on the Protection of the Historical and Cultural Heritage.

## **Chapter VII USE OF WORKS**

### **1. BASIC PROVISIONS**

#### **Section 46 Use of Works by Other Persons**

(1) The use of a work by other persons shall be permitted only in case of the author's transfer (assignment) of his economic rights or on the basis of a licence granted by the author, except for cases prescribed by Chapter IV of this Law.

(2) The transfer by the author of his economic rights or the licence to use the work must be expressed in writing, except for cases prescribed by Paragraph 2 of Section 49 of this Law.

(3) The transfer by the author of his economic rights or the licence to use his work can be limited regarding particular rights, as well as regarding the purpose, the term, the territory, the extent, the methods of and the devices for the use of the work.

#### **Section 47 Licence to Use Works**

(1) A licence to use a work means the possibility to do the acts covered by the economic rights of the author.

(2) On granting the licence, the author may retain rights similar to those granted to another person and the possibility to grant similar rights to a third party (non-exclusive licence) or to release the exercise of the transferred economic rights to an extent and on conditions specified in contract (exclusive licence).

(3) A person who has been granted the right to use a work may permit a third party to use the work (to transfer the licence, sublicense) only with the preliminary consent of the author.

### **2. AUTHOR'S CONTRACTS**

#### **Section 48 Concept of Author's Contract**

(1) An author's contract is an agreement between the author or his successor in title and the person wishing to use a work on the use of the work, on the basis of which the author or his successor in title shall grant the other party his economic rights or the licence to use the work to the extent and in the manner prescribed by the conditions of the contract.

(2) An author's contract may be concluded on the use of an already existing work or to create and use a new work.

#### **Section 49 Form of Authors' Contracts**

(1) Authors' contracts must be concluded in writing.

(2) The written form is not obligatory in granting a non-exclusive licence, including cases concerning contracts on publishing works in periodicals and works of reference, as well as concerning single broadcasts of oral works over the radio and on television.

#### **Section 50 Standard Authors' Contracts**

(1) By agreement between organizations representing authors and organizations uniting users of works standard author's contracts concerning particular methods of using works may be drawn up.

(2) An author's contract may contain clauses which are not prescribed by this Law or by the standard author's contract. Clauses in a contract concluded with the author, which make the author's position less favourable in comparison with the position established by this Law or the standard contract, are invalid and shall be replaced by clauses established by law or by the standard contract.

#### **Section 51 Concluding Author's Contracts**

(1) An author's contract shall be considered to be concluded if an agreement has been reached by the author or his successor in title and the person wishing to use the work on all the relevant clauses of the contract in a form prescribed by Section 49 of this Law.

(2) The relevant clauses of an authors contract, depending on the type of the work, are:

- 1) an accurate description of the work to be used (genre, extent, title etc.);
- 2) the extent, manner of, the purpose and devices for the use of the work;
- 3) the territory in which the work will be used;
- 4) the duration of the author's contract and the starting date of the use of the work;
- 5) rights transferred;
- 6) the type of licence (non-exclusive licence, exclusive licence) and granting the right of transfer of the licence (sublicence);
- 7) limitations on the use of the work by a third party;
- 8) the amount of author's remuneration, the time and method of payment;
- 9) the liabilities of the parties for nonfulfilment of the clauses of the contract;
- 10) other clauses regarding which one of the parties claims an agreement.

(3) An author's contract may prescribe a forfeit, a fine or a fine for delay for not fulfilling the contract or for partial fulfilment of the contract.

## **Section 52 Duration of Authors' Contracts**

The duration of authors' contracts shall be established by an agreement between the parties.

## **Section 53 Starting Date of Use of Works**

(1) Consistent with an author's contract, the person wishing to use a work shall be obliged to commence the use of the work in the manner and by the date stipulated by contract, except for the case prescribed by paragraph 1 of Section 56 of this Law.

(2) The starting date of the use of the work must not exceed three years, beginning from the moment of delivery of the work by the author to the user.

(3) Considering the size of the work and the manner of its use, standard author's contracts may prescribe shorter terms than prescribed in this Section.

## **Section 54 Limitations on the Use of the Work by a Third Party**

Consistent with author's contract on the transfer of economic rights or on granting an exclusive licence, neither the author nor his successor in title shall enjoy the right to authorize the use in the same manner of the work referred to in contract, or a part of the said work, by a third party without the written consent of the other party, unless otherwise provided in contract.

