

# **LAW ON COPYRIGHT AND RELATED RIGHTS**

## **CHAPTER ONE GENERAL PROVISIONS**

### **PART 1. INTRODUCTORY PROVISIONS**

#### **Scope of the Law Article 1**

This Law shall regulate the right of authors in their copyright works (hereinafter: copyright), the rights of performers, phonogram producers, video gram producers (film producers), broadcasting organizations, publishers and database makers in their subject-matter of related rights (hereinafter: related rights), the administration and the protection of copyright and related rights and the application of the Law.

#### **Public, disclosure and publishing Article 2**

- (1) Public, within the meaning of this Law, shall mean the availability of a copyright work, or of a subject-matter of a related right, under equal conditions, to a larger number of persons outside of the closer circle of family ties or personal acquaintances.
- (2) A copyright work or a subject-matter of a related right shall be considered to be disclosed if it has been made available to the public, with the consent of the right holder, unless otherwise provided by this Law.
- (3) A copyright work or a subject-matter of a related right shall be considered to be published if, with the consent of the right holder, it has been made in a sufficient number of copies offered to the public and distributed.

#### **Equitable remuneration Article 3**

The author or the holder of a related right shall be entitled to an equitable remuneration for every type of use of the copyright work or of the subject-matter of a related right, unless otherwise provided by this Law.

**Relationship between copyright and related rights**  
**Article 4**

The management and protection of related rights, according to this Law, shall not prejudice nor in any way affect the management and protection of copyright.

**Exceptions and limitations**

**Article 5**

This Law may provide for special cases and conditions for exceptions and limitations to the use of copyright and related rights.

**PART 2.**

**RELATIONSHIP BETWEEN COPYRIGHT AND RIGHT OF OWNERSHIP**

**General provision**

**Article 6**

Copyright is an autonomous right and it is independent from the ownership right or other rights in the objects in which the copyright work is incorporated, unless otherwise provided by law.

**Separateness of transfer**

**Article 7**

(1) The transfer of economic rights of the author of the work shall not affect the ownership right in the object where the copyright work is incorporated, unless otherwise provided by law or by contract.

(2) The transfer of the ownership right under paragraph (1) of this Article shall not affect the transfer of the economic rights of the author of the work, unless otherwise provided by law or by contract.

**Joint property of spouses**

**Article 8**

Joint property of spouses shall not include the copyright. Joint property of spouses shall include only the economic benefits deriving from the use of copyright.

**Judicial execution**

**Article 9**

(1) Judicial execution against copyright shall not be permitted.

(2) Judicial execution shall be possible only against the economic benefit arising from copyright.

(3) Judicial execution against an uncompleted copyright work and against an undisclosed original of a copyright work shall not be permitted.

### **Limitation on the right of adaptation**

#### **Article 10**

(1) If the owner of an architectural structure intends to adapt that work, he shall be obliged to offer the adaptation primarily to the author of the original work, provided he is alive and available in a usual manner.

(2) If the author unjustifiably refuses the offer laid down in paragraph (1) of this Article, the owner of the work shall acquire the right of adaptation, but he shall be obliged to respect the author's moral rights.

### **Protection against destruction of originals**

#### **Article 11**

(1) If the owner of the original of a copyright work intends to destroy the original, he shall be obliged to offer the original to the author, and the author shall be obliged to compensate to the owner the value of the material from which the original was made.

(2) If the return of the work to its author as referred to in paragraph 1 of this Article is not possible, the owner shall be obliged, in an appropriate manner, to enable the author to make a copy of the original.

(3) Where the copyright work, within the meaning of paragraph (1) of this Article, is an architectural structure, the author shall have the right to take photographs of the work, to be enabled access to the work in order to make a cartographic record and measurement survey of the structure, and to demand the delivery of photocopies of the projects at his own expense.

## **CHAPTER TWO**

### **COPYRIGHT**

#### **PART 1.**

### **COPYRIGHT WORK**

#### **Notion of a copyright work**

##### **Article 12**

(1) A copyright work, within the meaning of this Law, is an intellectual and individual creation in the field of literature, science and art, expressed in any manner and form.

(2) A copyright work shall be, in particular:

1. A written work (book, paper, article, handbook, brochure, treatise and other works of the same nature);
2. A computer program, as a written work;
3. A spoken work, (lecture, speech, address, and other works of the same nature);
4. A musical work, with or without words;
5. A dramatic work, dramatico-musical work, choreographic work and a work of pantomime;
6. A photographic work and a work created in a process analogous to photography;
7. An audiovisual work (cinematographic work and other work expressed in moving images);
8. Works of fine art (painting, drawing, print, sculpture, etc.);
9. Works of architecture,
10. Works of applied art and design; and
11. A cartographic work, plan, sketch, technical drawing, project, table, plastic work and other work of identical or similar character in the domain of geography, topography, architecture and science.

(3) The adaptation of a copyright work, where it fulfills the conditions of this Law, shall be considered as a copyright work.

### **Component parts of a copyright work**

#### **Article 13**

(1) Any component part of the copyright work, as well as the title of the work, insofar as it is intellectual and individual creation by itself, shall be considered as a separate copyright work.

(2) It shall not be permitted to use as the title of a copyright work a title, pursuant to paragraph 1 of this article, that has already been used for a work of the same type, if that title would create or would lead to confusion regarding the copyright work and the author.

### **Collections of copyright works**

#### **Article 14**

(1) A collection of copyright works, of expressions of folklore, of data or of other material, which, by reason of the selection and arrangement of its component parts, constitutes an individual and intellectual creation, such as: encyclopedia, anthology,

book of papers, music collection, collection of photographs, maps, exhibition, placement, collection of documents, and other collections, shall be considered as a copyright work.

(2) The copyright in the work from paragraph 1 of this Article shall in no way extend to its component parts and shall not affect the rights in such parts.

## **Databases**

### **Article 15**

(1) A database shall be a copyright work.

(2) A database, within the meaning of paragraph 1 of this Article, shall be a collection of data, arranged in systematic or methodical way, and individually accessible by electronic or other means.

(3) The copyright in the database shall not apply to computer programs used in the making or operation of databases accessible by electronic means.

## **Unprotected creations**

### **Article 16**

Within the meaning of this Law, the following shall not be considered as a copyright work:

1. Ideas, theories, concepts, operation methodologies, or mathematical concepts, regardless of the manner of explanation or expression;
2. Official texts of a political, legislative, administrative and judicial nature and their official translations;
3. Daily and other news having the character of mere media information, miscellaneous facts and data; and
4. Ideas and concepts which underlie any element of a computer program, including the program components that enable connection and interaction between the elements of the software and of the hardware equipment (interfaces).

## **PART 2.**

### **AUTHOR**

#### **Notion of author**

##### **Article 17**

(1) The author, within the meaning of this Law, shall be a natural person who has created the copyright work.

(2) The copyright belongs to the author by the mere act of creation of the work.

### **Presumption of authorship**

#### **Article 18**

(1) A person whose name, pseudonym, code or other sign is denoted in a usual manner on the work or its copies, or is indicated at the time of its disclosure, shall be considered as an author, until proved to the contrary, in accordance with this Law.

(2) In a case where the author is unknown, nor can be determined in accordance with the provisions of paragraph 1 of this Article, the copyright shall be exercised by the person who has lawfully disclosed the copyright work.

(3) The provision under paragraph 2 of this Article shall cease to apply once the author's identity is established. In that case, the person under paragraph 2 of this Article shall be obliged to surrender to the author the economic benefits acquired from the exercise of copyright, unless otherwise agreed between them by contract.

### **Co-authors**

#### **Article 19**

(1) The copyright in a work created in collaboration of two or more persons shall belong to all those persons (co-authors).

(2) The consent of all the co-authors shall be necessary for every use of the work under paragraph 1 of this Article. An individual co-author cannot refuse to give his consent for reasons that are contrary to the principle of conscientiousness and good faith.

(3) Where the work created by co-authors is composed of independent parts (divisible whole), each co-author may permit independent use of his part, provided that such use does not prejudice the use of the joint work or the rights of the other co-authors.

(4) The share of each co-author in the remuneration from the use of the work shall be determined in a proportion to the real contribution that each one of them had in the creation of the work, unless otherwise agreed by the co-authors.

(5) In case where the real contribution under paragraph 4 of this Article can not be determined, or where no agreement has been reached between the co-authors, each co-author shall be entitled to an equal part of the remuneration.

**PART 3.**  
**CONTENTS OF COPYRIGHT**

**General Provision**

**Article 20**

- (1) The copyright is an indivisible right and it is inseparable from the copyright work.
- (2) The copyright is consisting of exclusive moral rights, exclusive economic rights and other rights, provided by this Law.

**SECTION 1. Moral rights**

**Contents of moral rights**

**Article 21**

- (1) Moral rights shall protect the author with regard to his personal and spiritual (intellectual) ties to the work.
- (2) The author shall have the following exclusive moral rights:
  1. Right to claim authorship;
  2. Right of first disclosure;
  3. Right of protection of the integrity of the work; and
  4. Right of withdrawal.
- (3) The author may not waive the rights under paragraph 2 of this Article.

**Right to claim authorship**

**Article 22**

- (1) The author shall have the right to claim authorship of the work.
- (2) The author shall have the right to have his name, pseudonym, or other designation denoted on each copy of the work, or stated at each public use of the work, unless the author explicitly declares in a written form that he does not want to have his authorship denoted, or unless at the time of the use it is technically impossible or impractical.

## **Right of first disclosure**

### **Article 23**

- (1) The author shall have the right of first disclosure of his copyright work and the right to determine the conditions of disclosure.
- (2) Until the time of the first disclosure of the copyright work, only the author shall have the right to publicly reveal the content or the description of his work.

## **Right of protection of the integrity of the work**

### **Article 24**

The author shall have the right to object to any modification, distortion, or mutilation of the work, which would be prejudicial to his personality, honor and reputation, as well as to object to the destruction of the work.

## **Right of withdrawal**

### **Article 25**

- (1) The author shall have the right to withdraw the right of use from the holder of an economic right, in case where any further use would be prejudicial to his personality, honor, and reputation.
- (2) If the author withdraws the right of use under paragraph 1 of this Article, he shall be obliged to compensate the holder for the damage caused by such withdrawal.
- (3) The right holder under paragraph 1 of this Article shall be obliged, within three months from the receipt of the withdrawal, to inform the author of the amount of damage that needs to be compensated. If he fails to do so, the withdrawal shall become valid upon expiration of that time period.
- (4) Upon the withdrawal of the right under paragraph 1 of this Article, the economic right shall return to the author.
- (5) If the author wishes to transfer again the economic right in his work, he shall be obliged to offer such transfer primarily and under the same conditions to the right holder under paragraph 1 of this Article.
- (6) The provisions of this Article shall not apply to computer programs, audiovisual works, and electronic databases.

## **SECTION 2. Economic rights**

### **Contents of economic rights**

#### **Article 26**

- (1) The economic rights shall protect the property interests of the author in his copyright work.
- (2) The author shall have the exclusive right to authorize or prohibit the use of his work or copies thereof by any other person, except in the cases provided by this Law.

## **Types of economic rights**

### **Article 27**

The following exclusive economic rights of the author arise from the use of the copyright work or its copies:

1. Right of reproduction of the work;
2. Right of distribution of the work;
3. Right of communication to the public of the work; and
4. Right of adaptation of the work.

## **Reproduction**

### **Article 28**

(1) Reproduction, within the meaning of this Law, shall mean fixation i.e. recording of the work in a material or other appropriate medium (electronic and other), as well as making one or more copies of a copyright work, in whole or in part, directly or indirectly, temporarily or permanently, by any means and in any form.

(2) The reproduction under paragraph 1 of this Article shall be carried out, in particular, by graphic processes (graphic reproduction), by three-dimensional reproduction, by photocopying and other photographic processes achieving the same effect, by building or carrying out works of architecture, by sound or visual fixation, by storage of the work in electronic form (electronic fixation), and by transfer of the work from an analogue onto a digital system.

## **Distribution**

### **Article 29**

(1) Distribution, within the meaning of this Law, shall mean making available to the public an original or a copy of the work, for the purpose of sale or other form of transfer of ownership right or right of possession, including importation and rental, and covering the right of remuneration for lending as provided by this Law.

(2) Importation, within the meaning of this Law, shall mean placing on the domestic market originals or copies of a copyright work intended for further circulation for commercial purposes.

(3) Rental, within the meaning of this Law, shall mean making available for use an original or a copy of a copyright work for a limited period of time, for direct or indirect economic advantage. The rental shall not apply to constructed works of architecture ) and originals and copies of works of applied art and design.

(4) Lending, within the meaning of this Law, shall mean making available for use of a copyright work, for a limited period of time, by organizations which are accessible to the public, without obtaining direct or indirect economic advantage.

(5) The right of distribution in the territory of the Republic of Macedonia shall be exhausted with the first sale or other form of first transfer of ownership right of an original or copy of a copyright work, carried out by the right holder or with his consent. The exhaustion shall not apply to the rights of importation, rental and lending.

## **Communication to the public**

### **Article 30**

Communication to the public, within the meaning of this Law, shall be:

1. Public performance;
2. Public transmission;
3. Public exhibition;
4. Public presentation;
5. Broadcasting;
6. Rebroadcast; and
7. Making available to the public.

## **Public performance**

### **Article 31**

Public performance, within the meaning of this Law, shall be:

1. Live speaking or reciting of works in the field of literature;
2. Live performance of musical works and
3. Stage performance or live presentation of dramatic, dramatico-musical, choreographic, or pantomime works.

