

Law on Copyright and Neighboring Rights

(of June 30, 1994)

Chapter I

Copyright

Section 1

Copyright in General

Art. 1.

(1) The author of a literary or artistic work alone has the right to reproduce his work or to authorise its reproduction in any manner or form whatsoever, either by direct or indirect means, temporarily or permanently, in whole or in part.

This right also comprises the exclusive right to authorize adaptation or translation of the work.

This right further comprises the exclusive right to authorize rental or lending of the work.

The author of a literary or artistic work alone has the right to communicate his work to the public by any process whatsoever, included therein the means of making the said work available to the public in a manner that anyone may have access to its location and at a time of one's personal choosing.

The author of a literary or artistic work alone has the right to authorise the distribution to the public, by sale or by other means, of the original of his/her work or of copies thereof. The first sale or any otherwise initial transfer or assignment of the ownership title to the original or a copy of a literary or artistic work within the European Community by its author or with his or her consent exhausts the right of distribution of this original or this copy within the European Community.

(2) The author of a literary or artistic work enjoys an inalienable moral right in his work.

Overall renunciation of the future exercise of this right is null and void.

This right comprises the right to disclose the work.

Non-disclosed works may not be seized.

An author has the right to claim or to refuse authorship of his work.

He enjoys the right to respect for his work that permits him to oppose any alteration to that work.

Notwithstanding any renunciation, he maintains the right to oppose any distortion, mutilation or other alteration to his work or any other prejudicial act to the same work that may damage his honor or reputation.

Art. 2.

(1) Copyright subsists for 70 years after the death of the author to the benefit of the person he has designated to such effect or, failing such person, to his heirs in accordance with Article 7.

(2) Without prejudice to the second subparagraph of this paragraph, where a work is the result of collaboration, the copyright subsists to the benefit of all successors in title for 70 years after the death of the last surviving joint author.

The term of protection for an audiovisual work expires 70 years after the death of the last survivor of the following persons: the main director, the author of the screenplay, the author of

the dialogue and the author of the musical compositions with or without words specifically composed for the work.

(3) In the case of anonymous or pseudonymous works, the term of copyright is 70 years from the time the work is lawfully made accessible to the public.

However, where the pseudonym adopted by the author leaves no doubt as to his identity or if the author discloses his identity during the period referred to in the foregoing subparagraph, the term of protection of the work is that laid down in paragraph (1).

In the case of anonymous works or pseudonymous works that have not lawfully been made accessible to the public during the seventy years following their creation, their protection shall expire at the end of that term.

(4) Where a work is published in volumes, parts, issues or installments and the 70-year period begins at the time the work is made accessible to the public, the term of protection shall run separately for each element.

(5) The term of protection for photographs that are original in that they constitute the author's own intellectual creation, shall be determined in accordance with the foregoing paragraphs.

(6) Any person who, after expiry of copyright protection, lawfully publishes or lawfully communicates to the public for the first time a work not previously published, shall enjoy protection equivalent to that for the author's economic rights. The term of protection for such rights shall be 25 years from the time the work was lawfully published or lawfully communicated to the public for the first time.

(7) The terms laid down in this Article shall be computed from January 1 of the year following the act that has generated the right.

Art. 3.

(1) The economic rights shall be movable, assignable and transferable, in whole or in part, in accordance with the provisions of the Civil Code. In particular, they may be the subject of alienation or of an ordinary or exclusive license.

All contracts affecting the author shall require written form.

Contractual provisions relating to copyright and to its modes of exploitation shall be interpreted restrictively. Assignment of an article incorporating a work shall not imply assignment of the right to exploit that work; an author shall have access to his work to the extent necessary for him to exercise his economic rights.

The author's remuneration, the scope and duration of the assignment shall be set out explicitly for each mode of exploitation.

The assignee shall be required to exploit the work in accordance with the fair practice of the profession.

Notwithstanding any provision to the contrary, the assignment of rights in respect of as yet unknown forms of exploitation shall be null and void.

(2) The assignment of economic rights relating to future works shall be valid only for a limited period of time and only if the types of works to which the assignment applies are specified.

(3) Where works are created by an author under an employment contract or a service relationship, the economic rights may be assigned to the employer on condition that assignment of such rights is explicitly laid down and that the creation of the work falls within the scope of the contract or service relationship.

Where works are created by an author on a commission, the economic rights may be assigned to the person who has given the commission on condition that the latter's activities are in a non-cultural field or in advertising, that the work is intended for such activity and that assignment of the rights is explicitly laid down.

In such cases, the fourth to sixth subparagraphs of paragraph (1) and paragraph (2) shall not apply.

The clause affording to the copyright assignee the right to exploit a work in a form that is unknown at the date of the contract or of appointment to the service relationship shall be explicit and shall lay down participation in the profits obtained from such exploitation.

The scope and conditions of transfer may be laid down in collective agreements.

Art. 4.

Where copyright is indivisible, exercise of the right shall be governed by agreement. Failing agreement, none of the authors may exercise the right in isolation, subject to a decision by the courts in the event of disagreement.

However, each author may take action, on his own behalf and without the intervention of the other authors, against any infringement of copyright and may claim damages on his own behalf.

The courts may, at any time, make the authorization to publish a work subject to the measures they deem necessary; they may order, at the request of the opponent author, that he should participate neither in the costs nor in the profits of exploitation or that his name should not be shown on the work.

Art. 5.

In the case of a work of collaboration in which the contributions of the authors may be individually identified, those authors may not, unless otherwise agreed, deal in their works with new collaborators.

However, they shall share the right to exploit their contribution in isolation where such exploitation does not prejudice the joint work.

Art. 6.

Copyright shall belong as of origin to the natural person who has created the work.

Unless proved otherwise, the author shall be presumed to be the person shown as such on the work by the fact of his name being mentioned or of a sign that enables him to be identified.

The publisher of an anonymous or pseudonymous work shall be deemed to be the author of the work in respect of other parties.

Art. 7.

After the death of the author, the rights laid down in Article 1(1) shall be exercised during the term of copyright protection by his heirs or legatees, unless the author has allocated them to a specific person, subject to the statutory portion of inheritance that devolves upon the heirs.

After the death of the author, the rights laid down in Article 1(2) shall be exercised by his heirs or legatees, unless he has designated a person to such effect.

In the event of disagreement, the procedure under Article 4 shall apply.

Section 2 Special Provisions on Literary Works

Art. 8.

(1) Literary works shall mean writings of any kind, as also lessons, lectures, speeches, sermons or any other oral manifestation of thought.

Speeches made in deliberative assemblies, in public hearings of the courts or in political meetings may be freely reproduced and communicated to the public, but the author alone shall have the right to make offprints.

(2) Copyright shall not subsist in official acts of the authorities.

Section 3

Special Provisions on Works of Fine Art

Art. 9.

Unless otherwise agreed, assignment of a work of fine art shall imply assignment to the acquirer of the right to exhibit the work as such under conditions that are not damaging to the honor or reputation of its author, but not the assignment of any other of the author's rights.

Unless otherwise agreed or save for customary practice to the contrary, the assignment of a work of fine art shall imply prohibition on making other identical copies.

Art. 10.

Neither the author nor the owner of a portrait nor any other possessor or holder of a portrait shall have the right to reproduce such portrait or to communicate it to the public without the consent of the person portrayed or the consent of his successors in title during a period of 20 years as from his death.

Art. 11.

The seller shall owe to the author an inalienable resale royalty right levied on the amount of the adjudication of works of fine art obtained as a result of public auction.

The works concerned must be original creations of the author or copies considered as such according to the usage of the profession.

The same right shall be enjoyed by the heirs and other successors in title of authors in accordance with articles 2 and 7 of this Law.

Foreign authors shall only enjoy resale royalty right if Belgian authors enjoy reciprocity in their countries.

Art. 12.

Resale royalty right shall be calculated on the selling price where such price is at least 1250 euros. It shall be fixed at four percent.

Art. 13.

The public officer, the organizer or person responsible for the sale and the seller shall be severally responsible for notifying the sale within three months thereof to the author or to the society entrusted with the administration of his rights and for paying the rights that are due within that same period.

On expiry of that period, any sums that it has not been possible to pay shall be paid to the administration societies designated by the King and those societies shall redistribute them in the manner laid down by the King.

Claims by the author shall be prescribed three years as from the notification referred to in the first subparagraph.

Section 4

Special Provisions on Audiovisual Works

Art. 14.

In addition to the main director, those natural persons who have participated in the creation of an audiovisual work shall be deemed authors. Unless proven otherwise, the following shall be presumed the authors of a jointly created audiovisual work:

- (a) the author of the screenplay;
- (b) the author of the adaptation;
- (c) the author of the words;
- (d) the graphical author in the case of animated works or of animated sequences in audiovisual works where they represent a significant part of such work;
- (e) the author of the musical compositions, with or without words, specifically composed for the work.

The authors of the original work shall be assimilated to the authors of the new work if their contribution has been used therein.

Art. 15.

