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ESTUDIOS SOBRE LAS DISPOSICIONES NACIONALES DE APLICACIÓN
DEL WCT Y EL WPPT

preparado por la Secretaría

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INTRODUCCIÓN

1. En el presente documento se exponen los resultados de un estudio realizado por la Secretaría de la OMPI sobre las disposiciones de aplicación del Tratado de la OMPI sobre Derecho de Autor (WCT) y/o el Tratado de la OMPI sobre Interpretación o Ejecución de Fonogramas (WPPT) que figuran en la legislación nacional de los Estados miembros que han ratificado o se han adherido a dicho tratado.
2. Una vez finalizado el estudio se enviaron los resultados a los respectivos Estados miembros para información y examen. Varios de esos Estados remitieron correcciones o comentarios sobre los mismos; en el presente documento se ofrece información sobre las respuestas recibidas.
3. El estudio se centró en la legislación de los 39 Estados miembros siguientes, que se adhirieron o ratificaron el WCT y/o WPPT antes del 1 de abril de 2003: Albania, Argentina, Belarús, Bulgaria, Burkina Faso, Chile, Colombia, Costa Rica, Croacia, Ecuador, El Salvador, Eslovaquia, Eslovenia, Estados Unidos de América, Filipinas, Gabón, Georgia, Guatemala, Honduras, Hungría, Indonesia, Jamaica, Japón, Kirguistán, Letonia, Lituania, Malí, México, Mongolia, Nicaragua, Panamá, Paraguay, Perú, República Checa, República de Moldova, Rumania, Santa Lucía, Senegal y Ucrania.
4. A continuación se expone un breve reseña de las disposiciones legislativas objeto de estudio, que tratan de las siguientes cuestiones: la protección de los programas informáticos y las bases de datos; el derecho de puesta a disposición del público; la protección contra la elusión de medidas efectivas de protección tecnológica; la protección de la información sobre gestión de derechos; excepciones y limitaciones; los derechos de los artistas intérpretes y ejecutantes; y la responsabilidad civil de los proveedores de servicios de Internet. Cuando en el estudio se indica que “en la ley objeto de análisis” no constan disposiciones sobre una cuestión específica, no debe entenderse necesariamente que no existan disposiciones de esa índole en la legislación del país, antes bien, significa que en la legislación remitida a la Secretaría a los fines del estudio no figuraba una disposición alguna sobre ese tema.
5. En 35 de las leyes estudiadas se protegen expresamente los programas informáticos, ya sea asimilándolos a las obras literarias o como obras separadas. En cuanto a la forma de referirse a esos programas, la terminología varía de una legislación a otra, entre “programas informáticos” o “programas de computación”, y en algunas terminologías quedan a veces comprendidas las aplicaciones y los sistemas operativos, y en ocasiones, formas concretas de expresión.
6. La protección de las bases de datos se aplica a las colecciones y/o compilaciones y se basa en el criterio de originalidad en la selección y/o disposición, ya sea en lo que respecta a observarse también una variación terminológica en cuanto a la compilación sistemática o metodológica del material incluido en dichas bases. Las bases de datos se protegen de forma expresa (en 21 de las leyes analizadas) pero también en el ámbito de la obra literaria (en 27 de las leyes analizadas), y una característica común de todas esas legislaciones es la exclusión de la protección por derecho de autor de la obra en su conjunto, lo que se aplica también al contenido de dichas bases. En varias legislaciones se contempla la protección de los cuadros como forma de base de datos. En 38 de las leyes objeto de análisis figura una disposición sobre la protección de las bases de datos.

7. En 28 de las legislaciones objeto de análisis se contempla el derecho de puesta a disposición del público de las obras de modo que los miembros del público tengan acceso a dichas obras desde un lugar y en el momento que cada uno de ellos elija; es el derecho contemplado como derecho de comunicación al público (en 19 de las leyes objeto de análisis), aplicándose ciertas condiciones en cuanto a su alcance y ejercicio concreto. En función de la ley de que se trate, es el derecho que a veces incluye en el derecho de distribución asociado al mismo (en 5 de las leyes objeto de análisis); a veces se conside una forma de interpretación o ejecución pública (en 16 de las leyes analizadas), distinta de la radiodifusión (en 10 de las leyes); también figura como forma de transmisión interactiva (entre 2 de las leyes analizadas); como forma de transmisión por Internet (entre 2 de las leyes analizadas); y en una ley, como algo que “permite la transmisión”. Entre otros elementos de este derecho están la puesta a disposición de los miembros del público, la posibilidad de elegir el lugar y el momento de recepción, a condición de que el derecho se aplique a formas “no tangibles” de utilización, y la comunicación por medios inalámbricos, por cable y por otras formas o métodos de comunicación.

8. De las respuestas a la pregunta que figura en el estudio en relación con la protección jurídica y las medidas de subsanación que se contemplan contra el hecho de eludir medidas tecnológicas efectivas de protección se desprende que 22 de las leyes contienen disposiciones sobre esta cuestión, aunque la terminología empleada y el grado de protección varían mucho de una legislación a otra. La divergencia entre leyes entorno a este tema se aprecia en aspectos como el hecho de que se prevén sanciones civiles y/o penales en los casos de infracción, incluida la sanción pecuniaria y penas de prisión. En una de las leyes se considera que el hecho de eludir estas medidas constituye una forma de competencia desleal. Se contemplan también explícitamente (en 12 de las leyes analizadas) medidas como mandamientos judiciales para poner fin a una práctica ilegal y la destrucción de material ilegal. Existen también divergencias en cuestiones secundarias como el hecho de si sólo se contemplan los actos de elusión (en 22 de las leyes analizadas) o si se contemplan los actos de elusión, los actos preparatorios o la puesta a disposición del material (en 17 de las leyes analizadas); si debe haber intención real por parte de los autores del delito (en 4 de las leyes analizadas), o si es suficiente que existan motivos razonables para sospechar que el acto/material infringirá el derecho de autor y/u otros derechos conexos (en 6 de las leyes analizadas); y la determinación de la finalidad principal del equipo en cuestión (en 10 de las leyes analizadas). En los textos legislativos estudiados se contemplan la responsabilidad civil, mandamientos judiciales, indemnización por daños y perjuicios, penas pecuniarias y penas de prisión (en 20 de las leyes analizadas), pero esos recursos también se prevén en leyes conexas además de la legislación de derecho de autor y derechos conexos objeto de análisis.

9. En las disposiciones sobre protección de la información sobre la gestión de derechos se contemplan, entre otras, medidas de subsanación, sanciones y/o penas por la alteración, la distribución y/o supresión de dicha información (22 de las leyes analizadas contienen disposiciones a este respecto). En 22 de las leyes examinadas se define expresamente o se hace referencia a la información sobre la gestión de derechos, que también comprende la información relativa al registro inicial de las obras, a los métodos de utilización y a las condiciones para la explotación de la obra. Entre 2 de las leyes analizadas se establecen vínculos entre las disposiciones sobre la protección de la información sobre la gestión de derechos y las disposiciones relativas a la elusión de las medidas tecnológicas de protección. En otras disposiciones se especifica que se aplicarán sanciones/penas sólo en relación con los actos de alteración o supresión sino en relación con toda nueva distribución de la obra alterada (16 de las leyes analizadas contienen disposiciones de esta índole); se especifica que la información sobre la gestión de derechos debe estar incorporada en el ejemplo de la obra

(nueve de las leyes examinadas contienen disposiciones de esa índole); en otras legislaciones se estipula como requisito que haya habido voluntad específica o setengan motivos razonables para saber que el acto en cuestión es ilegal (cuatro de las leyes analizadas contienen disposiciones a ese respecto). En dos de las leyes examinadas se estipulan excepciones en relación con las sanciones/penas, en particular, en los casos en los que es necesario acceder a la información sobre la gestión de derechos al fin del cumplimiento de la ley y de la seguridad nacional.

10. La sección sobre excepciones y limitaciones es la más larga del estudio; en cada ley analizada figuran disposiciones en materia de excepciones y limitaciones, a saber: utilización personal o privada; uso en fines educativos; uso por bibliotecas y archivos; elaboración de ejemplares efímeros por los organismos de radiodifusión; elaboración de antologías y determinadas bases de datos; utilización de programas informáticos como instrumento auxiliar para realizar actividades legítimas; utilización por el gobierno; utilización en procedimientos ante los tribunales y el parlamento; utilización con fines de investigación científica; utilización en la información sobre los asuntos públicos y las cuestiones de actualidad; la descompilación de programas informáticos; la reproducción temporal; las transmisiones secundarias, por cable o en hoteles; la reproducción para probar equipo; la reproducción para la programación diferida; utilización de prácticas comerciales leales; exposición pública; reproducciones con la finalidad de describir edificios y estructuras; utilización con fines religiosos y espirituales; utilización por personas minusválidas; y reproducción y licencias voluntarias para la grabación de composiciones musicales. En una de las leyes analizadas figuran disposiciones en las que se especifica que las excepciones y limitaciones no se aplican a los derechos morales, mientras que en otras dos leyes figura una disposición en el sentido de que las excepciones y limitaciones no tendrán efecto en las medidas tecnológicas de protección.

11. En el estudio se pone en evidencia que en la legislación de 35 países se contempla la protección de los derechos de los artistas intérpretes y ejecutantes. En la legislación de 30 países figuran disposiciones en materia de derechos morales. En las disposiciones sobre el derecho de comunicación pública (30 de las leyes examinadas contienen ese tipo de disposiciones) se formula del siguiente modo dicho derecho: puesta a disposición; comunicación pública; puesta a disposición en forma intangible; redifusión pública; puesta a disposición por cualquier medio o procedimiento; y utilización en forma tangible. En lo relativo a los derechos patrimoniales sobre las interpretaciones o ejecuciones no fijadas (32 de las leyes examinadas contienen una o más de esas disposiciones), los derechos incluyen uno o más de los siguientes actos: fijación/grabación; radiodifusión; comunicación pública; y reproducción. En 25 de las leyes examinadas se contempla explícitamente el derecho de reproducción con sujeción a varias excepciones, como la utilización de fijaciones previo consentimiento. En seis de las leyes se hace referencia a la reproducción directa e indirecta, y en una de ellas se menciona un derecho de autorización original del difiere del derecho objeto de examen. En 25 de las leyes analizadas se contempla el derecho de distribución como derecho derivado del derecho de reproducción y ese derecho adopta la forma de puesta en circulación; importación de ejemplares; transferencia de la titularidad de las grabaciones; venta y puesta a disposición de ejemplares; y agotamiento del derecho de reproducción. En las disposiciones de varias leyes se aborda también el derecho de alquiler (26 de las leyes examinadas contienen disposiciones al respecto) y el derecho de puesta a disposición de interpretaciones o ejecuciones fijadas (22 de las leyes examinadas contienen disposiciones de esa índole).

12. Encuantoala responsabilidadcivildelosproveedoresdeserviciosde Internet,en 10de lasleyesanalizadasseabordaesacuestióndeformaexpresa.Deestasleyes,sietereflejanla formulaciónadoptada enlaDeclaraciónconcertadarespectodelArtículo 8delWCT.Enla legislacióndelJapónydelosEstados UnidosdeAméricafiguraungrannúmerode disposicionessobreeltema.Enambaslegislacionesexistendisposicionesenvirtuddelas cualeslosproveedoresdeserviciosde Internetpuedenevitarincurrirenresponsabilidadcivil medianteprocedimientosdenotificaciónyretirada.Enlalegislaciónjaponesasecontempla tambiénunderechoacomprobarlainformaciónrelativaalaidentidaddelsupuestoinfractor, yenellafiguraunadisposiciónenelsentidodequedichainformaciónnodebeserobjetode usoabusivo.

[SigueelAnexo]

ANNEX/ANNEXE/ANEXO

ALBANIA

(Law Reviewed: Law No. 7564 May 19, 1992, on the Copyright, updated by Law No. 7923 April 19, 1995, Law No. 8594 April 6, 2000, and Law No. 8630 July 3, 2000)

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

Not found in the Law reviewed.

2.1.2 Is “phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.3 Is “fixation” defined in the Law?

Not found in the Law reviewed.

2.1.4 Is “producer of a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.6. Is “broadcasting” defined in the Law?

Not found in the Law reviewed.

2.1.7 Is “communication to the public” defined in the Law?

Not found in the Law reviewed.

2.2 Istheconceptof“nationaltreatment”cont ainedintheLaw?

“Article40.Thefieldofapplication

“TheprotectionoftheperformersasprovidedbyArticles35and36ofthislawis applicablewhen:

- a) theperformerhastheAlbaniancitizenship;
- b) theperformancetookplaceintheterrit oryofAlbania;
- c) theperformanceisfixedinaphonogram,whichisincludedinthe protection’srights,asprovidedbythethirdparagraph;
- d) theperformancewhichisnotregisteredinthephonogram,isincludedina testamentwhichenjoystheri ghtofprotectionasprovidedbythethirdparagraph.

“TheprotectionofphonogramsprovidedbyArticle36and37isapplicablewhen:

- a) theheadquartersoftheorganizationisinAlbania;
- b) theprogramisbroadcastedbyastationsituatedinAlba nia.

“Thislawisappliedalsoforperformances,phonogramsandprogramswhichmustbe protectedinaccordancewiththeconventionsofwhichAlbaniaadheres.”

2.3 Doperformershavemoralrightsinthelaw?

Notfoundinthelawreviewed.

2.4 Doperformershaveeconomicrightsintheirunfixedperformances,andifso,which ones?

“Article34.Actsrequiringtheauthorizationoftheperformers

“Noonecanundertakethefollowingactswithouttheauthorizationoftheperformers:

[...]

3. Thefixtionoftheunfixedperformance.”

2.5 Doperformershavearightofreproductioninthelaw?

“Article34.Actsrequiringtheauthorizationoftheperformers

“Noonecanundertakethefollowingactswithouttheauthorizationoftheperformers:

[...]

4. Thereproductionoffixationoftheirperformance,inthefollowingcases:
- a) when the performance is fixed once without the authorization of the performers;
 - b) when the reproduction is done for purposes other than those authorized by the performers;
 - c) when the performance is first fixed in compliance with the provisions of Article 35, but the reproduction is done for purposes other than the purposes other than those defined in that article.”

2.6 Do performers have a right of distribution in the Law?

Not found in the Law reviewed.

2.7 Do performers have a right of rental in the Law?

Not found in the Law reviewed.

2.8 Do performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 35. Acts requiring the authorization of the producers of phonograms

“Without the authorization of the producers of phonograms no one can:

- a) reproduced directly or indirectly the phonogram.”

2.10 Do producers have a right of distribution in the Law?

Not found in the Law reviewed.

2.11 Do producers have a right of rental in the Law?

“Article 35. Acts requiring the authorization of the producers of phonograms

“Without the authorization of the producers of phonograms no one can:

[...]

c) lease or loan copy of the phonogram.”

2.12 Do producers have a right of making available of phonograms in the Law?

Not found in the Law reviewed.

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 36. Remuneration for the production of phonograms

“If a phonogram published for commercial purposes, or its reproduction, is directly used for broadcasting or the communication to the public, the user then, pays to the producer a remuneration, upon agreement, for the performers and the producers of the phonogram.

“If there is no agreement between the performers and the producer, then the half of the remuneration the producer has been given, shall go to the performers by the producer.”

2.14 Are rights in the Law subject to any formalities?

Not found in the Law reviewed.

2.15 What is the term of protection for:

2.15.1 performers?

“Article 34. Acts requiring the authorization of the performers

“The term of the protection provided for in the article lasts for 50 years, starting from the end of the year in which the performance took place.”

2.15.2 producers of phonograms?

“Article 35. Acts requiring the authorization of the producers of phonograms

“The term of the protection provided for in the first paragraph lasts for 50 years, starting from the end of the year, in which the phonogram was produced for the first time.”

2.16 What is the effective time-frame for application of rights in the Law?

Not found in the Law reviewed.

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 6. Freereproduction for personal use

“Reproduction of a published work without the author’s approval and without payment or remuneration, according to the laws, is allowed only for personal use (use for research and scientific purposes included).

“The first paragraph is not applicable for:

- a) the reproduction of architectural works in terms of a building or other constructions;
- b) the reprographic reproduction of fine art works published in limited copies, the graphic presentation of musical works, notebooks or other publications, which are meant for a single use purpose;
- c) the reproduction of computer programs, excluding what provided for in Article 13;
- d) any other reproduction which would come against the process of work employment or would damage the legitimate interests of the author.”

“Article 7. Freereproduction in the form of citation

“It is permitted, without the author’s approval and without payment or remuneration, the citing, according to the law, of a published work in another work under the condition that in the citation must be included the source and author’s name, if it is in the original work. The citing has to be honest, correct and it must not exceed the context of its original use.”

“Article 8. Free usage for teaching

“It is permitted the free usage of a work for teaching, without the author’s approval and without payment or remuneration, upon the condition that in the citation must be included the source and author’s name, if it is in the original work. It is permitted to:

- a) use a published work, according to the law, for illustrations in publications, broadcasts or sound or visual recordings for the purpose of teaching;
- b) reproduce, by means of reprography, special articles published according to the law in a newspaper or magazine; to reproduce written piece taken out of a published work according to the law or a short full work published according to the law for the purpose of teaching, or for the period of the exams in educational institutions. The activity of these institutions must not bear any direct or indirect profit purpose and of the work must be always honest.”

“Article 9. Freereproduction from libraries and archives

“Thereproductionfromalibraryorarchive,whichactivitydoesnotbearanydirector indirectprofitpurposes,ispermittedwithout theauthor’sapprovalandwithoutpayment orremuneration.Thecopyunderdiscussionbelongsthen tothefundofthelibrary’s archiveswiththepurposeof:

- a) storingandifnecessary(incaseoflossoroveruse)replacingthework itself;
- b) replacingofacopy(lost,damagedoroverused)forthepermanentfundof anotherlibraryorarchive.

“These procedurescantakeplaceifitisnotpossible tobuyanoriginalcopyforalong periodoftimeandunderreasonableconditions.”

“Article 10. Free reproduction for legal and administrative purposes

“Thereproductionofaworkispermitted,withouttheauthor’sapprovalandwithout paymentorremuneration,forthepurposeofusingitinacourtcaseorother administrativeprocesseswithinareasonable requiredextend.”

“Article 11. Free use for the purpose of giving information

“Itispermittedwithouttheauthor’sapprovalandwithoutpaymentorremunerationbut theobligatoryciting(mentioning)thesourceandtheauthor’snameifitisinthe originalwork:

- a) thereproductionanddistributionbypress,broadcastingorthethe communicationtothepublicbywire,ofanyarticlepublishedinnewspapersor magazinestreatinganeconomic,politicalorreligiousissueorofanyother broadcastwork, iftherightofreproduction,broadcastoranyothersimilar communicationtothepublicisnotexpresslylimited;
- b) thereproductionandofferingtothepublic,in caseofnews oncurrent events,ofaworkseenorheardduringthatevent,by meansofphotography, cinematography,broadcastingorcommunicationtothepublic,withoutexceeding theinformatorypurpose;
- c) thereproductioninthe press,broadcastorinother massmediameansof politicalspeeches,lectures,reports,sermonsandofotherworkssimilar tothem, heldonpublicplaces,aswellasthespeechesheld during legal proceedings,when allthesehaveaninformatorypurpose(hencenotexceedingthisinformatory purpose).Theauthorsoftheseworkshavetherighttopublishworkssummarises.”

“Article 12. Free use of pictures of publicly exposed works

“It is allowed without the author’s approval and without payment or remuneration the reproduction, broadcasting or the communication to the public by wire of a picture of an architectonic work, of a fine arts work, photographic work or applied arts work placed in a public area, excluding the cases when the picture is the main theme of the reproduction, broadcasting or communication and when it is used for commercial purposes.”

“Article 13. Free reproduction and adaptation for computer programs

“The legal owner of a computer program is permitted, without the author’s approval and without payment or remuneration, to make a copy or adaptation of such a program, if this copy or adaptation is:

- a) indispensable for the usage of the computer program and for the purpose the program is legally obtained;
- b) used for archives and if necessary (in case of lost, damage or overuse) to replace the legally obtained copy.

“The copy or the adaptation provided for in the first paragraph is destroyed in cases when the ownership of the copies of the computer programs is no more legal.”

“Article 14. Free use of computer programs

“The author’s approval is not obligatory if the reproduction of the code and the adaptation (“translation”) are necessary to get the required data for the interaction of a computer program which is created independently of the other programs. The reproduction can be made upon the following conditions:

- a) when this action is done by means of a license, by another person who has the right to use the copy of the program or by any authorized person;
- b) when the necessary data for interaction are not previously given to the persons mentioned in paragraph “a”;
- c) when these actions are limited in those parts of the original program which are indispensable for the creation of the interaction capacity.

“The use of the following data is prohibited because of the provisions of the first paragraph:

- a) for a purpose different from that of interacting capacity of the computer program created in an independent way;
- b) for giving them over to third parties, except for the cases when this is indispensable for the interacting capacity of the computer program created in an independent way;

- c) for the development, production or handing over of a similar computer program concerning the way of expression or for any other purpose which violates the copyright.

“The provisions of this article must not be interpreted in such a way that causes applications to come contrary to the normal use of the computer program, or infringes the legitimate rights of the author.”

“Article 15. Free temporary recording by broadcasting organizations

“A broadcasting organization can record for temporary use, by its own means, a work on which it enjoys this right without the author’s approval and without special remuneration. This agency is obliged to destroy this recording within six months from the day of recording it, except when there is an agreement with the author for longer terms. However, a recording of this kind may be stored in official archives even without an agreement, if it has special historical or documenting values.”

“Article 16. The free public performance

“It is permitted without the author’s approval and without payment or remuneration the public performance of a work during the activity of a school institution, prepared by the staff, if the audience is simply the staff and the students of that institution, the parents or tutors of the students, as well as other people who have a direct relation to the institution.”

“Article 38. Limitations on the protection

“Articles 35, 36 and 37 of this law are not applied when acts provided by these articles are undertaken:

- a) for private use, teaching or scientific research, on the condition that the use does not conflict with the normal use (of a performance, phonogram or broadcasting) and always without prejudice at a large scale to the legitimate interests of the holders of the rights provided in this chapter;
- b) for issuing current topics, provided that only short pieces of a performance, phonogram or broadcast are used;
- c) for citation, in short pieces from a performance, phonogram or broadcast, provided that these citations concur with the usual practice of the informative purpose of these citations;
- d) for other purposes, which are included in the limitations for the economic rights of the literary and artistic works, as provided in Chapter III.

“Requirements for an authorization mentioned in the Articles 35, 36 and 37 to fix performances and broadcastings, to reproduce published phonograms for commercial purposes, are not taken into consideration when the reproduction is done by a

broadcasting organization with its own means and for its own programmes only in case of:

- a) broadcasting the fixation of a performance or of its reproduction, as defined by this paragraph, the broadcasting organization has the right to broadcast exactly this performance;
- b) broadcasting the fixation of a program or its reproduction or such a fixation of a program made according to the conditions of this program, the broadcasting organization has the right to broadcast exactly this program;
- c) a fixation, made according to this paragraph, or its reproduction, the fixation of any reproduction is destroyed within sixty days, except for a single copy which can be preserved only for archive purposes.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

Not found in the Law reviewed.

3.3 What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4 Generally, what measures for enforcement of rights are in the Law?

“Article 50

- a) The translation, adaptation, sound or visual recording, importation, reproduction and circulation, the entry of special instruments for recording sounds and/or images, radio and/or television broadcasting or transmission other than through radio or television, or the transmission of an artistic work by any other means without the authorization of its author or the agency to which the rights have been transferred by the author, which conflicts with the provisions of this law or the international conventions ratified by the Republic of Albania, when the author’s moral and economic rights have been infringed, constitutes a criminal work and is penalized by fine or imprisonment up to one year.
- b) Disputes between the user of an intellectual property work and the author or the agency to which the rights have been transferred by the author, because of a violation of the conditions specified in the contract concluded between them, are submitted by the interested party to the relevant court for civil settlement.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

Not found in the Law reviewed.

