

THE LAW ON COPYRIGHT AND RELATED RIGHTS¹

I. SUBJECT-MATTER OF THE LAW

Article 1

This Law shall regulate the rights of the authors of literary, scientific and artistic works (hereinafter: the copyright), right of performers, right of the first publisher of a free work, rights of producers of phonograms, videograms, broadcasts and databases, as rights related to the copyright (hereinafter: the related right

- (2) Notwithstanding the provision of Paragraph 1 of this Article, the protection of a work of authorship shall also apply to the title of that work.

Article 4

- (1) Modifications of works of authorship shall be deemed works of authorship, subject to the requirements referred to in Article 2, Paragraph 1, of this Law.
- (2) A work of modification shall be a work in which the characteristic elements of the modified (original) work (musical remixes, arrangements, adaptations and other) are recognisable.
- (3) The protection of a copyright referred to in Paragraph 1 of this Article shall in no way limit the rights of the author of the original work.

Article 5

- (1) A collection of the works of authorship, which in view of the selection and arrangement of its integral parts, meets the requirements referred to in Article 2, Paragraph 1, of this Law (an encyclopaedia, collection of works, anthology, selected works, music collection, photograph collection, graphic map, exhibition and the like), shall also be deemed a work of authorship.
- (2) A collection of folk literary and artistic creations, as well as a collection of documents, court decisions and similar materials, which in view of their selection and arrangement, meets the requirements referred to in Article 2, Paragraph 1, of this Law, shall also be deemed a work of authorship.
- (3) A collection shall also be understood to mean a database, regardless of whether it is in a mechanically or otherwise legible form, which in view of the selection and arrangement of its integral parts, meets the requirements referred to in Article 2, Paragraph 1, of this Law.
- (4) The protection of a collection shall in no way restrict the rights of authors of the works constituting an integral part of the collection.

Article 6

- (1) The protection of copyright shall not apply to general ideas, principles and instructions included in

- (1) A work of authorship shall be deemed disclosed once it is communicated to the public for the first time by its author or a person duly authorised by him/her, in any way and anywhere in the world.
- (2)

- (5) Co-authors shall share the economic benefit from exploiting a co-authored work in proportion to the actual contribution made by each of them to the creation of such work, unless otherwise agreed on among them.

Article 11

- (1) The scriptwriter, director and chief cameraman shall be regarded as co-authors of a film.
- (2) If music makes up an essential component of a film (musical film) and it has been composed for that film, then also the composer shall be regarded as a co-author of that film.
- (3) In a cartoon and/or animated film, or in a film where drawings or animation are its essential elements, the main film-animator shall also be deemed to be the co-author of the film.

Article 12

- (1) If two or more authors combine their works for the sake of joint exploitation, each author shall reserve his/her right on his/her work.
- (2) The relations between the authors of combined works shall be determined by contract.

Article 13

- (1) The copyright on a work of authorship, the author of wh The copyright (2) its

4. CONTENT OF THE COPYRIGHT

4.1. Author's Moral Rights

4.1.1. Right of Authorship

Article 14

Any author shall have the exclusive right to be recognised as the author of his work.

4.1.2 Right to be Named

Article 15

- (1) Any author shall have the exclusive right to his/her name, pseudonym or mark being put on each copy of his work or be quoted at each public communication of that work, unless that is technically impossible or unfeasible in regard to the concrete form of the public communication of the work.
- (2) In certain cases, the author may explicitly wave the rights referred to in Paragraph 1 of this Article.

4.1.3. Right of Disclosure

Article 16

- (1) Any author shall have the exclusive right to disclose his/her work and set the way in which it is to be disclosed.
- (2) Pending the disclosure of a work, only its author shall have the exclusive right to give information in public about the contents of his/her work or to describe it.

4.1.4. Right of Protection of the Work's Integrity

Article 17

Any author shall have the exclusive right to protect the integrity of his/her work, particularly by the following actions:

- 1) Opposing the alterations to his/her work by unauthorised persons;
- 2) Opposing the communication of his/her work to the public in an altered or incomplete form, taking into account the concrete technical form of communication of the work and good business practices.
- 3) Giving permission for his work to be modified.

4.1.5. Right to Oppose Unbecoming Exploitation of the Work

Article 18

Any author shall have the exclusive right to oppose the exploitation of his/her work in a manner that is posing or could pose a threat to his honour or reputation.

4.2.6. The Right to Present

Article 26

- (1) The author shall have the exclusive right to give permission or prohibit presentation of his/her work.
- (2)

- (5) If the signals are coded, transmission via satellite shall be deemed to exist on condition that the signal decoding devices are accessible to the public through a broadcasting enterprise referred to in Paragraph 4 of this Article or through a third party duly authorised by the broadcasting enterprise.
- (6) In case of wire re-broadcasting the program of another broadcasting enterprise, the author's right from Paragraph 1 of this Article for the author's work contained in that program is realized only through the organization for collective realization of copyright and related rights.

4.2.9 The Right to Public Communication, including the Interactive Communication of the Work to the Public

Article 29

The author shall have the exclusive right to give permission or prohibit communication of his/ her work to the public by wire or wireless means including the making available in such a way that member of the public may individually access the work from a place and at a time he/she chooses.

4.2.10 The Right to Adapt, Arrange or Alter the Work in Some Other Manner

Article 30

The author shall have the exclusive right to prohibit or permit adaptation, arrangement or other alteration of his/her work.

4.2.11 The Right to Communicate a Broadcasted Work to the Public

Article 31

The author shall have the exclusive right to give permission or prohibit communication of his/her work that is being broadcasted, simultaneously to audience at public places, such as means of public transport, restaurants, waiting rooms and the like, with the means of such devices as radio receivers or television sets.

4.2.12 The Right to Communicate a Work from a Sound or Picture Carrier to the Public

Article 32

The author shall have the exclusive right to give permission or prohibit communication to the public of his/her work recorded on a sound carrier or picture carrier (a record, compact disc, audio cassette, video cassette, film tape, optic disc, slide) with the means of technical devices for the reproduction of sound and/or picture.

4.3. Author's Rights in Relation to the Owner of a Work of Authorship

4.3.1. Right of Access to a Copy of the Work

Article 33

- (1) Any author shall have the right to request an owner of a copy of his work to allow him/her access to that copy, if so is necessary for the reproduction of that work and if that is not a threat to justified interests of the owner or the person keeping the work in his/her possession.
- (2) The owner of a work or the person keeping it in his/her possession referred to in Paragraph 1 of this Article, shall not have to hand over a copy of the work to the author.

