

Law No. 1328/1998 on Copyright and Related Rights*

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Title I General Provisions

1. The provisions of this Law are for the protection of authors, other owners of rights in literary or artistic works and the owners of rights related to copyright and other intellectual property rights.

2. For the purposes of this Law, the following expressions and their various derived forms shall have the meanings specified:

1. “author”, the natural person who makes the intellectual creation;
2. “performer”, the person who presents, sings, reads, recites, performs or in any way executes a literary or artistic work or an expression of folklore, including the variety artiste or circus performer;
3. “home environment”, the area in which family meetings take place within the home;
4. “communication to the public”, the act by which the work is made accessible to the public by any means or process;
5. “copy”, the physical material embodying the work as a result of an act of reproduction;
6. “successor in title”, the person, whether natural person or legal entity, to whom rights recognized by this Law are transferred, whether on death or by virtue of an *inter vivos* transaction or legal mandate;
7. “distribution to the public”, the making available to the public of the original or one or more copies of the work or a permanent or temporary image of the work, including disclosure by sale, rental, transfer or any other known or as yet unknown means;
8. “disclosure”, any act whereby the work, performance or production is first made available to the public in any form or by any means or process with the consent of the author, performer or producer respectively;
9. “publisher”, the person, whether natural person or legal entity, who under a contract with the author or his successor in title undertakes to carry out the publication and distribution of the work on his own account;

10. “broadcast”, the direct or indirect dissemination over a distance of signs, sounds, images, or a combination thereof, for reception by the public;

11. “expressions of folklore”, productions of characteristic elements of the traditional cultural heritage, consisting of the whole range of literary or artistic works created by unknown or unidentified authors and handed down from generation to generation, and which conform to the expectations of the traditional cultural identity of the country or its ethnic communities;

12. “fixation”, the incorporation of signs, sounds or images or representations thereof in a medium whereby they may be perceived, reproduced or communicated;

13. “phonogram”, any fixation of sounds of a performance or other sounds, or of a representation of such sounds;

14. “ephemeral recording”, the sound or audiovisual recording of a performance or broadcast, made by a broadcasting organization using its own facilities and used for its own broadcasts;

15. “license”, the authorization or permission given by the owner of rights (the licensor) to the user of the work or other protected production (the licensee) with a view to the use thereof in a particular form and according to the conditions agreed in the license contract;

16. “work”, any original intellectual creation in the literary or artistic field that is capable of being disclosed or reproduced in any known or as yet unknown form;

17. “anonymous work”, a work in which there is no mention of the identity of the author according to the latter’s wish. A work in which the pseudonym used by the author leaves his true civil identity in no doubt is not an anonymous work;

18. “audiovisual work”, any creation expressed by a series of associated images, with or without incorporated sound, that is capable of being projected or shown by means of appropriate apparatus, or by any other medium of communication of images and sounds, independently of the characteristics of the physical material in which it is embodied, whether celluloid film, videogram, digital representation or any other known or as yet unknown object or device. The audiovisual work includes cinematographic works and those produced by a process analogous to cinematography;

19. “work of applied art”, an artistic creation having utilitarian functions or incorporated in a utilitarian article, whether a work of handicraft or produced on an industrial scale;

20. “collective work”, a work created by two or more authors on the initiative and under the responsibility of a person, whether natural person or legal entity, who discloses it in his own name, in which the contributions of the authors, owing to their large number or the indirect nature of those contributions, are so merged in the whole work that it is not possible to distinguish the various contributions or identify the individual creators;

21. “work of joint authorship”, a work created jointly by two or more natural persons;

22. “derived work”, a work based on another, existing work, without prejudice to the rights of the author of the original work and the relevant authorization, the originality of which lies in the adaptation or transformation of the existing work or in the creative aspects of its translation into a different language;

23. “individual work”, a work created by a single natural person;

24. “unpublished work”, a work that has not been disclosed with the consent of the author or his successors in title;

25. “original work”, the work as originally created;

26. “broadcast work”, a work created specifically for broadcasting by radio or television;

27. “pseudonymous work”, a work in which the author uses a pseudonym that does not identify him as a natural person. A work in which the name used leaves the civil identity of the author in no doubt is not considered a pseudonymous work;

28. “broadcasting organization”, a person, whether natural person or legal entity, who programs, decides upon and carries out broadcasts;

29. “public lending”, the transfer of possession of a lawful copy of the work for a limited time, without gainful intent, by an institution whose services are available to the public, such as a public library or archive;

30. “producer”, a person, whether natural person or legal entity, who takes the initiative and responsibility and exercises coordination in the production of the work;

31. “producer of phonograms”, a person, whether natural person or legal entity, who takes the initiative and economic responsibility in the first fixation of the sounds of a performance or other sounds or digital representations of such sounds;

32. “producer of videograms”, a person, whether natural person or legal entity, who takes the initiative and economic responsibility in the first fixation of a sequence of images that gives the impression of movement, with or without sound, or the digital representation of such images and sounds;

33. “computer program (software)”, the expression of a set of instructions in the form of words, codes or plans or in any other form, which, on being incorporated in an automated reading device, is capable of making a computer carry out a task or produce a result. A computer program also includes the technical documentation and users’ manuals;

34. “publication”, the production of copies made accessible to the public with the consent of the owner of the corresponding rights, provided that the availability of such copies allows the reasonable needs of the public to be met, due regard being had to the nature of the work;

35. “public”, one or more persons, outside the normal intimate family circle, who obtain(s) a copy incorporating a work or perceive(s) a single image or the images, signals, signs or sounds of a work by means of a transmission;

36. “broadcasting”, communication to the public by wireless transmission. Broadcasting includes that effected by satellite from the time of injection of the signal, both in the uplink stage and in the downlink stage of the transmission, until such time as the program contained in the signal is made accessible to the public;

37. “reproduction”, the fixation of the work in a material or medium that enables it to be communicated, including electronic storage, either permanent or temporary, and the production of copies of all or part thereof;

38. “reprographic reproduction”, the making of facsimile copies of originals or copies of a work by means other than printing, such as photocopying;

39. “retransmission”, the re-emission of a signal or program received from another broadcasting organization;

40. “cable retransmission”, any device whereby electronically produced program-carrying signals are carried over a given distance;

41. “satellite”, any device located in extraterrestrial space that is designed to receive and transmit signals;

42. “ownership”, the status of the owner of rights recognized by this Law;

43. “original ownership”, that deriving from the mere creation of the work;

44. “derived ownership”, that arising from circumstances different from creation, namely from a commission or legal presumption or from assignment by *inter vivos* transaction or transfer by succession;

45. “transmission”, emission over a distance by broadcasting or by wire, cable, optic fiber or other comparable process;

46. “personal use”, reproduction (or other form of use) of the work of another person, in a single copy, exclusively for an individual’s own use, in cases such as research and personal entertainment;

47. “videogram”, an audiovisual fixation incorporated in a videocassette, video disk, digital carrier or any other material object.

Title II

Subject Matter of Copyright

3. Copyright protection shall cover all intellectual works of creative character in the literary or artistic field, regardless of their type, form of expression, merit or purpose, the nationality or residence of the author or owner of the rights concerned and the place of publication of the work.

The rights recognized by this Law shall be independent of the ownership of the material object in which the work is embodied and of the method of initial or subsequent fixation, and their enjoyment or exercise shall not be made subject to the requirement of registration or compliance with any other formality.

The works protected under this Law may likewise qualify for other intellectual property protection regimes, such as patents, trademarks, privileged information on industrial processes or any other comparable system, provided that the works or elements in question qualify for such protection under the regimes concerned.

4. The works to which the foregoing Article refers include the following in particular:

1. works expressed in the written form of books, magazines, pamphlets or other writings, and any other works expressed by conventional letters, signs or marks;
2. oral works such as lectures, addresses and sermons; explanations used in teaching and other works of a similar nature;
3. musical compositions with or without words;
4. dramatic and dramatico-musical works;
5. choreographic and mimed works;
6. audiovisual works, including cinematographic works, made and expressed by any means or process;
7. broadcast works;
8. works of three-dimensional art, including drawings, paintings, sculptures, engravings and lithographs;
9. architectural plans and works;
10. photographic works and works expressed by a process analogous to photography;
11. works of applied art;
12. illustrations, maps, sketches, plans, diagrams and three-dimensional works relating to geography, topography, architecture or science;
13. computer programs;
14. collections of works such as encyclopedias and anthologies of works or other elements, such as databases, provided that such collections show originality in the selection, coordination or arrangement of their contents;
15. in general, any other intellectual production in the literary, artistic or scientific field that possesses the characteristics of originality and is capable of being disclosed or reproduced by any known or as yet unknown means or process.

The foregoing enumeration is merely declaratory and not exhaustive.

5. Without prejudice to the rights subsisting in the original work and the appropriate authorization, translations, adaptations, transformations or arrangements of existing works shall likewise be eligible for protection.

6. The title of a work, if original, shall be protected as part of the work.

7. Protection shall relate exclusively to the form of expression in which the ideas of the author are described, explained, illustrated or incorporated in the works.

8. The following shall not qualify for copyright protection:

1. the ideas contained in literary or artistic works, processes, operating methods or mathematical concepts *per se*, or the ideological or technical content of scientific works, or their industrial or commercial exploitation;

2. official texts of legislative, administrative or judicial character, or translations thereof, without prejudice to the obligation to respect the text and mention the source;

3. news of the day;

4. mere facts or data.

Title III Owners of Rights

9. The author is the original owner of the exclusive rights in the work, both moral and economic, that are recognized by this Law.

Nevertheless, the protection accorded to the author by this Law may inure to the benefit of other natural persons and also to the State, corporations under public law and other legal entities in the cases expressly provided for herein.

10. In the absence of evidence to the contrary, the natural person who is mentioned as such in the work by his name or signature or a sign that identifies him shall be presumed to be the author thereof.