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

ARGENTINA

(Legislación revisada: Ley N° 11.723 “sobre el régimen legal de la propiedad intelectual”, del 25 de setiembre de 1933, reformas y decretos hasta Ley N° 25.036, del 14 de octubre de 1998, Decreto Reglamentario básico (41.233/34, modificado por el Decreto 1670/74) y WCT y WPPT¹)

1. Disposiciones del WCT

1.1. ¿Se extiende el alcance de la protección del derecho de autor solamente a las expresiones, y no a las ideas, procedimientos, métodos de funcionamiento o conceptos matemáticos?

“Artículo 1

“[...] La protección del derecho de autor abarca la expresión de las ideas, procedimientos, métodos de operación y conceptos matemáticos pero no esas ideas, procedimientos, métodos y conceptos en sí.”

1.2. ¿Se encuentran los programas de ordenador protegidos en la ley como obras literarias?

“Artículo 1

“A los efectos de la presente ley, las obras científicas, literarias y artísticas comprenden los escritos de toda naturaleza y extensión, entre ellos los programas de computación fuente y objeto; las compilaciones de datos de otros materiales [...]”

1.3. ¿Se encuentran las recopilaciones de datos su otro material, en cualquier forma, protegidas en la ley como creaciones intelectuales, en razón de la selección o arreglo de los contenidos?

“Artículo 1

“A los efectos de la presente ley, las obras científicas, literarias y artísticas comprenden los escritos de toda naturaleza y extensión, entre ellos los programas de computación fuente y objeto; las compilaciones de datos de otros materiales [...]”

¹ Constitución de la Nación Argentina (22 de agosto de 1994). Artículo 31 “Esta Constitución, las leyes de la Nación que en su consecuencia se dicten por el Congreso y los tratados con las potencias extranjeras son la ley suprema de la Nación; y las autoridades de cada provincia están obligadas a conformarse a ellas, no obstante cualquier disposición en contrario que contengan las leyes o constituciones provinciales, salvo para la provincia de Buenos Aires, los tratados ratificados después del Pacto de 11 de noviembre de 1859” *Este es el caso del WCT y WPPT (aclaratoria añadida)*

1.4. ¿Existe en la ley el derecho de distribución?

“*Artículo 2*

“El derecho de propiedad de una obra científica, literaria o artística, comprende para su autor la facultad de disponer de ella, de publicarla, de ejecutarla, de representarla, y exponerla en público, de enajenarla, de traducirla, de adaptarla o de autorizar su traducción y reproducirla en cualquier forma.”

1.5. ¿Existe en la ley el derecho de alquiler? En caso afirmativo, ¿Acuáles obras se aplica?

“*Artículo 2*

“El derecho de propiedad de una obra científica, literaria o artística, comprende para su autor la facultad de disponer de ella, de publicarla, de ejecutarla, de representarla, y exponerla en público, de enajenarla, de traducirla, de adaptarla o de autorizar su traducción y reproducirla en cualquier forma.”

1.6. ¿Existe en la ley el derecho de comunicación pública?

“*Artículo 2*

“El derecho de propiedad de una obra científica, literaria o artística, comprende para su autor la facultad de disponer de ella, de publicarla, de ejecutarla, de representarla, y exponerla en público, de enajenarla, de traducirla, de adaptarla o de autorizar su traducción y reproducirla en cualquier forma.”

“*Artículo 36*

“No podrá ejecutarse o publicarse en todo o en parte, obra alguna literaria, científica, o musical, sino con el título y en la forma confeccionada por su autor y con autorización de este o su representante, haciéndose extensiva esta disposición a la música instrumental y al baile, así como a las audiciones públicas por transmisión a distancias, como las radiotelefonías.”

1.7. ¿Existe en la ley el derecho de puesta a disposición pública de obras de tal manera que los miembros del público puedan acceder a éstas en el lugar y momento individualmente escogido por ellos?

“*Artículo 8 WCT*

“Sin perjuicio de lo previsto en los Artículos 11.1)ii), 11 bis.1)i)yii), 11 ter.1)ii), 14.1)ii) y 14 bis.1) del Convenio de Berna, los autores de obras literarias y artísticas gozarán del derecho exclusivo de autorizar cualquier comunicación pública de sus obras por medios analógicos o digitales, comprendida la puesta a disposición del público de

sus obras, de tal forma que los miembros del público puedan acceder a estas obras desde el lugar y en el momento que cada uno de ellos elija.”

Declaración concertada respecto del Artículo 08

Queda entendido que el simple suministro de instalaciones físicas para facilitar o realizar una comunicación, en sí mismo, no representa una comunicación en el sentido del presente Tratado del Convenio de Berna. También queda entendido que nada de lo dispuesto en el Artículo 8 impide que una Parte Contratante aplique el Artículo 11 bis.2.”

1.8. ¿Gozan las obras fotográficas del mismo término de duración de la protección establecido para el resto de las obras?

“Artículo 34

“Para las obras fotográficas la duración del derecho de propiedad es de 20 años desde la primera publicación. Sin perjuicio de las condiciones y protección de las obras originales reproducidas o adaptadas a películas, para las obras cinematográficas la duración del derecho de propiedad es de 30 años desde la fecha de la primera publicación. La fecha y el lugar de la publicación y el nombre o la marca del autor o del editor debe estar inscritas sobre la obra fotográfica o sobre la película, de lo contrario la reproducción de la obra fotográfica o cinematográfica no podrá ser motivo de acción penal establecida en esta ley.”

“Artículo 9 WCT

“Respecto de las obras fotográficas, las Partes Contratantes no aplicarán las disposiciones del Artículo 7.4) del Convenio de Berna.”

1.9. ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

En la Ley 11.723

“Artículo 34 bis

“Disposición Transitoria: Lo dispuesto en el artículo 34 será de aplicación a las obras cinematográficas que se hayan incorporado al dominio público sin que haya transcurrido el plazo establecido en el mismo o sin perjuicio de la utilización lícita realizada de las copias durante el período en que aquéllas estuvieron incorporadas al dominio público”

“Artículo 84

“Las obras que se encuentran bajo el dominio público, sin que hubiese transcurrido los términos de protección previstos en esta Ley, volverán automáticamente al dominio privado, sin perjuicio de los derechos que hubieran adquirido terceros sobre las

reproducciones de esas obras hechas durante el lapso en que las mismas estuvieron bajo el dominio público”

“Artículo 85

“Las obras que en la fecha de la promulgación de la presente ley se hallen en el dominio privado continuarán en éste hasta cumplirse el término establecido en el Artículo 5°.”

“Artículo 86

“Créase el Registro Nacional de Propiedad Intelectual, del que pasará a depender la actual oficina de depósito legal. Mientras no se incluya en la ley general de presupuesto el Registro Nacional de Propiedad Intelectual, las funciones que le están encomendadas por esta ley, serán desempeñadas por la Biblioteca Nacional.”

“Artículo 87

“Dentro de los 60 días subsiguientes a la sanción de esta ley, el P.E. procederá a su reglamentación.”

“Artículo 88

“Queda derogada la ley 9141 y todas las disposiciones que se opongan a la presente.

“Artículo 89 Sanción: 26 de setiembre de 1933
Promulgación: 28 de setiembre de 1933.”

En La Ley 20.036

“Dada en la sala de sesiones del Congreso Argentino, en Buenos Aires, a los catorce días del mes de octubre del año mil novecientos noventa y ocho.”

Nota del Gobierno: El Registro Nacional de la Propiedad Intelectual pasará a denominarse “Dirección Nacional del Derecho de Autor”, por Decreto 800/71, dependiendo actualmente del Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación.

En el WCT

“Artículo 13 WCT

“Las Partes Contratantes aplicarán las disposiciones del Artículo 18 del Convenio de Berna a toda la protección contemplada en el presente Tratado.”

(Fecha de entrada en vigor: 6 de marzo de 2002, fecha añadida)

2. Disposiciones del WPPT

2.1. Definiciones

2.1.1 ¿Se encuentran las “interpretaciones o ejecuciones” o los “artistas intérpretes o ejecutantes” definidos en la ley?

“Artículo 1 Decreto 746/73

“Se consideran intérpretes: a) al director de orquesta, al cantory a los músicos ejecutantes, en forma individual; b) al director y a los actores de obra cinematográfica y grabaciones con imagen y sonido en cinta magnética para televisión; c) al cantante, bailarín y a toda otra persona que represente un papel, cante, recite, interprete o ejecute en cualquier forma que sea una obra literaria, cinematográfica o musical.”

al

2.1.2 ¿Se encuentra el “fonograma” definido en la ley?

“Artículo 2 WPPT

“[...]”

b) ‘fonograma’, toda fijación de los sonidos de una ejecución o interpretación de otros sonidos, o de una representación de sonidos que no sea en forma de una fijación incluida en una obra cinematográfica o audiovisual.

Declaración concertada respectode lArtículo 2.b)

Queda entendido que la definición de fonograma prevista en el Artículo 2.b) no sugiere que los derechos sobre el fonograma sean afectados en modo alguno por su incorporación en una obra cinematográfica u otra obra audiovisual.”

2.1.3 ¿Se encuentra la “fijación” definida en la ley?

“Artículo 2 WPPT

c) “fijación”, la incorporación de sonidos, o la representación de éstos, a partir de la cual puedan percibirse, reproducirse o comunicarse mediante un dispositivo.”

2.1.4. ¿Se encuentra el “productor de fonogramas” definido en la ley?

“Artículo 2 WPPT

“[...]

d) ‘productor de fonogramas’, la persona natural o jurídica que toma la iniciativa y tiene la responsabilidad de la primera fijación de los sonidos de una ejecución o interpretación u otros sonidos o las representaciones de sonidos.”

2.1.5 ¿Se encuentra la “publicación de una interpretación o ejecución fijada de un fonograma” definida en la ley?

“Artículo 2 WPPT

“[...]

e) ‘publicación’ de una interpretación o ejecución fijada de un fonograma, la oferta al público de la interpretación o ejecución fijada del fonograma con el consentimiento del titular del derecho y siempre que los ejemplares se ofrezcan al público en cantidad suficiente.

Declaración Concertada del Artículo 2 WPPT

Tal como se utilizan en estos artículos, las expresiones ‘copias’ y ‘originals copias’, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.1.6 ¿Se encuentra la “radiodifusión” definida en la ley?

“Artículo 2 WPPT

“[...]

f) ‘radiodifusión’, la transmisión inalámbrica de sonidos o de imágenes y sonidos o de las representaciones de éstos, para su recepción por el público; dicha transmisión por satélite también es una ‘radiodifusión’; la transmisión de señales codificadas será ‘radiodifusión’ cuando los medios de decodificación sean ofrecidos al público por el organismo de radiodifusión o con su consentimiento.”

2.1.7 ¿Se encuentra la “comunicación al público” definida en la ley?

“Artículo 33 del Decreto 41233/34 (texto según Decreto 9723/45)

“A los efectos del artículo 36 de la Ley 11.723, se entiende por representación o ejecución pública aquella que se efectúe -cualquiera que fueren los fines de la misma -en

todo lugar que no sea en domicilio exclusivamente familiar, a úndentro de éste, cuando la representación o ejecución se proyectada o prolapada al exterior. Se considerará ejecución pública de una obra musical que se efectúe por ejecutantes o cantantes, así como también la que se realice por medios mecánicos: discos, filmes sonoros, transmisiones radiotelefónicas y su retransmisión o difusión por altavoces.”

“Artículo 2 WPPT

“[...]

g) ‘comunicación al público’ de una interpretación o ejecución de un fonograma, la transmisión al público, por cualquier medio que sea la radiodifusión, de sonidos de una interpretación o ejecución o los sonidos de las representaciones de sonidos fijadas en un fonograma. A los fines del Artículo 15, se entenderá que ‘comunicación al público’ incluye también hacer que los sonidos de las representaciones de sonidos fijados en un fonograma resulten audibles al público.”

2.2 ¿Se encuentra el concepto de “tratamiento nacional” contenido en la ley?

“Artículo 13

“Todas las disposiciones de esta ley, salvo las del Artículo 57, son igualmente aplicables a las obras científicas, artísticas y literarias, publicadas en países extranjeros, sea cual fuere la nacionalidad de sus autores, siempre que pertenezcan a naciones que reconozcan el derecho de propiedad intelectual.

“Artículo 14

“Para asegurar la protección de la ley argentina, el autor de una obra extranjera sólo necesita acreditar el cumplimiento de las formalidades establecidas para su protección por las leyes del país en que se haya hecho la publicación, salvo lo dispuesto en el Artículo 23, sobre contratos de traducción.”

“Artículo 15

“La protección que la ley argentina acuerda a los autores extranjeros no se extenderá a un período mayor que el reconocido por las leyes del país donde se hubiere publicado la obra. Si tales leyes acuerdan una protección mayor, registrarán los términos de la presente ley.”

2.3. ¿Gozan los artistas intérpretes o ejecutantes de derechos morales en la ley?

“Artículo 56

[...] El intérprete de una obra literaria o musical está facultado para oponerse a la divulgación de su interpretación, cuando la reproducción de la misma se hace en forma tal que pueda producir grave e injusto perjuicio a sus intereses artísticos.

[...]”

“Artículo 4º del Decreto 1670/74

“El intérprete principal de una obra musical y/o literaria tendrá derecho a exigir que se mencione su nombre o pseudónimo cuando se difunda o transmita su actuación ya que se indique su nombre o pseudónimo en la etiqueta, sobre u otro envase análogo de los soportes de los fonogramas.”

2.4. ¿Gozan los artistas intérpretes o ejecutantes de derechos patrimoniales por sus interpretaciones o ejecuciones no fijadas?, y en caso afirmativo, ¿Cuáles son estos derechos?

“Artículo 56

“El intérprete de una obra literaria o musical, tiene el derecho de exigir una retribución por su interpretación difundida o retransmitida mediante la radiotelefonía, la televisión, o bien grabada o impresa sobre disco, película, cinta, hilo o cualquier otro sustancia o cuerpo apto para la reproducción sonora o visual. No legándose a un acuerdo, el monto de la retribución quedará establecido en juicios sumarios por la autoridad judicial competente.

El intérprete de una obra literaria o musical está facultado para oponerse a la divulgación de su interpretación, cuando la reproducción de la misma se hace en forma tal que pueda producir grave e injusto perjuicio a sus intereses artísticos. Si la ejecución ha sido hecha por un coro o una orquesta, este derecho de oposición corresponde al director del coro o de la orquesta.

Si no hay perjuicio del derecho de propiedad perteneciente al autor, una obra ejecutada o representada en un teatro o en una sala pública, puede ser difundida o retransmitida mediante la radiotelefonía o la televisión, con el solo consentimiento del empresario organizador del espectáculo.”

2.5. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de reproducción en la ley?

“Artículo 56

“El intérprete de una obra literaria o musical, tiene el derecho de exigir una retribución por su interpretación difundida o retransmitida mediante la radiotelefonía, la televisión, o bien grabada o impresa sobre disco, película, cinta, hilo o cualquier otro sustancia o cuerpo apto para la reproducción sonora o visual. No legándose a un acuerdo, el monto

de la retribución quedará establecido en juicios sumarios por la autoridad judicial competente.

El intérprete de una obra literaria o musical está facultado para oponerse a la divulgación de su interpretación, cuando la reproducción de la misma se hace en forma tal que puede producir grave e injusto perjuicio a sus intereses artísticos. Si la ejecución ha sido hecha por un coro o una orquesta, este derecho de oposición corresponde al director del coro o de la orquesta.

Sin perjuicio del derecho de propiedad perteneciente al autor, una obra ejecutada o representada en un teatro o en una sala pública, puede ser difundida o retransmitida mediante la radiotelefonía o la televisión, con el solo consentimiento del empresario organizador del espectáculo.”

2.6. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de distribución en la ley?

“Artículo 8 WPPT

“1) Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizar la puesta a disposición del público del original y de los ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, mediante venta u otra transferencia de propiedad.

2) Nada en el presente Tratado afectará la facultad de las Partes Contratantes de determinar las condiciones, si las hubiera, en las que se aplicará el agotamiento del derecho del párrafo 1) después de la primera venta u otra transferencia de propiedad del original o de un ejemplar de la interpretación o ejecución fijada con autorización del artista intérprete o ejecutante.”

Declaración Concertada del Artículo 8 WPPT

“Tal como se utilizan en estos Artículos, las expresiones “copias” y “original y copias”, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos Artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.7. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de alquiler en la ley?

“Artículo 9 WPPT

“1) Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizar el alquiler comercial al público del original y de los ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, tal como es establecida en la legislación nacional de las Partes Contratantes, incluso después de su distribución realizada por el artista intérprete o ejecutante o su autorización.

2) Sin perjuicio de lo dispuesto en el párrafo 1), una Parte Contratante que al 15 de abril de 1994 tenía y continúa teniendo un sistema de remuneración equitativa para los artistas intérpretes o ejecutantes por el alquiler de ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, podrá mantener ese sistema a

condición de que el alquiler comercial de fonogramas no dé lugar a un menor cabal considerables de los derechos de reproducción exclusivos de los artistas intérpretes o ejecutantes.”

Declaración Concertada del Artículo 8 WPPT

“Tal como se utilizan en estos artículos, las expresiones “copias” y “originals copias”, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.8. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de puesta a disposición de sus interpretaciones o ejecuciones fijadas en la ley?

Artículo 10 WPPT

“Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizar la puesta a disposición del público de sus interpretaciones o ejecuciones fijadas en fonogramas, yasea por hilo o por medios inalámbricos de tal manera que los miembros del público puedan tener acceso a ellas desde el lugar y en el momento que cada uno de ellos elija.”

2.9. ¿Gozan los productores de fonogramas (“productores”) de un derecho de reproducción en la ley?

Artículo 2

“El derecho de propiedad de una obra científica, literaria o artística, comprende para su autor la facultad de disponer de ella, de publicarla, de ejecutarla, de representarla, y exponerla en público, de enajenarla, de traducirla, de adaptarla o de autorizar su traducción y reproducirla en cualquier forma.”

2.10 ¿Gozan los productores de un derecho de distribución en la ley?

Artículo 2

“El derecho de propiedad de una obra científica, literaria o artística, comprende para su autor la facultad de disponer de ella, de publicarla, de ejecutarla, de representarla, y exponerla en público, de enajenarla, de traducirla, de adaptarla o de autorizar su traducción y reproducirla en cualquier forma.”

2.11 ¿Gozan los productores de un derecho de alquiler en la ley?

“Artículo 13 WPPT

“1) Los productores de fonogramas gozarán del derecho exclusivo de autorizar el alquiler comercial al público del original y de los ejemplares de sus fonogramas incluso después de su distribución realizada por ellos mismos o su autorización.

2) Sin perjuicio de lo dispuesto en el párrafo 1), una Parte Contratante que al 15 de abril de 1994 tenía y continúa teniendo vigente un sistema de remuneración equitativa para los productores de fonogramas por el alquiler de ejemplares de sus fonogramas, podrá mantener ese sistema a condición de que el alquiler comercial de fonogramas no dé lugar a un menoscabo considerable de los derechos de reproducción exclusivos de los productores de fonogramas.”

Declaración Concertada del Artículo 13 WPPT

“Tal como se utilizan en estos artículos, las expresiones “copias” y “original y copias”, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.12 ¿Gozan los productores de un derecho de puesta a disposición de fonogramas en la ley ?

“Artículo 14 WPPT

“Los productores de fonogramas gozarán del derecho exclusivo de autorizar la puesta a disposición del público de sus fonogramas y se apeará por hilo o por medios inalámbricos, de tal manera que los miembros del público puedan tener acceso a ellos desde cualquier momento que cada uno de ellos elija.”

2.13 ¿Gozan los productores y/o artistas intérpretes o ejecutantes de un derecho de remuneración por la radiodifusión y/o comunicación al público de fonogramas en la ley?

“Artículo 35 del Decreto Reglamentario básico (41.233/34, modificado por el Decreto 1670/74)

“[...] Sin perjuicio del derecho que otorga la ley a los autores; los intérpretes principales y/o secundarios y los productores de fonogramas tienen el derecho de percibir una remuneración de las personas que, en forma ocasional o permanente, obtengan un beneficio directo o indirecto con la utilización pública de la reproducción de un fonograma. Tal pago debe ser efectuado, entre otros, por los organismos de radiodifusión, televisión similares, cinematógrafos, teatros, bares, restaurantes, cabarets, y en general por quien comunique el fonograma al público, por cualquier medio directo o indirecto.”

2.14 ¿Se encuentran estos derechos sujetos a formalidades?

“Artículo 63

“La falta de inscripción traerá como consecuencia la suspensión del derecho del autor hasta el momento en que la efectúe, recuperándose dichos derechos en el acto mismo de la inscripción, por el término y condiciones que corresponda, sin perjuicio de la validez de las reproducciones, ediciones, ejecuciones y toda otra publicación hecha durante el tiempo en que la obra estuvo inscrita.”

No se admitirá el registro de una obra sin la mención de su ‘pie de imprenta.’ Se entiende por tal la fecha, lugar, e identificación y la mención del editor.”

Nota del Gobierno: La jurisprudencia ha entendido que la falta de registro afecta solamente a los derechos patrimoniales del autor, no a los derechos morales, los cuales pueden reivindicarse por vía penal sin el cumplimiento de dicho requisito.

2.15 ¿Cuáles es el término de protección para:

2.15.1 los artistas intérpretes o ejecutantes?

“Artículo 17 WPPT

“1) La duración de la protección concedida a los artistas intérpretes o ejecutantes en virtud del presente Tratado no podrá ser inferior a 50 años, contados a partir del final del año en el que la interpretación o ejecución fue fijada en un fonograma.

[...]”

2.15.2 productores de fonogramas?

“Artículo 17 WPPT

“[...]

2) La duración de la protección que se concederá a los productores de fonogramas en virtud del presente Tratado no podrá ser inferior a 50 años, contados a partir del final del año en el que se haya publicado el fonograma o, cuando tal publicación no haya tenido lugar dentro de los 50 años desde la fijación del fonograma, 50 años desde el final del año en el que se haya realizado la fijación.”

2.16. ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

En la Ley 11.723

“Artículo 84

“Las obras que se encuentran bajo el dominio público, sin que hubiese transcurrido los términos de protección previstos en esta Ley, volverán automáticamente al dominio privado, sin perjuicio de los derechos que hubieran adquirido terceros sobre las reproducciones de esas obras hechas durante el lapso en que las mismas estuvieron bajo el dominio público”

“Artículo 85

“Las obras que en la fecha de la promulgación de la presente ley se hallen en el dominio privado continuarán en éste hasta cumplirse el término establecido en el Artículo 5.”

“Artículo 86

“Créase el Registro Nacional de Propiedad Intelectual, del que pasará a depender la actual oficina de depósito legal. Mientras no se incluya en la ley general de presupuesto el Registro Nacional de Propiedad Intelectual, las funciones que le están encomendadas por esta ley, serán desempeñadas por la Biblioteca Nacional.”

“Artículo 87

“Dentro de los 60 días subsiguientes a la sanción de esta ley, el P.E. procederá a su reglamentación.”

“Artículo 88

“Queda derogada la ley 9141 y todas las disposiciones que se opongan a la presente.”

“Artículo 89 Sanción: 26 de setiembre de 1933
Promulgación: 28 de setiembre de 1933”

Nota del Gobierno: El Registro Nacional de la Propiedad Intelectual pasará a denominarse “Dirección Nacional del Derecho de Autor”, por Decreto 800/71, dependiendo actualmente del Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación.

En el WPPT

“Artículo 22 WPPT

“1) Las Partes Contratantes aplicarán las disposiciones del Artículo 18 del Convenio de Berna, *mutatis mutandis*, a los derechos de los artistas intérpretes o ejecutantes y de los productores de fonogramas contemplados en el presente Tratado.

2) No obstante lo dispuesto en el párrafo 1), una Parte Contratante podrá limitar la aplicación del Artículo 5 del presente Tratado a las interpretaciones o ejecuciones que tengan lugar después de la entrada en vigor del presente Tratado respectivamente de esa Parte.”

(Fecha de entrada en vigor: 20 de mayo de 2002, fecha añadida)

3. Disposiciones comunes

3.1 ¿Cuáles son las limitaciones y excepciones en la ley?

“Artículo 6

“Los herederos o derechohabientes no podrán oponerse a que terceros reediten las obras del causante cuando dejen transcurrir más de diez años indisponibles de su publicación.

Tampoco podrán oponerse los herederos o derechohabientes a que terceros traduzcan las obras del causante después de diez años de su fallecimiento.