## **Public transmission**

### **Article 32**

Public transmission, within the meaning of this Law, shall mean communication to the public by loudspeaker, screen or by any other technical means, of the following:

1. Live performance of a copyright work, outside of the space or place where the work is performed live;
2. Audio and/or visually fixed works (phonograms, video grams etc.), from the medium in which they are fixed; and

### 3. Broadcast copyright work.

#### **Public exhibition**

##### **Article 33**

Public exhibition, within the meaning of this Law, shall mean presentation to the public of an original or a copy of a work of fine art, a work of photography or a work created in a process analogous to photography, a work of applied art, design, architecture, physical planning, cartography, as well as other works of scientific and technical nature.

#### **Public presentation**

##### **Article 34**

Public presentation, within the meaning of this Law, shall mean presentation to the public, by technical means, of an audiovisual work or of a work of photography, fine art, architecture, physical planning, applied art, design, cartography, and works of scientific and technical nature.

#### **Broadcasting**

##### **Article 35**

(1) Broadcasting, within the meaning of this Law, shall mean communication of a copyright work by radio and television program signals intended for reception by the public, either wireless, including satellite, or by wire, including cable, microwave, or other system.

(2) Satellite, within the meaning of this Law, shall be any satellite operating on frequency bands which, according to the telecommunications regulations, are reserved for the broadcast of signals intended for the reception by the public or which are reserved for closed, point-to-point communication, in which case the conditions for the signal reception must be comparable to the conditions for the reception by the public.

(3) Broadcasting by satellite is carried out when, under the control and responsibility of the broadcasting organization, program-carrying signals intended for the public are introduced into an uninterrupted communication chain leading to the satellite and down towards the earth.

(4) If the program-carrying signals are encrypted, the broadcasting by satellite shall be considered as carried out if the decrypting means are provided to the public by the broadcasting organization or by some other person, with the consent of the organization.

#### **Rebroadcast**

##### **Article 36**

Rebroadcast, within the meaning of this Law, shall mean simultaneous, unabridged and unaltered transmission of a broadcast of a copyright work, provided that:

1. It is carried out by a broadcasting organization other than the one which initially broadcasted the work (hereinafter: rebroadcasting);
2. It is carried out by a cable, or microwave, system, where the initial broadcast is carried out by a broadcasting organization wireless or by wire (hereinafter: cable retransmission).

### **Making available to the public**

#### **Article 37**

Making available to the public, within the meaning of this Law, shall mean communication to the public of a copyright work, by wire or wireless means, including internet or other communication networks, in a way which allows members of the public to access the work, from a place and at a time individually chosen by them.

### **Adaptation**

#### **Article 38**

(1) Adaptation, within the meaning of this Law, shall mean translation, modification, including audiovisual adaptation, musical arrangement or other alteration of a copyright work or of an expression of folklore, as well as of other written materials, such as translations of official texts which are not made for official use.

(2) The rights in the copyright work created with the adaptation shall in no way affect the rights in the adapted work.

## **SECTION 3. Other rights of the author**

### **Contents of other rights of the author**

#### **Article 39**

The author shall have the following other rights:

1. Right of access and delivery
2. Right of resale (right of royalty from resale)
3. Right of fair compensation for reproduction for private use
4. Right of remuneration for lending and
5. Right of remuneration for rental.

## **Subsection 1. Right of access and delivery**

### **Right of access and delivery**

#### **Article 40**

(1) The author shall have the right to access the original or the copy of his work in possession by another person, for the purpose of exercising the right of reproduction or adaptation of the work, insofar as it does not conflict with the legitimate interest of the possessor.

(2) The author shall have the right to demand from the possessor to deliver to him the original of the work of fine art or of the photographic work for the purpose of public exhibition or other form of disclosure, if there is justified interest thereof.

(3) The delivery of the original from paragraph 2 of this Article may be subjected to lodging of an appropriate security or to insurance in the amount of the market value of the original.

(4) The author shall be obliged to carry out the access and delivery under paragraphs 1 and 2 of this Article with the least possible inconveniences to the possessor, and at his own expense. In case of damage to the work, the author shall be liable regardless of his fault.

## **Subsection 2. Right of resale (right of royalty from resale)**

### **Right of resale of an original work of art**

#### **Article 41**

(1) The author shall have the right to be notified and to obtain royalty from every subsequent sale or other disposal of an original of a work of art, as provided by this Law (hereinafter: right of resale).

(2) The resale right under paragraph 1 of this Article cannot be subject to waive, disposal or judicial execution.

### **Original work of art**

#### **Article 42**

(1) An original work of art, within the meaning of Article 41 of this Law, shall mean a work of fine art, graphic art or plastic art, such as: paintings, collages, drawings, prints, engravings, lithographs, sculptures, ceramics, carvings, tapestries, glassware, photographs or works created in a process analogous to photography, as well as copies of the mentioned works that are considered as originals.

(2) Copies of the mentioned works created by the author himself or made with his authorization in limited numbers, shall be considered as originals. They shall be, in a usual manner, numbered, signed or otherwise duly indicated by the author.

## **Amount belonging to the author**

### **Article 43**

(1) The author's royalty from the resale right shall be determined according to the following rates:

1. 5% for the portion of the sale price from 300 up to 3.000 EUR;
2. 4% for the portion of the sale price from 3.000,01 up to 50.000 EUR;
3. 3% for the portion of the sale price from 50.000,01 up to 200.000 EUR;
4. 1% for the portion of the sale price from 200.000,01 up to 350.000 EUR;
5. 0,5% for the portion of the sale price from 350.000,01 to 500.000 EUR;
6. 0,25% for the portion of the sale price exceeding 500.000 EUR.

(2) The highest amount of the royalty may not exceed 12.500 EUR.

(3) The author's royalty under paragraph 1 of this Article shall be jointly payable by the seller or art works, the art dealer, the organizer of the auction, or other intermediary who carries out the sale of art works).

(4) The royalties under this Article shall be calculated in MKD counter value according to the standard exchange rate of the National Bank of the Republic of Macedonia on the day of the sale. The basis for calculating the royalties shall be the sale price, excluding the value-added tax (VAT).

## **Right of resale of a manuscript**

### **Article 44**

(1) If the original (the manuscript) of a literary or musical work has been sold or otherwise disposed of, its author shall have the right to be notified of every subsequent resale and to obtain for each one a royalty in the net amount of 3% of each sale price.

(2) The provisions from Article 43 paragraphs 2, 3 and 4 of this Law shall accordingly apply to the works under paragraph 1 of this Article.

## **Right of information**

### **Article 45**

The author, his successors or the societies for collective management of copyright shall have the right, within three years from the day of the sale of the copyright work, to request from the entities under Article 43 paragraph 3 and Article 44 of this Law any information that may be necessary to secure payment of the royalty from the resale, in particular concerning the titles of the sold works, the owner and the intermediary, the sale contracts and the sale price.

### **Subsection 3. Right of fair compensation for reproduction for private use**

#### **Right of fair compensation**

##### **Article 46**

- (1) The reproduction for private purpose shall be subject to payment of fair compensation.
- (2) The fair compensation under paragraph 1 of this Article for reproduction of phonograms and video grams shall be paid at the time of the first sale or import of equipment for sound and visual fixation and new blank sound or sound and image carriers.
- (3) The fair compensation under paragraph 1 of this Article for photocopying shall be paid at the time of the first sale or import of photocopying equipment, and upon making photocopies intended for sale, on a monthly basis, according to the possible number of photocopies.
- (4) The equipment for sound and visual fixation shall be made equal to all other devices which enable to achieve the same effect, and the photocopying shall be equalized with other reproduction techniques.
- (5) The author shall have the right to a part of the fair compensation under paragraph 1 of this Article for the reproduction of phonograms and video grams and for the photocopying of his work, which is carried out for private use.
- (6) The right of fair compensation under paragraph 1 of this Article may not be subject to waive, disposal or judicial execution.

#### **Entities obliged to make payment**

##### **Article 47**

- (1) The duty to pay the fair compensation under Article 46 of this Law shall rest with producers and importers of equipment for sound and visual fixation, photocopying equipment, blank sound or sound and image carriers, as well as persons carrying out photocopying services.
- (2) The entities under paragraph 1 of this Article shall be obliged, upon request by the relevant society for collective management of copyright and related rights, to submit data concerning the type and number of sold or imported equipment and sound or sound and image carriers, as well as data concerning photocopies made.

## **Amount of the fair compensation**

### **Article 48**

- (1) The amount of the fair compensation under Article 46 of this Law shall be determined by the Government of the Republic of Macedonia.
- (2) The fair compensation under paragraph 1 of this Article shall be determined separately for each type of equipment for audio and visual fixation, for each fixation equipment which, due to its construction, does not require any special material to function (in an amount twice as much as the usual), for each sound or sound and image carrier based on the recording time, for each photocopying equipment based on the possible number of copies per minute and based on the possibility to copy in color (in an amount twice as much as the amount for black and white photocopying), as well as for each photocopy intended for sale.
- (3) The Government of the Republic of Macedonia shall harmonize the amounts of the compensations under paragraph 1 of this Article according to the fluctuation of the prices and the costs of living in the Republic of Macedonia.

## **Subsection 4. Right of remuneration for rental**

### **Right of remuneration**

#### **Article 49**

- (1) The author who has transferred his right of rental to the phonogram producer or to the video gram producer (hereinafter: film producer), in accordance with Article 72 and Article 91 paragraph 2 of this Law, shall retain the right of remuneration for every rental of his work.
- (2) The author may not waive the right of remuneration under paragraph 1 of this Article.

## **Subsection 5. Right of remuneration for lending**

### **Right of remuneration**

#### **Article 50**

- (1) The author shall have the right to remuneration for the lending of an original or copy of his copyright work.
- (2) The lending right under paragraph 1 of this Article shall not apply to architectural structures, works of applied art and design, or works that are mutually lent by the organizations under paragraph 4 of this Article.
- (3) The remuneration under paragraph 1 of this Article shall be payable by the organization, which is carrying out the lending.

(4) Public institutions in the field of science, culture and education (libraries, film archives, scientific and educational institutions) shall be exempted from the duty of payment of the remuneration under paragraph 1 of this Article.

(5) The author may not waive the right of remuneration under paragraph 1 of this Article.

## **PART 4.**

### **EXCEPTIONS AND LIMITATIONS**

#### **General provisions**

##### **Article 51**

(1) A copyright work can be used without authorization by the author, with or without remuneration, only if the work has been disclosed.

(2) The use under paragraph 1 of this Article can be carried out only in certain special cases, provided that the use does not conflict with the normal exploitation of the work, and does not unreasonably prejudice the legitimate interests of the author.

(3) The provisions under this Part shall not apply to computer programs.

#### **Use without payment of remuneration**

##### **Article 52**

(1) The use of a copyright work without payment of remuneration shall apply to the following cases:

1. Temporary reproduction of a copyright work, provided the reproduction is of transient or incidental character, and/or it constitutes an integral and essential part of a technological process, provided the reproduction does not, in itself, have an independent economic significance and the sole purpose of which is to enable the transmission of data in a network between third parties by an intermediary or to enable lawful use of the work;

2. Reproduction made by public libraries, educational establishments or museums, or by archives, for the purpose of carrying out their activity and without direct or indirect economic or commercial purpose;

3. Fixation of a copyright work by a broadcasting organization that has an authorization to broadcast the work, if it fixes the work by means of its own facilities and for its own needs, and provided it destroys the fixation within the period for which the broadcasting authorization is valid. If the fixation has exceptional documentary value, it can be delivered and preserved in a public archive;

4. Use of works for illustration for teaching or scientific research to the extent justified by the non-commercial purpose to be achieved, provided that the name of the author and the source is indicated, unless this turns out to be impossible;
5. Use of copyright works for the benefit of persons with special needs in a way which is directly related to the special need, to the extent required by the need and for a non-commercial purpose;
6. Reproduction and public communication of texts, articles and other similar works concerning current economic, political, religious and other similar topics, with the aim to inform the public, to the extent justified by that purpose, unless it is expressly prohibited by the author and provided that the name of the author and the source is indicated, unless this turns out to be impossible;
7. Use of parts of copyright works (quotations), for scientific research, education, criticism, polemics, or review, in a scope and to the extent required by the specific purpose and provided that the name of the author and the source is indicated, unless this turns out to be impossible;
8. Use of works for the purposes of public security, or in a judicial, parliamentary or administrative procedure;
9. Use of political speeches, as well as extracts of public lectures and similar works to the extent justified by the informatory purpose, provided that the name of the author and the source is indicated, unless this turns out to be impossible;
10. Use of works during religious rituals or other official celebrations organized by the state authorities or the local self-government;
11. Use of architectural or sculptural works permanently located in public places (streets, squares, parks, etc.);
12. Use of works in the field of fine and applied art, architecture, industrial design and photographic works exhibited at public exhibitions or at auctions, by the organizer, for posters or catalogues made with no commercial purposes, to the extent necessary for promotion of those events;
13. Adaptation of a work into a parody, caricature, or pastiche, provided that the adaptation does not create confusion with regard to the original of the work and the authorship, and provided the adaptation is in the frames of authorized use of the work;
14. Reproduction of a copyright work onto a sound and image carrier, public communication of the work from that carrier, as well as public communication of the work that is broadcast, in shops, at fairs and other places where the operation of equipment for recording, reproduction and communication of sound and image is demonstrated, to the extent necessary to demonstrate the functioning of the equipment. The fixations/recordings made on this basis shall be erased immediately;
15. Incidental (secondary) inclusion of a copyright work into some other material.
16. Use of drawings or plans of an architectural object, for the purpose of its reconstruction; and

17. Communication to the public and making available to the public of a copyright work for the purpose of research or private study in certain locations within the public scientific, cultural, educational and other establishments of similar nature, in case where a work is not subject to purchase, or its use is not subject to having an authorization, and where the work is contained in the collections/fund of these establishments.