Where the work is disclosed anonymously or under a pseudonym, the exercise of the rights shall accrue to the person, whether natural person or legal entity, who discloses it with the author's consent until such time as the latter reveals his identity and proves his authorship, in which case the rights already acquired by third parties shall be reserved.

11. The author of a derived work is the owner of the rights in his contribution, without prejudice to the protection of the authors of the original works used in the making of the derived work.

12. The co-authors of a work of joint authorship shall collectively be the original owners of the moral and economic rights in the work, and shall exercise their rights by common consent where possible.

Nevertheless, where the individual contributions of the co-authors belong to different genres, each of them may, unless otherwise agreed, exploit his personal contribution separately, provided that the exploitation of the joint work is not thereby prejudiced.

13. It shall be presumed, in the absence of evidence to the contrary, that the authors of a collective work have assigned unlimited and exclusive ownership of the economic rights to the person, whether natural person or legal entity, who publishes or discloses it in his own name, which person shall likewise be entitled to exercise the moral rights in the work.

14. Subject to the provisions of Articles 13, 62 and 69 of this Law, in the case of works created in the course of employment relations or in pursuance of a commission contract, the ownership of the rights that may be transferred shall be governed by what has been agreed between the parties.

In the absence of express contractual provision, it shall be presumed that the economic rights in the work have been assigned to the principal or commissioning party, as the case may be, to the extent necessary for his usual activities at the time of creation, which shall likewise mean that the employer or commissioning party, as the case may be, has the authority to disclose the work and exercise the moral rights to the extent necessary for the exploitation thereof.

Title IV **Content of Copyright**

Chapter I *General Provisions*

15. The author of a work, by virtue of the mere fact of his creation of the work, has original ownership of a right that is binding on all persons and comprises elements of moral and economic character as specified in this Law.

The disposal of the physical material in which the work is embodied shall not imply any assignment of copyright to the acquirer, except where expressly provided otherwise by contract or legal provision.

16. The copyright in translations and other works mentioned in Article 5 may subsist even where the original works were in the public domain, but shall not generate any exclusive rights in the said original creations, so that the author of the derived work may not object to others translating, adapting or altering the said works or including them in a collection, provided that the work is original and different from his own.

Chapter II *Moral Rights*

17. The moral rights recognized by this Law are perpetual, inalienable, unattachable, unrenounceable and imprescriptible.

On the death of the author, the moral rights shall be exercised by his heirs throughout the time referred to in Articles 48 to 51, unless otherwise provided by law.

18. The following are moral rights:

1. the right of disclosure;
2. the right of authorship;
3. the right of integrity;
4. the right to withdraw the work from the market.

19. By virtue of the right of disclosure the author has the right to decide to keep the work unpublished or to authorize its total or partial availability to the public, and in that case the manner in which disclosure should take place. No one may, without the consent of the author, make the essential contents of the work known before the former has done so or before the work has been disclosed.

20. By virtue of the right of authorship the author has the right to be recognized as such, by deciding that the work shall carry the appropriate particulars, and to determine whether disclosure is to take place under his name, under a pseudonym or sign or anonymously.

21. By virtue of the right of integrity the author has the right, which shall extend to his relations with the acquirer of the material medium embodying the work, to object to any distortion, modification or alteration of the work that may be prejudicial to his honor or reputation as an author.

22. By virtue of the right to withdraw the work from the market the author has the right to stop any form of use of the work for as long as there are serious moral reasons for doing so, as determined by the court, subject to prior indemnification of third parties for any damages or prejudice that they might be caused.

Where the author decides to resume exploitation of the work, he shall offer the corresponding rights preferably to their former owner on terms reasonably similar to the original ones.

The right provided for in this Article shall lapse on the death of the author and shall not be applicable to collective works or to those created in the course of employment relations or under a commission contract.

23. The exercise of the rights of authorship and integrity in works that have passed into the public domain shall accrue without distinction to the heirs, to the National Directorate of Copyright, to the relevant collective management body and to any person who proves a legitimate interest in the work concerned.

Chapter III
Economic Rights

24. The author shall enjoy the exclusive right to exploit his work in any form or by any process and to profit thereby, save in the case of express legal exceptions.

Throughout the life of the author, three-quarters of the remuneration that exploitation of the work may generate shall be unattachable.

25. Economic rights shall in particular include the exclusive right to do, authorize or prohibit the following:

1. reproduction of the work by any means or process;
2. communication of the work to the public by any means;
3. distribution of copies of the work to the public;
4. importation of copies of the work into the national territory;
5. translation, adaptation, arrangement or any other transformation of the work;
6. any other form of use of the work that is not provided for in the Law as an exception to the economic rights, the foregoing list being merely declaratory and not exhaustive.

26. Reproduction includes any form of fixation or production of one or more copies of the work, especially by printing or another graphic or three-dimensional art process, reprographic, electronic or phonographic recording, storage in digital form, in a random access memory or in audiovisual form using any known or as yet unknown medium or format. The exclusive right of reproduction shall include, as well as permanent reproduction, the temporary reproduction that occurs in the process of digital transmission or any other transmission of the work.

The foregoing enumeration is given merely by way of example.

27. Communication to the public may in particular be effected by means of

1. stage performances, recitals, dissertations and public renderings of dramatic, dramatico-musical, literary and musical works by any means or process, whether with the direct intervention of the performers or received or generated by mechanical, optical or electronic instruments or processes or produced from a sound or audiovisual recording or other source;
2. the public projection or showing of cinematographic and other audiovisual works;
3. the transmission of any work by broadcasting or other medium of wireless transmission or by wire, cable, optic fiber or other comparable process serving to disseminate signs, words, sounds or images over a distance, whether or not on subscription or against payment;

4. the retransmission of a broadcast work by a broadcasting organization different from the original one;

5. the receiving of a work broadcast by radio or television by means of any appropriate apparatus, in a place accessible to the public;

6. the public showing of works of art or reproductions thereof;

7. access by telecommunication to an electronic data-retrieval system, including computer databases, servers or other memory storage devices where they incorporate or constitute protected works;

8. the transmission of a work by satellite;

9. the point-to-point transmission of a work that is made available to the public, including video-on-demand;

10. access by telecommunication to an electronic retrieval system, including computer databases, servers or similar electronic storage devices;

11. the live performance of a work before an audience;

12. in general, the dissemination or disclosure of signs, signals, words, sounds or images by any known or as yet unknown means or process.

28. Distribution, for the purposes of this Chapter, includes the making available to the public of copies of the work by sale, barter, exchange or other form of transfer of ownership, rental, public lending or any other mode of use or exploitation.

Where authorized distribution takes place by means of sale or another form of transfer of ownership, the right shall be exhausted on the first such act. Nevertheless, the owner of the economic rights shall retain the rights of modification, communication to the public and reproduction of the work, and also the right to authorize or prohibit the hiring or public lending of copies.

29. Importation shall include the exclusive right to authorize or prohibit the entry into the national territory of copies of the work that have not been expressly authorized for the country of importation, regardless of whether or not the holder of the right has authorized the making of the said copies in the country of origin. The right of importation shall extend to the electronic transmission of works. It shall suspend the free circulation of the said copies at the border, but shall have no effect on a single copy for individual use carried in personal baggage.

30. The author shall have the exclusive right to make or authorize translations and also adaptations, arrangements and other transformations of his work, including dubbing and subtitling.

31. The author may demand that the holder of the sole or a rare copy of the work give access to it in the manner that best suits the interests of both parties, provided that such access

is necessary for the exercise of the author's moral or economic rights, and the latter shall be obliged to cover any cost that might arise from such access.

32. Any reproduction, communication, distribution, importation or other form of exploitation of the work, either as a whole or in part, shall be unlawful where it is done without the author's consent or, where appropriate, that of his successors in title.

33. No authority, whether natural person or legal entity, may authorize the use of a work or any other production protected by this Law, or lend assistance in such use, if the user does not have the express prior authorization of the owner of the rights concerned, save in the exceptional cases provided for in the Law. In the event of non-compliance, both parties shall be jointly liable.

Chapter IV *Rights to Compensatory Remuneration*

34. The owners of the rights in works published in graphic form or in the form of videograms or phonograms or any kind of sound or audiovisual recording shall have the right to a share in the compensatory remuneration for reproductions of those works or products that are made exclusively for personal use by means of non-typographical technical apparatus.

The remuneration shall be determined according to the equipment, apparatus and materials used for making the reproduction.

Payment shall be proved by an identifying mark on the recording or reproduction apparatus and on the physical materials used for the duplication, as appropriate.

Copyright owners may incorporate anti-copying technology and oversee the reproduction of their work.

35. The foregoing remuneration shall not be payable for equipment and materials that are used by the producers of audiovisual works and phonograms and publishers or their licensees, neither shall it be payable by studios concerned with sound recordings or the post-synchronization of sound and images, or companies that work under contract to any of them, with respect to the legitimate production or reproduction of their works and products, provided that the equipment or media in question are intended solely for such activities.

36. The collection and distribution of the remuneration referred to in this Chapter shall take place through the appropriate collective management bodies, which shall centralize collection either by delegating it to one of their number or by setting up a collecting agency with its own legal personality.

37. Within the six months following the entry into force of this Law the Executive, on a proposal by the National Directorate of Copyright, shall specify the owners entitled to remuneration and shall regulate the procedure for determining the equipment and material for which it is payable, its amount and the methods of collection and distribution.

The National Directorate of Copyright shall decide what exemptions are appropriate and may also broaden the liability for payment of remuneration referred to in Article 34 to include those who distribute the material mentioned therein to the public.

Title V **Limits of the Right of Exploitation and its Term**

Chapter I *Limitations on Exploitation Rights*

38. The intellectual works protected by this Law may be lawfully communicated in the following cases without need for the permission of the author or payment of any remuneration:

1. where it is done in an exclusively domestic environment, provided that there is no direct or indirect profit-making purpose;
2. where it is done in the public interest in the course of official events or religious ceremonies, involving short musical passages or small parts of musical works, provided that the public may attend the events free of charge;
3. in the case of single, personal copies that are used solely for teaching purposes by teaching staff at educational establishments;
4. where it is done in commercial establishments for the sole purpose of demonstrating receivers or players or other similar apparatus to customers, or for the sale of the sound or audiovisual materials incorporating the works;
5. where it is essential to the provision of judicial or administrative evidence.