## **Section 55 Payment of Author's Remuneration**

(1) The method of the payment of author's remuneration (percentage of the work's selling price, a fixed sum, percentage of the profit realized on the use of the work etc.), the amount of remuneration, the date and the order of payment shall be determined in author's contract by agreement between the parties.

(2) If the normative acts of the Republic of Estonia have fixed minimal rates of author's remuneration, the rates of remuneration agreed upon in an author's contract must not be lower than the fixed rates.

## **Section 56 Authors' Contracts on Creation of New Works (Contracts of Commission)**

(1) Consistent with author's contract on creation of a new work, the author shall be obliged to create the work under conditions and by the date prescribed in contract and to deliver it to the person who commissioned it in an agreed manner, whereas the person who commissioned the work shall be obliged to pay the author the remuneration and to commence the use of the work from the date prescribed in contract, unless, as far as the use of the work is concerned, the parties have agreed otherwise.

(2) The author shall be obliged to create the work personally, unless otherwise provided in contract. Including other persons in the creation of the work and changing the group of authors may occur only with the prior consent of the person who commissioned the work, which shall be fixed as an alteration in the author's contract.

(3) The person who commissioned the work shall be obliged to examine the work by a date fixed in the contract and to notify the author in writing whether the work which has been delivered has been approved or refused on grounds prescribed by contract or whether it is necessary to make modifications in the work, indicating the nature of the modifications, which is consistent with the clauses of the contract. If the written notification is not addressed to the author by the date fixed in contract, the work shall be considered to be accepted by the person who commissioned it.

(4) The amount of advance payment from the author's remuneration prescribed by contract, dates of its payment and the order thereof shall be determined in the author's contract.

### **Section 57 Rights Transferred to Users of Works by Virtue of Contracts**

- (1) Ownership in the manuscript of a work, sketch, drawing, magnetic tape, computer disc or any other material object by which the work can be reproduced shall be transferred to the user of the work only in cases directly prescribed in contract.
- (2) If the author alienates the original or a copy of his work, it shall not mean the transfer of his economic rights nor granting the licence to use his work, unless provided otherwise in contract.
- (3) Ownership or possession of a work of fine art created under contract of commission shall be transferred to the person who commissioned the work, unless provided otherwise in contract.
- (4) On the basis of Paragraphs 2 and 3 of this Section the owner of a work shall enjoy the right to display the work to the public (to exhibit it) without the payment of separate remuneration to the author, unless provided otherwise in contract. Such right shall not be enjoyed by persons who possess the original of the work or a copy thereof on the basis of a leasing contract, a lending contract etc.
- (5) If author's contract has been concluded on the use of a literary or artistic work in making an audiovisual work, the user of the work shall enjoy the right to show the audiovisual work to the public at the cinema, on television, by cable or other technical devices, to dub the work into another language, to provide it with subtitles and reproduce and distribute the work. The provisions of this Paragraph shall not apply to works of music.

### **Section 58 Liability of the Author or His Successor in Title for Violation of an Author's Contract**

- (1) The author or his successor in title shall be obliged to return the remuneration he has received by virtue of contract in case the contract is cancelled by the user of the work for any of the following reasons:
  - 1) the author or his successor in title has not delivered the work by the date fixed in contract;
  - 2) the work created by the author does not fulfil the requirements of the contract;
  - 3) the author has not effected changes proposed to him deriving from the contract by the date, in the manner and to the extent agreed upon;
  - 4) the author has violated the obligation to carry out the work personally;
  - 5) the author or his successor in title has violated the provisions of Section 54 of this Law.
- (2) If the author does not voluntarily return the remuneration paid to him, it shall be extracted from him in court.
- (3) If the user of the work fails to prove in court the fault of the author or his successor in title in not fulfilling the contract or in fulfilling it partially, the remuneration received consistent with the contract shall be retained by the author.