(2) The use of a database or of a copy thereof by the lawful user shall be without remuneration, if it is necessary for the purposes of access and normal use of its component parts.

### **Use of expressions of folklore**

#### **Article 53**

(1) The use of an expression of folklore shall be without remuneration.

(2) Expressions of folklore shall be used in a decent manner, without distortion and provided that the source and the origin of the work are indicated.

(3) The public and scientific institution - Folklore Institute "Marko Cepenkov" in Skopje shall be responsible for the management of the rights from paragraph 2 of this Article.

### **Use against payment of fair compensation**

#### **Article 54**

The use of a copyright work against payment of fair compensation shall apply to the following cases:

1. Reproduction on paper or any similar medium, by way of photocopying or any other analogous technique or other process having similar effects, with the exception of graphic editions of a musical work (sheet music);

2. Reproduction on any medium, made by a natural person for private use, without direct or indirect commercial purpose;

## **PART 5.**

### **DURATION OF COPYRIGHT**

#### **Duration of copyright**

#### **Article 55**

(1) The economic rights shall run for the life of the author and for 70 years after his death, unless otherwise provided by this Law.

(2) The moral rights shall run for various terms provided by this Law.

### **Calculation of terms in cases of co-authorship**

#### **Article 56**

(1) Where the work has been created by a number of authors (co-authors), the term of duration under Article 55 paragraph 1 of this Law shall be calculated from the death of the last surviving author.

(2) In the case of co-authorship of an audiovisual work, the term of duration of the protection shall be calculated from the death of the last surviving person from among the following: the principal director, the author of the screenplay, the author of the dialogues and the composer of the music created specially for use in the audiovisual work, regardless of whether that person is recognized as author of the audiovisual work according to this Law.

### **Term of protection of anonymous and pseudonymous works**

#### **Article 57**

(1) Copyright of anonymous and pseudonymous works shall run for 70 years after the lawful disclosure of the work.

(2) If the pseudonym leaves no doubt as to the identity of the author, or if the author reveals his identity during the period referred to in paragraph 1 of this Article, the term laid down in Article 55 paragraph 1 of this Law shall apply.

### **Special terms for non-disclosed works**

#### **Article 58**

Where the term, according to this Law, does not run from the death of the author or authors, and the work has not been lawfully disclosed, the copyright shall run for 70 years after its creation.

### **Terms of duration of a copyright work disclosed in parts**

#### **Article 59**

In case where the term of duration of the copyright, according to this Law, is calculated according to the lawful disclosure of the work, and the work is disclosed in volumes, parts, installments, issues, episodes and alike, the term shall be calculated separately for each component part.

## **Calculation of terms**

### **Article 60**

The terms of duration of the copyright protection laid down in this Law shall begin to run on the 1st of January of the year following the event which is the basis for calculation of the terms.

## **Duration of moral rights**

### **Article 61**

(1) The moral right of withdrawal under Article 25 of this Law shall run for the life of the author.

(2) The moral rights of recognition and indication of the authorship, and of protection of the integrity of the copyright work under Articles 22 and 24 of this Law shall continue to run after the expiration of the terms of duration of the economic rights, as provided by this Law.

(3) In addition to the author's successors, the relevant (professional) association of authors, the persons having legitimate interest, and the Macedonian Academy of Sciences and Arts shall be responsible for the management and protection of the moral rights of the author laid down in Articles 22 and 24 of this Law after his death.

## **Effects from expiration of the terms**

### **Article 62**

The copyright work, after the expiration of the terms of duration of the economic rights, as provided by this Law, shall be used without authorization and without remuneration.

## **PART 6.**

## **TRANSFER OF ECONOMIC RIGHTS**

### **General provision**

#### **Article 63**

(1) The author may transfer to other persons separate economic rights, in a manner and under conditions provided by this Law.

(2) The transfer under paragraph 1 of this Article may be carried out by succession, by written contract (exclusive or non-exclusive) or in other written way (non-exclusive) by an authorization, statement, approval, etc.

### **Transfer by succession**

#### **Article 64**

(1) Economic rights shall be subject to succession.

(2) The author's successors shall acquire all the rights that would have belonged to the author.

(3) Succession of copyright shall be governed by the succession regulations, unless otherwise provided by this Law.

### **Transfer by contract**

#### **Article 65**

(1) The author may carry out the transfer of economic rights to other persons by way of a written contract, unless otherwise provided by this Law.

(2) The contract under paragraph 1 of this Article that is not concluded in a written form shall not produce legal effect.

(3) The contract under paragraph 1 of this Article shall contain, in particular, the type of the rights being transferred, their scope, exclusive or non-exclusive, the territory concerned by the transfer of rights, the duration of the transfer, and the author's remuneration.

(4) Disputed or ambiguous provisions of the contract from paragraph 1 of this Article shall be interpreted in the author's interest.

### **Determining the remuneration**

#### **Article 66**

(1) The author's remuneration shall be determined according to the principle of fairness, the type of the work, the type and the scope of the right that is being transferred, the duration, and other relevant circumstances of its use.

(2) If the use of a copyright work generates revenue which is significantly larger than the agreed remuneration, the author shall have the right to demand a revision of the agreed remuneration, which will allow him a more equitable share of the revenue. The author may not waive this right.

(3) In a case when the author's remuneration is agreed or determined according to the revenue derived from the use of the work, the user of the work shall be obliged to keep appropriate books or other records that allow determining the amount of the generated revenue.

(4) The user from paragraph 3 of this Article shall be obliged to enable the copyright holder to inspect the documentation/records from paragraph 3 of this Article, and shall deliver to him the necessary reports on the generated revenue within a reasonable time period, unless the time period has been provided by law or by contract.

### **Nullity**

#### **Article 67**

The transfer of the following shall be null and void:

1. The copyright, as a whole;
2. The moral rights;
3. Unknown types of use of the copyright work.

### **Application of the regulations on obligations**

#### **Article 68**

The regulations governing obligations shall accordingly apply to the contract for transfer of economic rights, unless otherwise provided by this Law.

### **Active legitimation**

#### **Article 69**

The rights that belong to the author under this Law, including the right of judicial protection, shall also belong to any other copyright holder, in a scope transferred to him by law or by other legal act, unless otherwise provided by this Law.

### **Scope of transfer (exclusive and non-exclusive)**

#### **Article 70**

- (1) The transfer of an economic right within the meaning of Article 63, paragraph 2 of this Law shall be exclusive or non-exclusive.
- (2) Exclusive transfer of an economic right, within the meaning of this Law, shall authorize a single person to use the work, while the author or any other person is excluded from the use.
- (3) Non-exclusive transfer of an economic right, within the meaning of this Law, shall authorize a person to use the work, while the author or any other person is not excluded from the use.

### **The rule of separate transfer**

#### **Article 71**

The transfer of a particular economic right shall not affect the transfer of other economic rights, unless otherwise provided by this Law or by contract.

## **Presumption of joint transfer**

### **Article 72**

When transferring the right of reproduction, it shall be considered that the right of distribution of the copies of the concerned work has also been transferred, unless otherwise provided by contract.

## **Subsequent transfer**

### **Article 73**

(1) A holder to whom an economic right of the author has been transferred may not, without the author's authorization, subsequently transfer that right to a third party, unless otherwise provided by contract.

(2) If the subsequent transfer of the right is the consequence of a legal transformation of the holder, the authorization under paragraph 1 of this Article shall not be required.

(3) If the subsequent transfer of the right is allowed without the author's authorization, in accordance with law or with contract, the previous and the new holder shall be jointly and severally liable for the author's claims.

## **Cancellation of the transfer**

### **Article 74**

(1) The author may cancel the contract or withdraw the authorization or another written act for transfer of an economic right, if the holder of the exclusive right exploits it to an insufficient extent or does not exercise it at all, thereby significantly harming the author's interests.

(2) The author may not exercise the cancellation or the withdrawal under paragraph 1 of this Article where the reasons for the cancellation are attributable to him.

(3) The author may offer to the holder under paragraph 1 of this Article an additional time period for appropriate use of the right.

(4) Upon exercising the cancellation or the withdrawal under paragraph 1 of this Article, the economic right shall return to the author.

(5) The author shall be obliged to pay adequate compensation for damages to the right holder, if so required by the principle of fairness.

(6) The author may not waive the right of cancellation or withdrawal provided by this Law.

## **SECTION 1. Particular types of copyright contracts**

### **Subsection 1. Publishing contract**

#### **Publishing contract**

##### **Article 75**

(1) By a publishing contract the author shall transfer to the publisher the right of reproduction of his work and distribution by printing it in a hardcopy form in a sufficient number of copies intended for the public (hereinafter: right of publication), while the publisher shall pay remuneration to the author, publish the work and distribute the published copies.

(2) The publication right from paragraph 1 of this Article shall not include the right of publication of the work in an electronic form. A separate contract shall be concluded for publication of the work in an electronic form.

(3) The publisher who has the right of publication of the work in a hardcopy form shall have a right of priority, among equal bidders, for the publication of the work in electronic form. The right of priority shall run for three years from the publication of the work in a hardcopy form. The publisher shall give written reply within 30 days from the receipt of the author's offer.

(4) The right to a pocket edition, periodical edition or publication in sequels, translation and alike may be also transferred by the publishing contract.

#### **Contents of the publishing contract**

##### **Article 76**

(1) The publishing contract, in addition to the general elements concerning the contents of copyright contracts laid down in Article 65 of this Law, shall include deadline for submitting the manuscript for the purpose of publication, number of separate editions and number of copies (circulation) for each separate edition.

(2) The remuneration in the publishing contract can be determined as a lump sum, or as a percentage of the retail price of a copy of the edition. In case when the remuneration is agreed as a percentage of the retail price of the sold copies of the work, the publisher shall be obliged to enable the author inspection in the documentation concerning the sold copies.

#### **Presumption of exclusivity**

##### **Article 77**

During the validity period of the publishing contract, it shall be considered that the author has transferred exclusively to the publisher the right of publication of the work in the same language, except for newspaper articles, unless otherwise provided by the contract.

## **Improvement of the work**

### **Article 78**

The publisher shall be obliged, for the subsequent editions, to enable the author improvement or alteration of the work, provided this does not cause significant cost for the publisher and does not substantially alter the work, unless otherwise provided by the publishing contract.

## **Destruction of the work due to force major**

### **Article 79**

(1) In case when the manuscript of the work, after delivery to the publisher, is destroyed due to force major, the author shall have the right of remuneration that would have been given to him if the work had been published.

(2) In case when an entire prepared edition is destroyed due to force major before it has been distributed, the publisher shall have the right to prepare a new edition, and the author shall have the right of remuneration for one edition only.

(3) In case when part of a prepared edition is destroyed by a force major before it has been distributed, the publisher shall have the right to print only as many copies as were destroyed without payment of additional remuneration to the author.

## **Termination and cancellation of the contract**

### **Article 80**

(1) The publishing contract shall terminate in the following cases:

1. If the author dies before completion of the copyright work;
2. If the circulation of all agreed editions is sold out;
3. If the term of validity of the contract has expired; and
4. In other cases provided by law or by contract.

(2) The author may cancel the publishing contract if the publisher, after the circulation of the previous edition has been sold out, does not publish new agreed editions within the time period stipulated in the publishing contract. In case of cancellation, the author shall have the right to keep the received remuneration or to demand payment of the agreed remuneration as well as the right to request compensation for damages.

(3) The circulation shall be considered sold out, within the meaning of this Law, if the number of unsold copies is less than 5% of all agreed and carried out editions, and in any case if the number is less than 100 copies.

## **Destruction of the copies**

### **Article 81**

In case when the publisher intends to destroy the unsold copies of the work, he shall be first obliged to offer the copies to the author.

## **Subsection 2. Public performance contract**

### **Public performance contract**

#### **Article 82**

By the public performance contract the author shall transfer to the user the right of public performance of his work.

## **Contents of the public performance contract**

### **Article 83**

The public performance contract, in addition to the general elements concerning the contents of copyright contracts stipulated in Article 65 paragraph 3 of this Law, may also include the right of the author of inspection of the public performance of the work, and the duty for the user to allow that to the author and to provide adequate technical conditions for the performance.

## **Cancellation of the contract**

### **Article 84**

In case when the work has not been performed within the agreed time period or under the agreed conditions, the author shall have the right to cancel the contract, to keep the already received remuneration, to demand payment of the agreed remuneration, and to request compensation for damages.

## **Subsection 3. Contract for commission of a copyright work**

### **Contract for commission**

#### **Article 85**

(1) By the contract for commission of a copyright work, the author shall create the commissioned copyright work and deliver it to the commissioning person.

(2) The person commissioning the work shall have the right to supervise the work and give instructions, unless by doing so he encroaches upon the author's freedom of creation.

(3) The author shall retain the copyright in the commissioned work, unless otherwise provided by law or by contract.

## **Subsection 4. Copyright work in the course of employment**

### **Copyright work in the course of employment**

#### **Article 86**

(1) In case when a copyright work is created by an employee in the course of execution of his duties or following the instructions by the employer (hereinafter: copyright work in the course of employment), it shall be considered that the economic rights of the author of that work have been exclusively transferred to the employer for a period of five years from the completion of the work, unless otherwise provided by a collective agreement or employment contract.

(2) After expiry of the term in paragraph 1 of this Article the economic rights shall belong to the employee, while the employer may demand another exclusive transfer provided that he pays the employee remuneration for each separate type of economic rights.

(3) Notwithstanding paragraphs 1 and 2 of this Article, the author shall have the right to remuneration for each rental.

(4) The author may not waive the right stipulated in paragraph 3 of this Article.