39. The following is permitted without authorization by the author or payment of remuneration in relation to works already disclosed:

1. reproduction by reprographic means, for the purposes of teaching or the holding of examinations at educational establishments, provided that there is no gainful intent and only to the extent justified by the objective pursued, of articles or short extracts from lawfully published works, on condition that the use is in keeping with proper practice;
2. the reproduction of a single copy of a work by non-profit-making public libraries or archives, where the copy is in the permanent collection, in order to preserve that copy and replace it in the event of its being lost, destroyed or rendered unusable, or to replace the copy in the permanent collection of another library or archive that has been lost, destroyed or rendered unusable, provided that it is not possible to acquire such a copy in a reasonable time and on acceptable terms;
3. the reproduction of a work for judicial or administrative proceedings, to the extent justified by the aim pursued;

4. the reproduction of a work of art on permanent display in streets, squares or other public places, or on the outer walls of buildings, where the artistic medium used is different from that used for the making of the original, provided that the name of the author and the title of the work, if known, and the place in which it is located are mentioned;

5. the lending to the public of the lawful copy of a work expressed in writing by a library or archive that does not pursue any direct or indirect profit-making purpose;

6. the reproduction of works in Braille or another specific form for the exclusive use of the visually handicapped, provided that the reproduction is not done with gainful intent and the copies are not used for profit-making purposes;

7. where the work is used as a sign, emblem or distinctive mark of a political party or non-profit-making civil association or entity.

The reproduction provided for in this Article shall be allowed insofar as it does not interfere with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the author.

40. It shall be permissible, without the authorization of the author or payment of remuneration, to make quotations from lawfully disclosed works, subject to the obligation to mention the name of the author and the source, and on condition that the quotations are made in accordance with proper practice and to the extent justified by the aim pursued.

41. It shall likewise be lawful to do the following without authorization or payment of remuneration, provided that the name of the author and the source are mentioned and that reproduction or disclosure has not been the subject of an express reservation:

1. reproduction and distribution in the press, or transmission in any medium, of topical articles on economic, social, artistic, political or religious issues that are published in mass communication media or disclosed by broadcasting, without prejudice to the author's exclusive right to publish them separately, either singly or in a collection;

2. the dissemination, in connection with news reporting on current events in sound or audiovisual media, of the images or sounds of works seen or heard in the course of the said events, to the extent justified by the informatory purpose;

3. the dissemination in the press or transmission in any medium, as news of current events, of speeches, dissertations, addresses, sermons and other works of similar character given in public, and also speeches delivered in the course of judicial proceedings, to the extent justified by the informatory purposes pursued and without prejudice to the rights that the authors retain in the works disseminated with respect to their publication either singly or in a collection;

4. the transmission by broadcasting or cable distribution or any other known or as yet unknown medium of the image of an architectural work, a work of fine art, a photograph or a work of applied art located permanently in a place open to the public.

42. Any broadcasting organization may, without the permission of the author or payment of any special remuneration, make ephemeral recordings, using its own facilities and for a single use in its own broadcasts, of a work in which it has broadcasting rights. The recording shall be destroyed within three months except where a longer period has been agreed upon with the author. It may however be preserved in official archives, also without the permission of the author, where it possesses exceptional documentary character.

43. It shall be lawful, without the permission of the author or payment of special remuneration, for a broadcasting organization publicly to retransmit or distribute by cable a work originally broadcast by it with the author's consent, provided that such public retransmission or distribution takes place at the same time as the original broadcast and the work is broadcast or distributed to the public without alteration.

44. The exclusively personal copying of works published in graphic form or in the form of sound or audiovisual recordings shall be lawful where the compensatory remuneration referred to in Chapter IV of Title IV of this Law has been paid. The reproductions allowed under this Article shall not however extend to the following:

1. reproduction of a work of architecture in the form of a building or other construction;
2. reproduction of the whole of a book or musical work in graphic form, or of the original or a copy of a work of fine art executed and signed by the author;
3. a database or compilation of data.

45. The exceptions provided for in the foregoing Articles shall be restrictively interpreted, and may not apply to cases that are contrary to proper practice.

46. The limitations on the rights of exploitation with respect to computer programs shall be solely those provided for in Chapter II of Title VII of this Law.

Chapter II

Term

47. Economic rights shall subsist throughout the life of the author and for 70 years thereafter, and shall be transferred on his death in accordance with the provisions of the Civil Code [*Código Civil*].

In the case of works of joint authorship, the term of protection shall be counted as from the death of the last surviving co-author.

48. In the case of anonymous and pseudonymous works, the term shall be 70 years following the year of disclosure except where, before that period expires, the author reveals his identity, in which case the provisions of the foregoing Article shall apply.

49. In the case of collective works, computer programs and audiovisual and broadcast works, economic rights shall lapse after 70 years following first publication or, failing that, completion. That limitation shall not effect the economic rights of each of the co-authors of audiovisual and broadcast works in their personal contributions for the purposes of the second

paragraph of Article 12, or the enjoyment and exercise of the moral rights in those contributions.

50. The periods provided for in this Chapter shall be calculated from the first of January of the year following that of the death of the author, or where appropriate that of the disclosure, publication or completion of the work.

51. Where one of the authors of a work of joint authorship dies without heir, his rights shall be added to those of the other co-authors.

52. Works shall be considered posthumous where they were not disclosed in the author's lifetime or where they were disclosed but the author, on his death, leaves them so altered or corrected that they may be considered new works.

53. The successors may not object to third parties republishing or translating the principal's work if, on the expiry of 20 years from the latter's death, they have abused their rights by refusing such publication and if a court so rules at the instigation of the party seeking to undertake the republication or translation. The said third parties shall pay the author's successors the appropriate remuneration, which shall be set by common consent between the parties or, failing that, by judicial ruling.

Title VI Public Domain

54. The expiry of the periods provided for in this Law shall bring about the lapse of the economic rights and determine the work's passage into the public domain.

55. The use of works in the public domain shall always be subject to respect for the authorship and the integrity of the creation, and their exploitation shall give rise to the payment of remuneration according to tariffs set by the National Directorate of Copyright, which remuneration may not exceed the scales set for works in the private domain.

The said remuneration shall be intended exclusively for a fund for the promotion and dissemination of the various manifestations of culture, which shall be created by special legislation.

56. Translations, adaptations, arrangements and other modifications of works in the public domain shall be subject to the provisions of Article 16 of this Law.

Title VII Special Provisions for Certain Works

Chapter I Audiovisual and Broadcast Works

57. In the absence of evidence to the contrary, the following shall be presumed co-authors of an audiovisual work:

1. the director or maker;
2. the author of the plot;
3. the author of the adaptation;
4. the author of the script and dialogue;
5. the author of music specially composed for the work;
6. the artist, in the case of animated cartoons.

Where the audiovisual work has been taken from an existing work that is still protected, the author of the original work shall be treated on the same footing as the authors of the new work.

58. The producer of the audiovisual work shall affix on the physical media embodying the work, in such a way as to be visible in the course of the showing, a mention of the names of each of the co-authors, but that shall not be required for audiovisual productions of advertising character or those whose nature or short duration does not permit such a mention.

59. Where one of the co-authors refuses to complete his contribution or is prevented from doing so by *force majeure*, he may not object to the use of the completed portion of his contribution for the completion of the work, provided that, with respect to that completed portion, he retains the authorship and the benefit of the rights deriving therefrom.

60. Unless otherwise agreed, each of the co-authors may dispose freely of the part of the work constituting his personal contribution, in the case of a divisible contribution, for exploitation in a different genre, provided that the exploitation of the joint work is not thereby prejudiced.

61. It shall be presumed, in the absence of evidence to the contrary, that the person, whether natural person or legal entity, who in the usual way is credited with that status in the audiovisual work is the producer thereof.

62. It shall be presumed, unless otherwise agreed, that the authors of the audiovisual work have assigned their economic rights exclusively to the producer, who shall be also invested with ownership of the rights referred to in Article 22 of this Law, and authorized to decide on the disclosure of the work.

Without prejudice to the rights of the authors, the producer may, unless otherwise provided, exercise the moral rights in the audiovisual work in his own name.

63. In cases of infringement of the rights in the audiovisual work, recourse to legal action shall be available to both the producer and the assignee or licensee of his rights.

64. The ownership of the rights in an audiovisual work shall be presumed genuine in the absence of evidence to the contrary, as with the distribution and/or communication of works in general, where the material medium embodying it bears the following statements:

1. that the producer of an audiovisual work is the person or legal entity named therein;

2. that the owner of the copyright in an audiovisual work is the person or legal entity named therein.

65. It shall be deemed true, in the absence of evidence to the contrary, that the audiovisual work was first published on the date and in the country mentioned therein.

66. The provisions of this Chapter shall apply by analogy to broadcast works.

Chapter II *Computer Programs*

67. Computer programs shall be protected on the same terms as literary works. That protection shall extend to all their forms of expression, and to both operating programs and application programs, whether in source code or in object code form.

The protection provided for in this Law shall extend to any successive versions of the program, and also to derived programs.

68. The producer of the computer program is the person, whether natural person or legal entity, who takes the initiative and responsibility for the work. It shall be presumed, in the absence of evidence to the contrary, that the natural person or legal entity named as such in the usual way on the work is the producer of the program.

69. It shall be presumed, unless otherwise agreed, that the authors of the computer program have assigned the economic rights recognized by this Law, without limitation and exclusively, to the producer, that he is moreover invested with the ownership of the rights referred to in Article 22, and by implication with authority to decide on the disclosure of the program and to exercise the moral rights in the work.