An author who refuses to complete his contribution to an audiovisual work or who is not in a position to do so may not oppose the use of his contribution for the purpose of completing the work.

He shall be deemed an author, with respect to that contribution, and shall enjoy the rights deriving therefrom.

Art. 16.

An audiovisual work shall be deemed to have been completed when the final version has been fixed by common accord between the main director and the producer.

The authors' moral rights may only be exercised by the authors with respect to a completed audiovisual work.

The destruction of the master copy of such version shall be prohibited.

Art. 17.

The assignment of the right of audiovisual adaptation of an existing work must be the subject of a contract that is separate from the contract for publishing the work.

The assignee of the right shall undertake to exploit the work in accordance with fair practice in the profession and to pay to the author, unless otherwise provided, a remuneration that is proportional to the gross revenue he has obtained.

Art. 18.

Unless otherwise provided, the authors of an audiovisual work as also the authors of a creative element lawfully integrated or used in an audiovisual work, with the exception of authors of musical compositions, shall assign to the producers their exclusive right of audiovisual exploitation of the work, including the rights required for such exploitation such as the right to add subtitles or to dub the work, without prejudice to the provisions of Article 16 of this Law.

Art. 19.

Save for audiovisual works belonging to the non-cultural field or to advertising, authors shall be entitled to separate remuneration for each mode of exploitation.

The amount of such remuneration shall, unless otherwise provided, be proportional to the gross revenue obtained from exploitation. In such case, the producer shall communicate to all authors, at least once a year, a statement of revenue he has obtained for each mode of exploitation.

Art. 20.

Bankruptcy of the producer, legal settlement or liquidation of his enterprise shall not imply termination of the contracts with the authors of the audiovisual work.

Where the production or exploitation of the work is continued, the trustee or liquidator, as appropriate, shall be required to comply with all of the producer's obligations with respect to the authors.

In the event of the transfer of whole or a part of the enterprise or of its liquidation, the liquidator or the trustee, as appropriate, shall be required to draw up a separate lot for each audiovisual work whose exploitation rights may be subject to transfer or to sale by auction.

He shall be required to advise, on pain of nullity, each of the other producers of the work, the director and the authors, by registered mail, at least one month before transfer or before any other proceedings for sale or sale by auction.

The acquirer shall be subject to the same obligations as the transferor.

The director and, in his absence, the other authors, shall enjoy a preferential right in the work, unless one of the coproducers declares himself acquirer. Failing agreement, the purchase price shall be determined by court decision.

If no coproducer has declared himself the acquirer within a period of one month as from notification, the director may exercise his preferential right during a period of one month. After such period, the joint authors shall enjoy one month to exercise their preferential rights.

Exercise of this right shall be by service of a writ or by registered letter addressed to the trustee or liquidator, as the case may be.

Persons enjoying a preferential right may waive such right by service of a writ or by registered letter addressed by mail to the trustee. Where the producer's activities have been terminated for more than 12 months or where liquidation has been published without the sale of the audiovisual work having been carried out more than 12 months after publication, each author of the audiovisual work may require termination of his contract.

Section 4bis.**Special provisions on databases.****Art. 20bis.**

The databases that, by the choice or by the arrangement of the material, constitute an intellectual creation particular to their author are protected as such by copyright. The protection of databases by copyright does not extend to the works, data, or elements themselves and is without prejudice to all rights existing on the works, data, or other elements contained within the database.

Meant by "database" is a collection of works, data, or other independent elements, presented in a systematic or methodical manner and made individually accessible by electronic means or in some other manner.

Art. 20ter.

Unless contractually or statutorily provided otherwise, the employer alone shall be presumed to be the assignee of the proprietary rights with respect to the databases created, within a non-cultural field, by one or several employees or agents during the exercise of their functions or following the instructions of their employer.

Collective agreements may determine the extent and the modalities of the presumption of assignment.

Art. 20quater.

The legitimate user of a database or copies thereof may perform acts referred to under article 1, § 1, such as are deemed necessary to gain access to the content of the database and for its normal utilisation by the said user, without authorisation by the author of the database. To the degree that the legitimate user is authorised to utilise only a part of the database, paragraph 1. shall apply solely to the said part.

The provisions of paragraphs 1. and 2. are imperative.

Meant by "legitimate user" is an individual that performs acts authorised by the author or that are permitted under the law".

Section 5

Exceptions to the Economic Rights of the Author

Art. 21.

(1) Short quotations from a work that has been lawfully published, for the purpose of criticism, controversy, review, teaching, or are included in scientific works, in keeping with the fair and true practice within the profession and to the extent justified by the pursued purpose, shall not be considered to be infringements on the copyright.

Short quotations as meant in the paragraph above must make reference to and acknowledge their source and the name of the author, unless to do so proves not feasible.

(2) The compilation of an anthology meant to be used for educational purposes and without any commercial or economic gain attached to their publication, either directly or indirectly, shall require permission from the authors whose excerpts are to be included in the work. Nevertheless, after the death of the author, permission from the lawful successor in title to the right shall not be required on condition that the selection of the excerpt, its presentation, and its position do not infringe on the author's moral rights and that an equitable fee be paid, to be established between the parties, or, in default thereof, to be established by the court pursuant to fair practice.

(3) The author shall not be entitled to prohibit provisional acts of reproduction that are of temporary or accessory character and constitute an integral and essential part of a technical procedure and whose sole ultimate purpose is to provide for:

- a transmission within a network between third parties by means of an intermediary;
- or
- a lawful utilisation,

of a protected work, and that do not contain *in se* any economic importance.

Art. 22.

(1) Once a work has been lawfully published, its author may not prohibit:

1° reproduction and communication to the public, for the purposes of information, of short fragments of works or of works of fine art as a whole in connection with reports on current events;

2° reproduction and communication to the public of a work shown in a place accessible to the public where the aim of reproduction or communication to the public is not the work itself;

3° the private and gratis performance within a family circle and within the context of school activities;

4° reproduction in part or in whole of articles or works of fine art or reproduction of short fragments of other works fixed on a graphic or similar medium where such reproduction is intended for a strictly private or didactic purpose and does not prejudice the publication

of the original work;

4°bis Reproduction in part or in whole of articles or works of fine art or of short excerpts of other works fixed on a graphic or similar medium when such reproduction is intended to serve a didactic purpose or assist scientific research to the degree as justified by their non-gainful purposes and provided that such reproduction not be prejudicial to the normal exploitation of the work;

4°ter reproduction in part or in whole of articles or works of fine art or of short excerpts of other works fixed on any medium other than on paper or similar agents, with the aide of any photographic technique, or any other method producing a similar result, intended to serve a didactic purpose or assist scientific research to the degree as justified by their non-gainful purpose, and provided that such reproduction not be prejudicial to the normal exploitation of the work, with the proviso, unless such should prove not feasible, that the source, including the name of the author, be acknowledged;

4°quater The communication of works, when this communication is intended to serve an educational purpose or assist scientific research conducted by officially recognised institutions or institutions organised particularly for such a purpose by the public authorities, and in so far as this communication can be justified by its non-gainful character, falls within the framework of the institution's regular activities, or is conducted solely by means of the institution's closed transmission networks and not prejudicial to the normal exploitation of the work, and provided, unless this should prove not feasible, that the source, including the name of the author, be duly acknowledged;

5° reproductions of sound and audiovisual works made within the family circle and exclusively intended for that circle;

6° caricature, parody and pastiche, observing fair practice;

7° free performance of a work during a public examination where the purpose of the performance is not the work itself, but assessment of the performer or performers of the work with a view to awarding them a certificate of qualification, a diploma or other title within the framework of an approved type of teaching;

8° The reproduction limited to a number of copies to be determined in function of and justified by the objective of preserving the cultural and scientific heritage, carried out by libraries accessible to the general public, by museums, or by archival offices, not pursuing any direct or indirect commercial or economic gain or advantage, in so far as such is not prejudicial to the normal exploitation of the work or causes unjustified harm to the legitimate interests of the author.

The materials generated in this manner shall remain the property of these institutions, which renounce all commercial or gainful aim and utilisation thereof.

The author shall have access to these, strictly in the interest of preservation of the work, and with the proviso of a just remuneration for the labour accomplished by these institutions;

9° The communication included therein, being made available to private persons for the purpose of research or private study, of works that are not offered for sale or subject to licensing conditions and that are part of library collections accessible to the general public, teaching and scientific institutions, museums or archival offices, not pursuing any direct or indirect commercial or economic gain or advantage, by means of special terminals that can be accessed on the premises of the said establishments;

10° The ephemeral recordings of works conducted by broadcasting organisations for their own broadcasts and using their own resources, including therein persons that act in their name and under their responsibility;

11° The reproduction and the communication to the public of works for the benefit of handicapped individuals and that are directly related to the handicap in question and are of a non-commercial character, to the degree required by the said handicap, in so far as

this does not prejudice the normal exploitation of the work or cause unjustifiable harm to the legitimate interests of the author;

12° The reproduction and the communication to the public for the purpose of announcing public exhibits or the sale of art works, to the extent necessary to promote the event in question, and to the exclusion of all other commercial utilisation;

13° The reproduction of broadcasts by hospitals, penitentiaries, officially recognised organisations that assist youth groups or handicapped persons, in so far as such establishments are not pursuing a gainful purpose and provided that this reproduction be reserved for the exclusive use of the physical persons that are residents of said establishments.