4.3.2. Droit de Suite

Article 34

- (1) If an owner of an original copy of a work of fine arts or an original copy of manuscript of a literary, scientific or musical work sells that copy, and/or manuscript to other person, the author of the work shall have the right to be notified of that fact and to claim remuneration amounting to 3% of the sale price.
- (2) The author may not waive or dispose of the right referred to in Paragraph 1 of this Article.
- (3) The right referred to in Paragraph 1 of this Article shall be inheritable.
- (4) The right referred to in Paragraph 1 of this Article shall not exist if related to works from the area of architecture and cinematography works, as well as if related to works whose original copy, and/or manuscript is a subject-matter of the

right to request the gallery keeper or organizer of a public auction to present the appropriate documentation to him. If determined that notification contains incorrect or incomplete data, the costs incurred in connection with presentation of documents shall be borne by the art gallery keeper or organiser of the public auction.

4.3.3. Right to Prohibit the Exhibition of the Original Copy of a Work of Fine Arts

Article 36

- (1) The owner of the original version of a painting, sculpture and photograph shall have the right to exhibit such item, rega

- (4) Persons referred to in Paragraph 2 of this Article need not pay remuneration for technical devices or sound, picture and text carriers, if they are intended to be exported.
- (5) Authors may exercise their right to the remuneration referred to in Paragraphs 1 and 3 of this Article only through an organisation for the collective exercise of copyright and related rights.

Article 39

- (1) The author shall have the right to remuneration from the person who lends copies of his/ her work, except computer programs, when such person is registered for such an activity.
- (2) Provision of paragraph 1 of this Article shall not apply when lending:
 - 1) library material in public libraries,
 - 2) buildings;
 - 3) works of applied arts and/or industrial design.
- (3) The right referred to in Paragraph 1 of this Article may be exercised only through an organisation for collective exercise of copyright and related rights

5. LIMITATIONS ON COPYRIGHT

5.1. Common Provision

Article 40

- (1) In the cases in which a work of authorship is exploited pursuant to the provisions of this Law dealing with limitations on copyright, the name of that work's author and the source from which the work was taken (publisher of the work, year and place of publication, periodical, newspaper, television or radio station where the work or a part of it was originally published)

- (1) In the scope of informing the public on current events with the means of the press, radio and television, it shall be permissible to make copies of a work, as well as to communicate the work in all other forms to the public without its author's permission and without paying remuneration, on the following conditions:
 - 1) That the work has been disclosed;
 - 2) That the work is appearing as an integral part of a current event about which the public is being informed;
 - 3) That the reproduction of copies of the work and other forms of communicating it to the public are done only to the extent corresponding to the purpose and mode of informing on the current event.
- (2) If the subject-matter of informing is a speech, oration or some other work of the same kind, the work involved may be reproduced and communicated to the public as a whole, without the author's permission and without paying remuneration

Article 43

Short excerpts from the disclosed works may be reproduced without the author's permission and without paying remuneration if used for non-commercial purposes in the field of education, examination or scientific research.

Article 44

Public libraries, educational institutions, museums and archives shall have the right to reproduce works without author's permission and without paying remuneration, exclusively for their archival and non-commercial purposes.

Article 45

- (1) Without prejudice to the provisions of Article 180, Paragraph 1, Items 4 and 5 of this Law, any natural person shall have the right to reproduce for personal non-commercial purposes a disclosed work without the author's permission and without paying remuneration.
- (2) The copies referred to in Paragraph 1 of this Article shall not be placed on the market or be used for any other form of public communication of that work.
- (3) The provisions of Paragraph 1 of this Article shall not apply to the following:
 - 1) Recording of the performance, presentation or showing the work;
 - 2)

Article 46

- (1) If a work of authorship is a computer program, the person who has legitimately obtained a copy of that computer program for his/her own usual use, may do the following without its author's permission and without paying any remuneration:
 - 1) Store the program in the computer memory and run the program;
 - 2) Eliminate errors in the program, as well as make any other necessary changes in it, in accordance with its purpose, unless otherwise provided by contract;
 - 3) Make a one back-up copy of the program on a lasting tangible carrier;
 - 4) Decompile the program exclusively for the purpose of obtaining the data necessary for making that program inter-operational with some other independently developed program or some hardware, on condition that such data were not accessible in some other way and that decompilation is limited only to those parts of the program which are necessary to achieve interoperability.
- (2) The data obtained in the way referred to in Paragraph 1, Item 4, of this Article may not be communicated to others or be used for other purposes, particularly for the purpose of developing or selling another computer program that would infringe on the copyright on the original one.
- (3) Act referred to in Paragraph 1, Sub-paragraph 4 of this Article may be directly conducted by a person who has legally obtained a copy of a computer program, or by some other qualified person acting under his/her instructions.

Article 47

Any person shall have the right of temporary reproduction of the work of authorship without the author's permission and without paying any remuneration, under the following conditions:

- 1) Reproduction is transient or incidental,
- 2) Reproduction is an integral and essential part of a technological process,
- 3) Purpose of reproduction is to enable a transmission of data in a network between two or more persons through an intermediary, or to enable a lawful use of a work of authorship, and
- 4) Reproduction does not have independent economic significance.

Article 48

Short excerpts of a work of authorship may be reproduced or be communicated to the public (right of quotation), without the author's permission and without paying remuneration, on the following conditions:

- 1) The work has been disclosed;

2)

(1) State bodies, educational institutions and public libraries shall have the right to reproduce works without the author's permission, with the obligation to pay the remuneration, for educational or scientific research purposes, by means of photocopying or using any other kind of photographic technique or similar technique with the similar results, on a paper or any other similar medium.

(2)

6.2. Transfer by Contract

6.2.1. Author's Moral Rights

Article 58

The moral rights of any author are not transferable by a contract.

6.2.2. Author's Pecuniary Rights

Article 59

The author or his/her successor in rights may licence to another person some or all of the pecuniary rights on his/her work.