### **Section 59 Liability of the User of a Work for Violation of an Author's Contract**

- (1) If the user of a work does not use the work approved by him or does not commence the use of the work by the term fixed in author's contract, he shall be obliged to pay the author or his successor in title the whole amount of remuneration stipulated by contract.
- (2) In cases prescribed by Paragraph 1 of this Section the author or his successor in title shall enjoy the right to cancel the contract and to demand the return of the work or copies thereof which have been delivered by virtue of contract.
- (3) The user of the work shall be relieved of the obligation to pay the author or his successor in title a part of the remuneration which would have been paid after the use of the work had commenced, if he can prove that he failed to use the work for reasons attributable to the author or his successor in title.

### **Section 60 Compensation for Damages**

- (1) Both parties to an author's contract shall have the right to claim compensation from the other party for the damages caused by fault of the latter in not fulfilling the contract or fulfilling it partially.
- (2) The obligation to prove the fault of the other party and the extent of the damages shall lie with the party who has claimed compensation for damages.

### **Section 61 Rights of the Author on Reorganization and Dissolution of Organizations**

- (1) If an organization, which has commissioned a work or been using a work, is reorganized, the economic right transferred by the author or the licence to use the work shall be transferred to the successor in title of the organization which shall be responsible for fulfilling the obligations arising from the author's contract.
- (2) On the dissolution or bankruptcy of the organization the author or his successor in title shall have the right to the whole amount of remuneration prescribed by the contract for the work delivered to the organization.

## **Chapter VIII**

### **RIGHTS OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND RADIO AND TELEVISION ORGANIZATIONS (RIGHTS NEIGHBOURING ON COPYRIGHT)**

#### **Section 62 Concept of Rights Neighbouring on Copyright**

(1) Performers, producers of phonograms and broadcasting organisations shall enjoy the rights, as prescribed in this Chapter, in the results created by them (objects of copyright related rights).

(2) The exercise of rights neighbouring on copyright shall not limit the exercise of copyright of the author or of his successor in title.

*(21.01.1999)*

#### **Section 63 Field of Application of Rights Neighbouring on Copyright**

(1) The provisions of this Chapter shall apply to the performers in the following cases:

- 1) the performer is a national of the Republic of Estonia or a permanent resident of the Republic of Estonia;
- 2) the performance (stage production) of the work took place on the territory of the Republic of Estonia; or
- 3) the performance (stage production) has been fixed on a phonogram qualifying for protection under Paragraph 2 of this Section; or

4) the performance (stage production) which has not been fixed on a phonogram has been included in a radio or television broadcast qualifying for protection under Paragraph 3 of this

Section.

(2) The provisions of this Chapter shall apply to the producer of phonograms in the following cases:

- 1) the producer of phonograms is a national of the Republic of Estonia or a permanent resident of the Republic of Estonia or a legal entity located in the Republic of Estonia; or
- 2) the first fixation of the sounds was made on the territory of the Republic of Estonia; or
- 3) the phonogram was first published on the territory of the Republic of Estonia. Publication means the offering of copies of a phonogram to the public in a reasonable quantity so as to satisfy the reasonable demands of the public.

(3) The provisions of this paragraph shall apply to the radio and television organization in the following cases:

- 1) the organization has its headquarters in the territory of the Republic of Estonia;
- 2) the broadcast is transmitted from a transmitter located in the territory of the Republic of Estonia.

(4) The Provisions of this Paragraph shall apply to nationals and legal entities of other countries, consistent with international treaties which the Republic of Estonia has joined.

#### **Section 64 Concept of Performer**

"Performers" for the purposes of this law mean actors, singers, musicians, dancers, other persons or collectives who act, sing, recite, play on instruments or otherwise perform literary or artistic works or expressions of folklore, or direct other persons in performing, as well as persons who perform in variety shows and circus, at the puppet theatre etc.

#### **Section 65 Rights of Performers**

The performer shall enjoy moral and economic rights in the performances (interpretations) of a work.

#### **Section 66 Moral Rights of Performers**

The performer shall enjoy:

- 1) right of performership (authorship);
- 2) right to the performer's name;
- 3) right of inviolability of the performance;
- 4) right to the protection of the honour and reputation of the performer with regard to his performance.

#### **Section 67 Economic Rights of Performers**

(1) The performer of a work shall enjoy the exclusive right to use the performance of the work and to authorize the use thereof by others, as well as the right to remuneration for such use, which has been agreed upon between the parties except for cases prescribed by this Law and agreed between the parties.