(2) The reproduction and the communication to the public of the work for the purposes of providing information on current events pursuant to § 1, item 1 must be justified by the purpose of providing such information in question, and the source thereof, including the name of the author, shall be acknowledged, unless to do so should prove not feasible.

Art. 22bis.

By way of derogation from article 22, when the database has lawfully been published, the author may not prohibit:

1°. The partial or integral reproduction on paper or on a similar medium, by means of any photographic technique or any other method that produces a similar result, of databases fixed on paper or on a similar medium, when this reproduction is made for strictly private purposes and is not prejudicial to the normal publication of the work;

2°. The partial or integral reproduction on paper or on a similar medium, by means of any photographic technique or any other method that produces a similar result, when this reproduction is made for didactic purposes or to assist scientific research to the extent as justified by the non-gainful character of such pursuits, and provided that it not be prejudicial to the normal publication of the work;

3° the reproduction in part or in whole on a medium other than paper or a similar medium, when this reproduction is made for didactic purposes or to assist scientific research, to the extent as justified by the non-gainful character of such pursuits, and provided that it not be prejudicial to the normal publication of the work;

4° the communication of databases when this communication is carried out for didactic purposes or to assist scientific research by officially recognised institutions or institutions officially established for that purpose by the public authorities, in so far as this communication is justified by the non-gainful character of such pursuits, falls within the framework of the institution's normal activities, or is conducted solely by means of the institution's closed transmission networks and is not prejudicial to the normal publication of the work;

5° the reproduction and the communication to the public of a database, when such acts are carried out in the interest of public safety or are intended as an administrative or judicial procedure and are not prejudicial to the normal workings of the database.

Article 22, § 1, items 1° to 3°, 6° and 7° is by analogy applicable to databases.

(2) When the database is reproduced or communicated for didactic purposes or to assist scientific research, the name of the author and the title of the database must be acknowledged, unless this should prove not feasible.

Art. 23.

(1) An author may not prohibit the lending of literary works, databases, works of photography, scores of musical compositions, sound and audiovisual works, where lending is carried out with a didactic or cultural intention by officially recognised institutions or institutions that have officially been established for that purpose by the public authorities.

(2) Lending of sound or audiovisual works may not take place earlier than six months after the first distribution of the work to the public.

After consultation with the institutions and the copyright administration societies, the King may, for all phonograms and first fixations of films or for some of them, extend or reduce the period of time referred to in the foregoing subparagraph.

(3) The institutions meant in § 1, which the King designates, may import copies of literary works, databases, works of photography, and sound and audiovisual works, as well as the scores of musical compositions that have been the object of a lawful first public sale outside of the European Union and that are not being distributed to the public on the Union's territory, when the importing is intended for public lending for didactic or cultural purposes and in so far as it does not exceed more than five copies or scores of the work.

Art. 23bis.

The provisions of articles 21, 22, 22bis and 23, §§ 1 and 3, are imperative.

Nevertheless, exceptions may contractually be granted in the case of provisions meant in paragraph 1. when it pertains to works that are made publicly available on request according to contractual provisions in order that anybody may have access to them at the location and at the time of one's personal choosing.

Section 6

Provision Common to Sound and Audiovisual Works

Art. 24.

An author who transfers or assigns his right of rental in a sound or audiovisual work shall maintain his right to equitable remuneration on account of the rental.

This right may not be waived by the author.

Section 7

Publishing Contracts

Art. 25.

Publishing contracts shall state the minimum number of copies that make up the first printing.

However, this obligation shall not apply to a contract laying down a guaranteed minimum of royalties to be paid by the publisher.

Art. 26.

(1) The publisher shall be required to manufacture the copies of the work or have them manufactured within the agreed period of time.

Where not laid down by contract, this period of time shall apply in accordance with fair practice in the profession.

If the publisher does not comply with his obligation within the above stipulated time limit and without being able to give a legitimate reason, the author may recover the rights he has assigned,

after service of notice addressed by registered mail with advice of delivery that has remained without effect for a period of six months.

(2) The publisher will undertake to pay, unless otherwise agreed, to the author remuneration that is proportional to the gross takings.

If the author has assigned the publishing rights to the publisher under conditions such that, in view of the success of the work, the lump sum remuneration agreed upon proves to be manifestly disproportionate to the profits obtained from exploitation of the work, the publisher shall be required, at the request of the author, to agree to modification of the remuneration to afford the author an equitable share in the profits. Authors may not waive enjoyment of this right in advance.

(3) A publisher may not assign his contract without the consent of the copyright owner, except in the event of the simultaneous transfer of the whole or a part of his enterprise.

Art. 27.

Within three years of the expiry of the contract, the publisher may continue to market at the normal price the copies remaining in stock, unless the author prefers to buy the copies at a price which, in the absence of agreement, shall be fixed by the courts.

Art. 28.

Notwithstanding any agreement to the contrary, the publisher shall communicate to the author, at least once a year, a statement of sales, revenue and assignments for each type of exploitation. Except in the case of a reprint, the publisher shall be freed of this obligation if the work is not exploited, in any manner whatsoever, during five consecutive years.

Art. 29.

Independently of any other cause of termination of the publishing contract, the author may require termination if the publisher has carried out the destruction of all copies.

In the event of termination of the contract, the author shall be entitled to buy the copies still in stock at a price which, should there be no agreement between the publisher and the author, shall be fixed by the courts.

The fact that the author requires termination of the contract shall not affect any exploitation contracts validly concluded by the publisher with other parties, whereby the author shall have a direct claim against such parties for the payment of any agreed remuneration due to him on that account.

Art. 30.

In the event of bankruptcy, legal settlement or liquidation of the publisher's enterprise, the author may terminate with immediate effect the original contract by registered mail with advice of delivery.

All copies or reproductions covered by the copyright shall be offered preferentially to the author for purchase at a price which, in the event of disagreement between the trustee and the author, shall be determined by the court at the request of the most diligent party, after due summons of the trustee or the author and, where appropriate, after hearing the opinions of one or more experts. The author shall forego his preferential right if he does not inform the trustee of his wish to avail himself of that right within 30 days of receiving the offer. The offer and the acceptance of the offer shall be made, on pain of nullity, by service of a writ or by registered mail with advice of delivery. The author of the work may waive his preferential right by service of a writ or by registered mail addressed to the trustee.

Where the procedure referred to in the second paragraph has been applied, the author may refuse, in the same manner, the offer made to him within a period of 15 days counted from the notification made to him by registered mail by the expert or experts of the certified copy of the report.

The cost of the expert opinion shall be shared between the estate and the author.

Section 8 Performance Contracts

Art. 31.

Performance contracts shall be concluded for a limited duration or for a specific number of communications to the public.

The transfer or exclusive license afforded by the author with respect to live performances may not validly exceed three years; a period of two consecutive years without a performance being carried out shall automatically terminate the rights.

The holder of a performance contract may not assign that contract to any other person without the consent of the author save in the event of a simultaneous transfer of whole or a part of his enterprise.

Art. 32.

The holder of a performance contract shall be required to communicate to the author or his successors in title the exact program of public performances and to supply to them a documented statement of the gross takings.

If the author has authorized the public presentation of a live performance under conditions such that, in view of the success of the work, the lump-sum remuneration agreed upon proves manifestly disproportionate in relation to the profits obtained from exploiting the work, the holder of the performance contract shall be required, at the request of the author, to agree to a modification of the remuneration in order to afford the author an equitable share in the profits. An author may not waive enjoyment of this right in advance.

Chapter II Neighboring Rights

Section 1 General Provision

Art. 33.

The provisions contained in this Chapter shall not prejudice authors' rights. None of them may be interpreted as limiting the exercise of copyright.

The neighboring rights afforded by this Chapter are movable rights that may be assigned and transferred, in whole or in part, in accordance with the provisions of the Civil Code. They may, in particular, be the subject of alienation or of a simple or exclusive license.

Section 2 Provisions on Performers

Art. 34.

Performers shall enjoy an inalienable moral right in their performances.

Overall renunciation of the future exercise of the right shall be null and void.

A performer shall have the right to be named in accordance with the fair practice of the profession and also the right to prohibit false attribution.

Notwithstanding any renunciation, a performer shall maintain his right to oppose any distortion, mutilation or other modification of his performance or any other derogatory action in relation to his performance which would be prejudicial to his honor or his reputation.

Art. 35.

(1) The artist-interpreter or performer alone shall have the right to reproduce his performance or to authorize its reproduction, in any manner and under any form whatsoever, be it directly or indirectly, temporarily or permanently, in whole or in part.

This right shall include the exclusive right to authorize rental or lending.