## **Exceptions from the transfer in the course of employment**

#### **Article 87**

As an exception to Article 86 of this Law:

1. The employee shall retain the exclusive right to use the copyright work created in the course of employment as part of his collected works; and

2. It shall be considered that the economic rights in computer programs and in databases are transferred to the employer without any limitations, unless otherwise provided by contract.

## **SECTION 2. Special provisions for copyright works**

### **Subsection 1. Audiovisual work**

#### **Audiovisual work**

#### **Article 88**

Audiovisual work, within the meaning of this Law, shall be a cinematographic or other work expressed in a form of sequence of moving images, whether or not accompanied by sound, regardless of the type of the carrier which contains it.

### **Authors of audiovisual work**

#### **Article 89**

Authors of an audiovisual work, within the meaning of this Law, shall be: the author of the screenplay, the principal director and the principal cameraman. In case when

animation of any kind is an essential element of the work, the principal animator shall also be considered as author. Where music is an essential element of the work, the author of the music specially created for use in the audiovisual work shall also be considered as author.

### **Authors of contributions to the audiovisual work**

#### **Article 90**

The animator and the music author, when not considered as authors of the audiovisual work according to Article 89 of this Law, as well as the set designer, the costume designer, the editor, and the make-up artist shall have copyright only in their own contributions to the audiovisual work (hereinafter: authors of contributions).

### **Contract for film production**

#### **Article 91**

(1) The film production contract shall regulate the relations between the film producer on one hand, and the authors of the audiovisual work and the authors of contributions on the other hand, as well as the relations between the authors themselves, according to this Law.

(2) By concluding the film production contract, it shall be considered that the authors and the authors of contributions have transferred to the film producer, exclusively and without limitation, all their economic rights in the audiovisual work, including the right of translation by subtitling or dubbing, unless otherwise provided by contract.

(3) By concluding the film production contract, the authors shall keep the right to equitable remuneration from the film producer for every use stipulated in paragraph 2 of this Article, and the authors of contributions shall keep the right to use their contributions to the audiovisual work separately, unless by doing so they infringe the rights of the film producer.

(4) The authors and the authors of contributions may not waive the rights laid down in paragraph 3 of this Article.

(5) The film producer shall be obliged, at least once a year, to deliver to the authors of the audiovisual work a report on the generated revenue, separately for every type of use of the work.

### **Completion of the audiovisual work**

#### **Article 92**

(1) The audiovisual work shall be considered completed (created) when the principal director determines that the first standard copy of the work, which is the subject-matter of the contract, is completed.

(2) Alterations to the copy of the audiovisual work under paragraph 1 of this Article shall be possible only after prior approval by the principal director and the film producer.

(3) In case when one of the authors or authors of contributions does not complete his part of the audiovisual work or is unable to do so due to a force major, he may not object to the use of the created part for the completion of the work. The author shall enjoy appropriate copyright in that part.

### **Cancellation of the contract**

#### **Article 93**

(1) In case when the film producer fails to complete the audiovisual work within five years from the conclusion of the film production contract, or where he fails to distribute the completed audiovisual work within one year after its completion, the authors may cancel the contract, unless another time period has been agreed.

(2) In the case of cancellation under paragraph 1 of this Article, the authors and authors of contributions shall retain the right of payment of remuneration.

### **Application of other legal provisions**

#### **Article 94**

The film production contract shall not be subject to application of the provisions of this Law on the right of withdrawal under Article 21, paragraph 1, item 4, and Article 25, and on transfer of rights under Articles 71 and 73 of this Law.

### **Subsection 2. Computer program**

#### **Computer program**

#### **Article 95**

A computer program, within the meaning of this Law, shall be a program in any electronic form of expression, including the preparatory design material, provided that it is an individual and intellectual creation.

#### **Rights of the author**

#### **Article 96**

Unless otherwise provided by this Law, the author of the computer program shall have the exclusive economic right to use the program and to authorize or prohibit the use of the program for:

1. Reproduction, as well as loading, displaying, running, transmission or storage of the computer program, insofar as these acts necessitate such reproduction;

2. Translation, arrangement or any other adaptation, as well as reproduction of the results thereof, without prejudice to the rights of the person who made that adaptation; and

3. Distribution as well as lending of the original or the copies of the computer program in any form.

## **Special provisions on the limitation on the rights**

### **Article 97**

- (1) Unless otherwise provided by contract, the lawful user of the computer program may carry out the acts referred to in Article 96, paragraph 1, items 1 and 2 of this Law without authorization by the right holder, including for error correction, when they are necessary for the use of the computer program in accordance with its intended purpose.
- (2) The lawful user of the computer program may, without authorization by the right holder, make a back-up copy, insofar as it is necessary for its use.
- (3) The lawful user of a computer program may, without authorization from the author, observe, study, or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program, if it is necessary while loading, displaying, running, transmitting or storing the program.
- (4) The provisions of the contract which are contrary to paragraphs 2 and 3 of this Article shall be null and void.

## **Decompilation**

### **Article 98**

- (1) Reproduction of the code and translation of its form, within the meaning of Article 96, paragraph 1, item 2 of this Law, shall not require authorization from the right holder, if they are indispensable in order to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:
  1. Such acts are performed by a licensee, by another lawful user, or by a person authorized by them, acting on their behalf and for the same purpose;
  2. The information necessary to achieve interoperability has not previously been available to the persons from paragraph 1, item 1 of this Article; and
  3. Such acts are confined only to those parts of the original program which are necessary to achieve interoperability.
- (2) Information obtained through the application of paragraph 1 of this Article may not be:
  1. Used for goals other than to achieve the interoperability of the independently created computer program;
  2. Given to third parties, except when it is necessary to achieve the interoperability of the independently created computer program; or
  3. Used for the development, production or marketing of a computer program that is substantially similar in its expression, or used for any other act which infringes copyright.

(3) The provisions of this Article may not be applied in a manner which might unreasonably prejudice the copyright or which would be in conflict with the normal exploitation of the computer program.

## **CHAPTER THREE RELATED RIGHTS**

### **PART 1. GENERAL PROVISIONS**

#### **Subject-matter of related rights**

##### **Article 99**

Subject-matter of related rights shall be the performances of performers; phonograms of phonogram producers; video grams of film producers; programs of broadcasting organizations; publications of publishers and databases of database makers.

#### **Application of the provisions on copyright**

##### **Article 100**

The provisions of this Law on copyright, relating to: relationship between copyright and ownership right (Articles 6-9 and Article 11), component parts and titles of a copyright work (Article 13), presumption of authorship and co-authorship (Article 18 and Article 19), definitions of economic rights (Articles 28-38), right of exhaustion with the first sale (Article 29 paragraph 5), limitations on the economic rights (Articles 51-54), manner of calculation of the terms of duration and effects from their expiry (Articles 60 and 62), and transfer (Articles 63-71 and Articles 73-74), shall accordingly apply to the related rights.

### **PART 2. CONTENTS OF RELATED RIGHTS**

#### **SECTION 1. Rights of performers**

##### **Notion of performers**

##### **Article 101**

(1) Performers, within the meaning of this Law, shall be actors, singers, musicians, ballet dancers and other persons who by acting, singing, dancing, declaiming, reciting,

or in some other way perform works of literature and art or expressions of folklore (hereinafter: performers).

(2) Within the meaning of this Law, directors of stage works, orchestra and choir conductors, sound or sound fixation editors shall be also considered as performers.

### **Representatives of ensembles of performers**

#### **Article 102**

(1) Performers who collectively participate in the same performance, such as orchestra, choir, dancing or drama ensemble, group, or other type of collective, shall be obliged to authorize one of the members-performers of the ensemble as their representative for transfer of rights of use of the performance under Article 106 paragraph 1 of this Law, unless otherwise provided by law or by the rules of the ensemble.

(2) The authorization from paragraph 1 of this Article shall be given in written form and shall be valid if it is granted by the majority of the performers in the ensemble from paragraph 1 of this Article. The authorization shall contain the rights for which authorization is given, the total number of performers, their names, signatures of the members granting the authorization, and duration of its validity.

(3) The provisions from paragraphs 1 and 2 of this Article shall not apply to directors of stage works, conductors and soloists.

### **Moral rights**

#### **Article 103**

A performer shall have the following exclusive moral rights:

1. To be recognized as the performer of the performance;
2. To have his name, pseudonym, or other designation, or the name of the ensemble, the artistic director of the ensemble and the soloist, indicated for every use of the performance, unless it is technically impossible;
3. To object to any alteration, distortion, mutilation or destruction of his performance, and to object to any use of the performance that could be prejudicial to his personality, honor and reputation.

### **Economic rights**

#### **Article 104**

(1) A performer shall have exclusive economic rights to authorize or prohibit the use of his performance for:

1. Fixation of his unfixed performance;

2. Communication to the public of his unfixed performance, except for broadcasting of a performance which is itself already a broadcast performance or is made from a fixation;
3. Reproduction of the fixation of the performance;
4. Distribution of the original or copy of the fixation of the performance;
5. Making the fixation of the performance available to the public.

(2) Reproduction of a fixation of a performance under paragraph 1 item 2 of this Article, within the meaning of Article 28 of this Law, shall mean making of copies of the fixation.

### **Other rights of the performer**

#### **Article 105**

- (1) The performer shall have the right to a portion of the single equitable remuneration for every communication to the public of a phonogram containing his performance, published for commercial purpose, unless otherwise provided by this Law.
- (2) The performer who has transferred his right of reproduction of the fixation with his performance to a phonogram producer or to a film producer in accordance with this Law, shall retain the right of remuneration for every rental.
- (3) The performer shall have the right to a portion of the fair compensation for reproduction for private use according to Article 46 of this Law.
- (4) The performer may not waive the rights provided by paragraphs 1, 2, and 3 of this Article.
- (5) Publication for commercial purpose, within the meaning of paragraph 1 of this Article, shall mean reproduction of a phonogram in a sufficient number of copies intended for the public.

### **Transfer of the performing right**

#### **Article 106**

- (1) The performer may transfer to another person his economic rights of use of his performance by a performing contract.
- (2) The performing contract shall be concluded in a written form and shall contain, in addition to the general elements provided by Article 65 of this Law, the title of the performed work and the name of the author of the work, as well as the number and period of broadcasts in case where the contract concerns broadcasting.

## **Presumption of transfer**

### **Article 107**

Unless otherwise provided by the contract, it shall be considered that by the conclusion of a contract for the production of a phonogram or audiovisual work, the performer has transferred to the phonogram producer or the film producer all his economic rights, including the right of dubbing of his performance.

## **Performance in the course of employment**

### **Article 108**

The provisions from Article 86 of this Law concerning works created in the course of employment shall accordingly apply to performances in the course of employment.

## **SECTION 2. Rights of phonogram producers**

### **Notion of phonogram producers**

#### **Article 109**

(1) A phonogram producer, within the meaning of this Law, shall be a natural or legal person who undertakes the initiative, the organization, the financing and the responsibility for the first fixation of sounds of a performance, of other sounds or sound effects (hereinafter: phonogram).

(2) A phonogram, within the meaning of this Law, shall be the fixation of sounds of a performance, or of other sounds or sound effects, except fixation contained in an audiovisual work

(3) A fixation, within the meaning of this Law, shall be the embodiment of sounds or sound effects into a sound carrier from which they can be perceived, reproduced or communicated with the assistance of technical devices.

### **Contents of rights of phonogram producers**

#### **Article 110**

(1) The phonogram producer shall have the right, for every use of the phonogram, to have his name or designation appropriately indicated, unless it turns out to be impossible

(2) The phonogram producer shall have the exclusive economic right to use, to authorize or prohibit the use of the phonogram for:

1. Reproduction;
2. Distribution; and

### 3. Making available to the public.

#### **Other rights of the phonogram producer**

##### **Article 111**

- (1) The phonogram producer shall have the right to a portion of the single equitable remuneration for the communication to the public of his phonogram published for commercial purposes.
- (2) Phonograms made available to the public shall be considered as phonograms published for commercial purposes.
- (3) The phonogram producer and the performer of the performance fixed in the phonogram shall have the right to an equal share of the single equitable remuneration under paragraph 1 of this Article, unless otherwise provided by contract.
- (4) In the case from paragraph 1 of this Article, the user shall be obliged for every use to pay the remuneration under paragraph 1 of this Article for the rights of the phonogram producer and for the rights of the performer, unless otherwise provided by this Law.
- (5) The phonogram producer shall have the right to a portion of the fair compensation for reproduction for private use in accordance with Article 46 of this Law.

#### **SECTION 3. Rights of the film producer**

##### **Notion**

##### **Article 112**

- (1) A film producer, within the meaning of this Law, shall be a natural or legal person which undertakes the initiative, the organization, the financing, and the responsibility for the creation of the first fixation of an audiovisual work (hereinafter: video gram).
- (2) A video gram, within the meaning of paragraph 1 of this Article, shall be the image carrier containing the fixation of moving images, with or without accompanying sound, from which they can be perceived, reproduced or communicated with the assistance of technical devices.

#### **Contents of the rights of the film producer**

##### **Article 113**

- (1) The film producer shall have the right to have his name or designation appropriately indicated every time the video gram is used, unless it is impossible.
- (2) The film producer shall have an exclusive economic right to authorize or prohibit the use of his video gram for:
  1. Reproduction;
  2. Distribution;

3. Public presentation;
4. Broadcasting;
5. Rebroadcasting; and
6. Making available to the public.

### **Other rights of the film producer**

#### **Article 114**

The film producer shall have the right to a portion of the fair compensation for reproduction for private use according to Article 46 of this Law.