(2) It shall be permitted only with the consent of the performer:

- 1) to fix an unfixed performance on a record, sound or video tape, film, and by other similar means;



- 2) to broadcast the performance over the radio or on television, except for cases in which the broadcast has been made from a fixation of the performance or the performance is rebroadcast with the consent of the radio and television organization which first broadcast the performance;
  - 3) to communicate the performance to the public by any technical device outside the place where the performance is taking place, except for cases in which the communication is made from a fixation of the performance, a radio or television broadcast;
  - 4) to use the sound and the images separately, in case these have been fixed together and form an integral whole;
  - 5) to reproduce a fixation of the performance, in case the fixation of the performance was made without the authorization of the performer or has been reproduced for purposes other than those authorized by the performer or in case the work has been reproduced for purposes other than those prescribed by Section 75 of this Law.
- (3) The performer may authorize other persons, including organizations representing authors, to grant the permission to do the acts prescribed by Paragraph 2 of this Section.
- (4) *repealed (21.01.1999)*
- (5) Upon performing works in the course of employment the rights of the performer shall be determined by agreement between the parties.

#### **Section 68 Authorization to Use Performances**

- (1) The consent of the performer to the use of the performance must be granted in writing or drawn up as a contract.
- (2) To use a work performed by a collective the consent of all members of the collective is required. On behalf of the collective the authorization may be granted by the leader of the ensemble, the conductor, the leader of the choir, the director or another person authorized thereto by the collective.
- (3) Unless provided otherwise in contract:
  - 1) the authorization to broadcast a work over the radio or on television shall not imply an authorization to the radio and television organization to fix the performance or to authorize other organizations to broadcast the work;
  - 2) the authorization to broadcast a work over the radio or on television and to fix the performance does not imply the right of the radio or television organization to reproduce the fixation;
  - 3) the authorization to fix the performance and to reproduce the fixation does not imply the right to broadcast the fixation or a copy thereof over the radio or on television.

#### **Section 69 Concept of Producer of Phonograms**

For the purposes of this Law "producer of phonograms" means a physical person who or a legal entity which first lawfully fixed the sound of a performance or a natural sound.

#### **Section 70 Rights of Producer of Phonograms**

- (1) Only with the consent of the producer of phonograms it shall be permitted:
  - 1) to reproduce his phonogram;
  - 2) to import copies of his phonogram;
  - 3) to rent, or to use in another manner, copies of his phonogram.
- (2) The amount of remuneration, the methods and order of payment thereof shall be established by an agreement between the producer of phonograms and the user.

#### **Section 71 Notice of Protection of Phonograms**

In order to guarantee his rights and the rights of the performers fixed on a phonogram, the producer of phonograms shall be obliged to mark the fixations made for commercial purposes or the containers thereof with the symbol P (the letter P in a circle), accompanied by the year of the first publication of the phonogram. The said notice must be accompanied by the name or designation of the producer of the phonogram and those of the principal performers of the works fixed thereon, unless these are directly fixed on the phonogram or the container thereof.

#### **Section 72 Remuneration for Use of Phonograms**

- (1) If a phonogram published for commercial purposes, or a reproduction (refixation) thereof, is used on radio or on television or by means of other technical devices for the communication to the public, the performer of the work and the producer of the phonogram shall enjoy the right to get a single remuneration from the user of the phonogram for such communication.

(2) The user of the phonogram shall pay the remuneration prescribed by Paragraph 1 of this Section to the producer of the phonogram. The producer of the phonogram shall pay half of the remuneration received to the performers, unless otherwise provided by agreement between the performers of the works and the producer of phonograms.

(3) The remuneration received from the producer of the phonogram shall be divided among the performers of the works fixed on the phonogram, or used jointly, consistent with the agreement between the performers.

### **Section 73 Rights of Radio and Television Organizations**

(1) It shall be permitted only with the consent of the broadcasting organization:

1) to re-broadcast a broadcast;

2) to fix a broadcast;

3) to reproduce the fixation of a broadcast, in case the broadcast has been made without the consent of the broadcasting organization or in cases in which the broadcast was reproduced for purposes other than prescribed by Section 75 of this Law.

(2) The amount of remuneration for the use of the fixation of a broadcast as well as the methods and order of payment thereof shall be established by the agreement between the radio and television organization and the user.