Article 60

- (1) The licensing of pecuniary rights may be either exclusive or non-exclusive.
- (2) In the case of exclusive licensing of pecuniary rights, only the licensee shall be authorised to exploit the work of authorship in the way stipulated by contract, as well as to license such rights to somebody else, with the author's or his/her successor's special permission. The right a licensee licences to others shall be a non-exclusive right, unless otherwise provided by contract.
- (3) In the case of non-exclusive licensing of pecuniary rights, the licensee shall not be authorised neither to prohibit somebody else from exercising the copyright nor to a license his/her right to somebody else.
- (4) Where the contract does not state whether exclusive or non-exclusive licensing is implicated, concerned licensing of pecuniary rights shall be deemed to be non-exclusive.

Article 61

- (1) The licensing of pecuniary rights may be limited in terms of subject-matter, territory and time.
- (2) In the case of limitation relating to subject-matter, the licensee shall be authorised to perform one or several specified operations towards exploiting the work of authorship.
- (3) In the case of territorial limitation, the licensee shall be authorised to exploit the work of authorship within a specified territory, which is smaller than the one in which the right of authorship exists.
- (4) In the case of temporal limitation, the licensee shall be authorised to exploit the work of authorship within a specified period, which is shorter than the period of validity of the copyright with respect to such work.

Article 62

- (1) Any person who has acquired pecuniary rights by a licence from the author or his/her heir may cede such right wholly to another person, subject to the permission of the author or his/her heir.
- (2) The permission of the author or his/her heir shall not be needed in the event of transfer of the enterprise holding the pecuniary right.

Article 63

- (4) The licensing and/or cession of a right to exploit a work shall also mean the licence for making such changes in the work that are technically inevitable or usual for such exploitation of the work.

Article 67

A copyright contract shall include the following: names of contracting parties, title and/or identification of the work of authorship, rights that the subject-matter of licensing or cession, amount of remuneration if any, and the method and terms for its payment, as well as limitations related to content, territory and time, if any.

Article 68

- (1) If the profit made by exploiting a work of authorship is evidently disproportionate to the contractual remuneration, the author or his/her heir shall have the right to request the contract to be modified for the purpose of eliminating such disproportion.
- (2) If the author's remuneration is not agreed upon and if the profit made by the use of the work of an author exceeds the costs of its use, allowing therewith the payment of author's remuneration, the author or his/her heir shall have the right to request the contract to be modified by including such remuneration in the contract.
- (3) The right referred to in paragraphs 1 and 2 of this Article shall become unenforceable two years after the existence of such disproportion and /or profit made by the use of work of an author became known, but not later than six years from the end of the year in which the disproportion had arisen, and/or profit has been made.
- (4) The author and/or his/her heir may not waive in advance the right referred to in Paragraphs 1 and 2 of this Article.
- (5) In order to exercise rights referred to in Paragraphs 1 and 2 of this Article, the user of the work of authorship shall have a duty to present credible information on economic effects of the use of a work of authorship to the author, and/or his/her heir within period not exceeding a month as of the day of the request.

Article 69

- (1) The author or his/her heir may withhold the permission granted or revoke a licensed pecuniary right, if the acquirer of permission or licensee is not exercising the acquired right or if the right is exercised to a lesser extent than agreed, whereby jeopardizing the interests of the author or his/her heir.
- (2) The author or his heir may not withhold the permission granted or revoke a licensed pecuniary right if the acquirer is not exercising the right or is doing so inadequately for reasons for which the author or his/her heir is responsible.
- (3) The author or his/her heir may not exercise the right referred to in Paragraph 1 of this Article prior to the expiration of two years as of the date of the copyright contract, or the handover of the copy of the work to the acquirer of the right, if such handover had taken place after the conclusion of contract.

- (4) If a contribution (article, illustration and the like) intended to be disclosed and/or published in a newspaper or periodical is involved, the period referred to in Paragraph 3 shall be six months.
- (5) Prior to withholding the permission or revoking the right, the author or his/her heir shall notify the acquirer of the permission or right accordingly, providing a reasonable period of time within which the acquirer is to commence exercising the acquired right or doing so to the agreed extent.
- (6) The author or his/her heir may not waive in advance the right referred to in Paragraph 1 of this Article.

Article 70

- (1) The author may withhold the permission granted or revoke the licensed pecuniary right, if he/she is of the opinion that the exploitation of the work could be detrimental to his/her creative or personal reputation, for reasons arisen subsequent to the conclusion of the copyright contract, for which the acquirer of the right is not responsible.
- (2) The author shall indemnify the acquirer of the right for the real damage sustained.
- (3) The statement of withholding the permission or right referred to in Paragraph 1 of this Article shall be effective as of the date on which the author deposits a security for the indemnity referred to in Paragraph 2 of this Article.
- (4) At the author's request, the acquirer of the right shall notify the author of the amount of costs he/she has had in connection with preparations for the exploitation of the work until the date of the notice of withholding the permission or right, within three months from receipt of the statement of withholding the permission or right referred to in Paragraph 1 of this Article. Should the acquirer fail to perform his/her duty referred to in this paragraph, the statement of withholding the permission or right shall be effective as of the expiration of the term referred to in this Paragraph.
- (5) The author may not waive in advance his/her right referred to in Paragraph 1 of this Article.

6.2.3.1. Publishing Contract

Article 71

- (1) A publishing contract shall be a contract under which an author or any other copyright holder licences or cedes to a publisher the right to reproduce a work of authorship by printing and market thus reproduced copies, and where the publisher undertakes to reproduce that work and market, as well as to remunerate, if agreed upon, the author or any other copyright holder.

- (2) If the work of authorship referred to in Paragraph 1 of this Article has not been disclosed, the publisher shall be permitted under the publishing contract, to disclose such work.
- (3) The author or any other copyright holder may licence or cede to the publisher, under a publishing contract, the right to have the work translated, as well as the authority to reproduce and market the translated work.

Article 72

A publishing contract, the subject-matter of which is the publication of articles, drawings and other authors' contributions in newspapers and periodicals, need not be concluded in writing.

Article 73

- (1) The licensing of rights by the publishing contract shall be exclusive, unless otherwise agreed upon.
- (2) The provision of Paragraph 1 of this Article shall not apply to the publishing of articles, drawings and other authors' contributions in newspapers and periodicals.