## **SECTION 4. Rights of broadcasting organizations**

### **Contents of the rights of broadcasting organizations**

#### **Article 115**

A broadcasting organization shall have exclusive economic rights to authorize or prohibit the use of its programs for:

1. Fixation of the programs into sound and/or image carriers;
2. Reproduction and distribution of the copies of fixations of programs;
3. Rebroadcast;
4. Public transmission, in places accessible to the public against payment of an entrance fee;
5. Making available to the public.

## **SECTION 5. Rights of publishers**

### **The right of a publisher to fair compensation for reproduction for private use**

#### **Article 116**

A legal or natural person who lawfully publishes a copyright work in a hardcopy form (publisher) shall have the right to a portion of the fair compensation for reproduction for private use according to Article 46 of this Law.

### **Rights in special cases of publishing**

#### **Article 117**

(1) A legal or natural person who for the first time lawfully publishes or in other way discloses a copyright work in which the author's economic rights have expired shall

have exclusive economic rights equivalent to the economic rights of the author, as provided by this Law.

(2) A natural person who for the first time lawfully publishes a scientific or a critical commentary or review of a previously published copyright work in which the author's economic rights have expired, shall have exclusive economic rights equivalent to the economic rights of the author, as provided by this Law.

## **SECTION 6. Rights of a database maker**

### **Notion of a database maker**

#### **Article 118**

The maker of a database shall be a legal or natural person who undertakes the initiative and responsibility for investing into the creation of a database, if he can demonstrate that he has carried out a qualitative and/or quantitative substantial investment in the obtaining, verification or presentation of its contents.

### **Contents of the rights of database makers**

#### **Article 119**

(1) The database maker shall have exclusive right to authorize or prohibit the reproduction (extraction) and/or distribution of copies, making available to the public, or other forms of communication to the public of the whole or of a substantial part of the database (re-utilization).

(2) The first sale of a copy of a database by the right holder or with his consent shall exhaust the right to control further resale of the copy.

(3) The rights under paragraph 1 of this Article shall apply without prejudice to the existing rights in the parts incorporated into the database.

### **Scope of protection**

#### **Article 120**

(1) The protection of the rights of the database maker shall cover:

1. The entire contents of the database;
2. The substantial part of its contents, assessed qualitatively and/or quantitatively;
3. The insubstantial parts of its contents, when used in repeated and systematic acts which conflict with the normal exploitation or which unreasonably prejudice the legitimate interests of the database maker.

(2) The protection of the database shall not apply to computer programs used for the making or operation of databases accessible through electronic means.

## **Rights and obligations of the lawful user**

### **Article 121**

(1) The maker of a disclosed database may not prevent the lawful user of the entire database or of a part thereof, where he is authorized to use only a part, from using the insubstantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purpose.

(2) The lawful user of a disclosed database may not perform acts which conflict with the normal exploitation and/or acts which unreasonably prejudice the interests of the maker of the database.

(3) The lawful user of a disclosed database may not cause prejudice to the holder of copyright or related right with respect to works or subject-matter of related rights contained in the database.

## **Limitation on the rights**

### **Article 122**

The use of the substantial part of the contents of the database by the lawful user shall be without authorization of the right holder and without remuneration, in the case of reproduction:

1. From a non-electronic database for private purposes;
2. For teaching illustration purposes or for scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose; and/or
3. Distribution, making available to the public, or other forms of communication to the public, for purposes of public security, in administrative or in judicial procedures.

## **PART 3.**

### **DURATION OF RELATED RIGHTS**

#### **SECTION 1. Duration of the rights of performers**

### **Article 123**

(1) The economic performing rights shall run for 50 years from the day of the performance. If within this period the fixation of the performance has been lawfully published or lawfully communicated to the public for the first time, the rights of the performer shall run for 50 years from the first lawful publication or communication to the public.

(2) The moral rights under Article 103 of this Law shall continue to run after the expiry of the terms of duration of performing rights, as provided by this Law. The provision on the management of moral rights from Article 61 of this Law shall accordingly apply to the rights of performers.

## **SECTION 2. Duration of the rights of phonogram producers**

### **Article 124**

The rights of the phonogram producer shall run for 50 years from the day of the first fixation of the phonogram. If within this period the phonogram has been lawfully published for the first time, the rights of the producer shall run for 50 years from the publication. If the phonogram was not lawfully published within this period, and if it has been lawfully communicated to the public, the rights of the producer shall run for 50 years from the communication to the public.

## **SECTION 3. Duration of the rights of film producers**

### **Article 125**

The rights of the film producer shall run for 50 years from the day of completion of the fixation. If, during that period, the fixation has been lawfully published or communicated to the public for the first time, the rights of the producer shall run for 50 years from the first lawful publication or communication to the public.

## **SECTION 4. Duration of the rights of broadcasting organizations**

### **Article 126**

The rights of broadcasting organizations shall run for 50 years from the day of the first broadcast of the program.

## **SECTION 5. Duration of the rights of publishers and the rights in special cases of publication**

### **Article 127**

- (1) The rights of the publisher shall run for 50 years from the lawful publication.
- (2) The rights under Article 117 paragraphs 1 and 2 of this Law shall run for 25 years from the first lawful publication or disclosure.

## **SECTION 6. Duration of the rights of database makers**

### **Article 128**

- (1) The rights of the maker of the database shall run for 15 years after the completion of the making of the database. If within this period the database is lawfully disclosed, the rights shall run for 15 years after the disclosure.
- (2) The term of protection stipulated in paragraph 1 of this Article shall begin to run anew following any substantial change, evaluated qualitatively and/or quantitatively, to the contents of the database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the

database being considered to be a substantial new investment, evaluated qualitatively or quantitatively.

## **CHAPTER FOUR COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS**

### **PART 1. GENERAL PROVISIONS**

#### **Individual and collective management Article 129**

(1) The holders of copyright and related rights may administer the rights provided by this Law individually (separately for each copyright work or subject-matter of a related right), personally or through a representative, or collectively (jointly for several works or subject-matters of related rights and for several right holders) through an organization for collective rights management, in a manner and under conditions provided by this Law.

(2) Collective rights management under paragraph 1 of this Article shall cover legal matters with the users of rights, collection of remunerations from the use and their distribution, and protection of rights before the state authorities and other entities.

(3) The collective management of copyright and related rights shall be carried out only for disclosed copyright works and disclosed subject-matter of related rights.

(4) Disclosure of fixations of performances shall be considered as disclosure within the meaning of paragraph 3 of this Article.

(5) In case of collective management the rights shall be transferred on a non-exclusive basis.

#### **Carrying out the collective management Article 130**

(1) The collective management shall be carried out for rights provided by this Law in cases where the management cannot be carried out individually, due to the character of the copyright works or subject-matter of related rights and due to the conditions and manner of their use.

(2) Collective management may be carried out for exclusive rights that can be managed individually

## **Rights that are managed collectively**

### **Article 131**

Rights that can be managed collectively shall be, in particular:

1. Communication to the public of non-stage musical works and non-stage literary works;
2. The author's right of royalty from the right of resale;
3. The author's right of remuneration for public lending;
4. The right of remuneration of the author and the performer for rental of phonograms or video grams;
5. The right of remuneration of the performer for broadcasting and other communication to the public of his performance which in itself is a broadcast or is made from a fixation;
6. The right of remuneration of the performer and the phonogram producer from the single equitable remuneration for communication to the public of phonograms with performances published for commercial purposes;
7. The right of fair compensation of the author and the publisher from reproduction on paper or similar carrier by photocopying or any other analogous technique having similar effects, for private use;
8. The right of fair compensation of the author, the performer and the phonogram producer for the reproduction of the phonogram for private use;
9. The right of fair compensation of the author, the performer, and the film producer for the reproduction of the video gram for private use; and
10. The right of cable retransmission of copyright works and subject-matter of related rights which, as an exclusive right, is managed collectively on a compulsory basis, except for works and subject-matter of related rights that are rebroadcasted by a broadcasting organization, regardless of whether the concerned right is its own or the rebroadcasting right has been transferred to it by other right holder.

## **PART 2.**

### **ORGANIZATION FOR COLLECTIVE MANAGEMENT**

#### **Organization for collective management**

### **Article 132**

(1) Collective management of copyright and related rights shall be carried out by a legal person founded by right holders (natural and/or legal persons) for collective management of rights, that operates on its own behalf and for the account of the right holders, based on a license from the Ministry of Culture (hereinafter: organization).

(2) The organization shall operate with a non-profit purpose, based on the principles of rationality and transparency, and shall respect the rules of competition.

(3) The organization may be established for specific types of rights or for the rights belonging to specific right holders.

(4) The execution of certain administrative, technical or assisting matters can be delegated by the organization to another natural or legal person by a written contract.

## **Duties of the organization**

### **Article 133**

The organization shall be obliged to:

1. Protect the interests of the right holders whose rights it manages, by tracking their use in the Republic of Macedonia and abroad;

2. Carry out legal matters and manage relations between the right holders and the users and conduct proceedings before courts and other bodies for the protection of copyright and related rights and the like;

3. Adopt and publish general regulations for collection and for distribution of remunerations from the use, in accordance with Law;

4. Conclude agreements with relevant organizations abroad;

5. Transfer the right for non-exclusive use of copyright works and subject-matter of related rights by contract or by other written act;

6. Collect the specified remunerations from the users and carry out their distribution to the right holders, in accordance with law and the general regulations;

7. Request from the users information and documents necessary to determine the amount of the remuneration for the use of rights;

8. Carry out control over the use of copyright works and subject-matter of related rights;

9. Provide for internal control, accountability and responsibility of the bodies and individuals for the matters placed under their competence, in accordance with law and the general regulations;

10. Ensure and enable transparency of its operation (provide to the right holders access to information concerning the use of rights, the collected funds and the distribution);

11. Provide for and allow inspection into the operations and the data by the right holders, in a way, scope and under conditions provided by law and the general regulations of the organization;

11. Provide and maintain logistics, staff and other conditions determined by this Law for successful operation.

## **Members of the organization**

### **Article 134**

(1) The members of the organization (the right holders) shall manage the rights provided by this Law and take decisions in the organization, according to this and other Law.

(2) The organization that carries out collective management pursuant to this Law shall manage the rights of all the right holders for which it has obtained a license from the Ministry of Culture, in accordance with this Law and the Charter or the Founding Act.

## **SECTION 1. Notification, provision of data and authorization for use**

### **Entities obliged to submit notification, data and request authorization**

#### **Article 135**

(1) The user, in the cases from Article 137 items 1 and 3 of this Law, shall be obliged, at the latest 15 days prior to the day of the use of copyright works or subject-matter of related rights, to notify the organization and request an authorization for use, and in a subsequent period, which can be no longer than 15 days following the day of the use, to provide to the organization detailed data concerning the used works or other subject-matter, the place and time of use, and to make payment of the remunerations for the use.

(2) The seller, the art dealer, the organizer of public auction, the art gallery or other intermediary who is selling art works, within the meaning of Article 43 paragraph 3 of this Law, and originals (manuscripts) of literary and musical works stipulated in Article 44 of this Law, shall be obliged to submit to the collective management organization data concerning the sold works, the owner and the intermediary, the sale contracts and the certificates for originality of the works, and the sale price, within 30 days after the sale.

(3) The producers and the importers of equipment for sound and visual fixation, photocopying equipment, blank carriers of sound and of sound and image, as well as persons who provide photocopying services shall be obliged, upon request by the collective management organization, to provide data on the type and number of sold or imported equipment and carriers of sound or sound and image, as well as data on the photocopies made during a certain month.

(4) The broadcasting organizations shall be obliged to submit to the collective management organization an overview of the broadcasted copyright works or subject-matter of related rights, once a month, in a form and with content determined with the regulations under Article 139 of this Law.

(5) The user shall be obliged, without delay, to notify the relevant organization of any change of circumstances of the public use or of its termination, for the purpose of modifying the terms of the authorization or withdrawal of the authorization.

(6) In cases where, within the meaning of paragraph 1 of this Article, the organization has not been notified, or the detailed data has not been submitted, or an authorization was not granted, upon the organization's request the competent court shall issue a provisional measure - prohibition of use.

(7) In case where certain services/activities under Article 137 of this Law (catering, accommodation, transport, commercial gallery, concert, interpreting, stage/show, broadcasting and alike) are related to the use of rights which are managed collectively, the authority competent for issuing a license/decision for carrying out the activity shall grant it provided the entity carrying out the activity has previously concluded an agreement with the relevant collective management organization.

### **Control over the use**

#### **Article 136**

(1) The organization shall have the right to control the use of the copyright works and subject-matter of related rights for which it has a license for collective rights management.

(2) The users of copyright works and subject-matter of related rights shall be obliged to provide to the organization the relevant data concerning the use, as well as to allow inspection into the documents.

(3) When carrying out the control under paragraphs 1 and 2 of this Article, the competent state administration authorities shall be obliged, upon request by the collective management organization, to provide data and information that are of importance for the operation of the organization..

## **SECTION 2. Remunerations for use**

### **Bases for determining the remunerations**

#### **Article 137**

The remunerations for use of copyright works or subject-matter of related rights shall be determined according to the following bases:

(1) Where the use of the copyright work or subject-matter of related rights is indispensable for carrying out of the activity of the user, or such activity is dependant on their use (concert, interpretation, dance activity etc.), the remuneration for use shall be determined, by default, as a percentage from the revenue generated by the user from the use of the copyright work and/or subject-matter of related rights.

(2) Where the use of the copyright work or subject-matter of related rights is indispensable for carrying out of the activity of the user, or such activity is dependant on their use, and it is impossible to separately determine the specific revenue generated from the use (broadcasting activity), the remuneration for use shall be determined as a percentage from the revenue which includes the broadcasting tax and/or subscription,

revenues from advertising, sponsorships, grants and revenues from program transactions. The revenue shall not include the funds for the value added tax, funds obtained from loans and interest rates attached to loans.