### **Section 74 Duration of Rights Neighbouring to Copyright**

(1) The rights prescribed by this Chapter shall subsist for 50 years:

1) computed from the first performance of the work in case it is unfixed - with regard to the performer;

2) computed from the first publication of the work - with regard to the producer of the phonogram and to the performer whose performance has been fixed on the phonogram;

3) computed from the first transmission of the broadcast - with regard to the radio and television organization.

(2) The term shall run from the first of January of the following the year during which the acts referred to in Paragraph 1 of this Section were done.

(3) The economic rights neighbouring on copyright shall be transferred by way of inheritance for the term prescribed by this Section.

(4) The performership (authorship) of the performer, the performer's name and the performer's honour and reputation shall enjoy protection of unlimited duration.

### **Section 75 Limitations on Rights Neighbouring on Copyright**

(1) Without the authorization of the performer, the producer of the phonogram and the radio and television organization and without payment of remuneration it shall be permitted to use performances of works, phonograms, radio and television broadcasts and the fixations thereof, including the use by means of reproduction:

1) for private purposes, taking into consideration the provisions of Sections 26 and 27 of this Law;

2) solely for the purposes of teaching and scientific research;

3) in the form of short excerpts to be included in reports of current events;

4) in the form of short excerpts (quotations) for informatory purposes, consistent with the obligation to communicate accurately the meaning of the performance, phonogram, radio and television broadcast as a whole;

5) to make an ephemeral recording by a radio and television organization by means of its own technical devices and for use in its own broadcasts of a performance, broadcast or phonogram

which it has the right to broadcast. Such a recording and its reproduction (copies) must be destroyed within thirty days counted from its making, except for a single copy which may be preserved for archival purposes;

6) in other cases in which the rights of the authors of the works are limited by virtue of Chapter IV of this Law.

(2) The free use prescribed by this Section shall be permitted solely on condition that the legitimate interests of the performer, the producer of phonograms or the radio and television organization are not prejudiced and the use does not conflict with the normal economic use of the results.

(21.01.1999)

**Chapter IX**  
**COLLECTIVE MANAGEMENT OF RIGHTS** (21.01.1999)

**Section 76 Organisations representing authors, performers, producers of phonograms, broadcasting organisations and other rightholders**

(1) Authors, performers, producers of phonograms, broadcasting organisations and other holders of copyright and related rights have the right to establish associations pursuant to the procedure provided by legislation for the collective management of their copyrights and other rights arising from this Act and for the protection of their creative and economic interests. Such collective management organisations are non-profit associations which are founded, operate or are dissolved pursuant to the Non-profit Associations Act (RT I 1996, 42, 811; 51, 967; 1998, 36/37, 552; 59, 941) with the exceptions provided by this Act.

(2) Collective management of rights is effected in the following fields:

- 1) public performance of musical and literary works;
- 2) transmission of musical, literary and artistic works by radio, TV, cable, satellite or other technology means;
- 3) collection and distribution of fees for the resale of works of fine art;
- 4) collection of fees prescribed for the personal use of audiovisual works and sound recordings;
- 5) cable retransmission of radio and TV broadcasts and programmes (including works contained therein);
- 6) reproduction of sound recordings of musical or literary works, and audiovisual reproduction of musical, literary or other artistic works;
- 7) reproduction of works of fine art and of photography in periodicals;
- 8) other use of works and objects of copyright related rights.

(3) The rights related to the fields specified in clauses (2) 3), 4) and 5) of this section are exercised only through collective management organisations. Such organisations have the right to receive necessary oral or written truthful information from all persons in public law and private law concerning the fees collected and distributed for the use of works.

(21.01.1999)

**Section 77 Principles and methods of activities of collective management organisations**

(1) Collective management organisations shall manage and protect the economic and personal non-economic rights of their members pursuant to the procedure prescribed in their articles of association and membership contracts, including:

- 1) give their consent for the use of works or objects of copyright related rights (performances, phonograms, radio or TV broadcasts or programmes) by concluding a corresponding contract with users;
- 2) determine the amount of author's remuneration, licence fees, performer's fees or any other remuneration through negotiations if necessary;
- 3) collect and pay remuneration for the use of works or objects of copyright related rights;
- 4) establish and manage foundations to improve the conditions necessary for the creative activities of Estonian authors and performers, provide social guarantees for them and promote their works abroad;
- 5) protect and represent the rights of authors and holders of related rights in court and other institutions;
- 6) promote other activities in the field of management of copyright and related rights in accordance with the authorisation granted by authors.