Estos casos, si entre el tercero editor y los herederos o derechohabientes no hubiera acuerdos sobre las condiciones de impresión o retribución pecuniaria, ambas serán fijadas por árbitros.”

“Artículo 9

“Nadie tiene derecho a publicar, sin permiso de los autores o de sus derechohabientes, una producción científica, literaria, artística o musical que se haya anotado o publicado durante su lectura, ejecución o exposición públicas o privadas.

Quien haya recibido de los autores o de sus derechohabientes de un programa de computación una licencia para usarlo, podrá reproducir una única copia de salvaguardia de los ejemplares originales del mismo. Dichas copias deberán estar debidamente identificadas, con indicación del licenciado que realizó la copia y la fecha de la misma. La copia de salvaguardia no podrá ser utilizada para otra finalidad que la de reemplazar el ejemplar original del programa de computación licenciado si ese original se pierde o deviene inútil para su utilización.”

“Artículo 10

“Cualquier apuede publicar con fines didácticos o científicos, comentarios, críticas o notas referentes a las obras intelectuales e incluye hasta mil palabras de obras literarias o científicas u ocho compases en las musicales y en todos los casos sólo las partes del texto indispensables a ese efecto.

Quedan comprendidas en esta disposición las obras docentes, de enseñanza, colecciones, antologías y otras semejantes.

Cuando las inclusiones de obras ajenas sean la parte principal de la nueva obra, podrán los tribunales fijar equitativamente en juicios sumarios la cantidad proporcional que corresponde a los titulares de los derechos de las obras incluidas.”

“Artículo 27

“Los discursos políticos o literarios y en general las conferencias sobre temas intelectuales, no podrán ser publicadas si el autor no lo hubiere expresamente autorizado. Los discursos parlamentarios no podrán ser publicados con fines de lucro, sin la autorización del autor.

Exceptúase la información periodística.”

“Artículo 28

“Los artículos no firmados, colaboraciones anónimas, reportajes, dibujos, grabados o informaciones en general que tengan un carácter original y propio, publicadas por un diario, revista u otras publicaciones periódicas por haber sido adquiridos u obtenidos por éste o por una agencia de informaciones con carácter de exclusividad, serán considerados como de propiedad del diario, revista, u otras publicaciones periódicas, o de la agencia.

Las noticias de interés general podrán ser utilizadas, transmitidas o retransmitidas; pero cuando se publiquen en su versión original será necesario expresar la fuente de ellas.”

“Artículo 31

“El retrato fotográfico de una persona no puede ser puesto en el comercio sin el consentimiento o expresos de la persona misma, y muerta ésta, de su cónyuge o hijo o descendientes directos de éstos, o en su defecto del padre o de la madre. Faltando el cónyuge, los hijos, el padre o la madre, o los descendientes directos de los hijos, la publicación es libre.

La persona que hay dado su consentimiento puede revocar lo expresado a los perjuicios.

Es libre la publicación del retrato cuando se relacione con fines científicos, didácticos y en general culturales, o con hechos o acontecimientos de interés público que se hubieren desarrollado en público.”

“Artículo 33

“Cuando las personas cuyo consentimiento se sea necesario para la publicación del retrato fotográfico o de las cartas, sean varias, y hay acuerdo entre ellas, resolverá la autoridad judicial.”

“Artículo 34

“Para las obras fotográficas la duración del derecho de propiedad es de 20 años desde la primera publicación.

Sin perjuicio de las condiciones y protección de las obras originales reproducidas o adaptadas a películas, para las obras cinematográficas la duración del derecho de propiedad es de 30 años desde la fecha de la primera publicación.

La fecha y el lugar de la publicación y el nombre o el nombre del autor o del editor debe estar inscritas sobre la obra fotográfica o sobre la película, de lo contrario la reproducción de la obra fotográfica o cinematográfica no podrá ser motivo de la acción penal establecida en esta ley.”

“Artículo 35

“El consentimiento a que se refiere el Artículo 31 para la publicación del retrato no es necesario después de transcurridos 20 años de la muerte del autor de la carta.

Para la publicación de una carta, el consentimiento no es necesario después de transcurridos 20 años de la muerte del autor de la carta. Esto aun en el caso de que la carta sea objeto de protección como obra, en virtud de la presente ley.”

“Artículo 36

“Los autores de obras literarias, dramáticas, dramático -musicales y musicales, gozan del derecho exclusivo de autorizar:

- a) La recitación, la representación y la ejecución pública de sus obras;
- b) La difusión pública por cualquier medio de la recitación, la representación y la ejecución de sus obras.

Sin embargo, será lícita y esta será exenta de pago de derechos de autor y de los intérpretes que establece el artículo 56, la representación, la ejecución y la recitación de las obras literarias o artísticas publicadas, en actos públicos organizados por establecimientos de enseñanza, vinculados en el cumplimiento de sus fines educativos, planes y programas

de estudio, siempre que el espectáculo no se adifundido fuera del lugar donde se realice y la concurrencia y la actuación de los intérpretes sea gratuita.

También gozará de la exención de pago del derecho de autor a que se refiere el párrafo anterior, la ejecución o interpretación de piezas musicales en los conciertos, audiciones y actuaciones públicas a cargo de las orquestas, bandas, fanfarrias, coros y demás organismos musicales pertenecientes a instituciones del Estado Nacional, de las provincias o de las municipalidades, siempre que la concurrencia de público a los mismos sea gratuita.”

3.2 ¿Qué protección jurídica, y cuáles recursos jurídicos proporciona la ley contra la elisión de las medidas tecnológicas de protección eficaces?

No existiendo ninguna disposición al respecto en la ley.

3.3 ¿Cuáles obligaciones se encuentran en la ley para la protección de “información sobre la gestión de derechos”?

“Artículo 40 del Decreto 4123 3/34, reglamentario de la Ley 11.723 modificado por el Decreto 1670/71

“Quien se explote en locales en los que se ejecuten públicamente obras musicales de cualquier índole, con o sin letra, o los empresarios o los organizadores o los directores de orquesta e, en el caso, o los titulares o responsables de los usuarios de reproducciones de fonogramas a los que se refiere el artículo 35 del presente decreto, deberán notaren planillas diarias por riguroso orden de ejecución el título de todas las obras ejecutadas y el nombre o seudónimo del autor de la letra y compositor de la música y además el nombre o seudónimo de los intérpretes principales y el del productor de fonograma o su sello o marca de la reproducción utilizada en su caso. Estas planillas serán datadas, firmadas y puestas a disposición de los interesados, dentro de los treinta días de la fecha en que se efectúe la ejecución o comunicación pública. Los interesados o sus representantes, bajo su responsabilidad, podrán denunciar ante el Director General del Registro Nacional del Derecho de Autor el incumplimiento total o parcial de esta obligación y el responsable se hará pasible en cada caso de una multa de cinco mil pesos en beneficio del Fondo Nacional de las Artes, que será encargada de hacerla efectiva y en su caso de reintegrar los perjuicios que le correspondan a los titulares de los derechos.”

Quien sustituya en las planillas los títulos y/o los nombres de los autores de la letra o de la música de las obras de los intérpretes principales o del productor del fonograma u omita mencionar una obra ejecutada o comunicada al público o introduzca la mención de una obra no ejecutada o comunicada al público o falsee en cualquier forma su contenido, se hará pasible de las penas a que se refiere el artículo 71 de la ley.”

3.4 De manera general, ¿Cuáles son las medidas de observancia de derechos en la ley?

“Artículo 71

“Será reprimido con la pena establecida por el Artículo 172 del Código Penal, el que de cualquier manera y en cualquier forma defraude los derechos de propiedad intelectual que reconoce esta ley.”

“Artículo 72

“Sin perjuicio de la disposición general del artículo precedente, se consideran casos especiales de defraudación y sufrirán la pena que él establece, además del secuestro de la edición ilícita:

- a) El que edite, venda o reproduzca por cualquier medio o instrumento, una obra inédita o publicada sin autorización de su autor o derechohabientes;
- b) El que falsifique obras intelectuales, entendiéndose como tal la edición de una obra ya editada, ostentando falsamente el nombre del editor autorizado al efecto;
- c) El que edite, venda o reproduzca una obra suprimiendo o cambiando el nombre del autor, el título de la misma o alterando dolosamente el texto;
- d) El que edite o reproduzca mayor número de los ejemplares debidamente autorizados.”

“Artículo 73

“Será reprimido con prisión de 1 mes a 1 año o multa de \$100 a 1000 m/n. destinada al fondo de fomento creado por esta ley:

- a) El que represente o hiciera representar públicamente obras teatrales o literarias sin autorización de sus autores o derechohabientes;
- b) El que ejecute o hiciera ejecutar públicamente obras musicales sin autorización de sus autores o derechohabientes.

“Artículo 74

“Será reprimido con prisión de 1 mes a 1 año o multa de \$100 a 1000 m/n. destinada al fondo de fomento creado por esta ley, el que atribuyéndose indebidamente la calidad de autor, derechohabiente o representante de quien tuviera derechos, hiciera suspender una representación o ejecución pública ilícita.”

“Artículo 75

“En la aplicación de las penas establecidas por la presente ley, la acción se iniciará de oficio, por denuncia o querrela.”

“Artículo 76

“El procedimiento y jurisdicción será el establecido por el respectivo código de procedimiento en lo criminal vigente en el lugar donde se cometió el delito.”

“Artículo 77

“Tanto el juicio civil, como el criminal, son independientes y sus resoluciones definitivas no se afectan. Las partes sólo podrán usar en defensa de sus derechos las pruebas instrumentales de otro juicio, las confesiones y los peritajes, comprendido el fallo del jurado, mas nunca las sentencias de los jueces respectivos.”

“Artículo 78

“La Comisión Nacional de Cultura representada por su presidente, podrá acumular su acción a las de los damnificados, para percibir el importe de las multas establecidas a su favor y ejercitar las acciones correspondientes a las atribuciones y funciones que se le asignan por esta ley.”

“Artículo 79

“Los jueces podrán proveer a fianza de los interesados, decretar preventivamente la suspensión de un espectáculo teatral, cinematográfico, filarmónico u otro análogo; el embargo de las obras denunciadas, así como el embargo del producto que se haya percibido por todo lo anteriormente indicado y toda medida que sirva para proteger eficazmente los derechos que ampara esta ley.

Ninguna formalidad se ordena para aclarar los derechos del autor o de sus causahabientes. En caso de contestación, los derechos estarán sujetos a los medios de prueba establecidos por las leyes vigentes.”

“Artículo 80

“En todo juicio motivado por esta ley, y a su aplicación de sus disposiciones, ya como consecuencia de los contratos y actos jurídicos que tengan relación con la propiedad intelectual, se girará el procedimiento que se determina en los artículos siguientes.”

“Artículo 81

“El procedimiento y términos serán, fuera de las medidas preventivas, en que se establezca para las excepciones dilatorias en los respectivos Códigos de Procedimiento en lo civil y comercial, con las siguientes modificaciones:

- a) Siempre habrá lugar a prueba a pedido de las partes de oficio pudiendo ampliarse su término a 30 días, si el juzgado lo creyere conveniente, quedando firme a esta resolución;
- b) Durante la prueba a pedido de los interesados se podrá decretar una audiencia pública, en la sala del tribunal donde las partes, sus letrados y peritos, expondrán sus alegatos u opciones. Esta audiencia podrá continuar otros días si uno sólo fuere insuficiente.
- c) En las mismas condiciones del inciso anterior y cuando la importancia del asunto y la naturaleza técnica de las cuestiones lo requiera, se podrá designar un jurado de idoneos en la especialidad de que se tratare, debiendo estar presidido por las cuestiones científicas por el decano de la facultad de ciencias exactas o la persona que éste designare, bajo su responsabilidad para reemplazarlo; para las cuestiones literarias; el decano de la facultad de filosofía y letras; para las artísticas, el director del museo nacional de bellas artes y para las musicales, el director del conservatorio nacional de música.

Complementará el jurado de personas designadas de oficio.

El jurado se reunirá y deliberará en último término en la audiencia que establece el inciso anterior. Si no se hubiere elegido designado, en una especial y pública en la forma establecida en dicho inciso.

La resolución se limitará a declarar si existe o no la lesión a la propiedad intelectual, ya sea legal o convencional. Esta resolución valdrá como los informes de los peritos nombrados por partes contrarias, cuando se expidieren de común acuerdo”.

Artículo 82

“El cargo de jurado será gratuito y se aplicarán las disposiciones procesales referentes a los testigos.”

“Artículo 83

“Después de vencidos los términos del Artículo 5º, podrá denunciarse al Registro Nacional de Propiedad Intelectual la mutilación de una obra literaria, científica o artística, los agregados, las transposiciones, la infidelidad de una traducción, los errores de concepto y las deficiencias en el conocimiento del idioma del original o de la versión. Estas denuncias podrán formularlas cualquier habitante de la Nación o proceder de oficio, y para el conocimiento de ellas la dirección del Registro Nacional constituirá un jurado que integrarán:

- a) Par las obras literarias, el decano de la Facultad de Filosofía y Letras; dos representantes de la sociedad gremial de escritores, designados por la misma, y las personas que nombren el denunciante y el editor o traductor, una por cada uno;
- b) Par las obras científicas el decano de la facultad de ciencias que correspondan a su especialidad, dos representantes de la sociedad científica de la respectiva especialidad, designados por la misma, y las personas que nombren el denunciante y el editor o traductor, una por cada parte.

En ambos casos, cuando se haya objetado la traducción, el respectivo jurado se integrará también con dos traductores públicos nacionales, nombrados uno por cada parte, y otro designado por la mayoría del jurado;

- c) Par las obras artísticas, el director del museo nacional de bellas artes, dos personas idóneas designadas por la dirección del Registro de Propiedad Intelectual y las personas que nombren el denunciante y el denunciado una por cada parte;
- d) Par las musicales, el director del conservatorio nacional de música; dos representantes de la sociedad gremial de compositores de música, popular o de cámara en su caso, y las personas que designen el denunciante y el denunciado, una por cada parte.

Cuando las partes no designen sus representantes, dentro del término que les fije la dirección del registro, serán designados por ésta. El jurado resolverá declarando si existe o no la falta denunciada y en caso afirmativo, podrá ordenar la corrección de la obra e impedir su exposición o la circulación de ediciones no corregidas, que serán inutilizadas. Los que infrinjan esta prohibición pagarán una multa de \$100 a 1000 m/n., que fijará el jurado y se hará efectiva en la forma establecida por los respectivos Códigos de Procedimiento en lo civil y comercial, para la ejecución de las sentencias. El importe de las multas ingresará al fondo de fomento creado por esta ley. Tendrá personería para ejecutarlas la dirección del registro.”

3.5. ¿Cómo define la ley la responsabilidad de los proveedores de servicio?

“Declaración Concertada del Artículo 8 WCT

“Queda entendido que el simple suministro de instalaciones físicas para facilitar o realizar una comunicación, en sí mismo, no representa una comunicación en el sentido del presente Tratado o del Convenio de Berna. También queda entendido que nada de lo dispuesto en el Artículo 8 impide que una Parte Contratante aplique el Artículo 11 bis.2).”

3.6. ¿Existen algunas disposiciones en la ley relativa al almacenamiento temporal?

No existen ninguna disposición al respecto en la ley.

3.7. ¿Existen algunas disposiciones expresas para asegurar que las disposiciones en contra de la elisión no restrinjan el funcionamiento de las limitaciones o excepciones a los derechos otorgados en la ley?

No existiendo ninguna disposición al respecto en la ley.

BELARUS

(Law Reviewed: Law of the Republic of Belarus on Copyright and Related Rights
No. 194 - 3 of August 11, 1998)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Article 8(2). Works Not Protected by Copyright

[...]

“(2) Copyright shall not extend to ideas, processes, systems, methods of functioning, concepts, discoveries or simple information as such even if expressed, represented, explained or illustrated in a work.”

1.2 Are computer programs protected in the Law as literary works?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘computer program’ means an organized set of instructions and data enabling a specific result to be obtained with the aid of a computer and recorded on a material carrier, together with its accompanying electronic documentation.

[...]”

“Article 7. Works Protected by Copyright

“(1) The following shall be protected by copyright:

[...]

literary works (including computer programs and databases).

[...]

“(3) Computer programs shall be protected as literary works and protection shall extend to all types of programs, including applications software and operating systems, regardless of the language and form in which they are expressed, including the source code and the object code.”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘database’ means a body of materials, data or information, which by reason of the selection or arrangement of its contents constitutes the result of creative work; the concept of a database does not include the computer program providing electronic access to the contents of the database.

[...]”

“Article 7. Works Protected by Copyright

“(1) The following shall be protected by copyright:

[...]

literary works (including computer programs and databases).

[...]

“(2) The following shall also be protected by copyright:

[...]

collections such as encyclopedias, anthologies, atlases and other composite works that constitute, by reason of the selection or arrangement of their contents, the result of creative work.

Derivative works and collections shall be protected by copyright whether or not the works on which they are based or which they themselves include are protected by copyright.

“(3) Databases and other compilations, whatever their form, which, by reason of the selection and arrangement of the material, constitute the result of an intellectual effort, shall be protected as such. Such protection shall not extend directly to the data or materials themselves and shall not prejudice any copyright therein.”

1.4 Is there a right of distribution in the Law?

“Article 16. Economic Rights

“(1) The author or any other holder of copyright shall enjoy the exclusive right to perform or authorize the following acts:

[...]

distribution of the original or copies of the work by sale or any other mode of transfer of ownership; where the original or copies of a lawfully published work have been put into circulation with the authorization of the author by sale or any other mode of transfer of ownership, their subsequent distribution on the territory of the Republic of Belarus shall not require the authorization of the author (of the holder of copyright) and shall not give rise to the payment of remuneration.

[...]”

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘rental’ means making the original or a copy of a work or of the subject matter of related rights temporarily available to the public for commercial purposes.”

“Article 16. Economic Rights

“(1) The author or any other holder of copyright shall enjoy the exclusive right to perform or authorize the following acts:

[...]

rental of the original or copies of computer programs, databases, audiovisual works, musical scores or works fixed on phonograms, independently of the ownership of the original or the copies of the works concerned; this right shall not apply to computer programs if the program itself is not the essential object of the rental or to audiovisual works unless the rental gives rise to large scale copying of the works concerned, which would substantially infringe the exclusive right of reproduction.

[...]”

1.6 Is there a right of communication to the public in the Law?

“Article 16. Economic Rights

“(1) The author or any other holder of copyright shall enjoy the exclusive right to perform or authorize the following acts:

[...]

communication to the public of the work by any other means.

[...]"

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

"Article 4. Basic Concepts

"For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

communication of a work to the public also means the fact of making available to the public a work in such a manner that any person may have access there to at the place and time of his own choice.

[...]"

"Article 16. Economic Rights

"(1) The author or any other holder of copyright shall enjoy the exclusive right to perform or authorize the following acts:

[...]

communication to the public of the work by any other means.

[...]"

1.8 Are photographic works given the same duration of protection as other works in the Law?

"Article 22. Term of Copyright Protection

"(1) Economic rights shall subsist throughout the lifetime of the author and for 50 years after his death, except as provided by this Article.

"[...]"

1.9 What is the effective time-frame for application of the rights in the Law?

Not found in the Law reviewed.

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘performer’ means the actor, singer, musician, dancer or any other person who performs, sings, recites, declaims, plays a musical instrument, dances or in any other way presents a literary or artistic work or a work of folklore;

[...]”

2.1.2 Is “phonogram” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘phonogram’ means any exclusively sound recording of performances or other sounds or representations of sounds; the recording of sounds incorporated in an audiovisual work does not constitute a phonogram;

[...]”

2.1.3 Is ‘fixation’ defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘recording’ means the fixing, with technical aids, of sounds or images, or of both, in a material form that permits them to be repeatedly perceived, reproduced or communicated;

[...]”

2.1.4 Is “producer of phonogram” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified :

[...]

‘phonogram producer’ means the natural or legal person who has taken the initiative and responsibility for first recording the sounds of a performance or of other sounds; in the absence of proof to the contrary, the person whose name or designation is shown on the phonogram shall be considered the producer of the phonogram;

[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘publication’ means the making available to the public of copies of a work or phonogram with the consent of the author or other holder of copyright or related rights, in sufficient quantity to meet the reasonable needs of the public, by sale, rental or other transfer of ownership or of possession of copies of the work or phonogram;

[...]”

2.1.6 Is “broadcasting” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘broadcasting’ means communication to the public of works, performances, phonograms or programs of broadcasting or cable distribution organizations by wireless means, including by satellite; the transmission of coded signals constitutes broadcasting if the broadcasting organization makes available to the public means for decoding or if it authorizes such making available;

[...]”

2.1.7 Is “communication to the public” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘communication to the public’ means the transmission by wire or by wireless means of the images, the sounds, or the images and sounds, of a work, a performance, a phonogram or a program of broadcasting or cable distribution organization in such manner that the images or sounds are perceived by persons outside the usual family circle or its immediate acquaintances in places sufficiently distant from the place of origin of the transmission for it to be impossible, without such a transmission, for the images and sounds to be perceived there; communication of a work to the public also means the act of making available to the public a work in such manner that any person may have access thereto at the place and time of his own choice;

[...]”

2.2 Is the concept of “national treatment” contained in the Law?

“Article 30. Scope of Related Rights

“(1) The provisions of this Law on the protection of the rights of performers shall apply:

- to any performer who is a national of the Republic of Belarus;
- to any performer who is not a national of the Republic of Belarus, but whose performance
- took place on the territory of the Republic of Belarus;
- was recorded on a phonogram protected under the provisions of this Law; or
- has not been recorded on a phonogram, but has been included in a program broadcast or transmitted by cable that is protected in accordance with the provisions of this Law.

“(2) The provisions of this Law on the protection of phonograms shall apply to:

- any phonogram of which the producer is a national of the Republic of Belarus or is a legal person with headquarters located on the territory of the Republic of Belarus;
- any phonogram of which the producer is not a national of the Republic of Belarus or is not a legal person with headquarters located on the territory of the Republic of Belarus, but which has been published for the first time on the

territory of the Republic of Belarus or has been published on that territory within 30 days of the date of its first publication in another State.

“[...]

“(4) The provisions of this Law shall also apply to performers, phonogram producers and broadcasting or cable distribution organizations of which the rights are protected on the territory of the Republic of Belarus in accordance with the international treaties to which the Republic of Belarus is party.”

2.3 Do performers have moral rights in the Law?

“Article 31(1). Rights of Performers

“(1) Performers shall enjoy the following exclusive rights in his performance:

- the right to be named;
- the right to protection of the performance against any distortion or other derogatory act liable to prejudice his honor or dignity (right to the protection of the performer’s reputation). f

“[...]

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones?

“Article 31. Rights of Performers

“[...]

“(2) The exclusive right to exploit a performance shall mean the right to carry out or authorize the following acts:

“[...]

“recording of a hitherto unrecorded performance.”

2.5 Do performers have a right of reproduction in the Law?

“Article 31. Rights of Performers

“[...]

“(2) The exclusive right to exploit a performance shall mean the right to carry out or authorize the following acts:

[...]

reproduction of the recording of a performance.”

2.6 Do performers have a right of distribution in the Law?

“Article 31. Rights of Performers

“[...]

“(2) The exclusive right to exploit a performance shall mean the right to carry out or authorize the following acts:

[...]

distribution of the original or copies of a performance fixed on a phonogram by sale or other mode of transfer of ownership;

[...]”

2.7 Do performers have a right of rental in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘rental’ means making the original or a copy of a work or of the subject matter of related rights temporarily available to the public for commercial purposes;

[...]”

“Article 31. Rights of Performers

“[...]

“(2) The exclusive right to exploit a performance shall mean the right to carry out or authorize the following acts:

[...]

rental of the original or copies of a performance fixed on a phonogram;

[...]”

2.8 Do performers have a right to making available of fixed performances in the Law?

“Article 31. Rights of Performers

“[...]

“(2) The exclusive right to exploit a performance shall mean the right to carry out or authorize the following acts:

[...]

communication to the public of a performance fixed on a phonogram in such a manner that any person may have access to it at the place and time of his choice;

[...]”

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 32. Rights of Phonogram Producers

“[...]

“(2) The exclusive right to exploit the phonogram shall mean the right to carry out or authorize the following acts:

reproduction (direct or indirect) of the phonogram;

[...]”