Unless otherwise agreed, the authors may not object to the producer making or authorizing alterations to or successive versions of the program, or programs derived from it.

70. For the purposes of this Law the storage of a computer program in the internal memory of the apparatus by the lawful user for his exclusive personal use does not constitute unlawful reproduction.

The above lawful use shall not extend to the exploitation of the program by two or more persons through the installation of networks or workstations or another comparable process, except where the express consent of the owner of the rights is obtained.

71. The lawful user of a computer program may make an adaptation of that program where essential for it to be used in a particular computer and consistent with the license granted to the lawful user; the adaptation shall be intended solely as a back-up copy to replace the lawfully acquired copy where it cannot be used owing to damage or loss.

Reproduction of a computer program, including for personal use, shall require authorization by the owner of the rights, with the exception of the back-up copy.

72. The adaptation of a program by the lawful user, including the correction of errors, shall not constitute transformation for the purposes of Article 31 insofar as it is intended exclusively for personal use, except where there has been an express prohibition by the owner of the rights.

The production of copies of the program so adapted for use by two or more persons or for distribution to the public shall require express authorization by the owner of the rights.

73. None of the provisions of this Chapter may be so interpreted as to allow its application to prejudice unreasonably the legitimate interests of the owner of the rights or to be contrary to the normal exploitation of the computer program.

Chapter III *Architectural Works*

74. The acquisition of an architectural plan or project shall by implication entitle the acquirer to carry out the projected work, but the consent of the author shall be required for its further use in the construction of another work.

Use of an architectural plan for a construction made by a third party without the work of creation of the plan having been rewarded shall entitle the author to claim an indemnity which shall be set by the court.

75. An author of architectural works may not object to such alterations as may prove necessary in the course of construction or thereafter. Where the alterations are made without the author's consent, the latter may repudiate his authorship of the altered work, and the owner shall be prohibited from mentioning the name of the author of the original project in the future.

Chapter IV *Works of Three-Dimensional Art*

76. Unless otherwise agreed, the contract for the disposal of the physical medium embodying a work shall invest the acquirer with the right to exhibit the work in public, either free or for a consideration.

77. In the event of resale of works of three-dimensional art by public auction or through a professional art dealer, the author, and on his death his heirs or legatees, shall enjoy the inalienable and unrenounceable right to collect 5% (five per cent) of the resale price from the vendor throughout the term referred to in Article 47.

The auctioneers or owners of trading establishments that have taken part in the resale shall make it known within a period of two months to the corresponding management body and to the author or his successors in title, as the case may be, and shall supply the necessary documentation for the making of the appropriate settlement. When they are acting on behalf or on the instructions of the vendor, they shall likewise be jointly liable with the vendor for payment of the royalty, to which end they shall withhold the appropriate amount from the

price. In any event they shall be considered depositaries of the amount of the said participation.

Actions claiming the amount arising from the resale shall be barred after one year from the notification thereof. On expiry of that period without the amount of the participation having been claimed, it shall be credited to the National Directorate of Copyright for the culture development fund.

78. The portrait or bust of a person may not be placed on the market without the consent of the person portrayed, or that of his successors in title after his death. However, publication of the portrait shall be free when it relates to scientific, educational or general cultural concerns, or to circumstances or events that are in the public interest or have taken place in public.

Chapter V *Articles in the Press*

79. Unless otherwise agreed, the authority to use articles in newspapers, magazines or other mass communication media, granted by an author bearing no dependent relation to the newspaper or magazine company, shall confer on the publisher or owner of the publication only the right to insert the article once, the other economic rights of the assignor or licensor remaining reserved.

In the case of an author working under contract, the right to reproduce the newspaper or magazine article shall be deemed assigned to the company or communication medium unless otherwise agreed. Nevertheless, the author shall retain his rights regarding the independent publication of his productions.

The use of the copy in other newspapers, magazines, periodicals or other sound or audiovisual communication media of the same company, but different from that or those in which the author renders his services or with which he has signed a contract or entered into employment relations, shall entitle the authors of the copy to an additional payment for such uses.

80. Where the article assigned is to appear under the byline or pseudonym of the author, the assignee may not alter it and, if the owner of the newspaper or magazine alters it without the consent of the assignor, the latter may request the insertion of a full and faithful transcript of the article assigned, without prejudice to any right that he may have to claim damages and prejudice.

Where the article assigned is to appear without the author's byline as a manifestation of the thinking or ideals of the company that publishes the newspaper or review, the director and owner of the newspaper or magazine may make amendments or changes of form to it without the consent of the assignor.

81. Where an assigned article in which the byline or pseudonym of the author is to appear has not been published or disseminated within the specified period, or, if no period has

been specified, within the 60 days following its submission, the assignor may terminate the contract without prejudice to his right to the payment of the agreed remuneration.

82. The provisions of this Chapter shall apply by analogy to drawings, jokes, graphics, caricatures, photographs and other works susceptible of being published in newspapers, magazines or other social communication media.

Title VIII Protection of Folklore

83. Published or unpublished expressions of folklore shall be permanently protected against improper exploitation and mutilation or distortion.

The State, acting through the National Directorate of Copyright and other agencies responsible for the care of the traditional cultural heritage, shall be entrusted with protecting it against abusive exploitation or the violation of its integrity.

84. Where an expression of folklore serves as the basis for a derived work, the author of the latter, or the person who discloses or disseminates it by any means or process, shall specify the regional community in which the expression originated, and its title if it has one.

Title IX Transfer of Rights and Exploitation of Works by Third Parties

Chapter I General Provisions

85. Economic rights may be transferred by instrument or legal presumption, by *inter vivos* transaction or on death, by any of the means permitted by law.

86. Any *inter vivos* transfer shall be presumed made for a consideration except where there is an express agreement to the contrary, and the subject matter shall revert to the assignor on the lapse of the rights of the assignee.

The assignment shall be limited to the right or rights assigned and to the time and territorial scope contractually agreed. Each of the forms of use of the works shall be independent of the others, and consequently the assignment of each type of use shall be expressly stated.

87. Except in the cases and on the conditions specified in Articles 13, 62 and 69, exclusive assignment shall be expressly so granted and shall confer on the assignee, unless the contract provides otherwise, the right to exploit the work to the exclusion of any other person, including the assignor himself, and the right to grant non-exclusive assignments to third parties.

The non-exclusive assignee shall have the right to use the work according to the terms of the assignment and concurrently with both other assignees and the assignor himself.

88. Any assignment of the economic rights in all of the works that an author might create in the future shall be null and void except where they are clearly specified in the contract.

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

89. Assignment granted for a consideration shall confer on the author a proportional share in the proceeds derived by the assignee from exploitation of the work, the amount of which shall be agreed in the contract. Fixed remuneration may however be specified

1. where, in view of the manner of exploitation, there is a serious difficulty in determining the proceeds, or where their verification is impossible or would cost an amount out of proportion to any rewards;

2. where the use of the work is of a secondary nature in relation to the activity or material object for which it is intended;

3. where the work is used with others and does not constitute an essential element of the intellectual creation in which it is incorporated;

4. where it is the first or sole edition of one of the following types of work that has not been previously disclosed: dictionaries, anthologies and encyclopedias; prologues, commentaries, introductions and presentations; scientific works; illustrations for a work, translations or reduced-price popular editions.

90. If, in an assignment granted for fixed remuneration, there is a blatant disproportion between the author's remuneration and the profits achieved by the assignee, the former may seek the review of the contract and, in the absence of agreement, apply to the court for the setting of equitable remuneration according to the circumstances of the case. That right may be exercised within the 10 years following the year of the assignment.

91. The owner of economic rights may likewise grant third parties a simple license for use that is neither exclusive nor transferable, which shall be governed by the provisions of the relevant contract and those relating to the assignment of rights, insofar as they are applicable.

Contracts for the assignment of economic rights and those granting licenses for use shall be executed in writing, and shall not be subject to any other formality except in cases where the law presumes the *inter vivos* transfer of such rights.

Chapter II *Publishing Contracts*

92. A publishing contract is a contract by which the author or his successors in title grant to another person, called the publisher, the right to reproduce and distribute the work on his own account and at his own risk.

93. The publishing contract shall specify

1. the identity of the author, publisher and work;
2. whether or not the work is unpublished;
3. the territorial scope of the contract;
4. whether the assignment confers exclusive rights on the publisher;
5. the number of editions authorized;
6. the period within which copies of the only or first edition are to be brought into circulation;
7. the minimum and maximum numbers of copies that will be achieved by the edition or each of the editions agreed upon;
8. the copies to be reserved for the author and for critical review and promotion of the work;
9. the remuneration of the author;
10. the period within which the author has to deliver the original of the work to the publisher;
11. the quality of the edition;
12. the manner in which the cover price of each copy is to be fixed.

94. In the absence of express provision in the contract, it shall be understood that

1. the work has already been published;
2. the geographical scope is confined to the country in which the contract is concluded;
3. the publishing rights assigned to the publisher are for a single edition, which shall be at the disposal of the public within six months from the delivery of the copy to the publisher in a form fit for reproduction of the work;
4. the minimum number of copies constituting the first edition is 500;
5. the publisher may have an additional number of each folio sheet made, not exceeding 5% (five per cent) of the authorized quantity, in order to cover the risk of damage or loss in the printing or binding process. The additional copies resulting over and above the specified number shall be held on account in the author's remuneration where that remuneration has been agreed to be a function of the copies sold;
6. the number of copies reserved for the author and for critical review and promotion shall be 5% (five per cent) of the print-run, up to a maximum of 100 copies, distributed proportionally for each of the said purposes. The copies received by the author in that connection shall remain outside distribution channels and shall not be considered copies sold for the purposes of the payment of the remuneration;

7. the remuneration of the author is 10% (ten per cent) of the public selling price of each copy;

8. the author shall deliver the original of the work to the publisher within a period of 90 days from the date of the contract;

9. the edition shall be of standard quality as determined by custom and practice;

10. the public selling price of copies shall be set by the publisher, as shall discounts accorded to wholesalers and retailers, provided that they shall not be increased to such an extent that they unreasonably limit marketing.