(2) On the basis of a corresponding contract or in the cases provided by law, collective management organisations may also represent authors and holders of copyright related rights who are not their members.

(3) During the period when the right to represent authors or holders of copyright related rights is enjoyed by a collective management organisation pursuant to law or contract, authors or holders of copyright related rights cannot exercise such rights themselves.

(4) In cases of evident violations of the rights and legitimate interests of authors or holders of copyright related rights, collective management organisations have the right to represent all authors or holders of copyright related rights without authorisation.

(5) Collective management organisations shall represent foreign authors and holders of copyright related rights on the basis of bilateral or multilateral agreements concluded with foreign collective management organisations.

(21.01.1999)

**Section 78 Guarantees for members of collective management organisations**

In order to prevent unlawful and unjustified restrictions on copyrights and copyright related rights:

- 1) all decisions on remuneration (author's remuneration, licence fees, performers' fees or any other fees) and the percentage deducted from such fees to cover administrative expenses of a collective management organisation (commission), methods of collection, distribution and payment of fees, as well as the use of collected fees for

social or cultural purposes, for the foundation of foundations or for other purposes relating to the common interests of members of a collective management organisation shall be adopted by the general meeting of the collective management organisation or members authorised by them (meeting of representatives or management board);

2) collected fees shall be distributed among authors and holders of copyright related rights as proportionately as possible subject to the actual use of the works after deduction, from the fees, of the percentage jointly determined by the members of the organisation to cover administrative expenses and for other purposes prescribed in clause 1) of this section;

3) members of a collective management organisation shall have access to regular and complete information about the entire activity of the organisation and about the use of their works and the remuneration to be obtained by them;

4) the same rules apply to foreign authors and holders of copyright related rights as to Estonian authors;

5) foreign collective management organisations with whom bilateral or multilateral agreements have been concluded shall, at their request, receive all necessary information concerning management of the rights of their authors and holders of copyright related rights in Estonia.

(21.01.1999)

### **Section 79 Management of cable retransmission right by collective management organisations**

(1) Authors and holders of copyright related rights (performers, producers of phonograms and broadcasting organisations) may exercise the cable retransmission right only through collective management organisations specified in § 76 of this Act.

(2) If an author, performer, producer of phonograms or broadcasting organisation does not conclude a contract with a collective management organisation for the management of their rights, the organisation representing authors and holders of copyright related rights of the same category is mandated to represent them. If there are several such collective management organisations, an author or holder of copyright related rights is free to choose which of the organisations is mandated to manage their rights.

(3) Based on a contract between a cable operator and a collective management organisation, an author, performer, producer of phonograms or broadcasting organisation specified in subsection (2) of this section has the same rights and obligations as an author, performer, producer of phonograms or broadcasting organisation who has transferred management of their rights to such organisation.

(4) An author, performer, producer of phonograms or broadcasting organisation specified in subsection (2) of this section may claim remuneration to which they are entitled, within three years after the date of transmission.

(5) The provisions of subsection (1) of this section do not apply if a broadcasting organisation transmits its own broadcasts or programmes by cable. It is irrelevant whether the rights belong to the broadcasting organisation itself or have been transferred to it by other authors or holders of copyright related rights.

(21.01.1999)

## **Chapter X**

### **PROTECTION OF RIGHTS AND LIABILITY**

(21.01.1999)

### **Section 80 General principles of liability**

An infringement of copyright or related rights provided by this Act and other copyright legislation, or a violation of requirements provided thereby results in civil, criminal or administrative liability.

(21.01.1999)

### **Section 81 Protection of copyright and related rights under civil law**

(1) In the case of an infringement of copyright or related rights and a dispute which arises in the implementation of this Act or other copyright legislation, either party or both parties may take recourse to the courts for resolution of the dispute.