Article 74

- (1) Besides the particulars referred to in Article 71 of this Law, a publishing contract shall also include the following:
 - 1) Term within which the author or other copyright holder shall hand over to the publisher a proper manuscript or other original of the work, so as to make it possible for the publisher to reproduce the work. That term shall be a year from the date of contract, unless otherwise agreed upon;
 - 2) Term within which the publisher shall start marketing copies of the work. Such term shall be a year from receipt of a proper manuscript or other original of the work, unless otherwise agreed upon;
 - 3) Number of editions the publisher is authorised to publish. The publisher shall have the right to publish only one edition of the work, unless otherwise agreed upon;
 - 4) Number of copies of one edition. If the number of copies has not been stipulated, it shall be 500, unless business practices and other circumstances evidently call for it to be different;
 - 5) Term within which the publisher has to start marketing copies of the next edition upon depletion of the previous one, if so has been stipulated. Such term shall be a year from the date on which the author had made a request to that effect, unless otherwise agreed upon.
 - 6) Appearance and design of copies of the work.
- (2) In the event of a breach of the contractual obligation referred to in Paragraph 1, Items 1, 2 and 5, of this Article, the other contracting party shall have the right to void the contract and to be indemnified because of the failure to execute the contract.

Article 75

The duties of the publisher shall be the following:

- 1) To take care of the sale of copies of the work and to notify the author or any other copyright holder periodically, at his/her request;
- 2) To make it possible for the author or any other copyright holder, at his/her request, to proof reads in an appropriate phase of reproduction;
- 3) To make it possible for the author to make appropriate changes in the preparation of each subsequent edition, on condition that this does not alter the work's character and that in view of the publishing contract as a whole, it does not make up a disproportionately immense obligation for the publisher.

Article 76

A manuscript or any other original of a work of authorship that has been handed over to the publisher shall not become the latter's property, with the exception of articles, drawings and other contributions in newspapers and periodicals or unless otherwise provided by contract.

Article 77

If the sole existing copy of a work of authorship perishes because of *force majeure* after it was handed over to the publisher for the purpose of being published, the author or any other copyright holder shall have the right to a fair compensation, which would have been due to him/her had the work been published.

Article 78

- (1) A publisher who has acquired the right to publish a work in the form of a book shall have priority in the acquisition of the right to reproduce the work and market the copies thereof in the form of an electronic recording, within three years from the date of the publishing contract.
- (2) The priority referred to in Paragraph 1 of this Article shall expire if the publisher does not accept in writing the offer made by the author or any other copyright holder within 30 days as of the date of the offer.

Article 79

If the publisher intends to sell the unsold copies of a work as scrap paper, before such sale, it shall offer the author or any other copyright holder, if accessible, to buy-up such copies at the price payable for scrap paper.

6.2.3.2. *Contract on Presentation and Contract on Performance*

Article 80

Based on a contract on presentation or a contract on performance, the author or any other copyright holder licences a beneficiary to present or to perform of a work of

authorship, and the beneficiary undertakes to present or perform such work within a specified period of time, in the way and under the conditions established by contract.

Article 81

If the author or any other copyright holder fails to hand over the work (manuscript, musical score and the like) to the beneficiary within the agreed term or if the beneficiary fails to present or perform it within the agreed term, the author or any other copyright holder or the beneficiary may opt to void the contract of presentation on the contract on performance and claim damages.

Article 82

The manuscript, musical score or any other original work being the subject-matter of a contract on presentation or a contract on performance shall remain author's property, unless otherwise provided by the contract.

Article 83

The beneficiary of a contract on presentati

6.2.3.4. *Contract on Film Production*

Article 86

Under a contract on film production, one or several persons undertake to creatively co-operate with a film producer in the production of a film and they assign their pecuniary rights on such work to the producer.

Article 87

The scriptwriter and composer of film music, as co-authors of the cinematographic work within the meaning of Article 11 of this Law, reserve the right to exploit their work independently, separately from the film, unless otherwise provided by the contract on film production.

Article 88

A film shall be deemed completed once an agreement is reached on its final version between the co-authors and film producer.

Article 89

If a film producer intends to exploit the film in a version that differs from that referred to in Article 88 of this Law, it shall obtain the consent of the majority of the film's co-authors, including the chief director.

Article 90

- (1) The provisions on remuneration, if any, in the contract on film production shall determine which amount of remuneration corresponds to which form and extent of exploitation of the film.
- (2) The contractual remuneration for shooting a film shall not include remuneration for other forms of exploitation of a film.
- (3) The film producer must exploit the completed film.
- (4) The film producer shall notify the film co-authors, as well as the authors of any contributions to the film, of the actual revenue, and make it possible for them to inspect the business records.

Article 91

- (1) The co-authors of a film shall have the right to void the contract, as well as the right to retain the contractual remuneration, if the film producer fails to complete the film within three years from the date of the film producte it possi(as t) to retain the 2.9

authors whose contributions are contained in the collective work are listed on each copy of the work.

(2) Moral rights of an author shall last even

- (1) The author's work of the foreign citizens shall be protected the Serbia and Montenegro provided that:
 - 1) the author is a person who whose copyright is recognized on the basis of an international agreement ratified by Serbia and Montenegro, or
 - 2) there is reciprocity between Serbia and Montenegro and the author's country.
- (2) Person invoking the reciprocity referred to in paragraph 1, item 2 of this Article shall bare the burden of proof of its existence.

Article 107

Droit de suite referred to in Article 34 of this Law shall recognized to a foreign citizen exclusively on the basis of reciprocity.

Article 108

Author's moral rights of any foreign citizen shall be recognized regardless of whether the requirements referred to in Article 106, paragraph 1, of this Law have been met.

III. RELATED RIGHTS

1. PERFORMERS' RIGHTS

1.1. Establishment of the Right

Article 109

A performer shall enjoy moral rights and pecuniary rights in accordance with this Law for his/her performance of a work of authorship.

1.2. Performance

Article 110

- (1) For the purposes of this Law, the performance shall be understood to mean an intellectual commodity that originates from personal engagement of a performer during audio, visual, or audio-visual communication of the author's work.
- (2) The work being performed need not be a protected work of authorship.

1.3 Performer

Article 111

- (1) For the purpose of this Law, a performer shall be understood to mean an individual who engages personally in the performance of works (a musician, actor, dancer, performer of pantomimes, singer, conductor).
- (2) Persons making only a technical contribution to the performance of works are not performers.