2.10 Do producers have a right of distribution in the Law?

“Article 32. Rights of Phonogram Producers

“[...]

“(2) The exclusive right to exploit the phonogram shall mean the right to carry out or authorize the following acts:

[...]

distribution of the original or copies of the phonogram by sale or any other mode of transfer of ownership.”

2.11 Do producers have a right of rental in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘rental’ means making the original or a copy of a work or of the subject matter of related rights temporarily available to the public for commercial purposes.”

“Article 32. Rights of Phonogram Producers

“[...]

“(2) The exclusive right to exploit the phonogram shall mean the right to carry out or authorize the following acts:

[...]

rental of the original or copies of the phonogram;

[...]”

2.12 Do producers have a right of making available of phonograms in the Law?

“Article 32. Rights of Phonogram Producers

“[...]

“(2) The exclusive right to exploit the phonogram shall mean the right to carry out or authorize the following acts:

[...]

communication to the public of the phonogram by wire or wireless transmission in such a manner that any person may have access to it at the place and time of his choice.”

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 33. Use of a Published Phonogram for Commercial Purposes

“(1) Notwithstanding the provisions of Articles 31 and 32 of this Law, the following shall be authorized without the consent of the producer of a phonogram published for commercial purposes and of the performer whose performance is recorded on the phonogram, but subject to payment of remuneration:

- public performance of the phonogram;
- broadcasting of the phonogram;

- communication of the phonogram to the public in any other form.

“For the purposes of this Article, phonograms that have become accessible to the public by wire or wireless transmission in such a way that any person may have access to them at the place and time of his choice shall be deemed published for commercial purposes.

“(2) The collection, distribution and payment of the remuneration provided for in paragraph (1) of this Article shall be effected by one of the organizations for the collective administration of the economic rights of phonogram producers and/or performers.”

2.14 Are there rights in the Law subject to any formalities?

“Article 29. Persons Enjoying Related Rights

“[...]

“(4) The origin and exercise of the related rights afforded under this Title shall not be subject to compliance with any formality.”

2.15 What is the term of protection for:

2.15.1 performers?

“Article 38. Term of Related Rights

“(1) The performer’s moral rights (right to be named and right to protection of his reputation), afforded by Article 31 of this Law, shall be protected without limitation in time.

“The economic rights afforded by this Law to performers shall subsist for 50 years as from the first fixation of their performances.

“[...]

2.15.2 producers of phonograms?

“Article 38. Term of Related Rights

“[...]

“(2) The economic rights afforded by this Law to phonogram producers shall subsist for 50 years after first publication of the phonogram or for 50 years after the first fixation if the phonogram has not been published during such period.”

2.16 What is the effective time -frame for application of rights in the Law ?

Not found in the Law reviewed.

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 16. Economic Rights

“[...]

“(4) The rights of authors (or other holders of copyright) set out in this Article shall be subject to the limitations specified in Articles 18 to 21 of this Law and which shall apply insofar as the uses in question do not unjustifiably prejudice the normal exploitation of the work and do not without valid reason violate the legitimate interests of the author (or other holder of copyright).”

“Article 18. Reproduction of Works for Personal Use

“(1) Notwithstanding the provisions of Article 16 [concerning economic rights] of this Law and subject to compliance with the provisions of paragraphs (3), (4) and (5) of this Article, it shall be permitted, without the consent of the author (or other holder of copyright) and without payment of remuneration, for a natural person to reproduce in a single copy and for exclusively personal purposes a lawfully published work.

“(2) The provisions of paragraph (1) of this Article shall not apply to the reproduction:

- of works of architecture in the form of comparable buildings and structures;
- of databases or substantial parts of databases;
- of computer programs, except in the cases provided for in Article 21 of this Law;
- of musical scores and books (in their entirety) by reprographic reproduction.

“(3) The author (or other holder of copyright), the performer and the phonogram producer (or their successors in title) may receive remuneration for the reproduction of an audiovisual work or of a work fixed on a phonogram. The remuneration shall be paid:

- by the manufacturers of equipment (sound recorders, video recorders, etc.) and of recording mediums (tapes, cassettes, optical discs, compact discs, etc.) habitually used for reproducing works for personal purposes, with the exception of equipment and recording mediums exported abroad; and

- by the importers of the aforementioned equipment and mediumsexcept where the importing is done by an individual for personal purposes.

“(4) The remuneration shall be collected by an organization for the collective administration of economic rights. Failing an agreement between the representatives of the manufacturers and importers referred to in paragraph (3), on the one hand, and the organization for the collective administration of economic rights, on the other, the amount of the remuneration and the conditions for its payment shall be determined by the Council of Ministers of the Republic of Belarus.”

“(5) The organization for the collective administration of economic rights shall apportion the remuneration between the author of the works (or other holders of copyright) referred to in paragraph (3) of this Article, the performers and the phonogram producers referred to in Article 36(2) of this Law when it may be presumed that the work has been reproduced for personal purposes in accordance with paragraph (1) of this Article. Failing an agreement between the various groups of authors (or other holders of copyright) and/or the performers and the phonogram producers (or their successors in title) concerning the apportionment of the remuneration, the percentages shall be determined by the Council of Ministers of the Republic of Belarus.”

“Article 19. Use of a Work Without the Author’s Consent and Without Payment of Remuneration

“The following shall be authorized without the author’s consent and without payment of remuneration, but provided that the name of the author whose work is used and the source of the borrowing are mentioned:

- the quotation for scientific or research purposes, for teaching, polemic, critical or informational purposes and to the extent justified by the intended purpose, of extracts from lawfully published works;
- the use of extracts from lawfully published works for the purpose of illustration in publications, radio or television broadcasts or sound or video recordings of an educational nature, and to the extent justified by the intended purpose;
- the reproduction in newspapers or the communication to the public of articles lawfully published in newspapers or periodicals on current economic, political, social or other topics, insofar as the author has not expressly prohibited such reproduction or communication to the public;
- the reproduction in newspapers or the communication to the public of speeches, addresses, lectures and other works of like nature given in public, to the extent justified by the informational purpose;
- the reproduction or communication to the public, in connection with the reporting of current events, of works that are seen or heard in the course of such events, to the extent justified by an informational purpose;

- the reproduction in Braille or by other special means for the benefit of the blind, with the exception of works created specially for such means of reproduction;
- the reproduction or communication to the public of works of architecture, works of fine art and photographic works permanently located in a public place, unless the presentation of the work constitutes the main purpose of the reproduction or communication to the public or if it is used for commercial purposes;
- the reproduction of lawfully disclosed works for the purposes of judicial or administrative proceedings;
- the performance of lawfully disclosed works during religious services; it shall not be compulsory in such cases to mention the name of the author and the source of the borrowing.”

“Article 20. Reprographic Reproduction of Works by Libraries, Archive Services and Teaching Establishments

“It shall be permissible, without the consent of the author or other holder of copyright and without payment of remuneration, but provided that the name of the author whose work is used and the source of the borrowing are mentioned, to make a reprographic reproduction in one copy and without gainful intent:

- of a lawfully published work where such reproduction is made by a library or archives service and its purpose is to replace copies that have been lost, destroyed or rendered unusable;
- of isolated articles or succinct works lawfully published in collections, newspapers or other periodical publications, or of short extracts from lawfully published written works, if the reproduction is done by a library or archives service and its purpose is to meet the requirements of natural persons who will make use of the copies so obtained for study or research purposes;
- of isolated articles or succinct works lawfully published in collections, newspapers or other periodical publications, or of short extracts from lawfully published written works, if the reproduction is done by a teaching establishment and the copy obtained is intended for classroom use.”

“Article 21. Reproduction of Computer Programs

“(1) Any person lawfully in possession of a copy of a computer program may make a copy of the computer program provided that the copy is intended solely for archiving or for the replacement of a lawfully acquired copy in the event of the latter having been lost, destroyed or rendered useless, on the understanding that the copy of the computer program may not be used for other purposes and that it must be destroyed if the possession of the copy of the computer program ceases to be lawful.

“(2) Any person lawfully in possession of a copy of a computer program may adapt the computer program in order to ensure its interoperability with other computer programs provided that the information obtained by means of such adaptation is not used for the development of other computer programs similar to the one that has been adapted nor for the performance of any other act prejudicial to copyright.”

“Article 33. Use of a Published Phonogram for Commercial Purposes

“(1) Notwithstanding the provisions of Articles 31 and 32 of this Law, the following shall be authorized without the consent of the producer of a phonogram published for commercial purposes and of the performer whose performance is recorded on the phonogram, but subject to payment of remuneration:

- public performance of the phonogram;
- broadcasting of the phonogram;
- communication of the phonogram to the public in any other form.

“For the purposes of this Article, phonograms that have become accessible to the public by wire or wireless transmission in such a way that any person may have access to them at the place and time of his choice shall be deemed published for commercial purposes.

“(2) The collection, distribution and payment of the remuneration provided for in paragraph (1) of this Article shall be effected by one of the organizations for the collective administration of the economic rights of phonogram producers and/or performers.”

“Article 34. Limitation to the rights of broadcasting organizations

“[...]

“(3) The exclusive right of the broadcasting organization under the fifth indent of paragraph (2) of this Article shall not extend to those cases where:

- the program has been recorded with the consent of the broadcasting organization;
- the program is reproduced for the same purposes as those for which it was recorded under the provisions of Article 36 of this Law.”

“Article 36. Limitation on the Rights of Performers, Phonogram Producers and Broadcasting or Cable Distribution Organizations

“(1) It shall be permissible without the consent of the performer, phonogram producer and broadcasting or cable distribution organization and without payment of remuneration, to make use of the performance, the program broadcast or transmitted by cable or the recording thereof, and to reproduce phonograms:

- for inclusion in a report on current events or short extracts from the performance, the phonogram or the broadcast or cabled program;
- for the exclusive purposes of teaching or scientific research;
- for quotation in the form of short extracts from the performance, the phonogram or the broadcast or cabled program, on condition that the quotation is for informational purposes and on the understanding that a broadcasting or cable distribution organization may only make use, for the purposes of a program, of copies of a phonogram published for commercial purposes if the provisions of Article 33 of this Law are complied with;
- in the other cases of limitation of the economic rights of the author of scientific, literary and artistic works provided for by this Law.

“(2) The reproduction of the phonogram by a natural person for exclusively personal purposes shall be authorized without the consent of the performer and the phonogram producer.

“(3) The provisions of Articles 31, 32, 34 and 35 of this Law concerning the authorization of the performer, the phonogram producer and the broadcasting organizations shall not apply to the making of an ephemeral recording of a performance or a program, to the reproduction of such recording or to the reproduction of a phonogram published for commercial purposes if the ephemeral recording or the reproduction is made by a broadcasting organization using its own equipment and for the purposes of its own programs, on condition that:

- the broadcasting organization has obtained prior authorization to broadcast the performance or the program of which an ephemeral recording has been made or reproduced under the provisions of this paragraph;
- the ephemeral recording is destroyed within the period laid down for or ephemeral recordings of literary, scientific and artistic works made by broadcasting organizations under the provisions of Article 37 of this Law; however, a single copy may be preserved in official archives if it is of a purely documentary nature.

“(4) The application of the limitations provided for in this Article shall not prejudice either the normal exploitation of the phonogram, the performance or the broadcast or cabled program, or recording thereof, or the normal exploitation of the literary, scientific or artistic work incorporated therein, and it shall likewise not prejudice either the legitimate interests of the performer, the phonogram producer or the broadcasting or cabled distribution organization or those of the author of the works concerned.

“Article 37. Ephemeral Recordings Made by Broadcasting Organizations

“(1) A broadcasting organization may, without the consent of the author and without payment of additional remuneration, make an ephemeral recording of a work for which

it has obtained the right of broadcasting, on condition that it makes such recording with its own equipment and for the purposes of its own programs.

“(2) The broadcasting organizations shall be required to destroy such recording within six months following its making, unless a longer period has been agreed with the author of the recorded work. The recording may be preserved without the consent of the author of the work in the archives of the broadcasting organization if it is of a purely documentary nature.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Article 39. Infringement of Copyright and Related Rights

“(1) Any natural or legal person who does not comply with the requirements of this Law shall be in infringement of copyright or related rights.”

“[...]

“(5) The following shall also be deemed infringements of copyright or related rights: any act, including manufacture, importing for the purposes of distribution or the distribution (sale, rental) of devices, or the provision of services, carried out by a person not having authorization, who knows or who has reasonable ground to know, that such act will enable or facilitate the circumvention of the technological measures provided for by this Law for protecting copyright or related rights, and of which the principal aim or commercial result is to circumvent such measures.”

3.3 What obligations are in the Law for the protection of “rights management information?”

“Article 39. Infringement of Copyright and Related Rights

“(1) Any natural or legal person who does not comply with the requirements of this Law shall be in infringement of copyright or related rights.”

“[...]

“(5) The following shall also be deemed infringements of copyright or related rights:

[...]

the removing or altering of any electronic rights management information without the consent of the holder of copyright or related rights;

the distribution, importing for the purposes of distribution, broadcasting or communication to the public without the authorization of the holder of copyright or related rights of works, recorded performances, phonograms or broadcast or cabled programs with respect to which electronic rights management information has been removed or altered without the authorization of the rightholder.”

3.4 Generally, what measures for enforcement of rights are in the Law?

“Article 40. Copyright and Related Rights Sanctions

“(1) The holder of copyright or related right may, for the protection of his rights, institute proceedings, in accordance with the established procedure, before a court or other body, depending on their attributions.

“(2) The holder of copyright or related rights may require:

- recognition of his copyright or related rights;
- restoration of the situation obtaining prior to the infringement of the copyright or related rights;
 - cessation of the acts that infringe or are liable to infringe his copyright or related rights;
- payment of damages, including loss of earnings;
 - surrender, in place of the payment of damages, of revenue derived by the infringer from the infringement;
 - payment, in place of damages or the surrender of revenue, of an indemnity in an amount of between 10 and 50,000 times the minimum salary, at the discretion of the court having regard to the nature of the infringement;
 - the adoption of such other measures provided for in legislative texts as are recognized for the defense of copyright or related rights.

“The choice between the measures referred to in the fifth, sixth and seventh indents of paragraph (2) shall be made by the holder of the copyright or related rights.

“(3) The infringing copies of works, recorded performances, phonograms or broadcast or cabled programs shall be subject to compulsory confiscation ordered by the court hearing matters of copyright and related rights.

“The court may order confiscation of any materials and equipment, including the devices referred to in the second indent of Article 39(5) of this Law, used in an unlawful manner for the manufacture and reproduction of copies of works, recorded performances, phonograms or broadcast or cabled programs, and their transmission to the Treasury.

“(4) Infringing copies of a work, recorded performance, phonogram or broadcast or cabled program may be handed over on request to the holder of the copyright or related rights.

“(5) Infringing copies of a work, recorded performance, phonogram or broadcast or cabled program for which the holder of copyright or related rights has not requested that they be handed over shall be destroyed or transmitted to the Treasury.

“Article 41. Provisional Measures

“(1) The court may decide to prohibit the defendant from performing certain acts (manufacture, sale, import or other use referred to by this Law, and also the transport, stocking or storage with a view to placing on the market copies of works, recorded performances, phonograms or broadcast or cabled programs that are allegedly infringing, including the unlawful use of the devices referred to in the second indent of Article 39(5) of this Law).

“(2) The court may order the preventive seizure, either descriptive or actual, of all allegedly infringing copies of works, recorded performances, phonograms or broadcast or cabled programs, and also the descriptive seizure of the materials and equipment intended for their manufacture, including the unlawfully used devices referred to in the second indent of Article 39(5) of this Law.

“(3) Where sufficient evidence has been gathered to prove infringement of copyright or related rights and liability for a criminal sanction under the law, the body responsible for the inquiry or the examination of the case or the court shall be obliged, pending the outcome of civil proceedings in progress or likely to be instituted, to take provisional measures, in the form of the location and descriptive seizure of allegedly infringing copies of works, recorded performances, phonograms or broadcast or cabled programs, and also of materials and equipment intended for their manufacture, including the unlawfully used devices referred to in the second indent of Article 39(5) of this Law and, where appropriate, in the form of actual seizure and delivery to a custodian.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

“Article 4. Basic Concepts

“For the purposes of this Law, the terms given below shall have the meanings specified:

[...]

‘reproduction’ means the making of one or more copies of a work or of the subject matter of related rights in any material form whatsoever, including permanent or ephemeral storage in digital form by electronic means.”

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

BULGARIA

(Law Reviewed: Law on Copyright and Related Rights, text published in State Gazette (SG) No. 56 of June 29, 1993, as amended by the texts published in SG Nos. 63 of August 5, 1994, 10 of January 27, 1998, 20 of March 5, 1999 and 28 of April 4, 2000, 107 of December 28, 2000, 77 of August 9, 2002)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Article 3. Protected Works

“(1) Subject matter of copyright shall be any work of literature, art and science, which is a result of creative activities and is expressed in whatever manner and in whatever form, such as:

1. literary works, including works of scientific and technical literature, editorials, columnist works, political essays and the like, and computer programs;
2. musical works;
3. performing art works, such as dramatic works, dramatico-musical works, pantomimes, choreographic works, etc.;
4. films and other audiovisual works;
5. works of fine art, including works of applied art, design and folklore artistic crafts;
6. works of architecture;
7. photographic works and works created by a process analogous to photography;
8. blueprints, maps, sketches, plans and others, relating to architecture, urban planning, geography, topography, museum activities and to any sphere of science and techniques;
9. graphic design of publications.

“(2) Subject matter of copyright shall also be the following:

1. translations and adaptations of pre-existing works and folklore;
2. arrangements of musical works and folklore;

3. periodicals, encyclopedias, collections, anthologies, bibliographic works, databases and others, which include two more works or products.

“(3) Subject matter of copyright may also be any part of a work under paragraphs (1) and (2), as well as preliminary drawings, diagrams, and the like.”

“Article 4. Exceptions

“The following shall not be considered subject matter of copyright:

1. legislative and individual enactments of government bodies and official translations thereof;
2. ideas and concepts;
3. works of folklore;
4. current news, facts, information and data.”

1.2 Are computer programs protected in the Law as literary works?

“Article 3. Protected Works

“(1) Subject matter of copyright shall be any work of literature, art and science, which is a result of creative activities and is expressed in whatever manner and in whatever form, such as:

1. literary works, including works of scientific and technical literature, editorials, columnist works, political essays and the like, and computer programs.

[...]”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 3. Protected Subject Matter

[...]”

“(2) Subject matter of copyright shall also be the following:

1. translations and adaptations of pre-existing works and folklore;
2. arrangements of musical works and folklore;
3. periodicals, encyclopedias, collections, anthologies, bibliographic works, databases and others, which include two more works or products.”

1.4 IstherearightofdistributionintheLaw?

“Article18.TypesofEconomicCopyright

“(1) Theauthorshallhave theexclusiverighttousetheworkcreatedbyhimandto permititsusebyotherpersonsexceptwherethisLawprovidesotherwise.

“(2) Actssuchasthoselistedbelowshallbyconsidereduseswithinthemeaningof paragraph(1):

[...]

2. distributionoftheoriginaloftheworkorcopiesthereofamonganunlimited numberofpersons.

[...]”

“AdditionalProvisions

[...]

4. ‘distributionofwork’ meansthesale,exchange,donation,rentalorlending, ortheoffertosellor rentoriginalsorcopies. Therentingorlendingofworksof architectureorappliedartandcraftworksshallnot beconsidereddistribution underthisLaw.

[...]”

1.5 IstherearightofrentalintheLaw,andifso,towhichworksdoesitapply?

“AdditionalProvisions

[...]

“4. ‘distributionofwork’ meansthesale,exchange,donation,rentalorlending,orthe offertosellor rentoriginalsorcopies.Therentingorlendingofworksofarchitecture orappliedartandcraftworksshallnot beconsidereddistributionundert hisLaw.

[...]”

1.6 IstherearightofcommunicationtothepublicintheLaw?

“Article15.Typesofmoralcopyrights

“(1) Theauthorshallbeentitledto:

1. decidewhetherhisworkmaybemadeavailabletothepublicandto determinewhen,wher eandhow thatmaybedoneexceptforthesubjectmatter

of copyright under Art. 3(1), items 4, 6 and 8, for which such rights shall be arranged by contract.

[...]"

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law? he

"Article 18. Types of Economic Copyright

"(1) The author shall have the exclusive right to use the work created by him and to permit its use by other persons except where this Act provides otherwise.

"(2) Acts such as those listed below shall be considered uses within the meaning of paragraph (1):

[...]

10. transmission by wireless, cable or other technical means of access to the work, or part thereof, for the benefit of an unlimited number of persons in a manner that permits such access to occur in a place and at a time individually chosen by each one of them."

1.8 Are photographic works given the same duration of protection as other works in the Law?

"Article 27. General Rule

"(1) Copyright shall be protected for the author's lifetime and for seventy years after his death.

"[...]"

1.9 What is the effective time-frame for application of the rights in the Law?

"Transitional and final provisions

"6(1) This Law shall apply also to works, performances, phonograms and radio and television programs made or given prior to its entry into force unless the protection period thereof have expired.

"6(2) Copyright acquired prior to the entry into force of this Law shall remain in force.

"7. The author of a literary text that has been used without his consent in a musical work pursuant to Article 7 of the Law on Copyright of 1951 may not prevent the further use of the musical work together with the text if the two have already been made available to the public together. "

“Transitional and final provisions of the Law to Amend the Law on Copyright and Related Rights (Durzavenvestnik No 28/2000)

“51(1) This law shall also apply to works and subject matter under art. 72 created or made prior to its entry into force, provided the terms of protection set forth in it have not expired yet.

“51(2) Copyright holders cannot lay claims regarding uses of their works occurring at a time when the term of protection of those rights had already expired as provided under the then existing law.”

“Transitional and final provisions of the Law to Amend the Law on Copyright and Related Rights (Durzavenvestnik No 77/2002)

“38(1) The provisions of Art. 93b shall apply with regard to databases or parts thereof, whose creation was completed before this Law comes into effect, if the terms under Art. 93h have not expired.

“38(2) The right holders under Art. 93c shall not be entitled to laying claims regarding any actions carried out before this Law comes into effect.”

2. WPPT provisions

2.1. Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 74. Proprietors of Rights

“A performing artist is a person who presents, sings, plays, dances, recites, acts, directs, conducts, comments upon, dubs into another language or otherwise performs a work, circus or variety act, a puppet show or a work of folklore.”

2.1.2 Is “phonogram” defined in the Law?

“Additional provisions

“[...]

“(2) For the purposes of this Law:

[...]

8. ‘phonogram’ means the product of audio recording.

[...]”

2.1.3 Is “fixation” defined in the Law?

“Additional provisions

“[...]

“(2) For the purposes of this Law:

[...]

7. ‘audiorecording’ means the fixing on a durable material medium of a sequence of sounds in such a way as to allow them to be listened to, reproduced, re-recorded and broadcast by wireless, cable or other technical means.

[...]”

2.1.4 Is “producer of a phonogram” defined in the Law?

“Article 85. Proprietors of Rights

“The producer of a phonogram shall be the natural or legal person who organizes the first recording and finances it.”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Additional provisions

“[...]

“(2) For the purposes of this Law:

[...]

2. ‘publication of a work’ means bringing a work to the attention of an unlimited number of persons through reproduction and the distribution of copies, including in the form of audio or video recording, the number of which shall be adequate in relation to the nature of the work.

“[...]”

“Additional provisions

“[...]

“3. The definitions contained in items 1, 2, 3, 4 and 5 of the preceding provisions shall also apply to the subject matters specified in Article 72.

“[...]”

2.1.6 Is “broadcasting” defined in the Law?

“Additional provisions

“[...]

“2. For the purposes of this Law:

[...]

5. ‘broadcasting a work by wireless means’ means broadcasting it on radio or television, or by terrestrial means, as well as transmitting it in the form of a signal to a satellite and back to earth so that it may be received either directly and individually by the public, or through an intermediary other than the transmitting authority.

“[...]

2.1.7 Is “communication to the public” defined in the Law?

“Additional provisions

“[...]

“2. For the purposes of this Law:

1. ‘making a work available to the public’ means bringing the publication, with the consent of its author, to the attention of an unlimited number of persons for the first time, regardless of the form or manner in which that is done.”