He alone shall have the right to communicate his performance to the public by any means whatsoever, including making it available to the public in such a way that anybody may have access to it at the location and at the time of one's personal choosing.

The rights of the artist-interpreter or performer notably comprise the exclusive right of distribution, which shall only be exhausted in the case of first sale or other assignment of property title, within the European Community, of reproductions of his performance by the artist-interpreter or performer or with his consent.

Variety and circus artists shall also be considered performers. Ancillary performers, recognized as such by professional practice, shall not be considered performers.

(2) All contracts relating to performers shall require written form.

The contractual provisions relating to the rights of performers and to their exploitation modes shall be interpreted restrictively. Assignment of an object incorporating a fixation of a performance shall not constitute a right to exploit that performance.

The assignee shall be required to carry out exploitation of the performance in accordance with fair practice in the profession.

Notwithstanding any provision to the contrary, the assignment of rights relating to as yet unknown forms of exploitation shall be null and void.

The assignment of economic rights relating to future performances shall only be valid for a limited time and only if the types of performance concerned by the assignment are specified.

(3) Where the performances are carried out by a performer in the execution of an employment contract or under a service relationship, the economic rights may be assigned to the employer on condition that assignment of rights is expressly provided for and that the performance falls within the scope of the contract or service relationship.

Where the performances are carried out by a performer in execution of a commission, the economic rights may be assigned to the person who has given the commission on condition that the latter's activity is in the non-cultural field or in advertising, that the performance is intended for such activity and that the assignment of rights is expressly provided for.

In such cases, the third to fifth subparagraphs of paragraph (2) shall not apply.

Collective agreements may lay down the scope and conditions of transfer.

Art. 36.

Unless otherwise agreed, the performer shall assign to the producer of an audiovisual work the exclusive right of audiovisual exploitation of his performance, including the rights required for such exploitation such as the right to add subtitles or to dub the performance, without prejudice to the provisions of Article 34.

A performer who refuses to complete his participation in the making of an audiovisual work or is not in a position to do so, may not oppose the use of his participation in order to complete the

work. He shall be considered for that participation as a performer and shall enjoy the rights deriving therefrom.

Except for performances carried out in the making of audiovisual productions in the non-cultural field or for advertising, performers shall be entitled to separate remuneration for each exploitation mode. Where the agreed remuneration is proportional to takings, the producer shall communicate to the performers, in accordance with fair practice in the profession, a statement of the takings obtained for each exploitation mode.

Art. 37.

In the case of a live performance by a group of performers, authorization shall be given by the soloists, conductors, directors or, for other performers, by the manager of their troupe.

Art. 38.

The rights of performers shall expire 50 years after the date of the performance. However, if a fixation of a performance is lawfully published or communicated to the public, the right shall expire 50 years after the date of the first such event.

This term shall be computed as from January 1 of the year following the act that gives rise to it. After the death of the performer, the rights shall be exercised by his heirs or legatees, unless the performer has allocated them to a specific person, taking into account the portion that must devolve upon the heirs.

Section 3

Provisions Common to Producers of Phonograms and of First Fixations of Films

Art. 39.

Subject to article 41. and without prejudice to the rights of the author and the artist-interpreter or the performer, the producer of phonograms or of first fixations of a film alone shall have the right to reproduce his performance or to authorise the reproduction thereof in any manner and under any form whatsoever, be it directly or indirectly, temporarily or permanently, in whole or in part.

This right further comprises the right to authorise the rental or the lending thereof. It also comprises the exclusive right of distribution, which shall not be exhausted until the first sale or any other first assignment of property title, within the European Union, of the reproduction of his performance by the producer or with the latter's consent. The producer alone shall have the right to communicate to the public, by any process whatsoever, the phonogram or first fixation of the film, including therein making them available to the public in a manner to allow anyone access to their location and at the time of one's personal choosing. The rights of the producers (...) of first fixations of films shall expire fifty years after the fixation. However, if (...) the first fixation of the film shall have been lawfully published or communicated to the public in the course of the said period, the rights shall expire fifty years after the earlier occurrence of these two events.

The rights of producers of phonograms shall expire fifty years after the fixation. Nonetheless, if (...) the phonogram shall have been lawfully published in the course of the said period, the rights shall expire fifty years after the date of the first lawful publication. In the absence of a lawful publication in the course of the period as meant in the first sentence, and if the phonogram has been lawfully communicated to the public in the course of this period, the rights shall expire fifty years after the date of the first lawful communication to the public.

This term shall be computed as from January 1 of the year following the event that gives rise to it.

Section 4

Provision on the Rental of Phonograms and First Fixations of Films

Art. 40.

A performer who transfers or assigns his rental right in a phonogram or in a first fixation of a film shall maintain his right to equitable remuneration with respect to the renting.

This right may not be waived.

Section 5

Provisions Common to Performers and Producers

Art. 41.

Without prejudice to the author's right, when a performer's performance is lawfully reproduced or broadcast, the performer and the producer may not oppose:

1. its communication in a public place, on condition that the performance is not used in an entertainment and that no entrance fee to the place or no equivalent is charged to the public in order to enjoy that communication;
2. its broadcasting.

Art. 42.

The use of phonograms in accordance with Article 41 shall generate a right, whatever the place of fixation, to equitable remuneration to be paid to the performers and producers.

The remuneration shall be paid by the persons who carry out the acts referred to in Article 41 to the copyright administration societies referred to in Chapter VII of this Law.

In default of an agreement during the first six months after the entry in force of the law between the copyright administration societies and the organisations representing those required to pay this remuneration, such agreement shall be determined by a committee that meets as one body or in specialised sections and shall be chaired by the representative of the Minister with responsibility in matters of copyright.

This Committee shall meet as one body or in specialised sections within one or several sectors of activity. Each section shall be chaired by the representative of the Minister with responsibility in matters of copyright and be composed of an equal number of participants designated by the copyright administration societies and by participants designated by the organisations or sector(s) of activity representing those required to pay this remuneration.

The Minister with responsibility for copyright shall designate the copyright administration societies and the organizations representing those required to pay the remuneration.

Those required to pay the remuneration shall be required to supply as is reasonable all information required for collecting and distributing the royalties.

The Committee that meets as one body or in specialised sections shall determine the modalities under which such information and relevant documentation is to be furnished.

The Committee that meets as one body or in specialised sections shall take decisions by majority vote. In case of deadlock, the chairman shall cast the deciding vote.

The decisions of the committee shall be published in the *Moniteur belge*.

The King may determine the functions and the organisation of the Committee.

The Committee's decisions shall, by Royal Decree, be made mandatory vis-à-vis third parties.

The Minister with responsibility in matters of copyright may refuse to propose to the King to issue a compulsory decision on the grounds that it may contain provisions manifestly unlawful or contrary to public interest. He shall inform the Committee of his reasons.

Art. 43.

Subject to the international conventions, the remuneration referred to in Article 42 shall be shared by the copyright administration societies half each between the performers and the producers. The rights to remuneration referred to in Article 42 shall have respective durations identical to those laid down in Articles 38 and 39, final paragraph.

Section 6 Provisions on Broadcasting Organizations

Art. 44.

The broadcasting organisation alone shall be competent to authorise:

- (a) simultaneous or subsequent rebroadcasting of its broadcasts, including retransmission by cable and communication to the public by satellite;
- (b) the reproduction of its broadcasts by any procedure whatever, either directly or indirectly, temporarily or permanently, in whole or in part, comprised therein the distribution of fixations of its broadcasts;
- (c) communication of its broadcasts carried out in a place accessible to the public on payment of an entrance fee.
- (d) the making available to the public of the fixation of its broadcasts in such a manner that anyone may have access to the location thereof and at the time of one's personal choosing.

The right of distribution referred to in point b) of the first paragraph shall only be exhausted in case of a first sale or first other assignment of property title, within the European Community, of the fixation of its broadcast by the broadcasting organisation or with its consent.

Art. 45.

The protection referred to in Article 44 shall subsist for 50 years after the first diffusion of the broadcast.

This duration shall be calculated as from January 1 of the year following the event that gives rise to it.

Section 7 Provisions Common to Sections 1 to 6

Art. 46.

Articles 35, 39, 42 and 44 shall not apply where the acts referred to in those provisions are carried out for the following purposes:

- 1° Short quotations excerpted from a performance, made for the purpose of criticism, controversy, review, teaching, or included in scientific works, in keeping with fair practice within the profession and to the degree justified by the purposes pursued;
- 2° the fixation, reproduction and communication to the public, for an informative purpose, of short fragments of performances of the right holders referred to in Sections 2 to 6 in connection with reports on current events;
- 3° free and private performance carried out within the family circle or as part of school activities;
- 3°bis The reproduction of short quotations of a performance when this reproduction is made by means of any medium whatsoever, for the purpose of teaching or of scientific research, to the extent justified by its non-gainful purpose and with the proviso that it shall not be prejudicial to the normal presentation of the performance;

3^{ter} The communication of performances when this communication is made for the purpose of teaching or of scientific research by officially recognized institutions or institutions officially organised to that end by the public authorities, and in so far as this communication shall be justified by its non-gainful purpose, falls within the framework of the institution's normal activities, is carried out solely by means of the institution's closed transmission networks, and is not prejudicial to the normal communication of the performance;

4^o reproductions of performances of the holders of neighboring rights carried out in the family circle and exclusively intended for that circle;

4^{bis} The temporary acts of reproduction that are of a transitory or accessory character and constitute an integral and essential part of a technical procedure and whose sole ultimate goal is to allow:

- transmission within a network amongst third parties by an intermediary;
- or
- a lawful utilisation of a performance,

and that do not possess *in se* any economic importance;

5^o caricature, parody or pastiche, observing fair practice;

6^o free performance of a work during a public examination where the purpose of the performance is not the work itself, but assessment of the performer or performers of the work with a view to awarding them a certificate of qualification, a diploma or other title within a recognized teaching establishment.