(3) Where the public use of the copyright work or subject-matter of related rights does not generate revenue (performances, manifestations etc.), the remuneration can be determined as a percentage from the costs necessary for the use of the copyright work or subject-matter of related rights, such as remunerations or salaries of the authors or related rights holders, or the costs for using the space where the copyright work or subject-matter of related rights is used, or other relevant costs.

(4) The minimum nominal (absolute) amount of remuneration shall be determined when determining the remunerations under items 1, 2 and 3 of this Article.

(5) If the use of the copyright work or subject-matter of related rights is not indispensable for the carrying out of the activity of the user, but it contributes to increase the pleasure of the end users of its services (accommodation facilities, hotels, exhibition spaces, catering facilities, transportation means and other similar businesses), the remuneration shall be determined as a lump sum, separately for permanent and for temporary use of copyright works or subject-matter of related rights.

### **Determining the amount of the remunerations**

#### **Article 138**

When determining the amount of the remunerations, the following shall be taken into consideration:

1. The rights, their types and scope of their use;
2. The number of potential users;
3. The category and the size of the space;
4. The duration and the number of uses;
5. The difference in the prices in the activity of the user resulting from the use of works or subject-matter of related rights;
6. The structure and the character of the program (the broadcasting service format), according to the issued license for broadcasting activity (in the case of broadcasting);
7. Religious, cultural, societal and social interests of the users;
8. Interests of young persons and persons with special needs.

### **Regulations determining the remunerations**

#### **Article 139**

(1) The amount of the remunerations for use, unless otherwise provided by this Law, shall be determined by the following:

1. General agreement between the organization and the associations of certain categories of users or their chambers representing majority of the users (general agreement);
2. Individual agreement between the organization and individual users (individual agreement);
3. General regulation of the organization determining the amount of the remunerations for use (hereinafter: Tariff).

(2) The general agreement may not provide for higher amounts of the remunerations for use than those provided for in the Tariff, for the same type and scope of use of copyright works and subject-matter of related rights by entities having the same or similar activity, and the individual agreement may not provide for higher amounts of the remunerations for use than those provided by the general agreement or the Tariff.

(3) None of the parties to an agreement under paragraph 1 items 1 and 2 of this Article may refuse negotiations on a general agreement or individual agreement. The refusal to negotiate by the organization, as well as the unjustified delay of negotiations with the user or with the relevant associations of users or their chambers, shall constitute grounds for revocation of the license for collective management.

(4) If the user and the organization do not conclude an individual agreement on the terms and amount of the remuneration, the user shall be obliged to pay the remuneration according to the general agreement or the Tariff.

### **Procedure for adoption of a Tariff**

#### **Article 140**

(1) Prior to adopting the Tariff stipulated in article 139 paragraph 1 item 3 of this Law, the organization shall be obliged to request an opinion from the users, the relevant associations of users, or their chambers.

(2) If the entities under paragraph 1 of this Article do not submit their written opinions within 30 days from the day of receipt of the request, it shall be considered that they agree with the proposed Tariff.

(3) If the organization does not accept entirely or partially the proposals in the opinions of the entities from paragraph 1 of this Article, within 15 days from their receipt, it shall be obliged to request an opinion from the Commission for mediation in the field of copyright and related rights provided by this Law (hereinafter: Commission for mediation), regarding the subject of disagreement. The Commission shall give an opinion within 60 days from the day of receipt of the request. The opinion shall include an assessment whether the draft-Tariff of the society includes the rights for which the society has a license, as well as whether the remunerations in the Tariff are determined according to the provisions of this Law. If the Commission does not give an opinion within the stipulated period, it shall be assumed that it agrees with the draft-Tariff.

(4) The Tariff shall be published in the “Official Gazette of the Republic of Macedonia” following its adoption by the competent body of the organization.

### **Subsection 1. Commission for mediation**

#### **Competence**

##### **Article 141**

(1) The Commission for mediation, in addition to the mediation under Article 140 of this Law, shall mediate in the conclusion of agreements for cable retransmission upon request by any party to the agreement, and it may mediate in the conclusion of agreements for other types of use of copyright works or subject-matter of related rights, if both parties request so.

(2) The Commission for mediation in the cases under paragraph 1 of this Article shall assist the parties to the agreement in the conclusion of the agreement and may submit proposals to the parties.

(3) The proposals under paragraph 2 of this Article shall be considered accepted if none of the parties to the agreement expresses its opposition to the proposals within three months from their receipt.

(4) The proposals and the notice of any opposition under paragraphs 2 and 3 of this Article shall be served in writing by registered mail.

#### **Composition and appointment**

##### **Article 142**

(1) The Government of the Republic of Macedonia, upon proposal by the Minister of Culture, shall appoint the Commission for mediation.

(2) The Commission for mediation shall consist of president and four members with a four year mandate.

(3) The president and the members of the Commission for mediation shall be appointed from among the renowned independent and impartial experts in the field of copyright and related rights who can contribute with their work and knowledge of the application of the copyright law to the fulfillment of the goals for which the Commission is established.

(4) The president and the members of the Commission for mediation, prior to their appointment, shall give a written statement that there is no conflict of interests in relation to the activities of the Commission

#### **Operation**

##### **Article 143**

(1) The Commission for mediation shall work by holding meetings and shall take decisions by majority votes from the total number of members.

(2) The Commission for mediation shall adopt Rulebook on its operation.

(3) The Commission for mediation can invite on its meeting one authorized representative of each party to the agreement, and other experts from the relevant field. The representatives of the parties to the agreement and the invited experts shall take part in the work of the Commission, without the right to vote.

(4) The administrative and the technical matters of the Commission for mediation shall be carried out by the Ministry of Culture.

## **SECTION 4. Distribution of remunerations**

### **General regulation on distribution**

#### **Article 144**

(1) The organization shall adopt a general regulation for the distribution of the remunerations in accordance with law and the Charter or the Founding Act.

(2) The distribution of the remunerations from paragraph 1 of this Article shall be carried out according to the records and data on the use of works or subject-matter of related rights, and in case when it is not possible or would cause unreasonable costs it shall be determined as a lump sum, in accordance with the principle of fairness.

(3) In order to cover the total costs of operation of the organization, the funds from the collected remunerations may be used in an amount provided by the Charter or the Founding Act, in the amount up to 20%, and in the case of collective management of the fair compensation, determined with this law, that amount shall not exceed 30%.

(4) The individual calculations and the payments of the remunerations shall be carried out at least once a year.

(5) The general regulation for distribution shall be published in the “Official Gazette of the Republic of Macedonia” following its adoption by the competent body of the organization.

### **Special cases of distribution of remuneration**

#### **Article 145**

The distribution of the fair compensation determined with Articles 46, 105 111, 114 and 116 of this Law shall be carried out in the following proportion:

1. From the compensation collected for reproduction for private use of phonograms or video grams according to this Law, the authors shall receive 40%, the performers 30% and the phonogram or film producers 30%.

2. The compensation collected for reproduction for private use on paper or similar carrier according to this Law shall be distributed among the authors and publishers in an amount of 50% each.

3. The remuneration collected for public communication of a phonogram published for commercial purposes, including broadcasting, according to this

Law, shall be distributed among the performers and the phonogram producers in an amount of 50% each.

### **PART 3.**

## **PROCEDURE FOR ISSUANCE OF A LICENSE FOR COLLECTIVE MANAGEMENT**

### **Request for issuing license**

#### **Article 146**

- (1) The license for collective management shall be issued upon request by the organization.
- (2) Together with the request under paragraph 1 of this Article, the organization shall enclose the decision for registration in the Central Register of the Republic of Macedonia, the Charter or the Founding Act as well as other documentation determined with this Law.
- (3) The provision under paragraph 2 of this Article shall accordingly apply to the organization under Article 149 paragraph 3 of this Law.

### **Contents of the Charter or the Founding Act of the organization**

#### **Article 147**

The Charter or the Founding Act shall contain, in addition to the elements provided by other Law, provisions concerning the carrying out of the duties of the organization as provided by this Law, including in particular:

1. Types and scope of the rights that are managed;
2. Bodies of the organization, their competences, accountability, responsibility, manner of operation, election and dismissal;
3. Conditions and manner of acquiring the status of a member of the organization;
4. Manner and participation of the members of the organization in the bodies of the organization and their rights, duties and responsibilities;
5. Procedure for exemption (prohibition) from collective rights management by a right holder, except in cases where the right holder may not waive that right, in accordance with this Law;
6. Procedure for protection of rights of the members;
7. Procedure for adoption of general regulations;
8. Manner of collection of remunerations and principles of their distribution;

9. Establishing procedure and principles for conclusion of agreements with relevant organizations abroad and manner of providing exchange of information on collective management;
10. Manner and conditions for providing internal control and supervision over the operations;
11. Manner and conditions for providing transparency in the operation with respect to the members, the users and the general public;
12. Conditions for termination of the organization and division of the property.

### **Contents of the additional documentation**

#### **Article 148**

The additional documentation shall contain:

1. Expected and probable number of right holders and the scope of rights that shall be managed by the organization for collective management, or the number of those right holders who have joined the organization and the scope of their rights;
2. Assessment of the economic justification of efficient and economic collective management of particular rights.
3. Proof that the organization meets certain logistical, staff and other conditions (appropriate business premises, equipment for collection and processing of collective management data, and staff qualified in the field of collective management with at least one employee with a degree in law and one with a degree in economics - for the accounting duties, through its own administrative service or by delegating the activities to a third party).

### **Procedure upon request**

#### **Article 149**

(1) The Ministry of Culture, within 60 days from the receipt of the request, shall take a decision to issue a license or to refuse the request. An administrative dispute may be initiated against the decision before the competent court.

(2) For the collective management of copyright and related rights according to this Law, by default, for the same type of rights, or use of rights, a license shall be issued to one organization.

(3) In the case of the fair compensation determined with the Articles 46, 105, 111, 114 and 116 of this Law, a license shall be issued to the organization authorized by the relevant organizations or established by the relevant right holders among which the fair compensation is distributed.

(4) If two or more requests have been submitted for the same rights, the Ministry of Culture shall issue the license to the organization for which it shall assess that, according to the submitted documentation, shall carry out more successfully the collective management with regard to fulfillment of the conditions determined with this Law and with regard to the scope of the rights and the number of the right holders.

## **Start of operation**

### **Article 150**

(1) The decision for the issuance of a license under Article 149 of this Law shall be published in the “Official Gazette of the Republic of Macedonia” and shall enter into force on the day of publication.

(2) The general regulations of the organization (the Tariff and the regulation for distribution of the remunerations) shall be adopted and published by the organization within six months following the day of entering into force of the decision for the issuance of a license in accordance with paragraph 1 of this Article.

(3) The organization shall begin its operation at the latest 30 days after the publication of the regulations under paragraph 2 of this Article.

(4) The non-adoption of the regulations within the time period determined in paragraph 2 of this Article shall constitute grounds for revocation of the license for collective management.

## **Grounds for refusal of the request**

### **Article 151**

The Ministry of Culture shall take a decision to refuse the request if:

1. The complete documentation provided by this Law has not been submitted;
2. The Charter or the Founding Act is not in accordance with this Law;
3. It considers that the organization, based on the submitted documentation, does not fulfill the conditions to successfully carry out collective management.

## **Application of other regulations**

### **Article 152**

The procedure for issuing a license shall be carried out in accordance with the provisions of the Law on General Administrative Procedure, unless otherwise provided by this Law.

## **PART 4.**

### **CONTROL AND SUPERVISION OVER THE OPERATION OF THE ORGANIZATION**

#### **Entities that carry out control and supervision**

##### **Article 153**

(1) The control over the operation of the organization shall be carried out by the competent bodies of the organization and by the holders of the rights managed by the organization.

(2) The state authority responsible for supervision over the regulations and the operation of the organization with regard to the provisions of this Law shall be the Ministry of Culture.

#### **SECTION 1. Control by the bodies of the organization**

##### **Article 154**

(1) The competent bodies of the organization, in accordance with the Charter or the Founding Act, may request:

1. Annual reports from the executive and supervisory bodies of the organization concerning the collected funds, their distribution, the operation of the organization and application of the regulations on the remunerations, and the implementation of the agreements with the users and agreements with the relevant foreign organizations;

2. Auditing reports on the financial situation together with the opinion on the regularity of the operation in accordance with this Law, the general regulations of the organization and the concluded agreements;

3. Proposals for the financial plan and the costs of operation for the following year.

(2) The provisions from paragraph 1 of this Article shall not affect the obligations of the organization arising from other financial reports and audits carried out on the basis of other regulations.

## **SECTION 2. Control by the right holders**

### **Article 155**

(1) Any holder of rights managed by the organization may carry out, within a time limit determined by the Charter or the Founding Act, inspection into the annual financial report and the report of the supervisory body of the organization, and may request a written report on the collected funds from the use of his copyright works or subject-matter of related rights. The organization shall be obliged to submit such report at the latest within eight days after the request.

(2) At least one tenth of the holders under paragraph 1 of this Article may demand that one or more external independent experts audit the operation of the organization and give their expert opinion that shall be forwarded to the Ministry of Culture.

## **SECTION 3.**

### **Supervision by the competent state authority**

#### **Article 156**

(1) The Ministry of Culture may demand from the organization, at any time, information or data, or reports on the carrying out of the matters provided by this Law, and may carry out inspection into the regulations, the annual financial report, the financial documentation and other documentation.

(2) The organization shall be obliged to notify the Ministry of Culture on the commencement and termination of the functions of the managers and the representatives of the bodies, on the conclusion of general agreements for use of rights, on the conclusion of agreements with relevant foreign organizations, on the amendments to the Charter or Founding Act, as well as on other similar issues.