(2) In addition to the methods specified in § 112 of the General Part of the Civil Code Act (RT I 1994, 53, 889; 89, 1516; 1995, 26-28, 355; 49, 749; 87, 1540; 1996, 40, 773; 42, 811; 1998, 30, 409; 59, 941), infringed rights are protected under civil law by:

- 1) award of compensation for moral damage;
- 2) award of assets acquired through infringement;
- 3) termination of a contract;
- 4) prohibition of infringing activities.

(3) If a claim filed by an entitled person or representative thereof pursuant to clause (2) 2) of this section is included in a criminal matter or matter regarding an administrative offence arising from a violation of copyright legislation, then, upon the rendering of a decision in the same matter awarding seizure of the assets acquired as a result of a criminal offence or administrative offence, the same amount of money or equivalent of the seized assets in money shall be awarded for the entitled person by the same decision.

(4) If, as a result of a violation of copyright legislation, a work is communicated to the public, recorded, reproduced, distributed, imported or altered etc., an entitled person may claim:

1) restoration of the work in the original form; or

2) alteration of copies of the work by specific means; or

3) destruction of pirated copies.

(5) The provisions of clauses (4) 2) and 3) of this section do not apply to works of architecture.

(6) It is prohibited to transfer pirated copies to the author, holder of copyright related rights or a representative thereof.

(21.01.1999)

### **Section 82 Protection of copyright and related rights under criminal law**

(1) If a natural person infringes copyright, related rights or requirements provided by copyright legislation in the interests of a legal person, it is permitted to hold both the natural person criminally liable and the legal person administratively liable.

(2) The importation or exportation of pirated copies is deemed to be a violation of the customs rules. The Customs Act provides for the liability of legal persons for the importation or exportation of pirated copies.

(3) The provisions of §§ 83 and 84 of this Act and the Code of Administrative Offences (RT 1992, 29, 396; RT I 1997, 66-68, 1109; 73, 1201; 81, 1361 and 1362; 86, 1459 and 1461; 87, 1466 and 1467; 93, 1561, 1563, 1564 and 1565; 1998, 2, 42; 17, 265; 23, 321; 30, 410; 34, 484; 36/37, 552 and 553; 38, 562; 51, 756 and 759; 52/53, 771; 60, 951 and 952; 64/65, 1004) together with the specifications provided by this Act shall be taken as the basis in proceedings regarding administrative offences by legal persons which are not specified in subsection (2) of this section.

(4) The Code of Enforcement Procedure (RT I 1993, 49, 693; 1997, 43/44, 723; 1998, 41/42, 625; 51, 756; 61, 981) shall be taken as the basis in the execution of a decision imposing a fine on a legal person which has committed an administrative offence and of a decision rendered pursuant to the procedure provided for in subsection 81 (3) of this Act.

(21.01.1999)

### **Section 83 Administrative liability of legal persons**

(1) A fine between 20 000 and 50 000 kroons is imposed for an infringement of copyright or related rights by a legal person, or for a violation of requirements provided by copyright legislation by a legal person, except in the case specified in subsections (2)-(6) of this section.

(2) A fine between 50 000 and 100 000 kroons is imposed for trading in pirated copies by a legal person.

(3) A fine between 50 000 and 150 000 kroons is imposed for the public performance, public display or transmission to the public of a work by a legal person if pirated copies are used.

(4) A fine between 150 000 and 200 000 kroons is imposed for the manufacture, acquisition, possession, use, carriage, sale or transfer by a legal person of technical means or equipment designed for the removal of protective measures against the illegal reproduction of works or against the illegal reception of signals transmitted via satellite or cable.

(5) A fine between 150 000 and 250 000 kroons is imposed for the use of a computer programme by a legal person if the computer programme is reproduced (installed) in the computer system of the legal person without the consent of the author or holder of copyright.

(6) A fine between 250 000 and 500 000 kroons is imposed for the reproduction of a work or object of copyright related rights by a legal person without the consent of the author of the work, holder of copyright or holder of copyright related rights (manufacture of pirated copies).

(21.01.1999)

### **Section 84 Proceeding in matter regarding administrative offence committed by legal person**

(1) In the case of an administrative offence committed by a legal person, the following have the right to prepare a corresponding report:

1) officials of the Distribution Unit of the Ministry of Culture: in the case specified in subsections 83 (1) - (3) of this Act;

2) police officials.