7^o The reproduction in a limited number of copies determined in function of, and justified by, the objective of preserving the cultural and scientific heritage, such reproductions carried out by libraries accessible to the public, museums, or by archival offices that are not seeking to derive any commercial or economic gain or advantage thereof, either directly or indirectly, in so far as this shall not infringe upon the normal publication of the performance or cause unjustified prejudice to the legitimate holders of neighbouring rights.

Materials thus produced shall remain the property of those institutions that renounce all of their commercial or gainful utilisation.

The holders of neighbouring rights shall have access to them, with strict provision of the preservation of the work, and provided there shall be appropriate remuneration by those institutions for the work accomplished;

8^o. The communication and the making available to these private individuals, for purpose of research or private study, of performances that have neither been offered for sale nor are subject to licensing conditions, and that are part of libraries accessible to the public, of educational and scientific institutions, of museums or archival offices that are not seeking to derive any commercial or economic gain thereof, either directly or indirectly, by means of special terminals accessible on the premises of the said establishments;

9^o. The ephemeral recording of performances made by broadcasting stations to serve in their own broadcasts and by using their own resources, therein included the activities of persons that are acting in their name and under their responsibility;

10^o. The reproduction and the communication to the public of benefit performances on behalf of handicapped individuals and that are directly related to the particular handicap in question and are of a non-commercial character, to the extent required by the said handicap, in so far as it does not infringe upon the normal publication of the work or causes unjustified prejudice to the legitimate interests of holders of neighbouring rights;

11^o. The reproduction and the communication to the public for the purpose of announcing public exhibitions or the sale of performances, to the extent required to promote the event in question, this to the exclusion of all other commercial utilisation;

12^o. the reproduction of broadcasts, by establishments such as hospitals, penitentiaries,

officially recognised organisations that assist youth group and handicapped persons, in so far as these establishments do not pursue a gainful purpose and this reproduction be reserved for the exclusive use of the physical persons that are resident thereof.

Art. 47.

(1) Performers may not prohibit the lending of phonograms or first fixations of films where the lending is carried out for an educational and cultural purpose by institutions that are recognized or are officially established for that purpose by the public authorities.

(2) The phonograms and the first fixations of films may not be lent until six months after the first distribution to the public of the work.

After consultation with the institutions and copyright administration societies, the King may extend or reduce the period of time laid down in the preceding subparagraph with respect to all phonograms and first fixations of films or for some of them.

(3) The institutions referred to in § 1, which the King designates, may import phonograms or first fixations of films that have been lawfully sold outside of the European Union and that are not distributed to the public on the Union's territories, when this import is carried out for the purpose of public lending organised with an educational or cultural intent and does not comprise more than five copies of the phonogram or of the first fixation of the film.

Art. 47bis.

The provisions of articles 46 and 47, §§ 1 and 3, are imperative.

Nonetheless, there may be contractual exceptions in the case of the provisions referred to in paragraph 1 when it pertains to performances that are made available to the public on demand, in keeping with the contractual stipulations in a manner that anybody may gain access to them at the location and at the time of one's personal choosing.

Chapter III

Communication to the Public by Satellite and Retransmission by Cable

Section 1

Communication to the Public by Satellite

Art. 48.

In accordance with the foregoing Chapters and with the provisions hereafter, protection of copyright and of neighboring rights shall likewise extend to broadcasting by satellite.

Art. 49.

Communication to the public by satellite shall be deemed to occur solely in that Member State of the European Union in which, under the control and responsibility of the broadcasting organization, the program-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

If it occurs in a non-member State and if such State does not afford the same level of protection as the foregoing Chapters, it shall nevertheless be deemed to have occurred in the Member State defined hereafter and the rights shall be exercisable therein, depending on the case, against the ground station operator or the broadcasting organization:

- where the program-carrying signals are transmitted by satellite from an uplink station located on the territory of a Member State, or

– where the broadcasting organization that has commissioned the communication to the public has its main establishment on the territory of a Member State.

Art. 50.

For the purposes of Articles 48 and 49, communication to the public by satellite means the act of introducing, under the control and responsibility of the broadcasting organization, program-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth. If the program-carrying signals are encrypted then there is communication to the public by satellite on condition that the means for decrypting the broadcast are provided to the public by the broadcasting organization or with its consent.

Section 2

Retransmission by Cable

Art. 51.

In accordance with the foregoing Chapters and with the conditions defined hereafter, the author and the holders of neighboring rights shall enjoy an exclusive right to authorize retransmission by cable of their works or their performances.

Art. 52.

Retransmission by cable means the simultaneous, unaltered and unabridged retransmission by cable or by a microwave system for reception by the public of an initial transmission, by wire or over the air, including that by satellite, of television or radio broadcasts intended for reception by the public.

Art. 53.

(1) The right of the author and of the holders of neighboring rights to authorize or prohibit retransmission by cable may only be exercised by a copyright administration society.

(2) Where the author or the holders of neighboring rights have not entrusted the administration of their rights to a copyright administration society, the society that administers rights in the same category shall be deemed to have been entrusted with the administration of their rights.

Where more than one copyright administration society administers rights in the category concerned, the author or the holders of neighboring rights may themselves designate the society that is to be deemed to have been entrusted with the administration of their rights. They shall have the same rights and the same obligations deriving from the contract concluded between the cable operator and the copyright administration society as the right holders who have entrusted that society with the defense of their rights. They may assert their rights within a period of three years as from the date of retransmission by cable of their work or their performance.

(3) Paragraphs (1) and (2) shall not apply to rights exercised by a broadcasting organization with regard to its own broadcasts.

Art. 54.

(1) Where it is not possible to conclude an agreement authorizing retransmission by cable, the parties may have recourse to three mediators.

(2) The mediators shall be designated in accordance with the rules in Part Six of the Judicial Code

applicable to the designation of arbitrators. They shall be persons of independence and impartiality. Their task shall be to assist in negotiations and they may formulate proposals after having heard the parties involved. Proposals shall be notified by registered mail with advice of delivery.

(3) The parties shall be deemed to have accepted the proposals made to them if, within three months of notification, none of them has opposed the proposals by means of a notification in the same form to the other parties.

Chapter IV

Private copying of works and performances

Art. 55.

Authors, performers and producers of phonograms and audiovisual works shall be entitled to remuneration for the private reproduction of their works and performances, including those cases laid down in Articles 22(1), item 5, and 46(1), item 4, of this Law.

The remuneration shall be paid by the manufacturer, importer or intracommunity purchaser of mediums that may be used to reproduce sound and audiovisual works or of appliances permitting such reproduction on entry into circulation on the national territory of such mediums and such appliances.

The King shall lay down the detailed rules for collecting, distributing and verifying the remuneration as also the time at which it shall be due.

Subject to the international conventions, remuneration shall be distributed in accordance with Article 58 by the copyright administration societies between authors, performers and producers.

Subject to the conditions and detailed rules that He lays down, the King shall entrust a society that is representative of all the copyright administration societies to carry out the collection and distribution of that remuneration.

If an author or performer assigns his right to remuneration for private sound or audiovisual copying, he shall retain his right to obtain equitable remuneration with respect to the private copying.

This right to obtain equitable remuneration may not be waived by authors or performers.

The right to remuneration referred to in the first paragraph may not enjoy the presumptions referred to in Articles 18 and 36.

Art. 56.

The remuneration referred to in Article 55 shall be laid down by Royal Decree deliberated on in the Council of Ministers and shall be computed as a function of the selling price applied by the manufacturer, intracommunity purchaser or importer of appliances permitting reproduction of the protected works and, where appropriate, as a function of the price of the mediums.

In the absence of such a Decree, remuneration shall be fixed at:

- three percent of the selling price fixed in the first paragraph for appliances permitting reproduction of protected works;
- two francs an hour for analog mediums;
- five francs an hour for digital mediums.

Art. 57.