- (3) Provisions of this Law regulating relations of co-authors shall apply *mutatis mutandis* to relationships of two or more performers participating in the performance of one work.

1.4. Scope of the Right

1.4.1. Performer's Moral Rights

Article 112

- 6) Make the performance available to the public in an interactive manner by wire or wireless means, within the meaning of Article 29 of this Law.
- (2) The performer shall not have the exclusive right on broadcasting of his/her performance that is recorded and published on a sound carrier or of a performance that was recorded on a sound and picture carrier with the performer's permission.
- (3) Should a performer licence to a producer of phonograms and/or videograms his/her right referred to in Paragraph 1, Item 3, of this Article, he/she retains the right to an equitable remuneration for the rental of the recording of the performance.
- (4) If the contract between the performer and a film producer does not specify otherwise, it shall be deemed that under such contract the performer has licensed the producer the right to rent copies of the performance.

Article 115

- (1) A performer shall have the right to be remunerated for the following:
 - 1) Broadcasting of his/her performance from a published recording on a sound carrier;
 - 2) Public communication of his/her performance, which is broadcast from a recording published on a sound carrier;
 - 3) Public communication of his/her performance from a recording published on a sound carrier.
- (2) The remuneration referred to in Paragraph 1 of this Article shall be collected in the manner defined in Article 125, Paragraph 2 of this Law.

1.5. Transfer of the Right

Article 116

- (1) A performer may licence or cede his/her pecuniary rights referred to in Article 114 of this Law to another person under the contract on performance.
- (2) The person to whom the right referred to in Paragraph 1 of this Article has been licensed may not licence that right to a third party without the performer's consent, unless otherwise provided by the contract on performance.

Article 117

- (1) If more than five performers, other the conductor and soloists, participate in the performance of a work, it shall be deemed that the performance is given by an ensemble (a choir, orchestra, drama ensemble, ballet ensemble, opera ensemble).
- (2) In the exercise of the rights in accordance with this Law, an ensemble shall be represented by a person duly authorised

- (3) If besides the ensemble, also the director, soloists and players of chief roles, who are not members of that ensemble, participate in the performance of a work, the exercise of the rights in accordance with Law shall be also subject to the consent of these persons, unless otherwise agreed upon between them and the ensemble.

Article 118

- (1) The contract on performance shall include the following: names of contracting parties, type and the manner of exploiting the performance, name of author and name of the work of authorship performed and the amount, mode and terms of payment of the remuneration, if agreed upon.
- (2) Besides the particulars referred to in paragraph 1 of this Article, the contract on performance with respect to the broadcasting of a performance shall also include the number of broadcasts and the period in which the broadcasting shall take place, and a performance contract with respect to the recording and reproduction of copies of the recording of a performance, shall also include the number of copies that may be made.
- (3) Contract on performance shall be made in writing.

Article 119

The person to whom the right referred to in Article 114 of this Law has been licensed shall forward to the performer complete data on the exploitation of the performance.

1.6. Rights of the Performer Arising From Employment

Article 120

Provisions of this Law regulating the relations between authors and their employers shall apply *mutatis mutandis* to the rights of the performers who created their performance on the basis of the employment contract.

2. THE RIGHT OF THE PHONOGRAM PRODUCER

2.1. Establishment of the Right

Article 121

A producer of a videogram, with respect to its videogram, shall have the pecuniary rights in accordance with this Law.

3.2. Videogram

Article 127

- (1) Videogram shall be understood to mean the recording of a sequence of pictures with or without the accompanying sound on

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Article 132

A broadcast shall be understood to mean an electrical, electromagnetic or some other signal converted into audio, visual or audio-visual content that is broadcast for the purpose of being communicated to the public.

4.3. Producer of Broadcast

Article 133

The producer of a broadcast shall be understood to mean any natural or legal person, which has organized and paid for the production of the broadcast.

4.4. Scope of the Right

Article 134

The producer of a broadcast shall have the exclusive right to prohibit or permit any other person to:

- 1) Re-broadcast his broadcast;
- 2) Record his broadcast on a sound or picture or a sound and picture carrier;

The producer of a database shall be understood to mean any natural or legal person that has created a database, by qualitative and/or quantitative substantial investment in obtaining, verification or presentation of its contents

5.4. Scope of the Right

Article 138

- (1) The producer of a database shall have the exclusive right to prohibit or permit any person to:
 - 1) Occasionally or permanently reproduce a database as a whole or its essential parts by any means, for any purpose and in any form;
 - 2) Market or rent copies of the database or its substantial parts;
 - 3) Connect to a computer network and any other form of public communication of the database as a whole or its essential parts.
- (2) The right referred to in Paragraph 1, Item 1, of this Article shall also apply to non-essential parts of the database if they are subject to repeated or systematic use which contravenes with a normal exploitation of such database or which unreasonably injures legitimate interests of a database producer.
- (3) The right referred to in Paragraph 1 of this Article shall exist irrespective of the eligibility of the concrete database or its contents for copyright or any other protection.

6. THE RIGHT OF THE FIRST PUBLISHER OF A FREE WORK

Article 139

Any person who, after the expiry of protection of the author's pecuniary rights, for the
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The provisions of this Law regulating limitations and exhaustion of copyright, as well as the provision on broadcasting in Article 28 of this Law shall apply *mutatis mutandis* to related rights.

7.3. Transfer of Related Rights

Article 142

Related rights shall be transferable, with the exception of the performers' personal rights.

7.4. Right to Special Remuneration

Article 143

All holders of related rights, other than producers of databases, shall have the right to special remuneration in accordance with Article 38 of this Law, under the conditions identical to those applicable to authors.

7.5. Duration of Rights

Article 144

- (1) Pecuniary rights of the performer shall last for 50 years from the date of the performance. If a performance was recorded and lawfully published or communicated to the public within this period, the term of protection shall expire 50 years from the date of the first publication or communication to the public, whichever date is earlier. A performer's moral rights shall last even after the expiration of his/her pecuniary rights.
- (2) The rights of the phonogram producer or a videogram producer shall last for 50 years after the production of the phonogram or videogram. If the phonogram or videogram has been lawfully published or communicated to the public within this period, the term of protection shall expire 50 years from the date of the first publication or communication to the public, whichever date is earlier.
- (3) The rights of the broadcast producer shall last for 50 years from the date of the protected broadcast's first broadcasting.
- (4) The rights of the database producer shall last for 15 years from the date of the database's creation. If a database was made available to the public in whatever manner before expiry of that term, the term of protection shall expire 15 years from the date when database was first made available to the public.
- (5) If substantial changes occur in the selection or arrangement of the contents of a database, the term referred to in Paragraph 4 of this Article shall be extended for another 15 years. Any additions, deletions or improvements of a database as a whole or the part thereof, resulting in a new version of such database, shall be deemed to be substantial changes in the selection or arrangement of the contents of a database.