2.2 Is the concept of “national treatment” contained in the Law?

“Article 100. Applicable Law for Performances

“(1) This Law shall apply for the performances of the performers who are citizens of the Republic of Bulgaria or have a permanent address in the country, irrespective of where the performances have taken place.

“(2) This Law shall apply also to the performances of foreign performers, which have taken place on the territory of the Republic of Bulgaria.

“Article 101. Applicable Law for Recordings, Programs and Films

“This Law shall apply to subject matter under Art. 72 items 2, 3, and 4, made by physical persons who are citizens of the Republic of Bulgaria or have a permanent address in the country, or by legal entities, whose headquarters are located in the country, irrespective of where they have been made, as well as to the recordings made

orsimultaneouslypublishedforthefirsttimebyforeignpersons ontheterritoryofthe RepublicofBulgaria.”

2.3 Doperformershavemoralrightsinthelaw?

“Article75.MoralRights

“(1) Theperformingartistsshallenjoythefollow ingrights:

1. todemandthatthisname,pseudonymorstagenamebeindicated or otherwisecommunicatedin thecustomarymannerateachliveperformance,or oneveryuseofarecordingofthatperformancewhenitis reproducedorusedin anyothermanner;
2. todemandthepreservationofthecompletenessandintegrityofarecorded performancewhenitisreproducedorusedinanyothermanner.

“(2) Therightunderitem1oftheprecedingparagraphshallbeinalienable .Waiving therequirementunderitem2mayonlybeexplicitandinwriting.”

2.4 Doperformershaveeconomicrightsintheirunfixedperformances,andifso,which ones?

“Article76.EconomicRights

“(1) Aperformingartistshallhavetheexclusiverighttopermitforcompensation:

1. thebroadcastingofaperformanceofhisbywireless,cableorother technicalmeans,andalsothesoundorvideorecordingoftheperformance,the reproductionoftherecordingsonaudioorvideocarriersand theirdistribution.
2. thepublicperformanceandthebroadcastingbywireless,cableorother technicalmeansofsuch recordings.
3. theofferingtoanunlimitednumberofpersons,bywireless,cableorother technicalmeans,of accesstohisrecordedperformanceorpartthereofina mannerpermittingtheaccesstobehadfromanyplace andatanytime individuallychosenby eachoneofthosepersons.
4. importationandexportationofcopiesoftherecordingcontainingthe performanceoftheworkin commercialquantities,irrespectiveofwhetherthey havebeenmanufacturedlegallyorinviolationoftheright underitem1.

“(2) Performingartistsshallgranttherightsundertheprecedingparagraphbymeans ofawrittencontract.Compensationmaybenegotiatedasapercentageoftherevenue asalump -sumpaymentorinanother manner.

“(3) Unlessotherwiseagreedinthecontractbetweentheperformingartistandthe producerofsound recordings,theformershallhavetherighttoauthorizeother

persons as well to record and distribute his performances. Any agreement limiting the performing artist's right to grant such permissions shall be valid for a maximum of five years."

"Article 77. Secondary Use

"The amount of compensation for the performing artists and producers of sound recordings for broadcasting by wireless, cable or other technical means or for the public performance using audio or other equipment, of works that have already been made available to the public shall be determined according to Additional Provisions 5, with one half of the amount payable to the performing artists and the other half to the producers of sound recordings."

2.5 Do performers have a right of reproduction in the Law?

"Article 76. Economic Rights

"(1) A performing artist shall have the exclusive right to permit for compensation:

1. the broadcasting of a performance of his by wireless, cable or other technical means, and also the sound or video recording of the performance, the reproduction of the recordings on audio or video carriers and their distribution.

[...]

3. the offering to an unlimited number of persons, by wireless, cable or other technical means, of access to his recorded performance or part thereof in a manner permitting the access to be had from any place and at any time individually chosen by each one of those persons.

4. importation and exportation of copies of the recording containing the performance of the work in commercial quantities, irrespective of whether they have been manufactured legally or in violation of the right under item 1.

"(2) Performing artists shall grant the rights under the preceding paragraph by means of a written contract. Compensation may be negotiated as a percentage of the revenue as a lump-sum payment or in another manner.

"(3) Unless otherwise agreed in the contract between the performing artist and the producer of sound recordings, the performers shall have the right to authorize other persons as well to record and distribute his performances. Any agreement limiting the performing artist's right to grant such permissions shall be valid for a maximum of five years."

"Article 77. Secondary Use

"The amount of compensation for the performing artists and producers of sound recordings for broadcasting by wireless, cable or other technical means or for the public

performance using audio or other equipment, of works that have already been made available to the public shall be determined according to Additional Provisions 5, with one half of the amount payable to the performing artists and the other half to the producers of sound recordings.”

2.6 Do performers have a right of distribution in the Law?

“Article 76 .Economic Rights

“(1) A performing artist shall have the exclusive right to permit for compensation:

1. the broadcasting of a performance of his by wireless, cable or other technical means, and also the sound or video recording of the performance, the reproduction of the recordings on audio or video carriers and their distribution.

[...]

3. the offering to an unlimited number of persons, by wireless, cable or other technical means, of access to his recorded performance or part thereof in a manner permitting the access to be had from any place and at any time individually chosen by each one of those persons.

4. importation and exportation of copies of the recording containing the performance of the work in commercial quantities, irrespective of whether they have been manufactured legally or in violation of the right under item 1.

“(2) Performing artists shall grant the rights under the preceding paragraph by means of a written contract. Compensation may be negotiated as a percentage of the revenue as a lump-sum payment or in another manner.

“(3) Unless otherwise agreed in the contract between the performing artist and the producer of sound recordings, the former shall have the right to authorize other persons as well to record and distribute his performances. Any agreement limiting the performing artist’s right to grant such permissions shall be valid for a maximum of five years.”

“Article 77 .Secondary Use

“The amount of compensation for the performing artists and producers of sound recordings for broadcasting by wireless, cable or other technical means or for the public performance using audio or other equipment, of works that have already been made available to the public shall be determined according to Additional Provisions 5, with one half of the amount payable to the performing artists and the other half to the producers of sound recordings.”

2.7 Do performers have a right of rental in the Law?

“Additional provisions

“[...]

“2. For the purposes of this Law:

[...]

4. ‘distribution of work’ means the sale, exchange, donation, rental or lending, or import or export thereof, or the offer to sell or rent originals or copies. The renting or lending of works of architecture or applied art and craft works shall not be considered distribution under this Law.”

[...]

“3. The definitions contained in items 1, 2, 3, 4 and 5 of the preceding provisions shall also apply to the subject matters specified in Article 72.”

2.8 Do performers have a right of making available of fixed performances in the Law?

“Article 76. *Economic Rights*

“(1) A performing artist shall have the exclusive right to permit for compensation:

[...]

3. the offering to an unlimited number of persons, by wireless, cable or other technical means, of access to his recorded performance or part thereof in a manner permitting the access to be had from any place and at any time individually chosen by each one of those persons.”

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 86. *Economic Rights*

“(1) The producers shall have the exclusive right to grant permission against compensation for:

1. the reproduction and distribution of the phonogram.”

“Additional provisions

“[...]

“(2) For the purposes of this Law:

[...]

3. ‘reproduction of a work’ means directly or indirectly duplicating the work or part thereof in one or more copies, in any manner and in any form whether permanent or temporary, including the digital storage of the work on an electronic medium.

[...]

“3. The definitions contained in items 1, 2, 3, 4 and 5 of the preceding provisions shall also apply to the subject matters specified in Article 72.

“[...]

2.10 Do producers have a right of distribution in the Law?

“Article 86. Economic Rights

“(1) The producers shall have the exclusive right to grant permission against compensation for:

1. the reproduction and distribution of the phonogram;

[...]

“Additional provisions

“[...]

“(2) For the purposes of this Law:

[...]

4. ‘distribution of work’ means the sale, exchange, donation, rental or lending, or import or export thereof, or the offer to sell or rent originals or copies. The renting or lending of works of architecture or applied art and craft works shall not be considered distribution under this Law.”

[...]

“(3) The definitions contained in items 1, 2, 3, 4 and 5 of the preceding provisions shall also apply to the subject matters specified in Article 72.

“[...]

2.11 Do producers have a right of rental in the Law?

“Additional provisions

“[...]

“(2) For the purposes of this Law:

[...]

4. ‘distribution of work’ means the sale, exchange, donation, rental or lending, or import or export thereof, or the offer to sell or rent originals or copies. The renting or lending of works of architecture or applied art and craft works shall not be considered distribution under this Law.”

[...]

“(3) The definitions contained in items 1, 2, 3, 4 and 5 of the preceding provisions shall also apply to the subject matters specified in Article 72.

“[...]

2.12 Do producers have a right of making available of phonograms in the Law?

“Article 86. Economic Rights

“(1) The producers shall have the exclusive right to grant permission against compensation for:

[...]

4. the offering to an unlimited number of persons, by wireless, cable or other technical means, of access to the recording or a part thereof in a manner permitting the access to be had from any place and at any time individually chosen by each one of those persons.”

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

Not found in the Law reviewed.

2.14 Are there rights in the Law subject to any formalities?

Not found in the Law reviewed.

2.15. What is the term of protection for:

2.15.1 performers?

“Article 82. Duration

“The rights of performers shall remain in force for 50 years. That term shall commence on January 1 of the year following that in which the recording of the performance was published, or, where the recording has not been published or the performance has not been recorded, at the beginning of the year following that in which the first performance was held.”

2.15 What is the term of protection for:

2.15.2 producers of phonograms?

“Article 89. Duration

“The rights of producers under this Chapter shall remain in force for 50 years. That term shall commence on January 1 of the year following that in which the phonogram was published or, where the phonogram has not been published, at the beginning of the year following that in which the phonogram was made.”

2.16 What is the effective time -frame for application of rights in the Law?

“Transitional and final provisions

“[...]

“6(1) This Law shall apply also to works, performances, phonograms and radio and television programs made or given prior to its entry into force unless the protection periods thereof have expired .”

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 23. Permissible Free Uses

“Free use of works shall be permissible only in the cases specified in this Law, provided that it does not conflict with the normal exploitation of the work and does not prejudice the legitimate interests of the copyright holder.”

“Article 24. Permissible Free Use without Payment of Compensation

“The following shall be permissible without the consent of the copyright holder and without payment of compensation:

1. Temporary reproduction of works provided the act is transient and incidental, has no independent significance and is an integral and essential part of a technological process, and whose sole purpose is to enable:
 - a) Transmission in a network by an intermediary, or
 - b) Other lawful use of the work..
2. Use of quotations from other persons' already disclosed works when criticizing or reviewing, provided the source and the name of the author are cited unless this turns out to be impossible. The quotations should be compatible with the usual practice and its extent should not exceed the one justified by the purpose;
3. Use of parts of published works or of a limited number of works in other works to the extent justified by the purposes of analysis, comments or scientific research. Such use shall be permissible only for scientific and educational purposes, provided the source and the name of the author are cited unless this turns out to be impossible;
4. Use as current information in the press and other mass media of speeches, reports, sermons and the like and parts thereof, delivered at public meetings, as well as of pleas before the court provided the source and the name of the author are cited unless this turns out to be impossible;
5. Use by the mass media of already disclosed articles on current economic, political or religious issues in cases such use has not been explicitly forbidden, provided the source and the name of the author are cited unless this turns out to be impossible;
6. Reproduction by photographic, cinematographic or another analogous process, as well as by way of sound or video recording, of works related to current events, for the purposes of the mass media, to a limited extent justified by the purposes of information, provided the source and the name of the author are cited unless this turns out to be impossible;
7. Use of works permanently exhibited on streets, squares and other public places, excluding mechanical contact copying, as well as their broadcasting by wireless means or transmission by cable or other technical means, if done for the purposes of information or another non-commercial purpose;
8. Public presentation and public performance of published works in schools and other educational establishments, provided that there are no pecuniary revenues and no compensation is paid to the participants in the preparation and carrying out of the public presentation or performance;

9. Reproduction in necessary quantities of already published works by public libraries, schools or other educational establishments, museums and archives with educational or conservation purposes, provided this use will not serve commercial purposes;
10. Reproduction of already disclosed works in Braille or another analogous method, if not done for gainful purposes;
11. Permitting access of natural persons to works in collections belonging to organizations referred to in item 9, provided this is done for scientific purposes and is not of commercial nature;
12. Ephemeral recording of a work by radio and television organizations to which the author has granted the right to use the work made by means of their own facilities and for their own broadcasts and within the framework of the authorization granted. Recordings that have exceptional documentary character may be preserved in official archives;
13. Use of works for the purposes of national security, in court or administrative procedures or in the parliamentary practice;
14. Use of works during religious ceremonies or during official ceremonies organized by the public authorities;
15. Use of a building, which is a work of architecture or a plan of such a building for the purposes of its reconstruction;

“(2) The provisions under paragraph 1 shall not refer to computer programs. The provisions of Art. 70 and Art. 71 shall be applicable to computer programs.”

“Article 25 .Permissible Use Against Compensation

“(1) The following shall be permissible without the consent of the copyright holder and against payment of compensation:

1. Reproduction on paper or similar medium by reprographic or another analogous process of works with the exception of sheet music, and for non-commercial purposes.
2. Reproduction of works on any medium made by a natural person for his private use and for non-commercial purposes.

“(2) The provision under paragraph 1, item 2 shall not refer to computer programs and works of architecture. The provisions of Art. 70 and Art. 71 shall be applicable to computer programs.”

“Article 25a . Binding of Free Use with Preserving Technological Means of Protection

“The use of works under Art. 24(1) and Art. 25(1) cannot be carried out in a manner accompanied by removal, damage, destruction or disruption of technological means of protection without the consent of the copyright holder.”

“Article 84 . Application by Analogy

“The provisions of articles 18a, 21, 22, 23, Art. 24(1), items 1, 6, 8, 12 and 14, Art. 25(1), item 2, Art. 25a, 26, 32, 33, 34, 36, 37 and Art. 58(1) shall apply respectively to the rights of performers and Art. 66 - to the rights of the persons referred to in Art. 78(3).”

“Article 90 . Application by Analogy

“The provisions of Art. 8, Art. 18a, 21, 22, 23, Art. 24(1) items 1, 3, 6, 8, 11, 12, 13, and 14, Art. 25(1) item 2, Art. 25a, 26 and 36 shall apply respectively to phonogram producers.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Article 97 . Penalties

“(1) Any person who commits the following in violation of this Law:

[...]

shall be liable to a fine or pecuniary sanction ranging from 200 to 2,000 BGL, unless the infringement is punishable by a more severe penalty; subject matter of the infringement, regardless of whose property it may be, shall be seized in favor of the State and shall be handed over for destruction by agencies of the Ministry of Interior.

“(2) A repeat offence under paragraph (1) committed within one year of the imposition of the previous penalty shall be punished with a fine or pecuniary sanction ranging between 1,000 and 5,000 BGL; subject matter of the infringement, regardless of whose property it may be, shall be seized in favor of the State and shall be delivered for destruction by agencies of the Ministry of Interior.

“(3) In the event of systematic infringement, the facility where the infringements have been committed, such as a shop, studio, restaurant, movie theatre, theatre, company head office, etc. shall be closed for a term of three to six months.

“(4) Societies conducting collective administration of rights under this Law, which act in violation of Art. 40(4) shall be liable to a fine of between 200 and 2,000 BGL.

“(5) The sanctions under paragraphs (1) and (2) shall be imposed on any person who produces, distributes, advertises or imports, or possesses for commercial purposes, a decrypting device capable of affording access to an encrypted signal for persons who are outside the reception area specified by the broadcasting organization.

“(6) The sanctions under paragraph 1 and 2 shall be imposed also on persons who, without having the right, remove, modify, destroy or disrupt technological means of protection knowing or having ground to know that these devices are primarily designed for such purposes.

“(7) The sanctions under paragraphs 1 and 2 shall be imposed also on persons who manufacture, import, distribute, sell, rent, offer for sale or rental, or possess for commercial purposes devices, products or components which are primarily designed to remove, damage, destroy or disrupt technological means of protection, or persons who provide services for such circumvention with commercial purposes.

“(8) The sanctions under paragraphs (1) and (2) shall also be imposed on any person who does the following without authority and being aware or having reason to believe that the act is liable to cause, permit, facilitate or conceal the infringement of a right protected by this Law:

1. removes or modifies information in electronic form on the regime of rights in the subject matter of copyright or neighboring rights;
2. distributes, including import for the purposes of distribution, performs in public, broadcasts by wireless or transmits via cable or other technical means subject matter of copyright or neighboring rights, offers an unlimited number of persons access to subject matter in a manner whereby that access may be had from a place and at a time individually chosen by each of those persons, knowing that the information in electronic form on the regime of rights in the subject matter has been removed or modified without authority.”

3.3 What obligations are in the Law for the protection of “rights management information?”

“Article 97. Penalties

“[...]

“(7) The sanctions under paragraphs 1 and 2 shall be imposed also on persons who manufacture, import, distribute, sell, rent, offer for sale or rental, or possess for commercial purposes devices, products or components which are primarily designed to remove, damage, destroy or disrupt technological means of protection, or persons who provide services for such circumvention with commercial purposes.

“[...]

“(9) ‘Rights management information’ as used in Art. 7 means information which identifies the subject matter of copyright or neighboring right, the holder of such a right, information about the terms and conditions of use of such subject matter, and any numbers or codes that represent such information, when any of these items of

information is attached to a copy of the subject matter or appears in connection with its disclosure to the public.”

3.4 Generally, what measures for enforcement of rights are in the Law?

“Article 94. Action for Compensation

“(1) Any person who infringes copyright or a right, neighboring to copyright, or a right under Art. 93 shall be liable to compensation for the damages incurred by the right owner or the person to whom exclusive user rights have been granted. a

“(2) When the grounds of the claim have been established, but there is not sufficient information about the amount of the compensation, the persons under paragraph (1) may demand the following in place of compensation:

1. there is revenue received as a result of the infringement;
2. the cost of the object of infringement at the retail prices of the lawfully reproduced copies, or
3. from 100 to 50000 BGL, the exact sum being fixed at the discretion of the court.

“Article 95. Other Actions

“Where a work or subject matter under Art. 72 is used in violation of the provision of this Law, the right owner or the person to whom the user right has been exclusively granted may bring an action in court for:

1. an injunction restraining the unlawful use;
2. seizure and destruction of the illegally produced copies of the work, including negatives, master copies, printing blocks and other material used for the purposes of copying;
3. seizure and disablement of the copying, decrypting and reproduction equipment used exclusively for committing the infringement;
4. delivery to him of the articles mentioned in item 2.”

“Article 96. Competent Courts

“The disputes under this Law shall be settled by the district courts.”

“Article 96a. Safeguard Measures

“(1) When copyright or a neighboring right has been infringed or when there are sufficient grounds to believe that such infringement will be committed or evidence will be lost, destroyed or concealed, the court, at the request of the rightholder or of the person to whom the exclusive user right has been granted, may, without informing the other party, permit some of the following safeguard measures:

1. prohibition of the performance of the activity alleged to constitute or to be about to constitute an unlawful use of a work or subject matter under Art. 72;
2. seizure of the copies of the work or subject matter under Art. 72 that are alleged to have been unlawfully reproduced, as well as the negatives, printing blocks, stereotype plates and other material intended for the making of the copies;
3. prevention or prohibition of the use of machines which are alleged to have been or to be about to be used to commit violations;
4. sealing of the premises on which it is alleged that infringements are being or will be committed.

“(2) The authorization, imposition and revocation of safeguard measures shall take place according to the procedures stipulated in Articles 165 to 170 inclusive and 30 to 322 inclusive of the Code of Civil Procedure, with the exception of the first sentence of Article 317(2), and unless this Law provides otherwise.

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“(3) The safeguard measure consisting in prohibition of performance of the activity shall be imposed by virtue of a court order.

“(4) The safeguard measures under paragraph (1), items 2, 3 and 4 shall be imposed by an executive judge, who shall at the same time serve notice of the authorization of the safeguard measure on the defendant. The property seized, together with a checklist, shall be handed over to be kept by the plaintiff whomay use it only as evidentiary material.

by

“(5) The plaintiff for his representative may be present and may cooperate when the safeguard measures are being imposed.

“(6) The safeguard measures under paragraph (1), items 2, 3 and 4 shall be imposed within three days of that on which the executive judge has received the plaintiff's plea. Safeguard measures that have been authorized to prevent an impending infringement shall be imposed within a term that takes account of their purpose.

“(7) If it is established that an imposed safeguard measure has been requested without grounds, the aggrieved party may demand that the person who has requested the measure pay for the damages incurred thereby.”

“Article 96b. Rationale and Field of Application

“(1) A copyright holder or proprietor of a neighboring right or a right under Art. 93c, or a person to whom an exclusive user right has been granted, may request the customs authorities to suspend any goods transported across the state border of the Republic of Bulgaria regarding which there is reason to believe that they infringe rights protected by this Law. To cover suspension expenses, charges shall be payable at a rate laid down in a tariff adopted by the Council of Ministers.

“(2) When the place of residence or the registered office of the petitioner is outside this country, an address for service within the territory of the Republic of Bulgaria shall be given.

“(3) The provisions of this Section shall also apply to temporary imports and exports.

“(4) The suspension measures shall not apply to goods transported by passengers in small quantities for non-commercial purposes, to small parcels sent by parcel post or to goods in transit.”

“Article 96c. Procedure for Suspension

“(1) Suspensions shall be effected on the basis of a petition in writing lodged by a person under Art. 96b(1) which petitions shall contain proof of the rights of the petitioner, and also the grounds for believing that the rights have been infringed.

“(2) After establishing the existence of the circumstances provided for in Art. 96b(1), the customs authorities shall suspend the goods and shall impose on the petitioner a guarantee in money or property which shall cover his probable liability should the suspension of goods prove groundless.

“(3) The customs authorities shall without delay notify the petitioner, the consignor and the consignee of the suspension of the goods. The same persons shall be entitled to inspect the suspended goods and to receive information about them.

“(4) If within 10 working days of the date of being notified under paragraph (3) of the suspension of goods, the petitioner does not present any proof that legal proceedings have been initiated before the relevant court to resolve the substance of the dispute, or that a safeguard measure has been authorized, the customs authorities shall release the impounded goods, provided that all requirements for standard import or export have been satisfied. The release of the guarantee lodged shall take place according to the procedure established by Art. 322(2) of the Code of Civil Procedure. If the petitioner files a well-grounded request, the term may be extended by another 10 working days.

“(5) The competent authorities before which the legal procedure under paragraph (4) has been initiated shall decide, at the request of the interested party, whether the suspension measure is to be confirmed, modified or lifted.

“(6) Where after the request for suspension no procedure under paragraph (4) is initiated or where the request proves to have been groundless, the aggrieved party shall be entitled to indemnification.”

“Article 96d. Ex -Officio Actions by Customs Authorities

“(1) The customs authorities may on their own initiative or at the request of another government agency suspend goods regarding which they have reason to believe that they infringe the rights protected by this Law.

“(2) In such cases, the customs authorities shall without delay inform the persons under Art. 96b(1), the consignor and the consignee and shall give them the opportunity to inspect the suspended goods. The customs authorities may demand of the rightholder or the owner of neighboring rights any information that may be needed for an expert assessment.

“(3) The decision under paragraph (1) may be appealed according to the procedure established by the Code of Administrative Procedure.

“(4) If, within 10 working days of that on which the goods were suspended, no procedure has been initiated before the relevant court to resolve the substance of the dispute or no ruling has been made by the court on the authorization of a safeguard measure, the customs authorities shall release the suspended goods, provided that all standard import and export requirements have been satisfied.

“(5) The customs authorities shall bear no responsibility for any action that they may have taken in good faith to suspend the goods.”

“Article 96e. Additional Regulation

“The Council of Ministers shall issue a regulation on the implementation of this Chapter.”