The remuneration referred to in Article 55 shall be refunded subject to conditions laid down by the King:

- 1° to the producers of sound and audiovisual works;
- 2° to the broadcasting organizations;

- 3° to officially recognized institutions subsidized by the public authorities for the purposes of keeping sound or audiovisual documents;
- 4° to the blind and those with impaired sight, to the deaf and those with impaired hearing as also to recognized institutions set up with regard to such persons;
- 5° to recognized teaching establishments that use sound and audiovisual materials for teaching or scientific purposes;
- 6° To establishments such as hospitals, penitentiaries, and officially recognised youth group organisations.

Refunds shall only be given for mediums intended for the conservation of documents.

In addition, following the advice of the committee of interested parties, the King may determine by Royal Decree deliberated on within the Council of Ministers the categories of persons, physical or legal:

- 1°. Either those who shall benefit from a total or partial refund of the remuneration collected with respect to the computers that they have acquired;
- 2°. Or those that are exempted from or reimbursed for, as referred to in article 55, in whole or in part, payment of remunerations with respect to the computers acquired by these persons.

The reimbursement of or the exemption from the remuneration, referred to in the foregoing paragraph, must be duly justified:

- 1°. Either by the need to guarantee, without prejudice to the created work, every person's equal and equitable access to new information and communication technologies, and where the remuneration in question would create an obstacle to this accessibility;
- 2°. Or by the need to ensure the acquisition of computers by persons that manifestly will not employ these devices for the reproductions as referred to in article 55.

The King shall determine the conditions for reimbursement or exemption.

Art. 58.

(1) The remuneration referred to in Article 55 shall be allocated, in thirds, to each of the following categories:

- authors;
- performers;
- producers of phonograms and audiovisual works.

(2) The Communities and the Federal State may decide to allocate 30 percent of the proceeds of the remuneration referred to in the foregoing paragraph to promoting the creation of works by means of a cooperation agreement in application of Article 92bis(1) of the Special Law of August 8, 1980, on Institutional Reform.

Chapter V

Copying for private use or for the purpose of teaching or scientific research of works fixed on a graphic or similar medium.

Art. 59.

The authors and publishers of works fixed on a graphic or similar medium shall be entitled to remuneration with respect to the reproduction of such works, included therein those comprised under the conditions laid down in articles 22, § 1, items 4° and 4°bis, and 22bis, § 1, items 1° and 2°.

The remuneration shall be paid by the manufacturer, importer or intracommunity acquirer of appliances permitting the copying of protected works at the time such appliances enter into circulation on the national territory.

Art. 60.

Furthermore, a proportional remuneration, determined as a function of the number of copies made, shall be payable by natural or legal persons who make copies of works or, as appropriate and in lieu of such persons, by those who make available to others for a charge or free of charge a reproduction appliance.

Art. 61.

The King shall determine the amount of the remunerations referred to in articles 59 and 60, by decree deliberated on in the Council of Ministers. The remuneration referred to in article 60 may be adjusted in function of the sectors concerned.

He shall lay down the detailed rules for collecting, distributing and verifying such remuneration as also the time at which it shall be due.

Subject to the international conventions, the remuneration laid down in Articles 59 and 60 shall be allocated, in equal parts, to authors and publishers.

Subject to the conditions and detailed rules He lays down, the King shall entrust a society that is representative of all the copyright administration societies to carry out the collection and distribution of such remuneration.

CHAPTER Vbis

Reproduction and/or communication of works and performances for the purpose of teaching or scientific research.

Art. 61bis

The authors and publishers of works shall be entitled to remuneration with respect to the reproduction and communication of these works under the conditions set forth in articles 22, § 1, items 4ter and 4quater and 22bis, § 1, item 3°.

The authors of databases shall be entitled to remuneration with respect to their communication under the conditions set forth in article 22bis, § 1, item 4.

The artist-interpreters or performers, the producers of phonograms, and the producers of first fixations of films shall be entitled to remuneration with respect to the reproduction and communication of their performances under the conditions set forth in article 46, 3bis and 3ter.

Art. 61ter.

The proportional remuneration, which is determined in function of the exploitation of the works and the performances, shall be payable by physical or legal persons that are responsible for such exploitation or, case pertaining and in lieu of the former, by the teaching or scientific research institutions that make available to others such works and performances at no charge or for a valuable consideration.

Art. 61quater.

The remuneration referred to in article 61bis is laid down by Royal Decree, deliberated on in the Council of Ministers.

The King shall lay down the modalities for collection, distribution, and verification of the remuneration, as well as the time when it shall be due.

In keeping with the conditions and modalities as He may determine, the King shall entrust one or several societies that, individually or collectively, are representative of all of the copyright administration societies, with the collection and the distribution of the remuneration. The King may likewise determine the mode of allocation of the remuneration, on the one hand, amongst the categories of recipients that are entitled to receive them and, on the other, amongst the categories of the works in question.

Chapter VI Provisions on Public Lending

Art. 62.

(1) Authors and publishers shall be entitled to remuneration in case of the lending of literary works, databases, works of photography, or scores of musical compositions under the conditions as defined in article 23.

(2) The author, performer and producer shall have a right to remuneration for the lending of sound or audiovisual works as laid down in Articles 23 and 47.

Art. 63.

After consultation with the institutions and the copyright administration societies, the King shall determine the amount of remuneration referred to in Article 62. Such remuneration shall be collected by the copyright administration societies.

Under the conditions and detailed rules He lays down, the King may entrust a society that is representative of all the copyright administration societies to carry out the collection and distribution of the remuneration for public lending.

After consultation with the Communities, and where appropriate at their initiative, the King shall lay down for certain categories of establishment that are recognized or established by the public authorities, an exemption or a lump-sum price for each act of lending in order to establish the remuneration referred to in Article 62.

Art. 64.

(1) Subject to international conventions, the remuneration referred to in article 62, § 1, shall be distributed amongst the authors and publishers in a 70% allocation for the authors and 30% for the publishers.

(2) Subject to the international conventions, the remuneration referred to in Article 62(2) shall be distributed, by thirds, between the authors, the performers and the producers.

Chapter VII Copyright Administration Societies

Art. 65.

Any person who collects or distributes the rights afforded by this Law on behalf of several owners of such rights shall be subject to the provisions of this Chapter.

Such administration shall be carried out by a society that is regularly constituted in a country of the European Union in which it lawfully carries out the activities of a society for the collection or distribution of such rights.

The associates must be authors, performers, producers of sound or audiovisual works, publishers or the successors in title of the aforementioned persons.

If the society is established outside the countries of the European Union, it shall perform its activities in Belgium through a society or establishment that is regularly constituted in a country of the European Union and of which the person responsible for administration satisfies the conditions laid down in Article 198 of the Coordinated Laws on Commercial Companies.

Art. 66.

The society shall have the obligation to administer the rights afforded by this Law where the holder of such rights so requests, to the extent that it is in compliance with the purpose and statutes of the society.

The statutes of societies may in no event limit the right of persons they represent to be represented within the organs of the society.

Notwithstanding any stipulation to the contrary, the statutes, regulations or contracts of societies may not prevent an entitled person from entrusting the administration of one or more categories of works or of performances of his repertoire to the society of his choice nor from assuming their administration himself.

In the event of withdrawal, and without prejudice to earlier legal acts carried out by his society, the entitled person shall be required to comply with an adequate period of notice.

The societies shall be required to permit consultation on the spot of the repertoires that they administer.

Art. 67.

The societies referred to in Article 65 shall be authorized by the Minister with responsibility for copyright to carry out their activities on the national territory.

A Royal Decree shall determine the manner in which authorizations shall be requested and the conditions for granting such authorizations.

The Minister may withdraw authorization in the event of conditions for grant not having been complied with or where the society commits or has committed serious or repeated infringements of the provisions of this Law.

Refusal to grant authorization and withdrawal of authorization shall be accompanied by reasons.

Withdrawal shall take effect on expiry of a period of two years counted from notification of withdrawal. Withdrawal of authorization shall imply termination of the contract of membership or the brief given by the members of the society to the society.

All grants of authorization and all withdrawals shall be published in the *Moniteur belge*.

Art. 68.

The societies shall be supervised by a commissioner appointed in the same manner as for limited companies.

He shall be chosen from among the members of the Institute of Company Auditors; he shall bear the title of auditor-commissioner.

All provisions of the Coordinated Laws on Commercial Companies concerning auditor-commissioners in limited companies shall likewise apply to the auditor-commissioner referred to in the second paragraph.

Art. 69.

Any funds received that cannot be allocated in a final manner shall be distributed between the persons entitled in the category concerned by the societies, in accordance with conditions approved by a two-thirds majority of the general meeting.

Failing such majority, a new general meeting shall be specially convened for that purpose and shall decide on a simple majority.

The use made of such sums shall be the subject, each year, of a special report by the auditor-commissioner.

Art. 70.

Without prejudice to any information that must be communicated in accordance with the laws and statutes, any associate or his representative may obtain, within a period of one month as from the date of his request, a copy of the documents for the last three years concerning:

1. the annual accounts approved by the general meeting and the financial structure of the society;
2. an up-to-date list of the administrators;
3. the reports made to the meeting by the administrative council and by the auditor-commissioner;
4. the text and the statement of reasons of resolutions proposed to the general meeting and any information on candidates for the administrative council;
5. the overall amount, certified by the auditor-commissioner, of remuneration, of lump-sum costs and of advantages of any nature whatsoever, paid to the administrators;
6. the up-to-date tariffs of the society;
7. the use made of the funds which have had to be redistributed in accordance with Articles 13(2) and 69.