(2) A report shall set out the time and place of its preparation; the name and address of the institution in whose name the report is prepared; the official title, given name and surname of the official who prepared the report; the (business) name, location and registry code of the offender; the official position, given name and surname of the competent representative of the offender; the place, time and description of the offence; reference to the corresponding subsection of § 83 of this Act which prescribes liability for such administrative offence; statement by the representative of the offender and other information which is necessary for the correct determination of the matter.

(3) Matters regarding administrative offences specified in § 83 of this Act are heard by administrative court judges.

(4) In the hearing of matters regarding administrative offences referred to in § 83 of this Act, the following objects are subject to seizure:

- 1) means used for the commission of an administrative offence;
- 2) assets acquired through an administrative offence;
- 3) technical means or equipment designed for the removal of protective measures against the illegal reproduction of works or against the illegal reception of signals transmitted via satellite or cable;
- 4) pirated copies.

(21.01.1999)

## **Chapter XI** **IMPLEMENTATION OF ACT** (21.01.1999)

### **Section 85 Ascertainment of pirated copies and prevention of further circulation thereof**

(1) In the civil, criminal or administrative procedure, the following is taken as the basis for deeming a copy of a work to be a pirated copy:

- 1) statements given and documents provided by the author, holder of copyright or holder of copyright related rights or by a representative thereof, legal copies of the work or any other factual information received from the above-mentioned persons; or
- 2) the lacking of a required special marking on the object of copyright related rights or its packaging.

(2) Pirated copies are subject to seizure regardless of the imposition of penalties.

(3) Pirated copies are subject to seizure regardless of the fact to whom they belong.

(4) Illegal copies of objects of architecture are not subject to seizure.

(5) Seized pirated copies are destroyed.

(6) A person who obtains a pirated copy in good faith has the right to file an action in court against the person who sold or transferred the pirated copy to the person in good faith.

(21.01.1999)

### **Section 86 Further handling of seized computer system**

(1) A computer system as a mean used for the commission of an administrative offence which has been seized in a matter regarding the administrative offence specified in subsection 83 of this Act shall be transferred to the Ministry of Education free of charge.

(2) The Ministry of Education shall remove a computer programme installed in a computer without the consent of the author or holder of copyright and shall transfer the computer system to a state or municipal educational institution or any other educational institution in public law free of charge and for permanent use within the framework of the "Tiger Leap " programme.

(21.01.1999)

### **Section 87 Copyright Committee**

(1) In order to monitor compliance of the level of intellectual property protection in Estonia with the international obligations assumed by Estonia and, by agreement of the parties, and for the out-of-court resolution of infringements of copyright or related rights and disputes arising in the implementation of this Act or other copyright legislation, the Government of the Republic shall form a permanent copyright committee of experts (hereinafter committee) at the Ministry of Culture for each subsequent two years.

(2) If an interested person disagrees with a ruling made by the committee in a dispute specified in subsection (1) of this section, the person has the right of recourse to the courts concerning the same dispute.

(3) The committee shall provide an overview of compliance of the level of intellectual property protection in Estonia with the international obligations assumed by Estonia to the Government of the Republic twice a year and, if necessary, shall make proposals for the improvement of activities in this field.

(4) If necessary, the courts shall involve members of the committee as experts in civil, criminal or administrative proceedings regarding violations of the requirements provided by this Act or other copyright legislation.

*(21.01.1999)*

**Section 88 Protection of works and results of work of performers, producers of phonograms or broadcasting organisations created before entry into force of this Act**

(1) This Act extends to works and results of the work of performers, producers of phonograms or broadcasting organisations which are created before 12 December 1992.

(2) The requirements established by this Act for the use of works and results of the work of performers, producers of phonograms or broadcasting organisations do not extend to cases where use occurred before 12 December 1992.

(3) In the case of works whose term of protection of copyright has expired, the authorship of the works, the names of authors and their honour and dignity shall be protected by the Ministry of Culture (subsection 44 (1)). This provision also applies to performers (subsection 74 (4)).

*(21.01.1999)*

**Section 89 Implementing Acts**

(1) The Government of the Republic or, by its authorization the Minister of Culture, has the right to issue regulations for the implementation of sections 13 and 14 of this Act.

(29) The Government of the Republic has the right to establish requirements for documenting the circulation of certain objects of copyright related rights.

*(21.01.1999)*

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