“Article 97. Penalties

“(1) Any person who in violation of the provisions of this Law:

1. reproduces and distributes video carrier embodying recorded films or other audiovisual works;
2. reproduces and distributes audio carrier embodying recorded works;
3. organizes, in whatever manner, public showings of films or other audiovisual works;
4. offers third parties sound or video recording services consisting in the preparation of single copies of works or other material protected by this Law;
5. organizes the live or recorded public performance or presentation of works;
6. broadcasts by wireless, cable or other technical means works or a radio or television program;

7. publishes or distributes already published works;
8. owns a computer program, knowing or having ground to believe that this is an infringement;
9. reproduces or distributes or otherwise uses a computer program;
10. reproduces or distributes works of applied art, design and crafts, photographic works or works made in a manner comparable to photography;
11. uses unlawfully a work under art.3, paragraph 1, items 6 and 8;
12. impedes the execution of a provisional measure under article 96a;
13. does not fulfill an obligation under Art.26(2);
14. violates a ban under Art.93c

shall be liable to a fine or pecuniary sanction ranging from 200 to 2,000 BGL, unless the infringement is punishable by a more severe penalty; subject matter of the infringement, regardless of whose property maybe, shall be seized in favor of the State and shall be handed over for destruction by agencies of the Ministry of Interior.

“(2) A repeat offence under paragraph (1) committed within one year of the imposition of the previous penalty shall be punished with a fine or pecuniary sanction ranging between 1,000 and 5,000 BGL; subject matter of the infringement, regardless of whose property it maybe, shall be seized in favor of the State and shall be delivered for destruction by agencies of the Ministry of Interior.

“(3) In the event of systematic infringement, the facility where the infringements have been committed, such as a shop, studio, restaurant, movie theatre, theatre, company head office, etc. shall be closed for a term of three to six months.

“(4) Societies conducting collective administration of rights under this Law, which act in violation of Art.40(4) shall be liable to a fine of between 200 and 2,000 BGL.

“(5) The sanctions under paragraphs (1) and (2) shall be imposed on any person who produces, distributes, advertises or imports, or possesses for commercial purposes, a decrypting device capable of affording access to an encrypted signal for persons who are outside the reception areas specified by the broadcasting organization.

“(6) The sanctions under paragraph 1 and 2 shall be imposed also on persons who, without having the right, remove, modify, destroy or disrupt technological means of protection knowing or having ground to know that these devices are primarily designed for such purposes.

“(7) The sanctions under paragraphs 1 and 2 shall be imposed also on persons who manufacture, import, distribute, sell, rent, offer for sale or rental, or possess for commercial purposes devices, products or components which are primarily designed to

remove, damage, destroy or disrupt technological means of protection, or persons who provide services for such circumvention with commercial purposes.

“(8) The sanctions under paragraphs (1) and (2) shall also be imposed on any person who does the following without authority and being aware or having reason to believe that the act is liable to cause, permit, facilitate or conceal the infringement of a right protected by this Law:

1. removes or modifies information in electronic form on the regime of rights in the subject matter of copyright or neighboring rights;
2. distributes, including import for the purposes of distribution, performs in public, broadcasts by wireless or transmits via cable or other technical means subject matter of copyright or neighboring rights, offers an unlimited number of persons access to subject matter in a manner whereby that access may be had from a place and at a time individually chosen by each of those persons, knowing that the information in electronic form on the regime of rights in the subject matter has been removed or modified without authority.

“(9) ‘Rights management information’ as used in Art. 7 means information which identifies the subject matter of copyright or neighboring right, the holder of such right, information about the terms and conditions of use of such subject matter, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of the subject matter or appears in connection with its disclosure to the public.”

“Article 98. Establishment of Infringement, Issue of Fine Tickets and Penal Ordinances

“(1) The fine tickets establishing infringements under Art. 97 shall be issued by bodies duly empowered by the Minister responsible for culture with the assistance of agencies of the Ministry of Interior.

“(2) The penal ordinances shall be issued by the Minister responsible for culture or by officials authorized by him.

“(3) The establishment of the existence of infringements and the issue, appeal and enforcement of the penal ordinances shall be conducted as set out in the Law on the Administrative Offenses and Penalties.

“(4) Fifty percent of the funds from fines raised under Art. 97 shall be credited to the account of the National Culture Fund; the balance shall be credited to the budget of the Ministry of Culture and shall be disbursed for the protection of copyright; the conditions and procedure for allocation of funds shall be specified by the Council of Ministers.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

“Additional Provisions, Article 2

“For the purposes of this Law:

[...]

3. ‘reproduction of a work’ means directly or indirectly duplicating the work or part thereof in one or more copies, in any manner and in any form whether permanent or temporary, including the digital storage of the work on an electronic medium”

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

BURKINAFASO

(Loi N°032 -99/AN portant protection de la propriété littéraire et artistique ²⁾)

1. WCT provisions

1.1 Le champ de la protection par le droit d'auteur, prévu par la loi, couvre-t-il seulement les expressions, et exclut-il les idées, procédures, méthodes d'opération, ou concepts mathématiques?

Peut être trouvée dans la loi examinée.

1.2 Les programmes d'ordinateurs sont-ils protégés par la loi en tant qu'œuvres littéraires?

“Article 5 : La présente loi protège les œuvres de l'esprit qui sont des créations intellectuelles originales dans le domaine littéraire et artistique telles que :

- les livres, brochures, programmes d'ordinateur [...]

1.3 Les compilations de données ou d'autres matériaux, quelle que soit leur forme, qui en raison de la sélection ou de l'arrangement de leur contenu, constituent des créations intellectuelles, sont-ils protégés par la loi?

Peut être trouvée dans la loi examinée.

1.4 La loi prévoit-elle un droit de distribution?

“Section II – Droits patrimoniaux

“Article 16 : L'auteur d'une œuvre de l'esprit jouit sur son œuvre de droits patrimoniaux exclusifs dont les prérogatives lui permettent de faire ou d'autoriser :

- la reproduction de son œuvre;
- la traduction de son œuvre;
- la préparation des adaptations, des arrangements ou autres transformations de son œuvre;
- la distribution de exemplaires de son œuvre au public par la vente ou par tout autre transfert de propriété ou par location ou prêt public;

² CONSTITUTION DUBURKINAFASO: Article 151. Les traités et accords régulièrement ratifiés ou approuvés, dès leur publication, ont une autorité supérieure à celle des lois, sous réserve, pour chaque accord ou traité, de son application par l'autre partie.)

- la représentation ou l'exécution de son oeuvre en public;
- l'importation de exemplaires de son oeuvre;
- la radiodiffusion de son oeuvre;
- la communication de son oeuvre au public”.

1.5 La loi prévoit-elle un droit de location, le cas échéant, à quelles catégories d'oeuvres s'applique-t-il?

“Section II – Droits patrimoniaux

*“Article 16 : L'auteur d'une oeuvre de l'esprit jouit sur son oeuvre de droits patrimoniaux exclusifs dont les prérogatives lui permettent de faire ou d'autoriser :
exemplaires de son oeuvre au public par la vente ou partout ailleurs transferts de propriété ou par location ou prêt public”.*

“Article 17 : Les droits de location et de prêt prévus à l'article précédent ne s'appliquent pas à la location de programmes d'ordinateur dans le cas où le programme lui-même n'est pas l'objet essentiel de la location ou du prêt”.

1.6 La loi prévoit-elle un droit de communication au public?

“Section II – Droits patrimoniaux

“Article 16 : L'auteur d'une oeuvre de l'esprit jouit sur son oeuvre de droits patrimoniaux exclusifs dont les prérogatives lui permettent de faire ou d'autoriser :

- la représentation ou l'exécution de son oeuvre en public;
- la radiodiffusion de son oeuvre;
- la communication de son oeuvre au public”.

1.7 La loi prévoit-elle un droit de mise à disposition des oeuvres de manière que chacun puisse y avoir accès de l'endroit et au moment où il choisit de manière individualisée?

Peut être trouvée dans la loi examinée.

1.8 La loi prévoit-elle une durée de protection identique pour les oeuvres photographiques et les autres oeuvres?

Peut être trouvée dans la loi examinée.

1.9 Quels sont les délais effectifs pour l'application des droits prévus par la loi?

“Article 117 : Les dispositions de la présente loi s'appliquent aussi aux oeuvres qui ont été créées, aux interprétations ou exécutions qui ont eu lieu ou ont été fixées, aux phonogrammes et vidéogrammes qui ont été fixés et aux programmes des organismes de radiodiffusion qui ont eu lieu, avant la date d'entrée en vigueur de la présente loi, à condition que ces oeuvres, interprétations ou exécutions, phonogrammes ou vidéogrammes et programmes n'aient pas encore tombé dans le domaine public en raison de l'expiration de la durée de la protection à laquelle ils étaient soumis dans la législation précédente ou dans la législation de leur pays d'origine. Demeurent entièrement saufs et non touchés les effets légaux des actes et contrats passés ou stipulés avant la date d'entrée en vigueur de la présente loi”.

2. Traité de l'OMPI sur les interprétations et exécutions et les phonogrammes (WPPT)

2.1 Définitions :

2.1.1 La loi prévoit-elle une définition des “artistes interprètes ou exécutants”?

“Lexique 26) Les ‘artistes interprètes ou exécutants’ sont, à l'exclusion des artistes de complément considérés comme tels par les usages professionnels, les personnes physiques qui représentent, chantent, récitent, content, déclament, jouent, dansent ou exécutent de toute autre manière des oeuvres littéraires ou artistiques, des numéros de variétés, de cirque ou de marionnettes ou des expressions du folklore”.

2.1.2 La loi prévoit-elle une définition d'un “phonogramme”?

“Lexique 28) Le ‘phonogramme’ est toute fixation exclusivement sonore des sons provenant d'une interprétation ou exécution ou d'autres sons, ou d'une représentation de sons autre que sous la forme d'une fixation incorporée dans une oeuvre cinématographique ou une autre oeuvre audiovisuelle”.

2.1.3 La loi prévoit-elle une définition de la “fixation”?

Peut être trouvée dans la loi examinée.

2.1.4 La loi prévoit-elle une définition du ‘producteur de phonogramme’?

“Lexique 20) Le ‘producteur’ d'une oeuvre audiovisuelle est la personne physique ou morale qui prend l'initiative et la responsabilité de production de l'oeuvre”.

2.1.5 La loi définit-elle ce qu'il faut entendre par "publication" d'une interprétation ou exécution fixée ou d'un "phonogramme"?

"Lexique 33) La 'publication' d'une interprétation ou exécution fixée, d'un 'phonogramme' ou d'un vidéogramme est la mise à la disposition du public de copies de l'interprétation ou exécution fixée ou d'exemplaires du phonogramme ou du vidéogramme avec le consentement du titulaire des droits, à condition que comptent en de la nature de l'oeuvre, le nombre des copies ou des exemplaires publiés ait été suffisant pour répondre aux besoins du public".

2.1.6 La loi prévoit-elle une définition de la "radiodiffusion"?

"Lexique 17) La 'radiodiffusion' est la transmission sans fil de l'image, du son, ou de l'image et du son ou de représentations de ceux-ci aux fins de réception par le public; ceterm désigne aussi une transmission de cette nature effectuée par satellite, depuis l'injection de l'oeuvre vers les satellites y compris à la fois les phases ascendante et descendante de la transmission jusqu'à ce que l'oeuvre parvienne au public. La transmission désignée aux cryptés est assimilée à la «radiodiffusion» lorsque les moyens de décryptage sont fournis au public par l'organisme de radiodiffusion ou avec son consentement".

2.1.7 La loi prévoit-elle une définition de la "communication au public"?

"Lexique 16) La 'communication publique par câble' est la communication d'une oeuvre au public par fil ou par toute autre voie constituée par une substance matérielle".

2.2 La loi inclut-elle le concept de traitement national?

Peut-être dans la loi examinée.

2.3 La loi prévoit-elle un droit moral pour les artistes interprètes ou exécutants?

Peut-être dans la loi examinée.

2.4 La loi prévoit-elle des droits patrimoniaux pour les artistes interprètes ou exécutants sur leurs interprétations ou exécutions non fixées? Si oui, lesquels?

Peut-être dans la loi examinée.

2.5 La loi prévoit-elle pour les artistes interprètes ou exécutants un droit de reproduction?

"Article 73 : L'artiste interprète ou exécutant a le droit exclusif de faire ou d'autoriser les actes suivants:

- la reproduction d'une fixation de son interprétation ou exécution".

2.6 Laloiprévoit -ellepourlesartistesinterprètesouexécutantsundroitdedistribution?

“*Article73* :L’artisteinterprèteouexécutantaledroitexclusifdefaireou d’autoriser lesactessuivants:

- ladistributiondesexemplairesd’unefixation,desoninterprétationou exécutionparlaventeoupartoutautretransfertdepropriétéouparlocation”

2.7 Laloiprévoit -ellepourlesartistesinterprètesouexécutantsundroitdelocation?

“*Article73* :L’artisteinterprèteouexécutantaledroitexclusifdefaireoud’autoriser lesactessuivants:

- ladistributiondesexemplairesd’unefixation,desoninterprétationou exécutionparlaventeoupartoutautretransfertdepropriétéouparlocation”.

2.8 Laloiprévoit -ellepourlesartistesinterprètesouexécutantsundroitdemettreà dispositiondesinterprétationsouexécutionsfixées?

“*Article73* :L’artisteinterprèteouexécutantaledroitexclusifdefaireoud’autoriser lesactessuivants:

- lamiseàdispositiondupublic,parfilousansfil,desoninterprétationou exécutionfixéesurphonogrammeouvidéogramme,demanièrequetchacun puisseyaivoiraccèsdel’endroitetaumomentqu’ilchoisitindividuellement”.

2.9 Laloiprévoit -ellepourlesproducteursdephonogrammes(producteurs)undroitde reproduction?

“*Article76* :Leproducteurdephonogrammesaledroitexclusifdefaireoud’autoriser lesactessuivants:

- lareproduction, directeouindirecte,desonphonogramme”.

2.10 Laloiprévoit -ellepourlesproducteursundroitdedistribution?

“*Article76* :Leproducteurdephonogrammesaledroitexclusifdefaireoud’autoriser lesactessuivants:

- lareproduction,directe ouindirecte,desonphonogramme;
- l’importationdecopiesdesonphonogrammeenvuedeleurdistributionau public;
- ladistributionaupublicdecopiesdesonphonogrammeparlaventeoupar toutautretransfertdepropriétéouparlocation”.

2.11 L'alloi prévoit -elle pour les producteurs un droit de location?

“Article 76 : Le producteur de phonogrammes a le droit exclusif de faire ou d'autoriser les actes suivants:

- la distribution au public de copies de son phonogramme par la vente ou par tout autre transfert de propriété ou par location”.

2.12 L'alloi prévoit -elle pour les producteurs un droit de mettre à disposition des phonogrammes?

“Article 76 : Le producteur de phonogrammes a le droit exclusif de faire ou d'autoriser les actes suivants:

- la mise à disposition du public, par fil ou sans fil, de son interprétation ou exécution fixées sur phonogramme ou vidéogramme, de manière que chacun puisse y avoir accès de l'endroit et au moment qu'il choisit individuellement”.

2.13 L'alloi prévoit -elle pour les producteurs un droit à rémunération au titre de la radiodiffusion et de la communication au public de leurs phonogrammes?

Pastrouvé dans l'alloi examinée.

2.14 Les droits sont -ils soumis à des formalités?

“Article 4 : Cette protection n'est assujettie à aucune formalité.”

2.15 Quelle est la durée de protection prévue pour

2.15.1 Les artistes interprètes ou exécutants?

“Article 85 : La durée de protection à accorder aux interprétations ou exécutions en vertu de la présente partie de l'alloi est une période de soixante-dix années à compter de:

- la fin de l'année civile de la fixation, pour les interprétations ou exécutions fixées sur phonogrammes ou sur vidéogrammes;
- la fin de l'année où l'interprétation ou l'exécution a eu lieu, pour les interprétations ou exécutions qui ne sont pas fixées sur phonogrammes ou sur vidéogrammes”.

2.15.2 Les producteurs de phonogrammes?

“Article 86 : La durée de protection à accorder aux phonogrammes et vidéogrammes en vertu de la présente partie de l'alloi est une période de soixante-dix années à compter de la fin de l'année civile de la fixation”.

2.16 Quelles sont les délais effectifs pour l'application des droits par la loi?

Peut être trouvée dans la loi examinée.

3. Dispositions Communes

3.1 Quelles sont les limitations et exceptions prévues par la loi?

“Article 21 : Lorsque l'oeuvre a été licitement divulguée, l'auteur ne peut interdire :

- les représentations privées et gratuites effectuées exclusivement dans un cercle de famille;
- les copies ou reproductions strictement réservées à l'usage privé du copiste et non destinées à une utilisation collective, à l'exception:
 - des copies des oeuvres d'art et d'architecture destinées à être utilisées pour des fins identiques à celles pour lesquelles l'oeuvre originale a été créée;
 - de la reproduction en totalité ou d'une partie importante de bases de données;
 - de la reproduction de programmes d'ordinateurs sous réserve des dispositions de l'article 23 ci-dessous;
- l'importation d'un exemplaire d'une oeuvre par une personne physique, à des fins personnelles;
- la parodie, le pastiche et la caricature, compte tenu des lois du genre”.

“Article 22 : Lorsque l'oeuvre a été licitement divulguée, l'auteur ne peut interdire sous réserve que soient indiqués clairement le nom de l'auteur et la source:

- les analyses et courtes citations justifiées par le caractère critique, polémique, pédagogique, scientifique ou d'information de l'oeuvre à laquelle elles sont incorporées;
- les revues de presse;
- la reproduction et la diffusion, même intégrale, par la voie de presse ou de télédiffusion, à titre d'information d'actualité, des articles d'actualité politique, sociale, économique ou religieuse, des discours destinés au public prononcés dans les assemblées politiques, administratives, judiciaires ou académiques, des sermons, conférences, allocutions et autres oeuvres de même nature;

- l'utilisation des oeuvres littéraires ou artistiques à titre d'illustration de l'enseignement par le moyen de publication, d'émission de radiodiffusion ou d'enregistrement sonore ou visuels, à condition qu'une telle utilisation ne soit pas abusive et qu'elle soit dénuée de tout caractère lucratif".

“Article 23 : Pardérogation aux droits de l'auteur, le propriétaire d'un exemplaire d'un programme d'ordinateur peut, sans l'autorisation de ce dernier et sans paiement d'une rémunération séparée, réaliser un exemplaire ou l'adaptation de ce programme à condition que cet exemplaire ou cette adaptation soit:

- nécessaire à l'utilisation du programme d'ordinateur à des fins pour lesquelles le programme a été obtenu;
- nécessaire à des fins d'archivage et pour remplacer l'exemplaire licitement détenu dans le cas où celui-ci serait perdu, détruit ou rendu inutilisable”.

“Article 24 : Pardérogation aux droits de l'auteur, un organisme de radiodiffusion peut, sans autorisation et sans paiement d'une rémunération séparée, réaliser un enregistrement éphémère par ses propres moyens et pour ses propres émissions d'une oeuvre qu'il a le droit de radiodiffuser. L'organisme de radiodiffusion doit détruire cet enregistrement dans les six mois suivants sa réalisation, à moins qu'un accord pour une période plus longue ait été passé avec l'auteur de l'oeuvre ainsi enregistrée. Toutefois, sans un tel accord, un exemplaire unique de cet enregistrement peut être gardé à des fins exclusives de conservation d'archives”.

“Article 25 : Pardérogation aux droits des auteurs, il est permis de reproduire, de radiodiffuser ou de communiquer par câble au public une image d'une oeuvre d'architecture, d'une oeuvre des beaux-arts, d'une oeuvre photographique ou d'une oeuvre d'arts appliqués située en permanence dans un endroit ouvert au public, sauf si l'image de l'oeuvre est le sujet principal d'une telle reproduction ou communication et si elle est utilisée à des fins commerciales.”

3.2 Quelle est la protection juridique et les sanctions juridiques prévus par la loi contre la neutralisation des mesures techniques efficaces?

“Article 108 : Sont illicites et assimilées à des violations des droits de l'auteur et des droits voisins:

- la fabrication ou l'importation, pour la vente ou la location, d'un dispositif ou moyen spécialement conçu ou adapté pour rendre inopérant tout dispositif ou moyen de protection contre la copie ou de régulation de la copie;
- la fabrication ou l'importation, pour la vente ou la location, d'un dispositif ou moyen en nature à permettre ou à faciliter la réception d'un programme codé radiodiffusé ou communiqué de toute autre manière au public, par des personnes qui ne sont pas habilitées à le recevoir;

- la suppression ou modification, sans y être habilitée, de toute information relative au régime des droits se présentant sous forme électronique;
- la distribution ou l'importation aux fins de distribution, la radiodiffusion, la communication au public ou la mise à disposition du public, sans y être habilitée, d'œuvres, d'interprétations ou exécutions, de phonogrammes, de vidéogrammes ou d'émissions de radiodiffusion sachant que des informations relatives au régime des droits se présentant sous forme électronique ont été supprimées ou modifiées sans autorisation.

Les auteurs des infractions sus-visés sont punis des peines prévues aux articles 106 et 107 ci-dessus”.

3.3 Quelles sont les obligations prévues par la loi relatives à l'information sur le régime des droits?

“Lexique 35) ‘L’information sur le régime des droits’ s’entend des informations permettant d’identifier l’auteur, l’œuvre, l’artiste interprète ou exécutant, l’interprétation ou exécution, le producteur de phonogrammes ou de vidéogrammes, le phonogramme, le vidéogramme, l’organisme de radiodiffusion, l’émission de radiodiffusion, et tout titulaire de droit en vertu de cette loi, ou toute information relative aux conditions ou modalités d’utilisation de l’œuvre et autres productions visées par la présente loi, et de tout numéro ou code représentant ces informations, lorsque l’un quelconque de ces éléments d’information est joint à la copie d’une œuvre, d’une interprétation ou exécution fixée, à l’exemplaire d’un phonogramme ou à une émission de radiodiffusion fixée, ou apparaît en relation avec la radiodiffusion, la communication au public ou la mise à la disposition du public d’une œuvre, d’une interprétation ou exécution fixée, d’un phonogramme ou d’une émission de radiodiffusion”.

3.4 Quelles sont les dispositions prévues par la loi relatives à la mise en œuvre des droits?

“Titre V – Des Procédures et Sanctions

“Chapitre I: Procédures et Sanctions Civiles

“Article 98 : Toutes les contestations relatives à l’application des dispositions de la présente loi qui relèvent des juridictions de l’ordre judiciaire, sont portées devant les tribunaux compétents, sans préjudice du droit pour la partie lésée de se pourvoir devant la juridiction répressive dans les termes du droit commun”.

“L’organisme professionnel de gestion collective a qualité pour ester en justice pour la défense des intérêts dont il a la charge. Outre les procès-verbaux des Officiers ou Agents de Police Judiciaire, la preuve de la matérialité de toute infraction aux dispositions de la présente loi peut résulter des constatations d’agents assermentés de l’organisme professionnel de gestion collective”.

“Article 99 : A la requête de tout auteur d’une œuvre de l’esprit, de tout titulaire d’un droit voisin, de leurs ayants droit ou de l’organisme professionnel de gestion collective,

les services de Police, de Gendarmerie, des Douanes ou tout autre service habilité à procéder à des saisies sont tenus :

- des saisir, quels qu’soient le jour et l’heure, les exemplaires constituant une reproduction illicite d’une oeuvre, d’un phonogramme, d’un vidéogramme ou des programmes d’un organisme de radiodiffusion;
- des saisir, quels qu’soient le jour et l’heure, les recettes provenant de toute reproduction, représentation ou diffusion, par quelque moyen que ce soit, d’une oeuvre de l’esprit, d’un phonogramme, d’un vidéogramme ou d’un programme, effectuée en violation des droits des titulaires de droits d’auteur et de droits voisins;
- des saisir, quels qu’soient le jour et l’heure, le matériel ayant servi ou devant servir à la violation des droits protégés par la présente loi;
- des suspendre toute représentation ou exécution publique en cours ou annoncée effectuée en violation des droits des titulaires de droits d’auteur ou de droits voisins;
- des suspendre toute fabrication en cours tendant à la reproduction illicite d’une oeuvre, d’un phonogramme, d’un vidéogramme ou des programmes d’un organisme de radiodiffusion”.

“Article 100 : Lorsque les produits d’exploitation revenant à l’auteur ou à l’artiste interprète ou exécutant d’une oeuvre de l’esprit, ont fait l’objet d’une saisie –arrêt, la juridiction civile compétente peut ordonner le versement à l’auteur ou à l’artiste interprète ou exécutant, à titre alimentaire, d’une certaine somme ou d’une quotité déterminée de ses biens saisissables. Toutefois, sont insaisissables, dans la mesure où elles ont un caractère alimentaire, les sommes dues, en raison de l’exploitation pécuniaire ou de la cession des droits de propriété littéraire ou artistique, à tous auteurs, compositeurs, artistes interprètes ou exécutants ainsi qu’à leur conjoint survivant contre lequel n’existe pas un jugement de séparation de corps passé en force de chose jugée, ou à leurs enfants mineurs pris en leur qualité d’ayants cause.