- (6) The rights of the first publisher of a free work shall last for 25 years from the date of the first publication or first communication to the public in any other manner.
- (7) The expressions “communication to the public” and “publication” referred to in Paragraphs 1 and 2 of this Article shall have the same meaning as in the Article 7, Paragraph 1 and 2, of this Law.
- (8) The provisions of Article 104 of this Law shall apply to calculation of the periods of time referred to in this Article.

7.6. Persons to which the Law Applies

Article 145

- (1) Any performer, phonogram producer, videogram producer, broadcast producer, database producer and a publisher of a free work being a foreign person shall have the rights prescribed by this Law in accordance with the international agreements ratified by Serbia and Montenegro, or in accordance with the reciprocity principle between Serbia and Montenegro and the country he/she belongs to.
- (2) Exceptionally to the provision of Paragraph 1 of this Article, a database producer being a legal person without corporate domicile in Serbia and Montenegro shall be granted the rights under this Law only if its business operations are linked directly and on an ongoing basis with the economy of Serbia and Montenegro.
- (3) Where the existence of reciprocity is doubtful, the explanation shall be given by the administrative authority

The organisation may be founded by authors a

- (3) The organisation shall have the right to apply for the renewal of its operating licence for an unlimited number of times.

Article 157

- (1) The organisation shall acquire the status of a legal person once it is entered in the register of companies or other forms of organization, in accordance with the law regulating the conduct of business activities.
- (2) The application the founders of the organisation for entry in the register referred to in paragraph 1 of this Article shall be accompanied with the decision of the competent authority granting its operating licence.
- (3) Any organisation that does not renew its operating licence before the expiration of the term referred to in Article 156, paragraph 2, of this Law, or the one whose operating licence is revoked pursuant to Article 158 of this Law, shall be deleted from the register referred to in paragraph 1 of this Article.

Article 158

- (1) The competent authority shall revoke the organisation's operating licence where it establishes that:
 - 1) The operating licence was issued on the basis of false data;
 - 2) The organisation has failed to apply the measures set by the competent authority towards eliminating the deficiencies in its operation, within the term set by the competent authority;
 - 3) The organization has not fulfilled its obligation referred to in Article 171, Paragraph 3 of this Law.
- (2) The decision on revoking the operating licence referred to in Paragraph 1 of this Article shall be final.
- (3) The competent authority shall notify the authority competent for maintaining the register in which the organisa/TT8 e.165 0 -1.15 TrT8 1 Tant ent author

organisation from the register, contracts on co-operation with foreign organisations and the data on membership in international organisations.

- (3) The organisation shall notify the competent authority of any change of data entered in the register of organisations for the collective exercise of copyrights and related rights, within fifteen days from the occurrence of such change.
- (4) The changes referred to in Paragraph 3 of this Article shall be entered in the register of organisations for the collective exercise of copyrights and related rights.

2.3. Bodies of the Organization

Article 160

- (1) The organisation shall be governed by its founders in accordance with the organisation's statute.
- (2) The organisation's bodies shall be: General Assembly, Board of Directors, Managing Director and the Supervisory Board.

2.4. General Acts of the Organization

Article 161

- (1) The organisation's general acts shall be: the Statute, Schedule of fees, Distribution plan and other general acts dealing with certain matters concerning the business activity of the organisation.
- (2) The Statute shall be the organisation's basic act and other general acts shall be compliant with it.
- (3) The individual acts adopted by the organisation's bodies and authorised officers of the organisation shall be compliant with the organisation's general act.

Article 162

- (1) The Statute of the organisation shall include provisions on the kind and subject-matter of the rights collectively exercised through the organisation.
- (2) The Statute of the organisation shall be adopted by the organisation's General Assembly.

Article 163

- (1) The Schedule of Fees shall include the rates at which the organisation charges the users for the specific forms of exploiting the specific subject-matters of protection.
- (2) The Schedule of Fees shall be set as a percentage of the income earned by the user by exploiting the subject-matters of protection. This percentage has to be proportionate to the significance of exploitation of the protected subject-matter from the organisation's repertoire for the user's income.

- (3) If the user is not earning any income or if the exploitation of the subject-matter of protection is not directly associated with the income earned by the user, the fees shall be set as a percentage of the cost of exploiting the subject-matter of protection.
- (4) If the user's income and/or expenses can not accurately be determined, or the determination of the income, and/or expenses or proportionality of the fee to the income is unreasonably difficult, the fees may be set as a lump sum. The lump sum shall be determined taking into account the amount of remuneration set for another user under the provisions of Paragraphs 2 and 3 of this Article, where such user is comparable to the concerned user with respect to subject-matter of the use, economic power and other relevant criteria.
- (5) If a subject-matter of protection is exploited together with another subject-matter of protection and/or if there are several holders of rights for one exploitation, the fees shall be set proportionately.
- (6) The schedule of fees shall be adopted by the organisation's Board of Directors.
- (7) The tariff shall be published in the Official Gazette of Serbia and Montenegro.

Article 164

- (1) The Distribution Plan shall include th

- (1) In the conduct of the organisation's business, it shall be assumed that organization is authorised to act on behalf of all holders of the copyright and/or related rights with respect to any rights and any kind of subject-matters of protection that are within the scope of its business activity.
- (2) Any holder of a copyright and/or related right that has not concluded the contract referred to in Article 150 of this Law with the organisation, may notify the organisation of his/her intention to exercise the rights individually.
- (3) The organisation shall notify the users of the names of the holders of copyright and/or related rights referred to in Paragraph 2 of this Article.
- (4) With respect to the distribution of remuneration, the organisation shall treat the holders of copyright and/or related rights who have not notified the organisation of their intention to exercise their rights individually equally to the holders of copyright and related rights who have concluded the contract referred to in Article 150 of this Law with the organisation.