Art. 71.

Societies shall have the faculty, within the limits of their statutory competence, to conclude overall contracts relating to the exploitation of copyright and neighboring rights.

Art. 72.

This Law shall not affect representation contracts concluded by the societies, referred to by the Law, or contracts concluded between such societies and other parties in accordance with earlier laws.

This provision shall not apply where such societies have requested the authorization referred to in Article 67 within six months of the entry into force of the Royal Decree referred to in that Article. The request shall be accompanied by a copy of their statutes and of the last three approved balance sheets.

Authorization shall be afforded automatically at the request of the societies that have effectively carried out the activity referred to in Article 65 for at least three years preceding the entry into force of this Law or that have assumed such activities from a society or association that had exercised them during the same period.

Art.73.

Societies shall have the capacity to go to law to defend the rights with which they are statutorily entrusted.

Art.74.

In addition to the reports of officers or servants of the judicial police, proof of a performance, reproduction or exploitation of any kind as also that of any incorrect statement concerning the works performed or reproduced or concerning the takings may be provided by ascertainment by a court bailiff or, unless proved otherwise, of an agent designated by the administration societies and approved by the Minister with responsibility for copyright and sworn in accordance with Article 572 of the Judicial Code.

Art.75.

The societies shall communicate their annual accounts to the Minister with responsibility for copyright and shall inform him, two months prior to examination by the general meeting, of any proposal to amend the statutes, tariffs or rules for collection and distribution.

Art.76.

The Minister shall designate a delegate to each society.

The delegate shall ensure application of the Law and of the statutes as also of the tariffs and rules for collection and distribution referred to in Article 75.

He shall have the right to take legal proceedings with respect to any violation of the Law or of the statutes.

He may act on his own initiative or at the request of the Minister or of any interested party.

The society shall be required to furnish him with any document or information required for his task.

He shall have access to the books and other accounting documents of the society.

The delegate shall report to the Minister on his activities and inquiries and communicate to those who have requested them the results of such inquiries.

The service status and emoluments of the delegate shall be laid down by Royal Decree.

Without prejudice to Article 67, repeated violation of the statutes and regulations of the society may lead to withdrawal of approval by the Minister.

Art.77.

The delegate may enter on the agenda of the general meeting of the society the limitation of the society's operating costs and the designation of an expert to report to the meeting.

Art.78.

The agents of the administration society and all other persons who participate in the collection of remuneration due under Chapters IV to VI shall be under an obligation of professional secrecy with respect to all information of which they obtain knowledge in or on the occasion of the exercise of their functions. Breach of secrecy shall be punishable under Article 458 of the Penal Code.

Chapter VIII General Provisions

Section 1 Field of Application

Art.79.

Without prejudice to the provisions of the international conventions, foreign authors and holders of neighboring rights shall enjoy in Belgium the rights warranted by this Law, whereby the term of such rights may not exceed the term laid down by Belgian law.

However, should such rights expire at an earlier date in their own country, they shall cease at the same time to have effect in Belgium.

Furthermore, where it is ascertained that Belgian authors and Belgian holders of neighboring rights enjoy less extensive protection in a foreign country, the nationals of such country may only enjoy the provisions of this Law to that same extent.

Notwithstanding the first paragraph, reciprocity shall apply to the right for remuneration for private copying of publishers, performers and producers of phonograms or first fixations of films, without prejudice to the Treaty on the European Union.

Section 1bis.

Legal protection of technical measures and of rights-management information.

Art. 79bis.

(1) Any person that circumvents any effective technical measure, either knowingly or being in a position to be cognisant thereof, or knowingly or being in a position to be cognisant that such a circumvention could or might facilitate the perpetration of the offences referred to in articles 80 and 82, shall be guilty of a punishable offence pursuant to articles 81 and 83 to 86. The circumvention of the applied technical measures pursuant to or on the ground of the present article, or pursuant to article 87bis, § 1, shall be deemed to facilitate the perpetration of the offences referred to in articles 80 and 82.

Any person who produces, imports, distributes, sells, hires out, engages in publicity for the purpose of selling or renting out, or possesses for the purpose of commercial gain, articles, products, or components, or performs services that:

1° form the object of a promotion, publicity or commercialisation, with the purpose of circumventing the protection of any effective technical measure, or

2° have but a limited commercial purpose or limited usage other than to circumvent the protection of any effective technical measure, or

3° have primarily been conceived, produced, adapted, or realised for the purpose to allow or to facilitate the circumvention of the protection of any effective technical measure,

shall be guilty of an offence that is punishable pursuant to articles 81 and 83 to 86.

The provision of Book I of the Penal Code, including also chapter VII and article 85, are applicable to the offences referred to in paragraphs 1 and 2.

By " technical measures" is meant: all technology, appliances, or components that within their normal functional context are intended to prevent or limit the exploitation of the works or performances, and all acts unauthorised by the holders of copyright or of neighbouring rights.

The technical measures shall be deemed effective in the sense of paragraphs 1 and 2, when the use of a work or of a performance is being monitored by the right holders by means of the application of an access code or by a protective procedure such as that of encrypting, scrambling, or any other transformation of the work or the performance, or of a monitoring device on the act of copying that meets the objective of the protective measure in question.

(2) The persons legally entitled shall, within a reasonable delay, take adequate voluntary measures, including therein agreements with other concerned parties involved, in order to provide to the user of a work or a performance the necessary means to allow him to benefit from the exceptions provided in article 21, § 2, in article 22, § 1, items 4°, 4bis, 4ter, 8, 10 and 11, in article 22bis, § 1, paragraph 1, items 1 to 5°, and in article 46, 3bis, items 7°, 9° and 10°, when the latter has lawful access to the work or to the performance that is protected under the technical measures.

The King, by Royal Decree deliberated on in the Council of Ministers, may, under such conditions as He shall determine, extend to articles 22 § 1, item 5°, and 46, item 4, the list of the provisions referred to in paragraph 1 in so far as this shall not prejudice the normal exploitation of the works or of the performances or cause unjustified harmful consequences to the legitimate interests of the entitled persons.

(3) § 2 is not applicable to the works or performances that are made available to the general public on demand in keeping with the contractual provisions between the parties, in order that each of them shall have access to the location thereof and at a time of one's personal choosing.

(4) The technical protective measures referred to in § 1 cannot prevent the lawful acquirers of protected works and performances from using such works and performances in keeping with their intended normal utilisation.

Art. 79ter.

(1) Any person who knowingly and without authorisation commits one of the following acts:

1°. The suppression or the modification of any rights-management information being presented in electronic form, and

2°. The distribution, the importing for distribution purposes, the broadcasting, the communication to the public or the making available to the public of works or of performances, and whose information regarding rights-management presented in an electronic form has been deleted or modified without authorisation to do so,

knowingly, or with valid grounds for assuming that, by doing so, it will result in, lead to, facilitate, or dissimulate an infringement on copyright or a neighbouring right, shall be guilty of an offence punishable pursuant to articles 81 and 83 to 86.

The provisions of Book I of the Penal Code, therein included chapter VII and article 85, shall be applicable to this offence.

(2) In the sense of the present article, by "rights-management information", is understood all information provided by the right holders that allows the identification of the work or of the performance, their author, or any other right holder. This expression likewise designates information about conditions and modalities on the use of the work or the performance, as well as on any number or code representative of these kinds of information. Paragraph 1 is applicable whenever any of these elements of information is joined to the copy or appears in relation with the communication to the public of a work or of a performance.

Section 2 Penal Provisions

Art. 80.

Any malicious or fraudulent infringement of copyright and neighboring rights shall constitute an offense of counterfeiting.

The same shall apply to malicious or fraudulent use of the name of an author or of a holder of a neighboring right or of any distinctive sign adopted by such person to designate his work or his performance; such articles shall be deemed counterfeit.

Any person who knowingly sells, hires, places on sale or on hire, holds in storage for hire or for sale or who introduces onto the Belgian territory with a commercial intent such counterfeit articles shall be guilty of the same offense.

The provisions of Book I of the Penal Code, including Chapter VII and Article 85, shall apply to the offense of counterfeiting.

The provisions of Chapter XI of the Law of July 3, 1969, establishing the value-added tax code shall apply to infringements of the provisions of Chapters IV to VI and infringements of their implementing decrees, whereby the word "tax" shall be replaced by the word "remuneration."

Art. 81.

The offences as referred to in articles 79bis, § 1, 79ter and 80 shall be punishable by a fine of 100 to 100 000 francs. Any repeat of the offences referred to in articles 79bis, 79ter and 80 shall be punishable by imprisonment of between three months and two years, plus a fine of 100 francs to 100 000 francs, or by one of these fines only.

Art. 82.