95. The following are the obligations on the publisher:

1. to publish the work in the agreed form, without making any alteration to it that the author has not authorized;

2. to mention on each copy the title of the work and, in the case of translations, also the title in the original language; the name or pseudonym of the author, translator, compiler or adapter, as appropriate, except where they demand anonymous publication; the name and address of the publisher and printer; the reserved rights notice, with the year and place of first publication and of any subsequent editions; the number of copies printed and the date on which printing was completed;

3. to submit printer's proofs to the author, unless otherwise agreed;

4. to distribute and disseminate the work within the period and on the conditions specified, and in keeping with normal practice;

5. to pay the agreed remuneration to the author and, where that remuneration is proportional and the contract does not set a shorter period, to transfer the appropriate amounts to him at half-yearly intervals. Where fixed remuneration has been agreed upon, that shall be payable as from the moment at which copies are available for distribution and sale;

6. to submit to the author, on the condition specified in the foregoing subparagraph, a statement of account with a mention of the date and print-run of the edition, the number of copies sold and held on deposit for placing, and also the number of copies unused or destroyed by accident or *force majeure*;

7. to allow the author to verify the documents and vouchers supporting the statements of account, and also to inspect the repositories in which the copies of the edition are stored;

8. to apply for the registration of the copyright in the work and make the legal deposit in the author's name where he has not done so;

9. to restore the original of the published work to the author once the printing and production operations have been completed, except where that is impossible for technical reasons;

10. to give the author prior notice in the event of a further edition that has been authorized in the contract, in order that the latter may have the opportunity to make changes, additions or improvements that he considers relevant where the nature of the work so dictates. Where such improvements are made after the corrected proofs of the work have been returned, the author shall pay the publisher for the cost of the changes.

96. In the case of an exclusive assignment and unless otherwise agreed, as long as the editions that the publisher is entitled to produce have not been exhausted, neither the author nor his successors may dispose of the work either totally or partly to that end. Throughout the period of validity of the publishing contract the publisher shall have the right to demand the withdrawal from circulation of an edition of the same work that has been made by a third party.

97. The author shall have the right during the period of correction of proofs to make such corrections, additions or improvements that he considers appropriate, provided that they do not alter its character or purpose or substantially increase the cost of the edition. In any case the publishing contract may specify a maximum permissible percentage of corrections in relation to the whole work.

98. The following are the obligations on the author:

1. to answer to the publisher for the authorship and originality of the work;
2. to assure the publisher of undisturbed and where applicable exclusive exercise of the rights to which the contract relates;
3. to deliver to the author in due form, and within the agreed period, the original of the work to be published;
4. to correct the proofs of the print-run unless otherwise agreed.

99. The bankruptcy or winding-up of the publisher shall cause the contract to be rescinded, whereupon the author may dispose freely of his rights.

Nevertheless, printed copies in the publisher's possession may be sold, and in that case the author shall have the right to collect the corresponding remuneration according to the terms of the contract. However, when the sale of the copies proceeds, the author shall have a preferential right to acquire them, subject to a discount on the wholesale price, or to exercise in relation to them a right of compensation for such amounts as may be payable to him.

100. The publisher may institute and engage in such proceedings before the judicial and administrative authorities as may be available to him, either in his own right or as the representative of the author, in order to defend and assert the economic rights of both parties for as long as the validity of the publishing contract lasts, being invested to that end with the broadest rights of procedural representation.

101. The provisions of this Chapter shall likewise govern joint publishing contracts under which there are two or more publishers under obligation to the author.

Chapter III
Publishing Contracts for Musical Works

102. Under a publishing contract for a musical work, the author assigns the exclusive right of publication to the publisher and empowers him to carry out, either himself or through third parties, the fixation and phonomechanical reproduction of the work, its audiovisual adaptation, translation, sub-edition or any other form of use of the work that may be provided for in the contract, the publisher being obliged to effect the broadest dissemination of the work in all media, for which he shall collect a share, agreed between the parties, in the monetary proceeds therefrom.

The author may in addition assign to the publisher up to 50% (fifty per cent) of the profits derived from the communication to the public and reproduction of the work, and up to 33.33% (thirty-three point thirty-three per cent) of the compensatory remuneration referred to in Article 34 of this Law.

103. The author shall have the unrenounceable right to terminate the contract if the publisher has failed to publish or issue the work or has taken no action with a view to its dissemination within the period specified in the contract or, if no such period has been specified, within the six months following the delivery of the originals. In the case of symphonic and dramatico-musical works, the period shall be one year from the said delivery.

The author may likewise seek the rescission of the contract if the musical or dramatico-musical work has not generated any profit within the space of three years and the publisher fails to show that he has taken positive action to bring about its dissemination.

104. The provisions contained in Articles 99 and 100 of this Law shall be applicable to publishing contracts for musical works.

Chapter IV
Stage and Musical Performance Contracts

105. Under the type of contract provided for in this Chapter, the author, his successors in title or the corresponding management body, assign or license to a natural person or legal entity the right to perform a literary, dramatic, musical, dramatico-musical, mimed, choreographic or any other stage work in public in exchange for economic compensation.

The contracts mentioned may be concluded for a specific time or for a stated number of public performances.

106. In the event of assignment of exclusive rights, the validity of the contract may not exceed five years.

Where performances fail to take place or are discontinued within the period agreed upon by the parties, but which may not exceed one year, the contract shall end as of right. In such cases the impresario shall return to the author the copy of the work that he received and shall indemnify him for the damages and prejudice caused by his failure to comply.

107. The impresario shall undertake to ensure the author's or his representative's right to inspect the performance and attend performances free of charge, to settle the agreed remuneration punctually in the manner specified in Article 89, to submit to the author or his representatives the exact program of performances, noting the works used and their authors in daily schedules, and, where remuneration is proportional, to file a true and documented account of his revenue.

108. Where the author's remuneration has not been specified by contract, he shall be entitled to the equivalent of 10% (ten per cent) of the value of the tickets sold for each performance, and 15% (fifteen per cent) of the said amount at the inaugural performance.

109. The owner, partner, manager, director or other person responsible for the activities of the establishments in which acts of communication to the public take place using works, performances or productions protected by this Law shall be jointly liable with the organizer of the event for any violations of the rights involved that occur on those premises or in those establishments, without prejudice to the possibility of criminal liabilities.

110. The provisions on performance contracts shall likewise be applicable to all the other forms of communication to the public referred to in Article 27, as appropriate.

Chapter V *Phonographic Recording Contract*

111. Under a phonographic recording contract the author of a musical work or his representative authorizes a phonogram producer, against remuneration, to record or fix a work for the production on a phonographic disk, magnetic tape, digital medium or any other comparable device or machine with a view to the reproduction and sale of copies.

The authorization given by the author or publisher or by the management body representing them for the inclusion of the work in a phonogram shall confer on the producer so authorized the right to reproduce or license the reproduction of the phonogram, subject to payment of remuneration.

112. The authorization granted to the phonogram producer shall not include the right of communication to the public of the work embodied in the phonogram, or any other right other than those expressly authorized.

113. The producer is obliged to give the following information on all originals or copies of the phonogram, including those intended for free distribution:

1. the titles of the works and names or pseudonyms of their authors, and also those of any arrangers or adapters. If the work is anonymous, that fact shall be mentioned;
2. the names of the main performers and of the orchestral or choral groups, including the names of their directors;
3. the name or abbreviated name of the collective management body that manages the economic rights in the work;

4. the notice of reserved rights in the phonogram, in the form of a circled P symbol followed by the year of first publication;

5. the business style of the phonogram producer and the mark or name by which he or it is identified;

6. a mention that all the rights of the author and performers and the phonogram producer are reserved, including the rights of copying, rental, exchanging or lending and public performance.

Information which for want of an appropriate place cannot be printed directly on the originals or copies embodying the reproduction shall be compulsorily printed on the sleeve, cover or inlay card.

114. The phonogram producer is obliged to keep such records as will enable the authors and performers to verify the numbers of reproductions sold, and to allow the latter to check the accuracy of the payment of their remuneration by inspecting vouchers and visiting offices, workshops, warehouses and repositories, either in person or through an authorized representative or through the corresponding collective management body.

115. The provisions of this Chapter shall be applicable by analogy to literary works that are used as text for musical works, or for recitation or reading and inclusion in phonograms with a view to reproduction and sale.

116. The author and also the performer and phonogram producer or collective management bodies may, either together or separately, institute proceedings before the civil or criminal courts in the event of unlawful reproduction, rental or other use of the phonogram.

Chapter VI *Broadcasting Contracts*

117. Under a broadcasting contract the author or his representative or successor in title authorizes a broadcasting organization to broadcast his work.

The provisions of this Chapter shall likewise apply to transmissions made by wire, cable, optic fiber or other comparable means.

118. Broadcasting organizations shall record in monthly schedules, in the order of transmission, the title of each of the works broadcast and the name of its author, those of the performers or that of the director of the group or orchestra, if any, and that of the audiovisual or phonogram producer, whichever is applicable.

They shall likewise send copies of the said schedules, signed and dated, to each of the management bodies that represent the owners of the rights involved.

119. In the programs broadcast it shall be compulsory to state the title of each work used, and also the names of the authors, the main performers involved and the director of the group or orchestra, if any.

Title X
Rights Related to Copyright and Other Intellectual Rights

Chapter I
General Provisions

120. The protection accorded to rights related to copyright and to other intellectual rights provided for under this Title shall in no way affect the protection of the copyright in literary or artistic works. Consequently, none of the provisions of this Title may be interpreted to the detriment of that protection. In the event of doubt or conflict, that which is most favorable to the author shall prevail.

Without prejudice to its specific limitations, all the exceptions and limits provided for in this Law with respect to copyright shall likewise be applicable to the rights recognized under this Title.