Article 168

- (1) The organisation shall conclude a contract of non-exclusive licensing of the right of exploiting the subject-matter of protection from its repertoire with each interested user and/or association of users, under equal and appropriate terms.
- (2) The contract referred to in Paragraph 1 of this Article shall include the following in particular: kind of the subject-matter of protection, mode of exploiting the subject-matter of protection, amount of remuneration and manner of its payment to the organisation and a period in which the contract is to be effective.

Article 169

The organisation shall distribute to the holders of copyright and/or related rights who have concluded with it the contract referred to in Article 150 of this Law and the holders of copyright and related rights referred to in Article 167, Paragraph 4, of this Law, the income from the remuneration collected from users, except for funds designated for the purposes referred to in Article 165 of this Law, in accordance with the Distribution Plan.

Article 170

- (1) The distribution referred to in Article 169 of this Law shall be based on accurate data.
- (2) If accurate data are not available and/or if the collection of accurate data would create an unacceptable organisational and financial burden for the organisation, the distribution plan may be based on estimates stemming from relevant and verifiable facts.

Article 171

- (1) The organisation shall provide for the collective exercise of copyrights and related rights of domestic holders abroad, as well as those of foreign holders in the state of Serbia or the state of Montenegro, on the basis of contracts concluded with appropriate foreign organisations.

- (2) The provisions of Paragraph 1 of this Article shall not apply to organisations for collective exercise of the rights for which reciprocal cooperation with the foreign organizations is not customary in the international practice.
- (3) The organisation shall fulfil the duty referred to in Paragraph 1 of this Article within five years from the date of acquisition of the first operating license.

2.7. Duties of the Users

Article 172

- (1) The users must acquire a license for the use of the subject-matter of the protection.
- (2) The users shall notify the organisation of the name of the subject-matter of protection, frequency and extent of its exploitation, as well as of other circumstances of relevance for the calculation of the remuneration payable in accordance with the Schedule of Fees.
- (3) The data referred to in Paragraph 1 of this Article shall be forwarded to the organisation within 15 days from the commencing date of exploitation of the subject of protection.
- (4) The users who are authorised under this Law to exploit subject-matter of protection without permission of the right holders, and against payment of remuneration, shall forward the data referred to in Paragraph 1 of this Article monthly.
- (5) An owner, holder and lessee of the premises in which the subject-matter of the protection was used, as well as the organizer of the activity by which the subject-matter was used, shall be jointly and severally liable for the user's obligations.
- (6) In case of a dispute between the organization and the user regarding the amount of remuneration, the user shall pay the amount determined by the Schedule of Fees to the organization, in the special fond, which is not to be allocated to the holders of the right, until the dispute is resolved by the final and enforceable decision .

2.8. Supervision over the Organization's Activity

Article 173

- (1) The competent authority shall supervise the organisation's activities.
- (2) For purposes of the supervision, the organisation shall submit the following to the competent authority:
 - 1) Annual business report and annual account;
 - 2) Amendments to the Statute, Schedule of Fees and amendments thereto, remuneration Distribution Plan and amendments thereto, contracts with

appropriate foreign organisations and court and administrative decisions where the organisation was party.

- (3) The organisation shall submit the documents and data referred to in Paragraph 1 of this Article within 15 days from their adoption and/or the date of change.

Article 174

- (1) The competent authority shall have the right to have its representatives present at the sessions of the organisation's bodies, as well as the right to inspect business records.
- (2) The competent authority shall point at irregularities in the organisation's activity, issue an order for the application of measures for the elimination of irregularities and set a term for their elimination.

V. RECORDS OF WORKS OF AUTHORSHIP AND SUBJECT-MATTERS OF RELATED RIGHTS

Article 175

- (1) For the purpose of securing the evidence, the holders of copyright and related rights may deposit copies of their works and subject-matters of related rights with the competent authority.
- (2) The copies of works and subject-matters of related rights to be deposited shall be in the form of a written document (manuscript, printed text, musical score), sound, visual or audio-visual recording or in digital form.
- (3) The competent authority shall keep a record of each kind of works of authorship and subject-matters of related rights.
- (4) When a work of authorship or subject-matter of related rights is being deposited and entered into records, the holder of copyright or related right concerned shall give true and complete data about his/her work of authorship or subject-matter of related right.
- (5) The data entered in the records shall be deemed true until proven to the contrary.
- (6) Any *bona fide* person, who has infringed somebody's reliance on the accuracy of the data entered

- (8) The contents of the records referred to in Paragraph 3 of this Article and the requirements to be met by the copies of works and subject-matters of related rights that are being deposited shall be determined by a specific regulation.

Article 176

The prescribed fee shall be paid for entering the copies of authorship in the records and depositing them.

VI. PROTECTION OF COPYRIGHT AND RELATED RIGHTS

Article 177

- (1) Any holder of copyright, performer, producer of a phonogram, producer of a videogram, producer of a broadcast, producer of a database and acquirer of exclusive license for copyright and related rights, may file a suit and request particularly the following:

If the infringement of a pecuniary right was done intentionally or by gross negligence, the plaintiff may, instead of indemnity for material damage, claim up to threefold amount of usual remuneration that would have been paid had the concrete protected subject-matter been used lawfully.

Article 179

- (1) Notwithstanding the provision in Article 9, Paragraph 2 of this Law, if the plaintiff's name is stated on the copy or other form of materialization of the author's work and/or subject-matter of related right, he will be considered to be the holder of copyright to that work and/or related right to that subject-matter of protection, until proven otherwise.
- (2) Proceedings for the infringement on copyright and related rights shall be urgent.

Article 180

- (1) Any of the following shall be deemed to be an infringement of the right:
 - 1) The exploitation of any of the subject-matters of protection involving the use of copies of such subject-matter of protection that were made without authorisation, and/or are based on the unauthorized broadcasting;
 - 2) Holding copies of the work of authorship or subject-matter of related right for commercial purposes, if the holder knows or has reason to know that such copies are produced without authorization;
 - 3) Production, import, marketing, sale, rental, advertising for the purposes of sale or rental or holding for commercial purposes of the devices primarily constructed, produced or adjusted for enabling or facilitating the circumvention of any technological measure, which do not have any other significant purpose than the said one;
 - 4) Circumvention of any technological measure, or supply or advertising of services enabling or facilitating such circumvention;
 - 5) Removal or alteration of the electronic information regarding rights, or marketing, import, broadcasting or public communication in any other manner of the work of authorship or the subject-matter of the related rights, from which the electronic information on rights is removed or altered without

information on the conditions of the use of a work or subject-matter of related right, or any number or code representing such information.