In the event of a performance carried out in infringement of copyright or neighboring rights, the takings may be seized as the produce of the offense. They shall be allocated to the claimant in proportion to the share of his work or his performance in that performance and will be taken into account when assessing the damages.

Art. 83.

The court may order posting of judgments given in application of Article 81 for a period that it will determine, both outside and inside the infringer's installations and at the cost of the infringer, as also publication of the judgment, at the cost of the infringer, in newspapers or in any other manner.

Art. 84.

Legal persons shall have civil liability in respect of damages that are ordered, fines, costs, confiscations, restitutions and any other monetary sanctions ordered as a result of infringement of the provisions of this Law, against their administrators, representatives and servants. Likewise, the members of any commercial association not having legal personality may be declared to have civil liability where an infringement has been committed by an associate, manager, servant or agent with respect to an operation falling within the activities of the association.

Art. 85.

In the event of a repeat of the infringements referred to in this Law, the penalties incurred shall be doubled.

Furthermore, the court may order the closure, either final or temporary, of the establishment run by the sentenced person.

Art. 86.

Receipts and articles confiscated may be allocated to the civil party in account of or up to the amount of the damages suffered.

Section 3 Civil Proceedings in Copyright

Art. 87.

(1) Without prejudice to the competence of the first instance court, the presiding judge of that court shall ascertain the existence and order termination of any infringement of copyright or of a neighboring right.

The proceedings shall be instituted and examined in chambers.

A decision shall be given on the proceedings notwithstanding any proceedings in respect of the same facts before a criminal court.

The decision shall be provisionally enforceable, notwithstanding any appeal and without security, unless the judge orders that a security be provided.

Proceedings shall be instituted at the request of any interested party, of an authorized administration society or of a professional or interprofessional group possessing legal personality. In addition to termination of the disputed act, the presiding judge may order, in the manner he deems appropriate, publication of all or a part of the judgment at the cost of the defendant.

(2) Surrender of the counterfeited objects and of the plates, moulds, dies or any other appliances

having directly served to commit the infringement and which are still in the possession of the defendant may be ordered to be set off against the damages due to the plaintiff.

In the event of bad faith on the part of the defendant, the latter shall be sentenced to confiscation of the counterfeit articles and of the plates, moulds, dies or other appliances having directly served to commit the infringement or, where appropriate, to payment of an amount equal to the price of those articles or other goods already transferred.

Section 3bis.

Procedures relative to the application of technical measures of protection.

Art. 87bis.

(1) Notwithstanding the legal protection provided for in article 79bis, the presiding judge of the court of first instance shall be competent to:

1° Ascertain the existence of any infringement on article 79bis, §§ 2 and 5 and, case pertaining shall:

2° Either direct the entitled parties to take the necessary measures allowing the beneficiaries of the exceptions referred to in article 21, § 2, in article 22, § 1, items 4°, 4°bis, 4°ter, 8°, 10°, 11° and 13°, in article 22bis, § 1, paragraph 1, items 1° to 5°, and in article 46, 3bis, items 7°, 9°, 10° and 12, or of the provisions determined by the King on the grounds of article 79bis, § 2, paragraph 2, to benefit from the said exceptions to the degree necessary to take advantage of them when the beneficiary possesses lawful access to the protected work or protected performance.

3° Or direct the entitled parties to renounce the technical protection measures pursuant to article 79bis, § 5.

(2) The action based on § 1 is in keeping with the demand:

1°. Of the interested parties;

2°. Of the minister competent on the matter of copyright;

3°. Of a professional or interprofessional group possessing legal personality;

4°. Of an association representing the interests of consumers and possessing legal personality in so far as it is represented on the Consumers Council or approved by the minister competent on the matter of copyright pursuant to criterions laid down by Royal Decree deliberated on in the Council of Ministers.

By way of derogation from the provisions of articles 17 and 18 of the Judicial Code, the associations and groups referred to in items 3° and 4° may have legal recourse in defence of their collective interests as statutorily defined.

(3) The action referred to in § 1 is formulated and entertained pursuant to the lines of the procedure.

It may be introduced by contradictory application conform to articles 1034ter to 1034sexies of the Judicial Code.

The presiding judge of the court of first instance may order the posting of the judgment or of the redacted summary thereof during the period that he shall determine, both on the inside and on the outside of the establishments of the infringer and at the expense of the latter, and, likewise, the publication of the judgment or of the summary thereof at the expense of the infringer by way of newspapers or any other means whatsoever.

The judgment shall be provisionally enforceable notwithstanding any appeal and without security posting.

Any decision shall, within eight days, and at the due diligence of the Clerk of the competent court, be communicated to the minister responsible in the matter of copyright, except where the decision has been rendered at his request. Furthermore, it shall be incumbent on the Court Clerk to immediately inform the minister responsible in the matter of copyright of any appeal launched against the judgment rendered in application of the present article.

Section 4 Transitional Provisions

Art. 88.

(1) This Law shall apply to works and performances carried out prior to its entry into force and that are not in the public domain at that time.

This law is applicable to databases created prior to the entry into force of article 20bis and not at that moment entered into the public domain.

(2) It shall also apply to works and performances which are protected by copyright on July 1, 1995, in at least one Member State of the European Union.

However, renewal of the rights may not be invoked against persons who in good faith have undertaken the exploitation of works or performances that belonged to the public domain prior to July 1, 1995, insofar as they continue the same modes of exploitation.

(3) This Law shall not affect rights acquired by virtue of law or through the effect of legal instruments nor to acts of exploitation carried out before its entry into force.

(4) Contracts for the exploitation of works and other protected elements in force on the date of entry into force of this Law shall be subject to Articles 49 and 50 as from January 1, 2000, if they expire later than that date.

(5) Where an international coproduction contract concluded prior to January 1, 1995, between a coproducer of a Member State of the European Union and one or more coproducers of other Member States or of non-member States expressly provides for distribution arrangements between the coproducers of the exploitation rights by geographic area for all means of communication to the public without separating the arrangements applicable to communication to the public by satellite from the provisions applicable to other means of communication, and in the event of communication to the public by satellite of the coproduction prejudicing the exclusivity, particularly the linguistic exclusivity, of one of the coproducers or of one of his assignees for a given territory, authorization by one of the coproducers or his assignees for a communication to the public by satellite shall be subject to the prior consent of the person enjoying that exclusive right, whether coproducer or assignee.

Section 5 Repealing Provisions

Art. 89.

(1) The Law of March 22, 1886, on Copyright is hereby repealed.

(2) The Law of June 25, 1921, imposing a royalty on the public sale of works of art for the benefit of the artists who are the authors of the works sold shall be repealed at the date of the entry into force of Articles 11 to 13 of this Law.

Art. 90.

In Article 1 of the Law of April 8, 1965, establishing statutory deposit with the Royal Library of Belgium, the words “phonographic and” are deleted.

Section 6 Amending Provisions

Art. 91.

Article 572 of the Judicial Code is supplemented by an item 11, worded as follows:

“11. persons designated by the copyright and neighboring rights administration societies in order to ascertain any exploitation whatsoever of a work or of a performance as also any incorrect statement concerning such exploitation.”

In Article 19 of the Mortgage Law of December 16, 1851, constituting Title XVIII of the Civil Code, an item *4decies* is inserted, worded as follows:

“*4decies*. sums owed to authors referred to by the Law of June 30, 1994, on Copyright and Neighboring Rights.”

The words “and the neighbouring rights” have been added to article 96, first paragraph of the law of 14 July 1991, bearing on commercial practices and on the information and protection of the consumer.

Section 7 Entry Into Force

Art. 92.

(1) With the exception of the provisions referred to in paragraphs (2) to (7) of this Article, this Law shall enter into force on the first day of the month following that during which it has been published in the *Moniteur belge*.

(2) Articles 11 to 13 shall enter into force at the date of entry into force of the Royal Decree referred to in the second paragraph of Article 13.

(3) Articles 42 and 43 shall enter into force at the date of entry into force of the Ministerial Order referred to in the fifth paragraph of Article 42.

(4) Articles 22(1), item 5, 46, item 4, and 55 to 58 shall enter into force at the date of entry into force of the Royal Decrees referred to in the third and fifth paragraphs of Article 55 and in Article 57 and at the latest on the first day of the thirteenth month following the month of publication of this Law in the *Moniteur belge*.

(5) Articles 22(1), item 4, and 59 to 61 shall enter into force at the date of the entry into force of the Implementing Decrees referred to in Article 61.

(6) Articles 62 to 64 shall enter into force at the date of the entry into force of the Royal Decrees referred to in the first and third paragraphs of Article 63.

(7)

1. Articles 65, 66, 68, 69 and 70 shall enter into force on the first day of the twelfth month following that during which this Law is published in the *Moniteur belge*.

2. Articles 67 and 72 shall enter into force at the date of entry into force of the Royal Decree

referred to in the second paragraph of Article 67.

3. Articles 76 and 77 shall enter into force at the date of entry into force of the Royal Decree referred to in the eighth paragraph of Article 76.