“Les dispositions du présent article ne font pas obstacle aux saisies –arrêts pratiquées en vertu des dispositions du Code des Personnes et de la Famille relatives aux créances d’aliments”.

“Article 101 : Dans les trente jours de la date du procès –verbal de la saisie, le saisissant ou le tiers saisi peut demander au président du tribunal de grande instance de prononcer la main levée de la saisie ou d’encantonner les effets, ou en core d’autoriser la reprise de la fabrication ou celle des représentations ou exécutions publiques, sous l’autorité d’un administrateur constitué séquestre, pour le compte de qui il appartiendra, des produits de cette fabrication ou de cette exploitation.

“Le président du tribunal de grande instance statuant en référé peut, s’il fait droit à la demande du saisissant ou du tiers saisi, ordonner à la charge du demandeur la consignation d’une somme affectée à la garantie des dommages et intérêts auxquels les détenteurs de droits pourraient prétendre.

“Encas de non –lieu ou de relaxe, les mesures prises sont levées de plein droit par le tribunal. Faute par le saisissant de saisir au fond la juridiction compétente dans les

trente jours de la saisie, les mesures prises sont levées de plein droit par le président du tribunal saisi par requête. Toutefois, dans les cas des saisies effectuées pour des sommes exigibles d'un montant inférieur ou égal à deux cent cinquante mille francs, l'organisme professionnel de gestion collective peut, dans un délai de dix (10) jours à compter de l'expiration du premier délai, demander au tribunal de grande instance la confiscation de six exemplaires, des recettes ou du matériel saisis. Les produits de la confiscation auront les destinations indiquées dans les articles 104 et 112 de la présente loi”.

“Article 102 : Le tribunal compétent pour connaître des actions engagées en vertu de la présente loi peut, sous réserve des dispositions des codes de procédure civile et pénale, et aux conditions qu'il jugerai raisonnables, rendre une ordonnance interdisant la commission, ou ordonnant la cessation de la violation de tout droit protégé en vertu de la présente loi”.

“Article 103 : Les mesures prévues aux articles 99 à 102 ci-dessus s'appliquent en cas de violation des dispositions de la présente loi relatives à la protection des expressions du patrimoine culturel traditionnel appartenant au patrimoine national”.

“Article 104 : En cas de violation d'un des droits protégés par la présente loi, la victime a le droit d'obtenir le paiement, par l'auteur de la violation, de dommages-intérêts en réparation du préjudice subi par elle en conséquence de l'acte de violation, ainsi que le paiement des frais occasionnés par l'acte de violation y compris les frais de justice. En cas de non-respect des dispositions sur le droit de suite, l'acquéreur, le vendeur et la personne chargée de procéder à la vente aux enchères publiques pourront être condamnés solidairement au profit des bénéficiaires, à des dommages-intérêts”.

“Article 105 : Lorsque des exemplaires réalisés en violation des droits existent, les autorités judiciaires peuvent ordonner que ces exemplaires et leur emballage soient détruits ou disposés d'une autre manière, hors des circuits commerciaux de façon à éviter de causer un préjudice au détenteur du droit, sauf si le titulaire de droit demande qu'il en soit autrement. Cette disposition n'est applicable ni aux exemplaires dont un tiers a acquis de bonne foi la propriété ni à leur emballage.

“Lorsqu'un danger existe que du matériel soit utilisé pour commettre ou pour continuer à commettre des actes constituant une violation des droits d'auteur ou des droits voisins, le tribunal peut ordonner qu'il soit détruit, ou disposé d'une autre manière hors des circuits commerciaux de façon à réduire au minimum les risques de nouvelles violations ou qu'il soit remis au titulaire de droit.

“Lorsqu'un danger existe que des actes constituant une violation se poursuivent, le tribunal ordonne expressément la cessation de ces actes, au besoin sous astreinte”.

“Chapitre II – Procédures et Sanctions Pénales

“Article 106 : Nonobstant les dispositions de l’article 511 du code pénal :

- constitue le délit de contrefaçon, toute édition d’écrit, de composition musicale, de dessin, de peinture ou de toute autre reproduction, imprimée ou gravée en entier ou en partie, au mépris des lois et règlements relatifs à la propriété des auteurs;
- est également un délit de contrefaçon ou de reproduction, traduction, adaptation, représentation, diffusion par quelque moyen que ce soit, d’une oeuvre de l’esprit en violation des droits de l’auteur, tels qu’ils sont définis et réglementés par la loi. Le délit de contrefaçon est puni d’un emprisonnement de deux mois à un an et d’une amende de 50000 à 300000 francs ou de l’une de ces deux peines seulement;
- sont punis des mêmes peines, l’exportation et l’importation des ouvrages contrefaits.

“Article 107 : Est puni d’un emprisonnement de deux mois à un an et d’une amende de 50.000 à 300.000 francs ou de l’une de ces deux peines seulement toute fixation, reproduction, communication ou mise à disposition du public, à titre onéreux ou gratuit, ou toute télédiffusion d’une prestation, d’un phonogramme, d’un vidéogramme ou d’un programme, réalisées sans l’autorisation, lorsqu’elle est exigée, de l’artiste interprète, du producteur de phonogrammes ou de vidéogrammes ou de l’organisme de radiodiffusion. Est puni de la même peine toute importation ou exportation de phonogrammes ou de vidéogrammes réalisées sans l’autorisation du producteur ou de l’artiste interprète, lorsqu’elle est exigée.

“Est puni de la même peine le défaut de versement de la rémunération due au titre de la copie privée ou de la communication publique et de la radiodiffusion des phonogrammes du commerce”.

“Article 109 : Commet le délit de piraterie, dans le domaine artistique et littéraire, celui qui se livre, sur une grande échelle et dans un but commercial, aux actes réprimés par les articles 106, 107 et 108 ci-dessus.

“La piraterie est punie d’une peine d’emprisonnement d’un an à trois ans et d’une amende de 500.000 à 5.000.000 de francs ou de l’une de ces deux peines seulement”.

“Article 110 : Les peines encourues aux articles 106 à 109 ci-dessus sont portées au double s’il s’agit de la copie privée habituellement aux actes incriminés. En outre, le tribunal peut ordonner, soit à titre définitif, soit à titre temporaire, pour une durée n’excédant pas cinq (5) ans, la fermeture de l’établissement exploité par le condamné.

“Lorsque cette mesure de fermeture a été prononcée, le personnel doit recevoir une indemnité égale à son salaire, augmentée de tous les avantages en nature, pendant la

durée de la fermeture et au plus pendant six mois. Si les conventions collectives ou particulières prévoient, après licenciement, une indemnité supérieure, c'est celle-ci qui sera due.

“Toute infraction aux dispositions des deux alinéas qui précèdent est punie d'un emprisonnement d'un à six mois et d'une amende de 150.000 à 1.500.000 francs ou de l'une de ces deux peines seulement. En cas de récidive, les peines sont portées au double”.

“*Article 111* : Dans tous les cas prévus aux articles 106 à 110 ci-dessus, le tribunal peut prononcer la confiscation de tout ou partie des recettes procurées par l'infraction ainsi que celle de tous les phonogrammes, vidéogrammes, objets et exemplaires contrefaisants ou reproduits illicitement et du matériel spécialement installé en vue de la réalisation de l'infraction.

“Les recettes confisquées seront remises à la victime ou à ses ayants droit pour les indemniser de leur préjudice, le surplus de leur indemnité ou l'entière indemnité, s'il n'y a pas eu de confiscation, étant réglé par les voies ordinaires.

“Le matériel et les exemplaires confisqués seront traités conformément aux dispositions de l'article 104 de la présente loi.

“A la requête de la partie civile, le tribunal peut également ordonner, aux frais du condamné, l'affichage du jugement prononçant la condamnation ainsi que sa publication intégrale ou par extraits dans les journaux qu'il désigne, sans que les frais de cette publication puissent excéder le montant maximum de l'amende encourue”.

“*Chapitre III – Les Mesures à La Frontière*”

“*Article 112* : Ausens de la présente loi et dans la mise en oeuvre des mesures à la frontière, les détenteurs de droits sont les titulaires de droits d'auteur et de droits voisins, leurs ayants droit ainsi que l'organisme professionnel de gestion collective qui les représente également”.

“*Article 113* : Afin de permettre la mise en oeuvre du droit d'importation et du droit à rémunération pour copie privée, prévus respectivement aux articles 16, 82 à 84 de la présente loi, il est institué un visa d'importation des oeuvres artistiques et littéraires ainsi que des supports vierges servant à fixer ces oeuvres.

“Le visa d'importations sera délivré par l'organisme professionnel de gestion collective selon des modalités à préciser par voie réglementaire”.

“*Article 114* : En l'absence du visa d'importation institué par la présente loi, la douane peut avant toute autorisation de mise en circulation des marchandises, informer l'organisme professionnel de gestion collective qui intervient selon des modalités à préciser par voie réglementaire.

“Ladouane peut, desapropre initiative, suspendre ledédouanement etretenir des marchandises pourlesquelles il existe desprésomptions qu’une atteinte aété ou pourrait être reportée àundroit d’auteur ou àundroit voisin. Dansce cas, ladouane peut demander audétenteur dudroit defournir, gracieusement, tous les renseignements et concours, y compris l’assistance d’expert set autres moyens nécessaires pour déterminer siles marchandises suspectessont contrefaites oupiratées.

“L’administration desdouanes peut, surdemande écrite d’undétenteur dedroit d’auteur ou dedroit voisin, assortie de justifications, ou àlademande del’organisme professionnel de gestion collective, retenir dans lecadre deses contrôles les marchandises que ceux -ci prétendent constituer une contrefaçon dedroit.

“Dans les cas prévus aux deux alinéas précédents, les procédures à suivre et les mesures à prendre par ladouane sont celles delaréglementation douanièremettant en oeuvre l’Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce (ADPIC)”.

“Article 115 : Sans préjudice delaprotection des renseignements confidentiels, la douane ou une autre autorité compétente, peut autoriser ledétenteur dedroit d’auteur ou dedroit voisin à examiner les marchandises dont ledédouanement a été suspendu conformément à l’article précédent, et à prélever des échantillons en vue de déterminer, par examen, essai ou analyse, siles marchandises sont piratées, contrefaites ou portent autrement atteinte à ses droits.

“Sans préjudice delaprotection des renseignements confidentiels, ladouane peut fournir audétenteur dedroit d’auteur ou dedroit voisin les renseignements complémentaires dont elles aient qu’il leur permettront de déterminer siles marchandises sont effectivement contrefaites, piratées ou si elles portent autrement atteinte à ses droits”.

“Article 116 : Les mesures prévues aux articles 113 à 115 ci -dessus s’appliquent en cas de violation des dispositions delapré sente loi relatives à laprotection des expressions dupatrimoine culturel traditionnel appartenant aupatrimoine national”.

3.5 Comment la loi définit -elle la responsabilité des fournisseurs des services sur Internet?

Peut être trouvée dans la loi examinée.

3.6 Existe-t-il des dispositions relatives au stockage temporaire?

Peut être trouvée dans la loi examinée.

3.7 Existe-t-il des dispositions spécifiques qui permettent d’assurer que les dispositions relatives aux mesures techniques ne restreignent pas l’exercice des exceptions et limitations prévues par la loi?

Peut être trouvée dans la loi examinée.

CHILE

(Legislación revisada: Ley 17.336 sobre la propiedad intelectual, del 28 de agosto de 1970 y parcialmente modificadas por las leyes 18.957 de 1990 y 19.166 de 1992, y WCT y WPPT ³)

1. Disposiciones del WCT

1.1. ¿Se extiende el alcance de la protección del derecho de autor solamente a las expresiones, y no a las ideas, procedimientos, métodos de funcionamiento o conceptos matemáticos?

“Artículo 2 WCT: Relación con el Convenio de Berna

“La protección del derecho de autor abarca a las expresiones pero no a las ideas, procedimientos, métodos de operación o conceptos matemáticos en sí.”

1.2. ¿Se encuentran los programas de ordenador protegidos en la ley como obras literarias?

“Artículo 3:

“Quedan especialmente protegidos con arreglo a la presente ley:

[...]

16) Los programas computacionales.”

1.3. ¿Se encuentran las recopilaciones de datos u otro material, en cualquier forma, protegidas en la ley como creaciones intelectuales, en razón de la selección o arreglo de los contenidos?

“Artículo 3

“Quedan especialmente protegidos con arreglo a la presente ley:

[...]

1) Los libros, folletos, artículos y escritos, cualesquiera que sean su forma y naturaleza, incluidas las enciclopedias, guías, diccionarios, antologías y compilaciones de toda clase.

³ Constitución Política de la República de Chile de 1980 con Reforma de 2000. Artículo 5° Es deber de los órganos del Estado respetar y promover tales derechos, garantizados por esta Constitución, así como por los tratados internacionales ratificados por Chile y que se encuentren vigentes. *Este es el caso del WCT y WPPT (aclaratoria añadida).*

[...]"

1.4. ¿Existeen laleyelderechodedistribución?

“Artículo6WCT: Derechodedistribución

- “1) Losautoresdeobrasliterariasyartísticasgozarándelderechoexclusivode autorizarlapuestaadisposicióndelpúblicodeloriginalydelosejemplaresdesus obrasmedianteventauotrtransferenciadepropiedad.
- 2) NadaenelpresenteTratadoafectarálafacultaddelasPartesContratantesde determinarlascondiciones,silashubiera,enlasqueseaplicaráelagotamientodel derechodelpárrafo1)despuésdelaprimeraventauotrtransferenciadepropiedaddel originaldeunejemplardelaobraconautorizacióndelautor.”

“DeclaraciónconcertadarespectodelArtículo6

“TalcomoseutilizanenestosArtículos,lasespresiones‘copias’y‘originalesycopias’ sujetasalderechodedistribuciónyalderechodealquilerenvirtudedichosArtículos, serefierenexclusivamentealascopiasfijadasquese puedenponerencirculacióncomo objetostangibles.”

1.5. ¿Existeenlaleyelderechodealquiler?Encasoafirmativo,¿Acuálesobrasseaplica?

“Artículo7WCT: Derechodealquiler

- “1) Losautoresde:i)programasdeordenador;ii)obrascinematográficas;yiii) obrasincorporadasenfonogramas,talcomoestablezcalalegislaciónnacionaldelas PartesContratantes,gozarándelderechoexclusivodeautorizarelalquilercomercialal públicodeloriginalodelosejemplaresdesusobras.
- 2) Elpárrafo1)noseráaplicable:i)enelcasodeunprogramadeordenador,cuando elprogramapropiamente dichonoseaobjetoessencialdelalquiler;yii)enelcasode unaobracinematográfica,amenosqueesealquilercomercialhayadadolugarauna copiageneralizadadedichaobraquemenoscabeconsiderablementeelderecho exclusivodereproducción.
- 3) Noobstantelodispuestoenelpárrafo1),unaParteContratantequeal15deabril de1994aplicabaycontinúateniendovigenteunsistemaderemuneraciónquitativade losautoresenloqueserefierealalquilerdeejemplaresdesusobrasincorporadas fonogramas, podrámanteneresesistemaacondicióndequeelalquilercomercialde obrasincorporadasenfonogramasnodélugaralmenoscaboconsiderabledelderecho exclusivodereproduccióndelosautores.”

“Declaración concertada respecto del Artículo 7

“Tal como se utilizan en estos Artículos, las expresiones “copias” y “originales y copias” sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos Artículos, se refieren exclusivamente a las copias fijadas que se pueden poner en circulación como objetos tangibles.”

1.6. ¿Existe en la ley el derecho de comunicación al público?

“Artículo 18

“Sólo el titular del derecho de autor o quienes se estuvieren expresamente autorizados por él, tendrán el derecho de utilizar la obra en alguna de las siguientes formas:

- a) Publicarla mediante su edición, grabación, emisión radiofónica o de televisión, representación, ejecución, lectura, recitación, exhibición y, en general, cualquier otro medio de comunicación al público, actualmente conocido o que se conozca en el futuro.”

[...]

1.7. ¿Existe en la ley el derecho de puesta a disposición al público de obras de tal manera que los miembros del público puedan acceder a éstas en el lugar y momento individualmente escogido por ellos?

“Artículo 18

“Sólo el titular del derecho de autor o quienes se estuvieren expresamente autorizados por él, tendrán el derecho de utilizar la obra en alguna de las siguientes formas:

- a) Publicarla mediante su edición, grabación, emisión radiofónica o de televisión, representación, ejecución, lectura, recitación, exhibición y, en general, cualquier otro medio de comunicación al público, actualmente conocido o que se conozca en el futuro.”

[...]

1.8. ¿Gozan las obras fotográficas del mismo término de duración de la protección establecido para el resto de las obras?

“Artículo 10

“La protección otorgada por la presente ley dura por toda la vida del autor y se extiende hasta por 50 años más, contados desde la fecha de su fallecimiento. En caso que, al vencimiento de este plazo, existiere conyuge o hijas solteras o viudas o cónyuges o encuentre afectado por una imposibilidad definitiva para todo género de trabajo, este plazo se extenderá hasta la fecha de fallecimiento del último de los sobrevivientes.

“La protección establecida en el inciso anterior, tendrá efecto retroactivo respecto al cónyuge y las referidas hijas del autor.

“En el caso previsto en el inciso segundo del artículo 8° y siendo el empleador una persona jurídica, la protección será de 50 años a contar desde la primera publicación.”

1.9. ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

“Artículo 108

“La presente ley regirá 180 días después de su publicación en el Diario Oficial”
(2/10/70, fecha añadida).”

“Artículo 109

“Los titulares de derechos conexos, cuyas interpretaciones o ejecuciones, emisiones y grabaciones hayan sido publicadas en el territorio nacional con anterioridad a la presente ley, para gozar de la protección otorgada por ésta, deberán proceder a su inscripción en el Registro de Propiedad Intelectual dentro del plazo de 180 días, contados desde su publicación. La inscripción a que se refiere este artículo requerirá solamente la presentación de una declaración jurada, sin perjuicio de prueba en contrario.”

En el WCT

“Artículo 13 WCT: Aplicación en el tiempo

“Las Partes Contratantes aplicarán las disposiciones del Artículo 18 del Convenio de Berna a toda la protección contemplada en el presente Tratado.”

(Fecha de entrada en vigor: 6 de marzo de 2002, fecha añadida)

2. Disposiciones del WPPT

2.1. Definiciones

2.1.1 ¿Se encuentran las “interpretaciones o ejecuciones” o los “artistas intérpretes o ejecutantes” definidos en la ley?

“Artículo 5

“Para los efectos de la presente ley, se entenderá por:

[...]

j) Artista, intérprete o ejecutante: el actor, locutor, narrador, declamador, cantante, bailarín, músico o cualquiera otra persona que interprete o ejecute una obra literaria o artística.

[...]"

2.1.2. ¿Se encuentra el "fonograma" definido en la ley?

"Artículo 5

"Para los efectos de la presente ley, se entenderá por:

[...]

m) Fonograma: toda fijación exclusivamente sonora de los sonidos de una ejecución de otros sonidos.

Copia de fonograma: el soporte que contiene sonidos tomados directamente o indirectamente de un fonograma, y que incorpora la totalidad o una parte substancial de los sonidos fijados en él.

[...]"

2.1.3. ¿Se encuentra la "fijación" definida en la ley?

"Artículo 2 WPPT: Definiciones

[...]

c) 'fijación', la incorporación de sonidos, o la representación de éstos, a partir de la cual pueden percibirse, reproducirse o comunicarse mediante un dispositivo.

[...]"

2.1.4. ¿Se encuentra el "productor de fonogramas" definido en la ley?

"Artículo 5

"Para los efectos de la presente ley, se entenderá por:

[...]

k) Productor de fonogramas o productor fonográfico: la persona natural o jurídica responsable por la publicación de fonogramas.

[...]"

2.1.5.¿Se encuentra la “publicación de una interpretación o ejecución fijada de un fonograma” definida en la ley?

“Artículo 5

“Para los efectos de la presente ley, se entenderá por:

[...]

o) **Publicación:** la reproducción de la obra en formato tangible sujeta a disposición del público mediante ejemplares que permitan leerla o escucharla visual o auditivamente de manera directa o mediante el uso de un aparato reproductor de cualquier tramáquina.”

[...]”

2.1.6.¿Se encuentra la “radiodifusión” definida en la ley?

“Artículo 2 WPPT: *Definiciones*

[...]

f) ‘radiodifusión’, la transmisión inalámbrica de sonidos o imágenes y sonidos de las representaciones de éstos, para su recepción por el público; dicha transmisión por satélite también es una ‘radiodifusión’; la transmisión de señales codificadas será ‘radiodifusión’ cuando los medios de decodificación sean ofrecidos al público por el organismo de radiodifusión o con su consentimiento.

[...]”

2.1.7.¿Se encuentra la “comunicación al público” definida en la ley?

“Artículo 2 WPPT: *Definiciones*

[...]

g) ‘comunicación al público’ de una interpretación o ejecución de un fonograma, la transmisión al público, por cualquier medio que no sea la radiodifusión, de sonidos de una interpretación o ejecución o los sonidos o las representaciones de sonidos fijadas en un fonograma. A los fines del Artículo 15, se entenderá que ‘comunicación al público’ incluye también hacer que los sonidos o las representaciones de sonidos fijados en un fonograma resulten audibles al público.”

2.2. ¿Se encuentra el concepto de “trato nacional” contenido en la ley?

“Artículo 2

“La presente ley ampara los derechos de todos los autores chilenos y de los extranjeros domiciliados en Chile. Los derechos de los autores extranjeros no domiciliados en el país, gozarán de la protección que les sea reconocida por las convenciones internacionales que Chile suscriba y ratifique.

Para los efectos de esta ley, los autores apátridas o de nacionalidad indeterminada serán considerados como nacionales del país donde tengan establecido su domicilio.”

2.3. ¿Gozan los artistas intérpretes o ejecutantes de derechos morales en la ley?

“Artículo 5 WPPT: *Derechos morales de los artistas intérpretes o ejecutantes*

“1) Con independencia de los derechos patrimoniales del artista intérprete o ejecutante, e incluso después de la cesión de esos derechos, el artista intérprete o ejecutante conservará, en lo relativo a sus interpretaciones o ejecuciones sonoras en directo o sus interpretaciones o ejecuciones fijadas en fonogramas, el derecho a reivindicar ser identificado como el artista intérprete o ejecutante de sus interpretaciones o ejecuciones excepto cuando la omisión venga dictada por la manera de utilizarla en la interpretación o ejecución, y el derecho a oponerse a cualquier deformación, mutilación u otra modificación de sus interpretaciones o ejecuciones que cause perjuicio a su reputación.

2) Los derechos reconocidos al artista intérprete o ejecutante de conformidad con el párrafo precedente serán mantenidos después de su muerte, por lo menos hasta la extinción de sus derechos patrimoniales, y ejercidos por las personas o instituciones autorizadas por la legislación de la Parte Contratante en que se reivindique la protección. Sin embargo, las Partes Contratantes cuya legislación en vigor en el momento de la ratificación del presente Tratado o de la adhesión al mismo, no contenga disposiciones relativas a la protección después de la muerte del artista intérprete o ejecutante de todos los derechos reconocidos en virtud del párrafo precedente, podrán prever que algunos de esos derechos no serán mantenidos después de la muerte del artista intérprete o ejecutante.

3) Los medios procesales para la salvaguardia de los derechos concedidos en virtud del presente Artículo estarán regidos por la legislación de la Parte Contratante en la que se reivindique la protección.”

2.4. ¿Gozan los artistas intérpretes o ejecutantes de derechos patrimoniales por sus interpretaciones o ejecuciones no fijadas?, y en caso afirmativo, ¿Cuáles son estos derechos?

“Artículo 65

“Son derechos conexos al derecho de autor los que esta ley otorga a los artistas, intérpretes y ejecutantes para permitir o prohibir la difusión de sus producciones y

percibir una remuneración por el uso público de las mismas, sin perjuicio de las que correspondan al autor de la obra.