(3) The amendments to the Charter or the Founding Act shall require the approval by the Ministry of Culture. If the Ministry of Culture does not reply within 60 days from the submission of the acts, it shall be considered that the approval has been given.

### **Supervision measures**

#### **Article 157**

(1) If, while carrying out supervision over the regulations of the organization, the Ministry of Culture considers that a general or individual regulation is not in accordance with this Law, with the Charter or the Founding Act, it shall take a decision to cease the application of the regulation and shall initiate a procedure before a competent court for assessment of the legality of the regulation.

(2) If, while carrying out supervision over the operation of the organization, the Ministry of Culture considers that the operation is not in accordance with this Law, with the

license, with the Charter or the Founding Act, or with the general regulations on collection and distribution of remunerations, the Ministry of Culture shall deliver a decision giving the organization first a written warning and setting a reasonable time limit of at least 30 days for removal of the established irregularities. If the determined irregularities are not removed within the given time period, the license for collective management shall be revoked.

(3) The decision revoking the license from paragraph 2 of this Article may be subject to initiation of an administrative dispute before the competent court.

## **SECTION 4. Transparency in the operation**

### **Publication**

#### **Article 158**

The organization shall be obliged to publish once a year the reports on the operation and on the collected remunerations from the use of works or subject-matter of related rights which it manages collectively, on the internet and/or through one of the press media.

## **CHAPTER FIVE PROTECTION OF COPYRIGHT AND RELATED RIGHTS**

### **PART 1. GENERAL PROVISIONS**

#### **Types of protection and application of other regulations**

##### **Article 159**

- (1) Copyright and related rights shall enjoy criminal, civil and misdemeanor protection.
- (2) Criminal protection of copyright and related rights shall be carried out according to the provisions of the Criminal Code and the regulations on criminal procedure.
- (3) Civil protection of copyright and related rights shall be carried out according to the regulations on litigation procedure, securing claims, obligations relations, and this Law.
- (4) Misdemeanor protection of copyright and related rights shall be carried out according to the regulations on misdemeanors and this Law.

(5) The protection of copyright and related rights shall include the protection of technological measures against rights infringement.

(6) The regulations on the customs measures for protection of intellectual property rights shall apply to the procedures upon request for provisional measures, as determined with this Law, in cases of import, export or re-export of a copyright work, a subject-matter of a related right, or a copy thereof.

### **Persons entitled to protection**

#### **Article 160**

(1) A person whose right determined under this Law has been infringed, or there is reasonable doubt that the right will be infringed, and when there is a real threat of a right infringement, unless otherwise provided by this Law, shall have the right to submit:

1. Request for protection of the right and
2. Request for provisional and other measures, unless otherwise provided by this Law.

(2) The person under paragraph 1 of this Article shall include, in addition to the author, the right holder, the person authorized to use the right and the organization (right holders).

(3) The procedure upon the claims under paragraph 1 of this Article shall be urgent.

### **Solidarity of the parties**

#### **Article 161**

(1) When a right provided by this Law has been infringed, any of the holders of that right may demand protection of the right against a third party, as if he is the only holder. When the person who infringed the right fulfills the claims of any of the holders of the same right, his obligation shall cease for the rest of the right holders. In case of an ongoing court procedure, the holders of a particular right shall be considered as a single party.

(2) In case of several infringers of a right provided by this Law, each of them shall be jointly and severally liable for the infringement.

### **Protection of a right that is managed collectively**

#### **Article 162**

When the organization proves that an infringement has been committed of a right provided by this Law, it shall not be necessary for the infringement to be established by the individual holder whose right is managed collectively.

## **SECTION 1. Protection of technological measures**

### **Notion and contents of technological measures**

#### **Article 163**

(1) Technological measures, within the meaning of this Law, shall mean any technology, computer program, device or their component parts, which in their normal course of operation are designed to prevent or restrict acts of infringement of the rights provided by this Law which are not authorized by the right holder. These measures shall be deemed effective if the right holder implements them by applying access control or protection process, such as encryption, scrambling or other type of transformation of the work, as well as by mechanisms for copy control.

(2) It shall be considered that a person is infringing an exclusive right provided by this Law, when he knew or could have known that he undertakes any activities for the purpose of circumvention of the effective technological measures for protection of that right.

(3) It shall be considered as infringement of the exclusive rights provided by this Law when a person manufactures, imports for the purpose of distribution, distributes, sells, rents, advertises for sale or rental, or possesses for commercial purposes a technology, computer program, device or their components, or provides services without authorization, of any effective technological measures, which:

1. Are promoted, advertised or marketed for the purpose of circumvention of technological measures;
2. Have only limited commercial purpose or use, other than to circumvent;
3. Are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of technological measures.

(4) The provisions of this Article shall accordingly apply to any technology, computer program, device or their components used for removal or alteration of electronic rights management information.

### **Exceptions from the application of technological protection measures**

#### **Article 164**

(1) The right holder who uses technological measures shall be obliged, without delay, and in the shortest period possible, upon request from the person who has legal access to the copyright work, in case of the exceptions and limitations under Article 52 paragraph 1 items 2, 3, 4, 5 and 8 and Article 54 of this Law, to enable him access and use of the work through removal of the technological measures or through provision of other appropriate means.

(2) The conditions under Article 51 of this Law shall accordingly apply to the exceptions and limitations from paragraph 1 of this Article.

(3) The exceptions and limitations within the meaning of this Article shall not apply to the right of making available to the public.

(4) The contractual provisions which are contrary to paragraph 1 of this Article shall be null and void.

## **Protection of electronic rights management information**

### **Article 165**

(1) It shall be considered that a person is infringing the exclusive economic rights when he knowingly, without authorization, removes or alters any electronic information for the rights management, or if he reproduces, distributes, imports for the purpose of distribution, rents, or communicates to the public a copyright work or subject-matter of related rights from which electronic rights-management information has been removed or altered without authorization, and he knew or could have known that by doing so he is inducing, enabling, facilitating or concealing an infringement of the rights.

(2) Electronic rights-management information stipulated in paragraph 1 of this Article shall mean any information provided by the right holders which allows to identify the copyright works or subject-matter of related rights including databases, the author, any other right holder, terms and conditions of their use, as well as their appropriate numbers or codes that represent such information.

## **PART 2. ACTIONS UPON REQUEST FOR PROTECTION OF RIGHTS**

### **Contents of the protection of the right Article 166**

The right of protection under Article 160 paragraph 1 item 1 of this Law shall contain the following claims concerning:

1. Termination of the infringement action;
2. Compensation of material damages;
3. Compensation of non-material damages;
4. Civil penalty;
5. Indication of the author;
6. Return of the benefits acquired from the unauthorized use;

7. Removal from circulation of the objects that infringe the right;
8. Publication of the court judgment.

### **Termination of the infringement action**

#### **Article 167**

The person from Article 160 of this Law may request from the defendant to cease the infringing action, and/or prohibition of such or similar action in the future.

### **Compensation of material damages**

#### **Article 168**

If material damages have been caused by an infringement of a right provided by this Law, the person from Article 160 of this Law shall have the right to request compensation of the material damages and compensation of lost profits. The compensation shall be determined in the amount that the defendant would have paid if he had demanded to use the right lawfully (usual remuneration), or in an amount stipulated in the relevant tariffs or general agreement.

### **Compensation of non-material damages**

#### **Article 169**

In case of infringement of a moral right, regardless of the pronounced penalty from Article 170 of this Law, and in absence of material damage, the court may award the author payment of an equitable pecuniary compensation for the suffered emotional pain and suffering as a consequence from the infringement of his moral right, if it finds that the circumstances of the case, and especially the degree of the infringement and its duration, have caused that.

### **Civil penalty**

#### **Article 170**

(1) If a right provided by this Law has been infringed intentionally or through gross negligence, the person from Article 160 of this Law may request payment of the agreed or the usual remuneration for such type of use, increased for up to 200%, regardless of whether he has suffered material damage as a result of the infringement (civil penalty).

(2) When deciding on the request for payment of the penalty of paragraph 1 of this Article and when determining the amount thereof, the court shall take into account all the circumstances of the case, and in particular the degree of fault of the defendant, the amount of agreed or usual remuneration.

## **Indication of the author**

### **Article 171**

In case of infringement of the moral right concerning the indication of the name, pseudonym or other designation of the author when using his work, the court may decide to have their additional or correct indication.

## **Return of the benefits acquired from the unauthorized use**

### **Article 172**

The return of the benefits acquired from unauthorized use shall be carried out in accordance with the regulations on obligations.

## **Removal from circulation of the infringing objects**

### **Article 173**

(1) In case of infringement of an exclusive right under this Law, without prejudice to the claims for compensation of damages and regardless of any awarded compensation according to this Law, the person from Article 160 of this Law shall have the right to request:

1. Removal from circulation of the copies of a copyright work and subject-matter of related rights that have been made without authorization for the purpose of distribution or when they are in distribution, as well as of the materials and equipment used or intended to carry out the infringement, and

2. Their destruction.

(2) The measures under paragraph 1 of this Article shall be carried out at the expense of the person who has infringed the rights under this Law.

(3) When pronouncing the measures under paragraph 1 of this Article, the court shall take into consideration the circumstances of the case, and in particular the proportionality between the seriousness of the infringement and the claims, the interest of the person under paragraph 1 of this Article for provision of effective protection of rights, as well as the interests of third parties.

(4) The provisions of this Article concerning destruction of architectural works shall apply only where a specially justified reason exists thereof.

(5) Where the measures under this Article do not correspond to the nature and intensity of the infringement, which may be removed in some other way, and if the court considers that the person who has committed the infringement has acted unintentionally or without negligence, the court may award to the person under paragraph 1 of this Article, provided that the person agrees with that, payment of a pecuniary compensation in an amount which cannot be less than the one which he would have obtained from the authorized use of the right.

(6) The destruction measures under this Article shall not apply if the destruction of the equipment used or intended for infringement of a right under this Law would cause greater damage than the damage caused by the infringement of the right, except in case of equipment exclusively or primarily intended for infringement.

(7) The claims from this Article against third parties shall be limited to three years from the moment the person from Article 160 of this Law became aware about the unauthorized production of the objects, or from their distribution or the intention to distribute them, but no later than five years from their unauthorized production or distribution.

### **Publication of the court judgment**

#### **Article 174**

The person from Article 160 of this Law shall have the right to request publication of the final judgment that entirely or partially adopts his claims for protection of copyright and related rights in the mass communication media, at the expense of the defendant.

### **PART 3.**

## **PROVISIONAL MEASURES FOR PROTECTION OF RIGHTS**

### **Contents of provisional measures**

#### **Article 175**

(1) If the person from Article 160 of this Law submits a request under Article 160 paragraph 1 item 2 of this Law, according to the regulations on securing a claim (proposal or legal action) and makes it probable that the copyright is infringed or there is a threat of infringement, the court may issue a provisional measure for cease or prevention of the infringement, by ordering:

1. Prevention of the imminent infringement of the right;
2. Provisional prohibition of right infringement or making such infringement subject to payment of a pecuniary compensation in the amount of the prescribed fine for such type of right infringement, or subject to the lodging of guarantees to ensure the compensation for such type of use;
3. Seizure or prevention of circulation of a copy which is suspected to infringe the right, so as to prevent its import and distribution for commercial purposes;
4. Other similar measures in accordance with law.

(2) The court may issue the measure from paragraph 1 of this Article against an intermediary whose services are used for the right infringement.

(3) In case of a right infringement for the purpose of obtaining commercial benefit, and provided that the person from paragraph 1 of this Article makes it probable that the right infringement threatens to cause him irreparable harm, the court may order a measure

for provisional seizure of the movable or immovable property, as well as the blocking of the bank accounts and other assets of the infringer. To that end, the court may order the communication of bank and financial documents and access to information. The court shall be obliged to ensure the secrecy of those data, as well as to prohibit their abuse.

(4) The provisional measures from paragraph 1 of this Article may be taken without hearing of the opposite party, if the person requesting them shows reasonable evidence that he is the right holder, and evidence that the right is being infringed or there is a threat of infringement, or that any delay would cause irreparable harm to the right holder. If the provisional measure was taken without hearing of the opposite party, the court shall submit to it the decision on the provisional measure immediately after its execution.

(5) The court shall specify the duration of the provisional measure in the decision. If the measure is ordered before filing a legal action, the decision shall contain a time period within which the person requesting the measure is obliged to file a legal action in order to justify the ordered measures, such period being no longer than 20 working days, counted from the day of delivery of the decision to the person proposing the measure.

(6) The procedures for issuing provisional measures shall be subject to application of the regulations on securing claims, unless otherwise provided by this Law.

## **Measures for preserving evidence**

### **Article 176**

(1) Upon the request from Article 175 paragraph 1 of this Law the court may order measures for preserving evidence.

(2) The court may order the measures from paragraph 1 of this Article in particular concerning:

1. Making a detailed description of a copy suspected to infringe the right;
2. Seizure of a copy suspected to infringe the right;
3. Seizure of materials and equipment used in the production and distribution of a copy suspected to infringe the right, as well as any related documents.

(3) The measures from paragraph 1 of this Article may be pronounced without hearing of the opposite party, if the person requesting them shows reasonable evidence that he, or the person who has granted him the power of proxy, is the right holder, and evidence that the right is infringed or there is a threat of infringement, or if any delay is likely to cause irreparable harm to the right holder. If the measure was pronounced without hearing of the opposite party, the court shall submit to it the decision on the measure immediately after its execution.

(4) The court shall specify the duration of the measure in the decision. If the measure is ordered before filing a legal action, the decision shall contain a time period within which the person requesting the measure is obliged to file a legal action in order to justify the ordered measure, such period being no longer than 20 working days, counted from the day of delivery of the decision to the person proposing the measure.