121. The owners of related rights and other intellectual rights may invoke the provisions concerning authors and their works insofar as they are consistent with the nature of their own rights.

Chapter II
Performers

122. Performers shall enjoy the moral right

1. to the recognition of their names in relation to their performances;
2. to oppose any distortion, mutilation or any other act in relation to their performances that is detrimental to their prestige or reputation.

123. Performers or their successors in title shall have the exclusive right to do, authorize or prohibit the following:

1. communication of their performances to the public, except where a performance used in that communication:
 - (a) constitutes a broadcast work in itself;
 - (b) has been fixed on a phonogram or videogram that has itself been made public;
2. fixation and reproduction of their performances by any means or process;
3. reproduction of an authorized fixation where it is done for purposes different from those for which the authorization was given.

Notwithstanding the provisions of this Article, performers may not object to the communication of their performances to the public where it is done from a fixation made with their prior consent and published for commercial purposes.

124. Performers likewise have the right to equitable remuneration for the communication to the public of the phonograms published for commercial purposes that contain their performances, which remuneration shall be shared equally with the phonogram producer, except where the said communication is included among the exceptions provided for in Article 38 of this Law.

125. Orchestras, vocal ensembles and other groups of performers shall designate a representative for the exercise of the rights recognized by this Law. In the absence of such designation, the representation shall be exercised by the directors of the said groups.

The representative shall have the right to entrust the relevant parts of his mandate to a collective management body.

126. The term of the rights recognized in this Chapter shall be 50 years, calculated from the year following that of the fixation of the performance.

In the case of orchestras and choral and other groups, the term shall be 50 years, counted from the first of January of the year following that of the fixation of the performance.

Chapter III *Phonogram Producers*

127. Phonogram producers shall have the exclusive right to do, authorize or prohibit the following:

1. direct or indirect reproduction of their phonograms;
2. distribution to the public, including exportation, rental, public lending and any other transfer of possession for a consideration of copies of their phonograms;
3. importation of copies where they have not been authorized for the territory that they are to enter;
4. digital communication by optic fiber, radio wave, satellite or any other system that has been or may yet be created where such communication is equivalent to an act of distribution, in that it enables the user to select the work and production by digital means;
5. inclusion of their phonograms in audiovisual works;
6. modification of their phonograms by technical means.

The rights recognized in subparagraphs 1, 2, 3 and 4 shall extend to the person, whether natural person or legal entity, who exploits the phonogram by virtue of an exclusive assignment or license.

128. The producers of phonograms shall likewise have the right to receive remuneration for the communication of the phonogram to the public by any means or process, except in the case of the lawful uses referred to in Article 38 of this Law, which remuneration shall be shared equally with the performers.

129. In the event of infringement of the rights recognized in this Chapter, the right to bring legal action shall belong to the original owner of the rights in the phonogram, to the person who proves the exclusive assignment or licensing to him of the rights in question or to the collective management body that represents them.

130. The protection granted to the phonogram producer shall be for 50 years, counted from the first of January of the year following that of the first publication of the phonogram.

On expiry of the term of protection, the phonogram shall pass into the public domain as provided in Title VI of this Law.

Chapter IV Broadcasting Organizations

131. Broadcasting organizations shall have the exclusive right to do, authorize or prohibit the following:

1. retransmission of their broadcasts by any known or as yet unknown means or process;
2. recording on any sound or audiovisual medium of their broadcasts, including that of any isolated image included in the broadcast or transmission;
3. reproduction of their broadcasts.

Broadcasting organizations shall likewise have the right to receive equitable remuneration for the communication to the public of their broadcasts or transmissions where it is done in places to which that public has access against payment of an admission charge or entrance fee.

132. For the purposes of the enjoyment and exercise of the rights provided for in this Chapter, equivalent protection shall be accorded, as appropriate, to broadcasting stations that transmit programs to the public by wire, cable, optic fiber or other comparable process.

133. The protection provided for in this Chapter shall be for 50 years, counted from the first of January of the year following that of the broadcast or transmission.

Chapter V Other Intellectual Rights

134. This Law recognizes a right of exploitation in recordings of moving images, with or without sound, that are not creations capable of being described as audiovisual works. In such cases the producer shall enjoy in relation to his audiovisual recordings the exclusive right to authorize or not to authorize their reproduction, distribution and communication to the public, including that of photographs taken in the course of the process of production of the audiovisual recordings.

The term of the rights recognized by this Article shall be 50 years, counted from the first of January of the year following that of the disclosure of the recording or that of its making if it has not been disclosed.

135. Any person who takes a photograph or makes another fixation by a comparable process that does not qualify as a work according to the definition contained in subparagraph 16 of Article 2 and the provisions of Title II of this Law shall have the exclusive right to authorize its reproduction, distribution and communication to the public on the same terms as are accorded to the authors of photographic works.

The term of this right shall be 50 years counted from the first of January of the year following that of the taking of the photograph.

Title XI Collective Management

136. The collective management bodies that have been or are to be formed for the defense of the economic rights provided for in this Law shall require State authorization to operate and shall be subject to State control as provided in this Law and where appropriate in the Regulations.

The said bodies shall be associations under civil law without gainful intent, shall have legal personality and their own assets, and may not exercise any activity that is of political or religious character or alien to their essential functions.

137. The National Directorate of Copyright, having due regard to the requirements provided for in this Chapter, shall decide on those bodies which, for the purposes of collective management, are in a position to represent the owners of rights in works, publications, productions, performances and broadcasts.

138. Collective management bodies shall be authorized, on the conditions set forth in their own statutes, to exercise the rights entrusted to them for administration and to assert them in all types of administrative and judicial proceedings, being invested to that end with the broadest powers of procedural representation, including the right to desist, to acquiesce and to settle. Users may only invoke against this authorization the authority of the owner of the exclusive rights granted or, as the case may be, the payment of the appropriate remuneration to the said owner.

Management bodies may enter into joint representation agreements with a view to acting together in their relations with users, or they may create a collecting agency with legal personality.

139. The National Directorate of Copyright shall rule on a collective management body's request for an operating license within the six months following the date on which it has all the requisite documentation in its possession.

On the expiry of that period without the National Directorate of Copyright having made its ruling, the request shall be regarded as refused by implication.

The operating license shall be granted if the following requirements are met:

1. the statutes meet the requirements prescribed in the relevant laws and in this Chapter;
2. the applicant body undertakes to accept the administration of the rights entrusted to it by its members, or those whom it represents, according to the genre or manner of exploitation for which it has been formed;
3. the body meets the necessary conditions for the efficient administration of the rights that it intends to manage, to which end the National Directorate of Copyright may demand whatever information it considers necessary.

140. The following in particular shall be taken into account when compliance with the conditions set forth in the foregoing Article is assessed:

1. the number of owners who have undertaken to entrust the management of their rights to the applicant body in the event of it being licensed;
2. the volume of the repertoire that it intends to manage, and the actual existence of that repertoire as reflected in the activities conducted by the most significant users;
3. the number of potential users and their importance;
4. the adequacy of the statutes and the resources available to it for the attainment of its aims;
5. the possible effectiveness of the management abroad of the repertoire to be administered, reflected in probable representation contracts with bodies of the same nature operating abroad.

141. Without prejudice to the provisions of other Laws, the statutes of a collective management body shall contain the following:

1. the name of the body, which may not be identical or confusingly similar to that of other bodies;
2. the objective or aims, specifying the rights administered, inasmuch as it is not allowed to conduct its activity outside the scope of the protection of the copyright, related rights or other intellectual rights recognized by this Law;
3. the types of owners of rights covered by its management, and where appropriate the various categories of such owners of rights for the purposes of their participation in the internal administration of the body;
4. the conditions governing the acquisition and loss of membership and the suspension of membership rights;
5. the rights and duties of members, and in particular the voting regime, which shall be secret for the election of the constituent bodies;

6. the governing and representative organs of the body and their relative competence, and also the provisions governing the convening, constitution and operation of those of collegiate character;

7. the starting capital and planned resources;

8. the principles to which the systems of apportionment of collected sums have to be subject;

9. the economic and financial control and management regime of the body;

10. the provisions that ensure the management of the repertoire without any interference from users, and which avoid any preferential use of the works, performances or productions under management;

11. the fate of the capital or residual net assets in the event of liquidation of the body, which in no event may be shared between the members.

142. Management bodies shall be obliged to

1. deposit with the National Directorate of Copyright authenticated copies of their constituent instruments and statutes and also their rules of membership and other rules that elaborate on the statutory principles; the rules of collection and distribution; the contracts concluded with users' associations and representation contracts with foreign bodies of the same nature; the annual balance sheets and audit reports, and the instruments or documents by which the members of the governing and supervisory bodies and their directors and agents are designated, all within the 30 days following their approval, conclusion, completion, election or appointment, as the case may be;

2. agree to administer the rights entrusted to them in accordance with their objectives and aims, and to conduct their management work in a manner consistent with their statutes and other applicable provisions;

3. accord to the persons represented, whether national or foreign, an appropriate right of participation in the decisions of the body regarding the assignment, collection, administration and distribution of royalties;

4. set fair and equitable tariffs to determine the remuneration payable for the use of their repertoires with respect to both national and foreign owners, whether resident or not resident in the Republic;

5. keep the tariffs so established at the disposal of the public;

6. engage in contractual dealings, in the absence of just grounds for doing otherwise, with any user who so requests and accepts the established tariff, for the grant of authorizations or non-exclusive assignments for the use of their repertoires;

7. distribute, at intervals not exceeding one year, the collected remuneration in accordance with their rules of distribution, subject only to the deduction of administrative and management costs and an additional discount not exceeding 10% (ten per cent) of the amount

available for distribution, which shall be set aside exclusively for social and welfare activities or services for the benefit of their members, all the foregoing in accordance with what is approved annually by the Ordinary Assembly, and the provisions of the reciprocal representation contracts concluded with organizations in the same category;

8. implement distribution systems that preclude any arbitrary action, on the principle of equitable apportionment among the owners of rights and in a manner that is effectively proportional to the use of the works, performances or productions, as the case may be;

9. ensure the provision of periodical information for the benefit of their members regarding the activities and transactions of the body that may have a bearing on the exercise of their rights, which information should include the general balance sheet of the body and the auditor's report, and also the text of any resolutions adopted by their governing bodies. Similar information should be sent to foreign counterparts with which they have representation contracts for the national territory;

10. submit the annual balance sheet and accounting documents for inspection and approval by the National Directorate of Copyright, whose report shall form part of the documentation available to members, without prejudice to the rights of inspection and reporting that belongs to the internal supervisory bodies in accordance with the statutes.