Article 181

- (1) Copyright and performers' rights may not be the subject of the judicial enforcement
- (2) Only specific pecuniary claims stemming from the rights referred to in Paragraph 1 of this Article may be the subject of the judicial enforcement.
- (3) Unfinished works and unpublished manuscripts may not be the subject the judicial enforcement.

Article 182

At the request of a holder of the right who makes it credible that his/her copyright or related right has been infringed on or will be infringed on, the court may order a provisional measure involving the seizure or removal from the market of the object with which the infringement is made and/or a provisional measure involving a prohibition against the acts under way, which could be conducive to infringement.

Article 183

- (1) At the request of the holder of the right who makes it credible that his/her copyright or related right has been infringed, or that such infringement is
- (2) v i n g a

Article 185

- (1) The court may order the defendant to furnish information about third parties related to the infringement or hand over documents relating to the infringement.
- (2) The person that fails to perform its obligation referred to in Paragraph 1 of this Article shall be liable for the damage thus incurred.

Article 186

In the event of a dispute for the determination of rights of a publisher and/or a person who published a work whose author is unknown (Article 13), the court shall provide for the author's anonymity to be preserved.

VII. PENAL PROVISIONS

Article 187

- (1) Any company, enterprise or company or any other legal person that:
 - 1) discloses, records, reproduces or communicates to the public in any manner wholly or partly, a work of authorship, performance, phonogram, videogram, broadcast or database without permission, or markets or rents or holds in possession in commercial purposes copies of works of authorship, performances of phonograms, videograms, broadcasts or databases that have been reproduced or placed on the market without authorization (Articles 16, 20, 21, 22, 23, 25, 26, 27, 28, 114, 124, 129, 134 and 138);
 - 2) markets or rents copies of works referred to in paragraph 1 of this Article, for the purpose of deriving pecuniary benefit for itself or somebody else, knowing that they were disclosed, recorded or reproduced without authorisation (Articles 16, 20, 21, 23, 25, 26, 27, 28, , 114, 124, 129, 134 and 138);
 - 3) produces, imports, markets, sells, rents, advertises for the purposes of sale or renting, or holds for commercial purposes devices primarily constructed, produced or adjusted for enabling or facilitating the circumvention of any technological measure, which do not have any other significant purpose than the said one (Article 180, paragraph. 1 item 3);
 - 4) circumvents any technological measure, or supplies or advertises the services which enable or facilitate such circumvention (Article 180, paragraph 1, item 4);
 - 5) removes or alters electronic information on rights, or markets, imports, broadcasts or in any other manner communicates the work of authorship or the subject-matter of related right to the public, from which the electronic information on rights has illegally been removed or altered, while knowing or having reason to know that by doing so it instigates, enables, facilitates or conceals the infringement of a copyright or related right (Article 180, Paragraph 1, Item 5);
 - 6) being the owner of a building, makes an alteration on the building which is materialized copy of the work of architecture without prior offering the author to do the alterations of the work (Article 37);
 - 7) conducts collective exercise of copyright and/or related rights without permission of the competent authority (Article 156, paragraph 2).

shall be fined for economic offence.

- (2) The responsible person in the company, enterprise or other legal person concerned shall also be fined for economic offence for any of the acts referred to in Paragraph 1 of this Article.

Article 188

Any natural person shall be fined for the misdemeanour for any acts referred to in Article 187, Paragraph 1, Item 3 (Article 37).

Article 189

- (1) Business company, enterprise or other legal person that:
 - 1) without stating the author's or performer's name or under different name, wholly or partially discloses, performs, presents, communicates the performance or presentation or broadcasts work of authorship or performance of another person (Article 15 and 112, paragraph 1, item 2);
 - 2) without permission of the author modifies or adapts work of authorship or recorded performance of another person (Article 17, 30 and 112, paragraph 1. item 3.):
 - 3) as a gallery keeper or an organizer of a public auction of original works of fine art, and/or original manuscripts does not inform the author of the work of name and address of the seller of its work, name and address of the new buyer and price which was paid or does not pay the author the amount of 3% of the sale price of the work within the period of 30 days as of the day of the sale of the original works and/or manuscripts (Article 34, paragraph 1 and 35, paragraphs 1 and 2).
 - 4) gives incorrect data or deceives true data about its work of authorship or subject-matter of related rights when entering into the records and depositing work of authorship or subject-matter

The fines referred to in Articles 187, 188 and 189 of this Law shall be established by the regulation of the member states.

VIII. TRANSITIONAL AND FINAL PROVISIONS

Article 191

A performer whose right has expired prior to the effective date of this Law may not request the establishment of the right under this Law.

Article 192

Existing organizations for the collective exercise of copyright and related rights shall organize themselves in conformity with this Law and adjust their general acts to the provisions of this Law within a year from the day this Law comes into force.

Article 193

- (1) All contracts concluded prior to the day this Law comes into force shall be performed in conformity with the law that was in force at the time such contracts were made.
- (2) Provisions of Articles 68 and 69 of this Law shall apply to the contracts referred to in Paragraph 1 of this Article.
- (3) Provisions of Article 28, paragraph 6 and Article 141 in relation to Article 28, paragraph 6 shall become effective after 2 years expire from the date this Law comes into force.

Article 194

- (1) Provisions of this Law related to protection of copyright, performer's right, phonogram producer's right and broadcast producer's right, except for provisions of Articles 14 to 18, shall apply to both natural and legal persons as defined under the Article 1, Paragraph 3 of the TRIPs Agreement after ratification of this Agreement.
- (2) Provisions of Articles 34 and 35 of this Law shall apply to nationals or residents

Articles 100, paragraph 1, 101, 102 and 103 of this Law shall not apply to works of authorship whose term of protection has lapsed on the day this Law enters into force of.

Article 196

On the day when this Law comes into force, the provisions of the Law on Copyright and Related Rights (*SFRY OG* Nos. 19/78, 24/86 and 21/90) shall cease to be effective.

Article 197

This Law shall come into force on the eight day from its publication in the “Official Gazette of Serbia and Montenegro”.