(5) The procedures for issuing measures for preserving evidence shall be subject to application of the regulations on securing claims, unless otherwise provided by this Law.

### **Collection of evidence during the civil litigation procedure**

#### **Article 177**

(1) Where a party to the litigation procedure invokes specific evidence and claims that such evidence is held by the opposite party or is under its control, the court shall call the opposite party to submit that evidence, determining a time period for the action.

(2) In case where the right holder under this Law, as a plaintiff, claims in the legal action that a right infringement occurred for gaining a commercial advantage, as well as where he relies in the procedure on banking, financial and similar commercial documents, papers and similar evidence, and claims that they are held by the opposite party or are under its control, the court shall call that party to submit the evidence, determining a time period for the action.

(3) When a party called to submit evidence denies that the evidence is held by it or under its control, the court may take evidence in order to establish the facts.

(4) With respect to the right of the party to refuse the provision of the requested evidence, the right to refuse to testify according to the regulations on civil litigation procedure shall apply.

(5) The court shall judge the significance of the failure by the party to act upon the court decision to submit evidence.

(6) The court decision from paragraphs 1 and 2 of this Article may not be subject to a special appeal.

### **PART 4.**

#### **OTHER MEASURES**

#### **Provision of information**

#### **Article 178**

(1) The person from Article 160 of this Law who has initiated a civil litigation procedure for the protection of rights may request the provision of information on the origin and distribution networks of the work/copy of the work that are used for the infringement of his right.

(2) The request from paragraph 1 of this Article may be submitted in the form of a legal action or a provisional measure against a person who:

1. Is sued in a litigation procedure as provided by paragraph 1 of this Article;
2. In the course of his commercial activity possesses a work/copy of a work suspected to infringe the right;

3. In the course of his commercial activity provides services suspected to infringe the right or provides services used in an activity suspected to infringe the right;

4. Is indicated as a person involved in the production or distribution of a work/copy of a work or in provision of services suspected to infringe the right, and at the same time is one of the persons from paragraph 2, items 1, 2, and 3 of this Article.

(3) The request from paragraph 1 of this Article may be submitted as the first claim in a legal action consisting of several claims, if the person against whom the request is submitted is sued in the main legal action.

(4) The request from paragraph 1 of this Article may include, in particular, information concerning:

1. Names and addresses of the producers and distributors, suppliers and other previous holders of the goods or providers of services, as well as the intended wholesale and retail sellers;

2. The quantity of produced, manufactured, delivered, received or ordered works/copies of works, as well as their prices.

(5) The person against whom the request for provision of information under this Article is submitted may refuse to provide such information for the same reasons for which, according to the rules of the Law on litigation procedure, he may refuse to testify. In case where he refuses the provision of information without justified reason, he shall be liable for damages in accordance with the provisions from the Law on obligations.

(6) The provisions of this Article shall not affect the regulations on the manner of use of confidential information in civil, misdemeanor or criminal proceedings, the regulations governing liability for misuse of the right to obtain information, or the regulations governing the processing and protection of personal data.

(7) The provisions of this Article shall not prevent the application of the provisions on provisional measures and on measures for preserving evidence under this Law.

## **Preventive actions for protection**

### **Article 179**

In order to preserve evidence or for other reasons, the author or the right holder according to this Law may register and deposit originals or copies of his work, phonogram, video gram or other subject-matter of his right with a notary or a legal representative.

## **Symbols and designations**

### **Article 180**

(1) The holder of an exclusive copyright under this Law may denote the original or the copies of his work or the video gram with the designation © before his name, pseudonym or designation, and the year of the first disclosure.

(2) The holder of an exclusive right in a phonogram according to this Law may denote the original or the copies of his published phonogram or their containers with the symbol p before his name, pseudonym or designation and the year of the first disclosure.

(3) Unless the contrary has been proved, it shall be considered that the exclusive rights in the works or phonograms shall belong to the person indicated according to paragraphs 1 and 2 of this Article.

(4) The provisions of this Article shall not affect or prevent the management and protection of the rights determined with this Law.

**PART 5.  
SUPERVISION  
Article 181**

Supervision over the implementation of the provisions of this Law with respect to organizations for collective management shall be carried out by the Ministry of Culture.

**PART 6.  
MISDEMEANOUR SANCTIONS AND MEASURES**

**Fine for legal persons  
Article 182**

(1) A fine for misdemeanour in the amount between 1.000 and 1.500 EUR in denar counter value shall be imposed on the legal person which:

1. Indecently uses expressions of folklore and does not state the source and the origin (Article 53 paragraph 2);
2. Fails to notify without delay the relevant organization for collective management of any change of circumstances of the use or of its termination (Article 135 paragraph 5);
3. Fails to notify and fails to submit information, documents and data, fails to pay the appropriate amount of remunerations to the relevant organization for collective management within the specified periods, and fails to allow inspection into the documentation (Article 135 paragraphs 1, 2, 3, and 4);
4. Fails to enable access and use of the work through removal of the technological measures or by other means, to the person who has legal access in a case of limitation on the right, as determined in Chapter 2, Part 4 of this Law (Article 164);

(2) A fine in the amount between 250 and 600 EUR in denar counter value shall be imposed on the responsible person within the legal person for a misdemeanour under paragraph 1 of this Article.

**Fine for sole traders and for self-employed individuals**

### **Article 183**

A fine in the amount between 250 and 600 EUR in denar counter value shall be imposed on the sole trader and on the self-employed individual for a misdemeanour under Article 182 paragraph 1 of this Law.

### **Fine for natural persons**

#### **Article 184**

A fine in the amount between 150 and 250 EUR in denar counter value shall be imposed on a natural person for a misdemeanour under Article 182 paragraph 1 of this Law.

### **Budget revenues**

#### **Article 185**

The fines under this Article shall constitute revenues for the Budget of the Republic of Macedonia.

### **Prohibition to carry out business activity, profession or duty**

#### **Article 186**

For the misdemeanour under Article 182 paragraph 1 of this Law, additionally, a prohibition to carry out business activity, profession or duty may be pronounced to the legal person under Article 182, to the sole trader and the self-employed individual under Article 183, with duration of at least one year and not more than two years, counted from the day when the decision has become final.

### **Statutes of limitation and enforcement**

#### **Article 187**

A procedure may not be initiated or conducted for the misdemeanours from Article 182 paragraph 1 of this Law after the expiration of two years from the day the misdemeanour was committed, and the pronounced penalty for the misdemeanour may not be enforced after the expiration of two years from the day when the decision on the misdemeanour has become final.

## **CHAPTER SIX APPLICATION OF THE LAW**

## **General provisions**

### **Article 188**

(1) This Law shall apply to all copyright works and subject - matter of related rights which, on the day of entry into force of this Law, have enjoyed legal protection according to the Law on Copyright and Related Rights ("Official Gazette of the Republic of Macedonia" No. 47/96, 3/98, 98/2002, 4/2005 and 131/2007).

(2) Authors and holders of related rights who are citizens of the Republic of Macedonia or have their principal establishment in the Republic of Macedonia shall enjoy protection according to this Law.

(3) Foreign authors and foreign holders of related rights shall enjoy the same protection as the persons from paragraph 2 of this Article, according to international agreements ratified in accordance with the Constitution of the Republic of Macedonia.

(4) Foreign authors and foreign holders of related rights who do not enjoy the protection under paragraph 3 of this Article shall enjoy protection according to Articles 189-195 of this Law.

(5) Foreign authors and foreign holders of related rights who do not enjoy the protection of paragraphs 2 and 3 of this Article, may enjoy the same protection as the persons of paragraph 2 of this Article on the basis of factual reciprocity.

(6) Regardless of the other provisions of this Chapter, foreigners shall enjoy protection under this Law with respect to their moral rights in all cases, and with respect to the right of resale and the databases protected with related rights only on the condition of factual reciprocity.

(7) Reciprocity shall be proved by the person relying on it.

## **Authors and copyright works**

### **Article 189**

(1) Protection under this Law shall be enjoyed by the following:

1. Foreign authors who are domiciled in the Republic of Macedonia;
2. Works that are first published in the Republic of Macedonia or published in the Republic of Macedonia within 30 days from the day of first publication in another country;
3. Audiovisual works whose producer has his principal establishment or domicile in the Republic of Macedonia; and
4. Works of architecture or fine art which, as an immovable property or a component part thereof, are located on the territory of the Republic of Macedonia.

(2) If the copyright work has been created by several authors, the protection according to this Law shall be enjoyed by all of them, if at least one of them meets any of the conditions of paragraph 1 of this Article.

## **Performers and performances**

### **Article 190**

(1) Protection under this Law shall be enjoyed by foreign performers:

1. Who have a domicile in the Republic of Macedonia;
2. Whose performances take place in the territory of the Republic of Macedonia;
3. Whose performances have been fixed on phonograms that enjoy protection under this Law; and
4. Whose performances have been incorporated in broadcasting by radio, but without intention of being fixed on phonograms, that enjoy protection under this Law.

(2) If several performers take part in the performance, the protection under this Law shall be enjoyed by all of them, if at least one of them is a citizen of the Republic of Macedonia or has a domicile in the Republic of Macedonia.

## **Producers and publishers**

### **Article 191**

(1) Protection under this Law shall be enjoyed by foreign phonogram and film producers whose phonogram or video gram has been first fixed in the Republic of Macedonia.

(2) Foreign publisher, with regard to his related rights, shall enjoy protection under this Law if the edition has been first published in the Republic of Macedonia or has been published in the Republic of Macedonia within 30 days from the day of first publication in another country.

## **Broadcasting organizations**

### **Article 192**

Protection under this Law shall be enjoyed by a foreign broadcasting organization that transmits its programs or broadcasting services through transmitters located on the territory of the Republic of Macedonia.

## **Comparison of terms of duration**

### **Article 193**

Within the scope of application of international obligations, the terms of duration of rights according to this Law shall apply to foreign holders of copyright and related rights who enjoy protection under this Law, and shall expire no later than the date of expiry of the protection granted in the country of which they are citizens or in which they have a principal establishment, but in any case no longer than the terms of duration provided by this Law.

## **Communication to the public by satellite**

### **Article 194**

(1) Protection under this Law shall be enjoyed by a foreign author and foreign holder of related rights whose work, performance or subject-matter of a related right is communicated to the public in the Republic of Macedonia through satellite, provided that the appropriate program-carrying signals are introduced into an uninterrupted communication chain leading to the satellite and down towards the earth, and sent to and from the Republic of Macedonia, under the control and responsibility of a broadcasting organization.

(2) The protection, according to this Law, shall be enjoyed, regardless of whether the condition of paragraph 1 of this Article has been fulfilled, if:

1. An uplink station which transmits the program-carrying signals is situated in the Republic of Macedonia; or

2. The broadcasting organization that has commissioned the broadcast by satellite has its principal establishment in the Republic of Macedonia.

## **Persons without citizenship and refugees**

### **Article 195**

(1) Authors and holders of related rights who have no citizenship or whose citizenship cannot be determined - stateless persons shall enjoy the same protection under this Law as the citizens of the Republic of Macedonia, if they have a domicile in the Republic of Macedonia.

(2) The persons of paragraph 1 of this Article, who do not have a domicile in the Republic of Macedonia or whose domicile cannot be determined, but have a necessary residence in the Republic of Macedonia, shall enjoy the same protection as the citizens of the Republic of Macedonia.

(3) The persons of paragraph 1 of this Article, who have neither domicile nor necessary residence in the Republic of Macedonia, shall enjoy the same protection as the citizens of the state in which they have a domicile or necessary residence.

(4) The provisions of this Article shall apply to foreign authors and foreign holders of related rights having the status of refugees under the regulations of the Republic of Macedonia.

## **CHAPTER SEVEN**

### **TRANSITIONAL AND FINAL PROVISIONS**

## **Validity of agreements concluded before this Law**

### **Article 196**

The provisions of this Law shall not apply to agreements for use of copyright and related rights between a holder and a user of the right, concluded before the entry into force of this Law, unless otherwise provided by this Law.

## **Operation of the collective management societies**

### **Article 197**

The societies for collective management of copyright and related rights which have a license for collective management and approvals to their general regulations for collection and distribution of remunerations, shall have the right to continue with their operation according to the provisions of the Law on Copyright (“Official Gazette of RM” No. 47/96, 3/98, 98/02, 4/05, and 131/07) until the time of obtaining a licence for collective management pursuant to the provisions of this Law, but no longer than one year after its entry into force.

## **Termination of procedures for annulment of licenses**

### **Article 198**

(1) In the case of societies for collective management of copyright and related rights to which, until the day of entry into force of this law, licenses for operation have been issued, and no approval has been granted to their general regulations (for remunerations for use of copyright and related rights and for distribution of the remunerations), and for those reasons they have not started their operation, the procedures shall be terminated and the issued licenses shall be annulled.

(2) The societies under paragraph 1 of this Article shall have the right to submit a request for obtaining a license for collective management according to the provisions of this Law.

## **Termination of validity**

### **Article 199**

On the day of entry into force of this Law, the Law on Copyright and Related Rights (“Official Gazette of RM” No. 47/96, 3/98, 98/02, 4/05, and 131/07) shall cease to apply.

## **Delayed application**

### **Article 200**

The provisions concerning the right of fair compensation for reproduction for private use under Articles 46, 47, 48, and 131 items 7, 8, and 9 of this Law, and the right of remuneration for public lending under Article 50 and Article 131 item 3 of this Law, shall apply after one year from the day of entry into force of this Law.

## **Entry into force**

### **Article 201**

This Law shall enter into force on the eighth day following the day of its publication in the "Official Gazette of the Republic of Macedonia".