143. Management bodies may not hold funds that are not for distribution. If, on the expiry of one year following the collection concerned, it has not been possible to identify the beneficiary, the money collected shall be distributed among the national and foreign owners represented by the body in proportion to the other sums that they have received for the use of their works, performances or productions, as the case may be.

144. For the purposes of the authorization and control regime provided for in this Law, the National Directorate of Copyright may, in a reasoned decision, demand any kind of information from management bodies, order inspections or hearings and appoint a representative to attend, with the right to speak but not to vote, the meetings of deliberating, management or supervisory or any other bodies provided for in the relevant statutes.

145. Collective management bodies may be subjected to sanctions by the National Directorate of Copyright in the manner provided for in Articles 148 and 149 of this Law.

Title XII

State Participation in Administration

Chapter I

National Directorate of Copyright

146. The National Directorate of Copyright is created by this Law under the provisional authority of the Ministry of Industry and Commerce until such time as the National Institute of Intellectual Property is created.

The head of the Directorate shall be appointed by the Executive from a list of three attorneys submitted by the Ministry of Industry and Commerce, following a competition to determine relative merit, for a term of five years which may be renewed.

147. The National Directorate of Copyright shall have the following powers:

1. to direct, coordinate and supervise the implementation of the laws of the Republic and the international treaties and conventions to which it is party in the field of copyright and other rights recognized by this Law, and to ensure compliance with them;

2. to carry out the task of authorizing collective management bodies and exercise control over them with respect to their management activities, as provided in this Law;

3. to administer the funds arising from remuneration for the use of works and other productions forming part of the public domain or the national heritage, for which purpose it may delegate collection to the most representative collective management body;

4. to institute civil actions and file criminal complaints in the name and on behalf of the State regarding the enjoyment and exercise of the rights recognized by this Law, to which end it may act through a representative;

5. to act as arbitrator when requested to do so by the parties, or to convene them to a conciliation hearing, in such disputes as may arise concerning the enjoyment or exercise of the rights recognized by this Law;

6. to deal with requests for advice formulated by the courts in such disputes as may arise concerning subject matter connected with this Law;

7. to set the tariffs for the use of works and other productions that pass into the public domain and become State property;

8. to rule within a period of 90 days on oppositions filed against the registration of a work, performance or production, in accordance with the provisions of Chapter II of this Title. On expiry of the said period, the opposition shall be deemed rejected;

9. to carry out, either *ex officio* or at the request of a party, supervisory and inspection functions in relation to activities that might give rise to the assertion of the rights recognized by this Law;

10. to impose, either *ex officio* or at the request of a party, such sanctions as may be within its jurisdiction according to the law;

11. to develop information, teaching and training programs concerning copyright, related rights and other intellectual rights recognized by this Law, and to organize a Research and Study Center on the subject;

12. to keep the National Register of Copyright and Related Rights;

13. to keep the register of the constituent instruments of the collective management bodies governed by this Law, including subsequent amendments;

14. to enact its own rules of procedure;

15. any other functions that may be specified in laws and regulations thereunder.

148. The National Directorate of Copyright may impose sanctions on management bodies that infringe their own statutes or rules, or engage in activities detrimental to the interests of those whom they represent, without prejudice to such criminal sanctions or civil actions as may be appropriate.

149. The sanctions referred to in the foregoing Article may be

1. private, written warning;

2. public warning, publicized in such mass communication media as may be specified by the Directorate, at the expense of the infringer;

3. a fine, which shall be not less than 10 or more than 100 minimum wage units, according to the seriousness of the offense;

4. suspension of the operating license for up to a year;

5. cancellation of the operating license in cases of particular seriousness.

150. Infringements of this Law or of the Regulations under it shall be punished by the National Directorate of Copyright, after the infringer has been heard, with a fine corresponding to 10 to 100 minimum salary units.

In the event of a repeat offense, understood as being the repetition of an act of the same nature within a period of six months, the fine may be doubled.

151. An appeal from rulings handed down by the National Directorate of Copyright shall lie to the Minister of Industry and Commerce. The appeal shall be filed with the Director of the Directorate within a period of five working days. The Minister shall hand down a reasoned decision, against which a judicial-administrative appeal may be filed within 10 working days.

On the expiry of 15 working days without the Minister having handed down a ruling, the person concerned may have direct recourse to the judicial-administrative route.

Chapter II

Register of Copyright and Related Rights

152. The National Directorate of Copyright shall keep the National Register of Copyright and Related Rights, which is substituted for any other that may have existed under earlier legislation, and in which may be recorded intellectual works and other intellectual property protected by this Law, and also agreements or contracts that in any way confer, amend, transfer, encumber or extinguish economic rights, or by which alterations to the work are authorized.

Registration shall be merely declaratory and not constitutive of rights, in such a way that failure to register shall not prejudice the enjoyment or exercise of the rights recognized by this Law.

The request and its processing, the Register entry and the fees payable for registration shall take place in accordance with the provisions of the applicable regulations.

153. Notwithstanding the provisions of the foregoing Article, registration shall be recognized as *prima facie* evidence of the facts and acts recorded therein, in the absence of proof to the contrary. Any entry shall be subject to third-party rights.

Title XIII **Judicial Action and Procedure**

Chapter I *Administrative Protection*

154. The competent administrative authorities shall not authorize the making of public communications and shall abstain from issuing the relevant operating licenses if the person responsible for the communication, or the establishment concerned, fails to provide evidence of the written authorization of the owners of the rights in the works or productions to be communicated, or of the management body that administers the corresponding repertoire.

The absence of an operating license issued by the authorities shall constitute an administrative offense, which shall be punished with suspension of the communication to the public, either on the initiative of the authority itself or by the police at the request of the owners of the rights in the works or productions or the bodies that represent them.

Suspension shall take place without prejudice to the fine determined by the body with the power to impose it.

155. Where use is made in public of works, productions and other protected intellectual property that does not require the permission of the State authorities but, although included among the exploitation rights recognized by this Law, does not have the written consent of the owners concerned or of the management body representing them, the latter may apply to the competent administrative or police authority for suspension of the communication.

156. For the purposes of the suspension provided for in the foregoing Articles, no material or personal guarantee shall be required where the measure is sought by any of the management bodies authorized to operate as provided in this Law.

Title XIV
Judicial Action and Procedure

Chapter I
Civil Action and Procedure

157. Any dispute that arises in connection with the implementation of this Law shall, where no other procedure has been provided for, be investigated and settled in accordance with the provisions of Title XII, on summary proceedings, of the Civil Procedure Code.

The Civil Procedure Code [*Código Procesal Civil*] shall apply subsidiarily in all matters not provided for in this Chapter.

158. The owners of any of the rights recognized by this Law, or their representatives or the collective management bodies concerned, may, without prejudice to such other actions as may be available to them, seek the cessation of the unlawful activity of an infringer and demand compensation for the material and moral damage caused by the violation, or the surrender of the profits made by the infringer through the unlawful act, and the payment of procedural costs.

The compensation for material damage and prejudice shall include not only the amount that should have been charged for the grant of the authorization, but also a minimum surcharge corresponding to 100% (one hundred per cent) of the said amount, except where the aggrieved party proves the existence of a greater prejudice, due account being taken of the income generated by the infringer through the commission of the unlawful act.

159. Cessation of the unlawful activity may include the following:

1. suspension of the infringing activity;
2. prohibition of the infringer from resuming that activity;
3. withdrawal from the market and destruction of the unlawful copies;
4. the disablement of molds, plates, matrices, negatives and other material intended exclusively for the reproduction of unlawful copies and, where necessary, the destruction of such material;
5. the removal of the equipment used for the unauthorized communication to the public.

The court may likewise order the publication of the declaratory portion of the sentence, at the infringer's expense, in one or more periodicals.

160. The court, at the request of the National Directorate of Copyright, the owner of the rights concerned, his representative or the corresponding management body, shall order the immediate implementation of the necessary precautionary measures to prevent the commission of the infringement or the continuation or repetition of a violation already committed, including the following in particular:

1. seizure of the revenue derived from the unlawful activity or, where appropriate, the amounts payable in remuneration;
2. immediate suspension of the unlawful manufacturing, reproduction, distribution, communication or importation activity, as the case may be;
3. confiscation of the copies produced or used and of the material or equipment used for the infringing activity.

The precautionary measures provided for in this provision shall not preclude the adoption of others provided for in ordinary legislation.

161. The precautionary measures referred to in the foregoing Article shall be granted by the judicial authority provided that evidence is given of the necessity of the measure or proof filed that constitutes at least a presumption of the alleged violation of rights, without any counter-security having to be provided.

The necessity of the measure or presumption of the alleged violation of rights may also arise from the visual inspection that the court may order as a preparatory measure on the site of the infringement.

162. The precautionary measures mentioned in the foregoing Article shall be lifted by the judicial authority where

1. the person against whom the measure has been ordered provides security that is considered sufficient by the court to guarantee the results of the proceedings, and the appeal has no staying effect;
2. the party applying for the measures does not provide evidence of having started the procedure leading to a decision on the merits of the case within a period of 30 consecutive days from their having been ordered or implemented.

163. The preventive measures provided for in the foregoing Article shall be applied without prejudice to the obligation on the Directorate General of Customs to proceed with the seizure at the border of all copies constituting a violation of any of the rights provided for in this Law, and to suspend the free circulation of such material when attempts are made to import it into the territory of the Republic.

The seizure measures shall not apply to a copy having no commercial character that is carried in personal baggage.

164. The user of the works, performances, productions, broadcasts and other intellectual property recognized by this Law shall be considered guilty of negligent delay where he fails to make the payments specified in the tariffs laid down for the form of use concerned, or the compensatory remuneration, within the 10 consecutive days following a judicial or notarial summons to do so.

165. Owners of copyright may exercise all the rights relating to civil actions and procedures provided for in this Chapter against a person who possesses, uses, designs, manufactures, imports, exports or distributes, whether by sale, rental, lending or other means,

any device or computer program, or against a person who offers or renders a service whose purpose or effect is to permit or facilitate the avoidance of coding technology.

Chapter II
Criminal Sanctions

166. A penalty of imprisonment for a term of six months to one year or a fine of five to 50 minimum salary units shall be imposed on a person who, having been authorized to publish a work, does so fraudulently in one of the following ways:

1. without mentioning the name of the author, translator, adapter, compiler or arranger on the copy;
2. by printing the name with additions or deletions that adversely affect the author's reputation as such or that of the translator, adapter, compiler or arranger, as the case may be;
3. by publishing the work with abridgements, additions, deletions or any other changes made without the consent of the owner of the rights;
4. by publishing a number of works separately when authorization has been given for them to be published together, or publishes them together when only their separate publication has been authorized.

167. A penalty of imprisonment for a term of six months to three years or a fine of 100 to 200 minimum salary units shall be imposed in the following cases:

1. where a person improperly uses the title of a work in breach of Article 6 of this Law;
2. where a person makes an alteration to the work in violation of the provisions of Article 30 of this Law;
3. where a person communicates a work to the public in violation of the provisions of Article 27, an audiovisual recording provided for in Article 134 or a photographic image provided for in Article 135 of this Law;
4. where a person distributes copies of the work in breach of the rights provided for in Article 28, of phonograms in violation of Article 127, of an audiovisual recording as provided for in Article 134 or of a photographic image provided for in Article 135 of this Law;
5. where a person imports copies of the work not intended for the national territory in violation of the provisions of Article 29, or of phonograms, in violation of the provisions of Article 127 of this Law;
6. where a person, by any wire or wireless means, retransmits a radio broadcast or a transmission by wire, cable, optic fiber or other comparable process in breach of the provisions of Articles 25, 26, 131 or 132 of this Law;
7. where a person communicates to the public performances or phonograms that are intended solely for private performance;

8. where a person, being the assignee or licensee authorized by the owner of the rights concerned, reproduces or distributes a greater number of copies than that permitted by the contract, or communicates, reproduces or distributes the work, performance, production or broadcast after the expiry of the agreed period of authorization;

9. where a person makes known to any other person an unpublished or undisclosed work that he has received in confidence from the owner of the copyright, or anyone else in the latter's name, without the consent of the said owner;

10. where a person manufactures, imports, sells, rents or in any other way brings into circulation devices or products, or renders any service, the purpose or effect of which is to block, evade, eliminate, deactivate or circumvent in any way the technical devices that the owners have set in place to protect their rights.

168. A prison term of two to three years or a fine of 200 to 1,000 minimum salary units shall be imposed in the following cases:

1. where a person improperly attributes to himself the status of holder, whether original or derived, of any of the rights recognized by this Law, and by virtue of that improper attribution causes the competent authority to suspend the act of communication, reproduction, distribution or importation of the work, performance, production or broadcast, or any other of the intellectual property protected by this Law;

2. where a person makes false statements concerning the certification of income, the repertoire used, the identity of the authors, authorizations supposedly obtained or the number of copies, or commits any other adulteration of particulars that is liable to prejudice any of the owners of rights protected by this Law;

3. where a person, in breach of the provisions of Article 26, reproduces protected works in the original or a developed form, in their entirety or in part, save in the cases of lawful reproduction exhaustively specified in Chapter I of Title V, or, in the case of computer programs, save in the exceptional cases specified in Articles 70 and 71 of this Law;

4. where a person brings into the country, stocks, distributes by means of sale, rental or lending or in any other manner brings into circulation unlawful reproductions of protected works;

5. where a person reproduces or copies by any means the performance of a performer, a phonogram, a radio broadcast or transmission by wire, cable, optic fiber or other comparable process, or who brings into the country, stocks, distributes, exports, sells, rents or in any other way brings into circulation such unlawful reproduction;

6. where a person enters in the Register of Copyright and Related Rights a work, performance, production, broadcast or any other intellectual property protected by this Law that belongs to another person as if it were his own, or as if it were that of a person different from the true owner of the rights;

7. where a person manufactures, imports, sells, rents or in any other way brings into circulation devices or systems that are of prime importance in the unauthorized decrypting of

an encrypted program-carrying satellite signal or in facilitating unauthorized reception of a program broadcast or otherwise communicated to the public in coded form.

169. The criminal judge or court shall in his sentence order the destruction of the unlawful copies and where appropriate the disablement or destruction of the molds, plates, matrices, negatives and other material intended for the reproduction thereof.

As a subsidiary penalty, the judge or court may order the publication of the conclusions of the sentence in one or more periodicals at the expense of the infringer.

170. A prison term of two to three years or a fine of 100 to 200 minimum salary units shall be imposed on a person who possesses, uses, designs, manufactures, imports, exports or distributes either by sale or by rental, lending or other means, any device or computer program, or on a person who offers or renders a service, the objective of which is to permit or facilitate the evasion of coding technology.

Title XV

Chapter I Border Control

171. The owner of a right protected by this Law who has good reason to believe that preparations are being made for the importation or exportation of goods that infringe those rights may apply to the customs authority to have the said importation or exportation suspended at the time of clearance. The application and the order issued by the customs authority shall be subject to the conditions and guarantees applicable to precautionary measures.

172. Any person who applies for the institution of border measures shall provide the customs authorities with the necessary information and a sufficiently accurate description of the merchandise for it to be recognized.

173. When the applicable conditions have been met and guarantees provided, the customs authority shall either order or refuse suspension and inform the applicant accordingly. The decision of the customs authority shall not constitute a final judgment.

174. Where suspension has been carried out, the customs authorities shall immediately inform the importer or exporter of the merchandise and the party applying for the measure.

175. Where 10 working days elapse from the time at which suspension has been notified to the party applying for the measure without the latter having informed the customs authorities that the appropriate court action has been initiated, or that the court has ordered precautionary measures to prolong the suspension, the latter shall be lifted and the merchandise held shall be cleared.

176. Once the appropriate court action has been initiated, the party affected by it may apply to the court for reconsideration of the suspension order, and shall be heard to that end. The court may decide to amend, revoke or confirm the suspension.

177. For the purpose of justifying the prolongation of the suspension of the merchandise held by the customs authorities, or in support of a court action, the court shall allow the owner of the rights to inspect the merchandise. The importer or exporter shall have the same right. In allowing the inspection, the court shall make the necessary arrangements for confidential information of any kind to be protected, where applicable.

178. Where evidence of an infringement has been found, the complainant shall be informed of the name and address of the sender, importer or exporter and consignee of the merchandise, and of the amount of merchandise affected by the suspension order.

179. In the case of counterfeit goods that have been seized by the customs authorities, neither the re-exportation of the goods in the same condition nor the application of a different customs procedure to them shall be allowed.

Title XVI Scope of the Law

180. Works, artistic performances, phonographic productions, radio broadcasts or transmissions by wire, cable, optic fiber or other comparable process, audiovisual recordings, photographic fixations and other intellectual property of foreign origin shall enjoy national treatment in the Republic of Paraguay, regardless of the nationality or residence of the owner of the rights concerned or the place in which the material was published or disclosed.

Title XVII Transitional and Final Provisions

Chapter I Transitional Provisions

181. The rights in the works and other productions protected by virtue of earlier laws shall benefit from the longer terms of protection recognized by this Law.

Works and other productions that have passed into the public domain on expiry of the term provided for in the legislation repealed by this Law shall return to the private domain until such time as the term provided for in this Law expires, without prejudice to rights acquired by third parties prior to the entry into force thereof.

182. Works, performances, phonographic productions or radio broadcasts that were not protected under the law now repealed but are protected by this Law shall automatically benefit from the protection of the latter, without prejudice to rights acquired by third parties prior to the entry into force thereof, provided that new uses may not be initiated as from the said entry into force.

183. Societies or associations of owners of rights already operating as collective management bodies shall have a period of six months following the date of entry into force of this Law within which to adapt their constituent instruments, statutes and rules of operation to the provisions contained in Title X, to file the documentation referred to in Articles 141

and 142 and to seek the final operating license provided for in Articles 136, 137 and 139 of this Law.

If, on the expiry of the above period, the requirements specified have not been met, the entities in question shall discontinue their collective management activities and shall be recreated.

184. Until such time as the Regulations have been issued, the National Directorate of Copyright shall be empowered to make rulings on the requirements governing applications, and the processing of such applications for the recording and deposit with the National Registry of Copyright and Related Rights of works and other intellectual property protected by this Law.

Chapter II *Final Provisions*

185. The Executive shall issue Regulations under this Law within six months following the promulgation thereof.

186. Article 262.ix of Law No. 879/81—Code of Judicial Organization [*Ley No. 879/81—Código de Organización Judicial*], Part III, Title II, Chapter VI, Articles 867 to 879 inclusive of the Civil Code, Law No. 94/51 and Law No. 1174/85 are repealed. All provisions contrary to those of this Law that may be contained in general or specific legislation are likewise repealed.

187. The foregoing shall be communicated to the Executive.

* *Spanish title:* Ley No. 1328/1998 de Derecho de Autor y Derechos Conexos.
Entry into force: October 20, 1998.
Source: Communication from the Paraguayan authorities.
Note: Translation by the International Bureau of WIPO.