Ninguna de las disposiciones de esta ley relativa a los derechos conexos podrá interpretarse en menoscabo de la protección que ella otorga al derecho de autor.”

“Artículo 66

“Se prohíbe grabar, reproducir, transmitir o retransmitir por los organismos de radiodifusión o televisión, o utilizar por cualquier otro medio, con fines de lucro, las interpretaciones o ejecuciones personales de un artista, sin su autorización, o la de su heredero o cesionario.”

2.5. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de reproducción en la ley?

“Artículo 66

“Se prohíbe grabar, reproducir, transmitir o retransmitir por los organismos de radiodifusión o televisión, o utilizar por cualquier otro medio, con fines de lucro, las interpretaciones o ejecuciones personales de un artista, sin su autorización, o la de su heredero o cesionario.”

2.6. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de distribución en la ley?

“Artículo 8 WPPT: *Derecho de distribución*

“1) Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizar la puesta a disposición del público del original y de los ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, mediante venta u otra transferencia de propiedad.

2) Nada en el presente Tratado afectará a la facultad de las Partes Contratantes de determinar las condiciones, si las hubiera, en las que se aplicará el agotamiento del derecho del párrafo 1) después de la primera venta u otra transferencia de propiedad del original o de un ejemplar de la interpretación o ejecución fijada con autorización del artista intérprete o ejecutante.”

“Declaración Concertada del Artículo 8 WPPT

“Tal como se utilizan en estos Artículos, las expresiones ‘copias’ y ‘original y copias’, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos Artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.7. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de alquiler en la ley?

“Artículo 9 WPPT: Derecho de alquiler

“1) Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizar el alquiler comercial al público del original y de los ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, tal como establezca la legislación nacional de las Partes Contratantes, incluso después de su distribución realizada por el artista intérprete o ejecutante o su autorización.

2) Sin perjuicio de lo dispuesto en el párrafo 1), una Parte Contratante que al 15 de abril de 1994 tenía y continúa teniendo un sistema de remuneración equitativa para los artistas intérpretes o ejecutantes por el alquiler de ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, podrá mantener ese sistema a condición de que el alquiler comercial de fonogramas no dé lugar a un menoscabo considerable de los derechos de reproducción exclusivos de los artistas intérpretes o ejecutantes.”

“Declaración Concertada del Artículo 8 WPPT

“Tal como se utilizan en estos artículos, las expresiones ‘copias’ y ‘original y copias’, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.8. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de puesta a disposición de sus interpretaciones o ejecuciones fijadas en la ley?

“Artículo 10 WPPT: Derecho de puesta a disposición de interpretaciones o ejecuciones fijadas

“Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizar la puesta a disposición del público de sus interpretaciones o ejecuciones fijadas en fonogramas, yasea por hilo o por medios inalámbricos de tal manera que los miembros del público puedan tener acceso a ellas desde el lugar y en el momento que cada uno de ellos elija.”

2.9. ¿Gozan los productores de fonogramas (“productores”) de un derecho de reproducción en la ley?

“Artículo 68

“Los productores de fonogramas gozarán del derecho de autorizar o prohibir la reproducción, el arrendamiento, el préstamo y demás utilizaciones de sus fonogramas. Esta facultad tendrá una duración de 50 años, contada desde el 31 de diciembre del año de la fijación del respectivo fonograma.

En caso que la facultad del productor de autorizar o prohibir la ejecución pública de fonogramas entra en conflicto con la facultad del autor de autorizar o prohibir la ejecución pública de sus obras, se estará siempre a la voluntad manifestada por este último titular.

El productor de fonogramas, además del título de la obra grabada y el nombre de su autor, deberá mencionar en la etiqueta del disco fonográfico el nombre del intérprete, la marca que lo identifique y el año de publicación. Cuando sea materialmente imposible consignar todas esas indicaciones directamente sobre la reproducción, ellas deberán figurar en el sobre, cubierta, caja o membrete que la acompañará obligatoriamente.”

2.10. ¿Gozan los productores de un derecho de distribución en la ley?

“Artículo 68

“Los productores de fonogramas gozarán del derecho de autorizar o prohibir la reproducción, el arrendamiento, el préstamo y demás utilidades de sus fonogramas. Esta facultad tendrá una duración de 50 años, contada desde el 31 de diciembre del año de la fijación del respectivo fonograma.”

2.11. ¿Gozan los productores de un derecho de alquiler en la ley?

“Artículo 68

“Los productores de fonogramas gozarán del derecho de autorizar o prohibir la reproducción, el arrendamiento, el préstamo y demás utilidades de sus fonogramas. Esta facultad tendrá una duración de 50 años, contada desde el 31 de diciembre del año de la fijación del respectivo fonograma.”

2.12. ¿Gozan los productores de un derecho de puesta a disposición de fonogramas en la ley?

“Artículo 14 WPPT: *Derecho de poner a disposición los fonogramas*

“Los productores de fonogramas gozarán del derecho exclusivo de autorizar la puesta a disposición del público de sus fonogramas y a su vez por hilo o por medios inalámbricos, de tal manera que los miembros del público puedan tener acceso a ellos desde cualquier momento que cada uno de ellos elija.”

2.13. ¿Gozan los productores y/o artistas intérpretes o ejecutantes de un derecho de remuneración por la radiodifusión y/o comunicación pública de fonogramas en la ley?

“Artículo 67

“El que utilice fonogramas o reproducciones de los mismos para su difusión por radio o televisión o en cualquier otra forma de comunicación pública, es responsable y será obligado a

pagar una retribución a los artistas, intérpretes o ejecutantes y a los productores de fonogramas, cuyo monto será establecido de acuerdo con lo dispuesto en el artículo 100.

El cobro del derecho de ejecución de fonogramas a que se refiere este artículo deberá efectuarse a través de la entidad de gestión colectiva que los represente.

La distribución de las sumas recaudadas por concepto de derecho de ejecución de fonogramas se efectuará en la proporción de un 50% para los artistas, intérpretes o ejecutantes, y un 50% para el productor fonográfico.

El porcentaje que corresponda a los artistas, intérpretes o ejecutantes se repartirá de conformidad con las siguientes normas:

- a) Dostercios serán pagados al artista intérprete, entendiéndose como tal el cantante, el conjunto vocal o el artista que figure en primer plano en la etiqueta del fonograma o, cuando la grabación sea instrumental, el director de la orquesta.
- b) Untercio será pagado, en proporción a su participación en el fonograma, a los músicos acompañantes y miembros del coro.
- c) Cuando el artista intérprete sea un conjunto vocal, la parte que le corresponda, según lo dispuesto en la letra a), será pagada al director del conjunto, quien la dividirá entre los componentes, por partes iguales.”

2.14 ¿Se encuentran estos derechos sujetos a formalidades?

“Artículo 68

“[...] El productor de fonogramas, además del título de la obra grabada y el nombre de su autor, deberá mencionar en la etiqueta del disco fonográfico el nombre del intérprete, la marca que lo identifique y el año de publicación. Cuando sea materialmente imposible consignar todas esas indicaciones directamente sobre la reproducción, ellas deberán figurar en el sobre, cubierta, caja o membrete que la acompañará obligatoriamente.”

“Artículo 72

“En el Registro de la Propiedad Intelectual deberán inscribirse los derechos de autor y los derechos conexos que esta ley establece.”

“Artículo 75

“En el momento de inscribir una obra en el Registro de Propiedad Intelectual, se depositará un ejemplar completo, manuscrito, impreso o reproducido. Tratándose de obras no literarias, regirán las siguientes normas:

- a) Para las obras de pintura, dibujo, escultura, ingeniería y arquitectura, bastarán los croquis, fotografías o planos del original necesarios para identificarlo con las explicaciones del caso;
- b) Para las obras cinematográficas, será suficiente depositar una copia del argumento, escenificación y leyenda de la obra;
- c) Para las obras fotográficas, será suficiente acompañar una copia de la fotografía;
- d) Para el fonograma, será suficiente depositar la copia del disco o de la cinta magnetofónica que lo contenga;
- e) Para las interpretaciones y ejecuciones, será suficiente depositar una copia de la fijación. Se dispensa la presentación de esta copia cuando la interpretación o ejecución esté incorporada a un fonograma o a una emisión inscrita de acuerdo a la letra d) del presente artículo;
- f) Para las emisiones, se depositará una copia de la transmisión radial o televisiva. Se dispensa la presentación de esta copia cuando haya sido enviada a la Oficina de Información y Radiodifusión de la Presidencia de la República de acuerdo a las disposiciones legales vigentes, y
- g) Para las obras musicales será necesaria una partitura escrita; pero en el caso de las obras sinfónicas bastará una reducción para piano. Si se trata de obras con parte de canto, se acompañará la letra.”

2.15 ¿Cuáles es el término de protección para:

2.15.1 los artistas intérpretes o ejecutantes?

“Artículo 70

“La protección concedida por este Título tendrá una duración de cincuenta años, contados desde el 31 de diciembre del año de la fijación de los fonogramas respectivamente de las interpretaciones o ejecuciones grabadas en ellos; de la transmisión para las emisiones de los organismos de radiodifusión y de la realización del espectáculo para las ejecuciones o interpretaciones.”

2.15.2 productores de fonogramas?

“Artículo 70

“La protección concedida por este Título tendrá una duración de cinco años, contados desde el 31 de diciembre de la fecha de fijación de los fonogramas respectivamente de las interpretaciones o ejecuciones grabadas en ellos; de la transmisión para las emisiones de los organismos de radiodifusión y de la realización de espectáculos para las ejecuciones o interpretaciones.”

2.16 ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

“Artículo 108

“La presente ley regirá 180 días después de su publicación en el Diario Oficial” (2/10/70, fecha añadida).

“Artículo 109

“Los titulares de derechos conexos, cuyas interpretaciones o ejecuciones, emisiones y grabaciones hayan sido publicadas en el territorio nacional con anterioridad a la presente ley, para gozar de la protección otorgada por ésta, deberán proceder a su inscripción en el Registro de Propiedad Intelectual dentro del plazo de 180 días, contados desde su publicación. La inscripción a que se refiere este artículo requerirá solamente la presentación de una declaración jurada, sin perjuicio de prueba en contrario.”

En el WPPT

“Artículo 22 WPPT: Aplicación en el tiempo

1) Las Partes Contratantes aplicarán las disposiciones del Artículo 18 del Convenio de Berna, *mutatis mutandis*, a los derechos de los artistas intérpretes o ejecutantes y de los productores de fonogramas contemplados en el presente Tratado.

2) No obstante lo dispuesto en el párrafo 1), una Parte Contratante podrá limitar la aplicación del Artículo 5 del presente Tratado a las interpretaciones o ejecuciones que tengan lugar después de la entrada en vigor del presente Tratado respectivamente de esa Parte.”

(Fecha de entrada en vigor: 20 de mayo de 2002, fecha añadida).

3. Disposiciones comunes

3.1. ¿Cuáles son las limitaciones y excepciones en la ley?

“Artículo 38

“Es lícito, sin remuneración ni autorización del autor, reproducir obras de carácter cultural, científico o didáctico, fragmentos de obras ajenas protegidas, siempre que se mencionen su fuente, título y autor.”

“Artículo 40

“Las conferencias y discursos podrán ser publicados con fines de información; pero no en colección separada, completa o parcial, sin permiso del autor.

“Artículo 41

“Las lecciones dictadas en universidades, colegios y escuelas, podrán ser anotadas o recogidas en cualquier forma para aquellos a quienes van dirigidas; pero no podrán ser publicadas, total o parcialmente, sin autorización de sus autores.

“Artículo 42

“En los establecimientos comerciales en que se expongan y vendan instrumentos musicales, aparatos de radio o televisión, fonógrafos y otros similares, reproductores de sonido o imágenes, o discos o cintas magnéticas, podrán utilizarse fonogramas o partituras libremente y sin pago de remuneraciones, con exclusión de objeto de efectuar demostraciones a la clientela, siempre que éstas se realicen dentro del propio local de la sección del establecimiento destinada a este objeto y en condiciones que eviten su difusión exterior.”

“Artículo 43

“La reproducción de obras de arquitectura por medio de la fotografía, el cine, la televisión y cualquier otro procedimiento análogo, así como la publicación de las correspondientes fotografías e ilustraciones, revistas y textos escolares, es libre y no está sujeta a remuneración de derecho de autor.”

“Artículo 44

“Todos los monumentos y, en general, las obras artísticas, que adornan plazas, avenidas y lugares públicos, pueden ser libremente reproducidos, mediante la fotografía, el dibujo o cualquier otro procedimiento, siéndole lícita la publicación y venta de las reproducciones.”

“Artículo 45

“No serán aplicables a las películas y fotografías publicitarias o propagandísticas las reglas que establecen los artículos 30 y 35.”

“Artículo 46

“En las obras de arquitectura el autor no podrá impedir la introducción de modificaciones que el propietario decida realizar, pero podrá oponerse a la mención de su nombre como autor del proyecto.”

“Artículo 47

“Para los efectos de la presente ley no se considera comunicación ni ejecución pública de la obra, incluso tratándose de fonogramas, su utilización dentro del núcleo familiar, en establecimientos educacionales, de beneficencia u otras instituciones similares, siempre que esa utilización se efectúe sin ánimo de lucro. En estos casos no se requiere remunerar al autor, ni obtener su autorización .

Asimismo, para los efectos de la presente ley, la adaptación o copia de un programa computacional efectuado por su tenedor o autorizado por su legítimo dueño, no constituye infracción a sus normas, siempre que la adaptación sea esencial para su uso en un computador determinado y no se le destine a un uso diverso, y la copia sea esencial para su uso en un computador determinado o para fines de archivo o respaldo.

Las adaptaciones obtenidas en la forma señalada no podrán ser transferidas bajo ningún título, sin que medie autorización previa del titular del derecho de autor respectivo; igualmente, las copias obtenidas en la forma indicada no podrán ser transferidas bajo ningún título, salvo que lo sean conjuntamente con el programa computacional que les sirvió de matriz.”

3.2. ¿Qué protección jurídica, y cuáles recursos jurídicos proporciona la ley contra la elisión de las medidas tecnológicas de protección eficaces?

No existiendo una disposición al respecto en la ley.

3.3. ¿Cuáles obligaciones se encuentran en la ley para la protección de “información sobre la gestión de derechos”?

No existiendo una disposición al respecto en la ley.

3.4. ¿De manera general, cuáles son las medidas de observancia de derechos en la ley?

“Artículo 78

“Las infracciones a esta ley serán sancionadas con multa de 5 a 50 unidades tributarias mensuales.

La misma sanción se aplicará a las contravenciones al Reglamento.”

“Artículo 79

“Cometen delito contra la propiedad intelectual y serán sancionados con la pena de presidio menor en su grado mínimo y multa de 5 a 50 unidades tributarias mensuales:

- a) Los que, sin estar expresamente facultados para ello, utilicen obras de dominio ajeno protegidas por esta ley, inéditas o publicadas, en cualquier de las formas o por cualquier de los medios establecidos en el artículo 18;
- b) Los que, sin estar expresamente facultados para ello, utilicen las interpretaciones, producciones y emisiones protegidas de los titulares de los derechos conexos, con cualquier de los fines o por cualquier de los medios establecidos en el Título II de esta ley;
- c) Los que falsifiquen obras protegidas por esta ley, sean literarias, artísticas o científicas, o las editen, reproduzcan o vendan ostentando falsamente el nombre de editor autorizado, suprimiendo o cambiando el nombre del autor o el título de la obra, o alterando maliciosamente su texto;
- d) Los que, obligados al pago de retribución por derecho de autor o conexos derivados de la ejecución de obras musicales, omitieren la confección de las planillas de ejecución correspondiente, y
- e) Los que falsifiquen o adulteren una planilla de ejecución.

“Artículo 80

“Cometen, asimismo, delito contra la propiedad intelectual y serán sancionados con las penas que se indican en cada caso:

- a) Los que falsearen el número de ejemplares vendidos efectivamente, en las rendiciones de cuenta a que se refiere el artículo 50, serán sancionados con las penas establecidas en el artículo 467 del Código Penal, y
- b) Los que, en contravención a las disposiciones de esta ley o a los derechos que ella protege, intervengan, con ánimo de lucro, en la reproducción, distribución al público o introducción al país, y los que adquieren o tengan con fines de venta: fonogramas, videogramas, discos fonográficos, cassettes, videocassettes, filmes o películas cinematográficas o programas computacionales.

Los autores serán sancionados con la pena de presidio o reclusión menor en su grado mínimo, aumentándose en un grado en caso de reincidencia.

“Artículo 81

“El que a sabiendas publicare o exhibiere una obra perteneciente al patrimonio cultural común bajo un nombre que no sea el del verdadero autor, será penado con una multa de dos a cuatro sueldos vitales anuales, escala A), del departamento de Santiago.

El recurrente puede pedir, además, la prohibición de la venta, circulación o exhibición de los ejemplares.”

“Artículo 82

“El Tribunal, al hacer efectiva la indemnización de perjuicios, puede ordenar, a petición del perjudicado:

- 1) La entrega de éste, la venta o destrucción:
 - a) De los ejemplares de la obra fabricados o puestos en circulación en contravención a sus derechos, y
 - b) Del material que sirva exclusivamente para la fabricación ilícita de ejemplares de la obra.”
- 2) La incautación del producto de la recitación, representación, reproducción o ejecución. Durante la secuela del juicio podrá el Tribunal ordenar, a petición de parte, la suspensión inmediata de la venta, circulación, exhibición, ejecución o representación.”

“Artículo 83

“El Tribunal puede ordenar, a petición del perjudicado, la publicación de la sentencia, con o sin fundamento, en un diario que éste designe, y a costa del infractor.”

“Artículo 84

“Existirá acción popular para denunciar los delitos sancionados en esta ley. El denunciante tendrá derecho a recibir la mitad de la multa respectiva.

“Artículo 85

“En los casos de contravenciones del derecho de autor o conexos, el Jefe de Mayor Cuantía en lo Civil que corresponda, en conformidad a las reglas generales, procederá *breve y sumarium* ante.”

3.5. ¿Cómo define la ley la responsabilidad de los proveedores de servicio?

“Declaración Concertada del Artículo 8 WCT

“Queda entendido que el simple suministro de instalaciones físicas para facilitar o realizar una comunicación, en sí mismo, no representa una comunicación en el sentido del presente Tratado o del Convenio de Berna. También queda entendido que nada de lo dispuesto en el Artículo 8 impide que una Parte Contratante aplique el Artículo 11 *bis.2*.”

3.6. ¿Existen algunas disposiciones en la ley relativas al almacenamiento temporal?

“Artículo 18

“Sólo el titular del derecho de autor o quien se estuvieren expresamente autorizados por él, tendrán el derecho de utilizarla obra en alguna de las siguientes formas:

[...]

b) Reproducir la por cualquier procedimiento.”

3.7. ¿Existen algunas disposiciones expresas para asegurar que las disposiciones en contra de la elisión no restrinjan el funcionamiento de las limitaciones o excepciones a los derechos otorgados en la ley?

No existen ninguna disposición al respecto en la ley.

COLOMBIA

(Legislación revisada: Decisión 351 de la Comisión del Acuerdo en Cartagena “Régimen Común sobre Derecho de Autor y Derechos Conexos”, Ley 23 de 1982 “Sobre derechos de autor”, Ley 44 de 1993 “Por la cual se modifica y adicional a la Ley 23 de 1982 y se modifica la Ley 29 de 1944”; Ley 599 de 2000. “Código Penal Colombiano” (Artículos 270a y 272); Ley 600 de 2000. “Código de Procedimiento Penal Colombiano”; Decreto 1360 de 1989 “Por el cual se reglamenta la inscripción del software en el Registro Nacional del Derecho de Autor”; Decreto 460 de 1995 “Por el cual se reglamenta el Registro Nacional del Derecho de Autor y se regula el Depósito Legal”; WCT y WPPT⁴)

1. Disposiciones del WCT

1.1. ¿Se extiende el alcance de la protección del derecho de autor solamente a las expresiones, y no a las ideas, procedimientos, métodos de funcionamiento o conceptos matemáticos?

“Artículo 7 Decisión 351

“Queda protegida exclusivamente la forma mediante la cual las ideas del autor son descritas, explicadas, ilustradas o incorporadas a las obras.

No son objeto de protección las ideas contenidas en las obras literarias y artísticas, o el contenido ideológico o técnico de las obras científicas, ni su aprovechamiento industrial o comercial.”

“Artículo 6 Ley 23 de 1982

“Los inventos o descubrimientos científicos con aplicación práctica explotable en la industria, y los escritos que los describen, solo son materia de privilegio temporal, con arreglo al artículo 120, numeral 18, de la Constitución.

Las ideas o contenido conceptual de las obras literarias, artísticas y científicas no son objeto de apropiación. Esta Ley protege exclusivamente la forma literaria, plástica o sonora, como las ideas del autor son descritas, explicadas, ilustradas o incorporadas en las obras literarias, científicas y artísticas.

Las obras de arte aplicadas a la industria solo son protegidas en la medida en que su valor artístico pueda ser separado del carácter industrial del objeto u objetos en las que ellas puedan ser aplicadas.”

⁴ Constitución Política de Colombia de 1991, actualizada hasta la Reforma de 2001. Artículo 224 “Lo tratado para su validez, deberá ser aprobado por el Congreso”. *Este es el caso del WCT y WPPT (aclaratoria añadida).*

“Artículo 2 WCT: Ámbito de la protección del derecho de autor

“La protección del derecho de autor abarcará las expresiones pero no las ideas, procedimientos, métodos de operación o conceptos matemáticos en sí.”

1.2. ¿Se encuentran los programas de ordenador protegidos en la ley como obras literarias?

“Artículo 4 Decisión 351

“La protección reconocida por la presente Decisión recae sobre todas las obras literarias, artísticas y científicas que puedan reproducirse o divulgarse por cualquier forma o medio conocido o por conocer, y que incluye, entre otras, las siguientes:

1) Los programas de ordenador;

[...]”

“Artículo 2 Ley 23 de 1982

“Los derechos de autor recaen sobre las obras científicas, literarias y artísticas las cuales se comprenden todas las creaciones del espíritu en el campo científico, literario y artístico, cualquiera que sea el modo o forma de expresión y cualquiera que sea su destinación, tales como: los libros, folletos y otros escritos; las conferencias, alocuciones, sermones y otras obras de la misma naturaleza; las obras dramáticas o dramático-musicales; las obras coreográficas y las pantomimas; las composiciones musicales con letra o sin ella; las obras cinematográficas, alscuales se asemejan las obras expresadas por procedimiento análogo al cinematográfico, incluso los videogramas; las obras de dibujo, pintura, arquitectura, escultura, grabado, litografía; las obras fotográficas alscuales se asemejan las expresadas por procedimiento análogo a la fotografía; las obras de arte aplicadas; las ilustraciones, mapas, planos, croquis y obras plásticas relativas a la geografía, a la topografía, a la arquitectura o a las ciencias, y, en fin, toda producción del dominio científico, literario o artístico que pueda reproducirse, o definirse por cualquier forma de impresión o reproducción, por fonografía, radiotelefonía o cualquier otro medio conocido o por conocer.”

“Artículo 1 Decreto 1360 de 1989

“De conformidad con lo previsto en la Ley 23 de 1982 sobre Derechos de Autor, el software se considera como una creación propia del dominio literario.”

1.3. ¿Se encuentran las recopilaciones de datos u otro material, en cualquier forma, protegidas en la ley como creaciones intelectuales, en razón de la selección o arreglo de los contenidos?

“Artículo 4 Decisión 351

“La protección reconocida por la presente Decisión recae sobre todas las obras literarias, artísticas y científicas que puedan reproducirse o divulgarse por cualquier forma o medio conocido o por conocer, y que incluye, entre otras, las siguientes:

[...]

ll) Las antologías o compilaciones de obras diversas y las bases de datos, que por la selección o disposición de las materias constituyan creaciones personales.

[...]”

“Artículo 5, literal b) Ley 23 de 1982

“Son protegidos como obras independientes, sin perjuicio de los derechos de autores sobre las obras originales y en cuanto representen una creación original:

[...]

B. Las obras colectivas, tales como las publicaciones periódicas, antologías, diccionarios y similares, cuando el método o sistema de selección o de organización de las distintas partes o obras que en ellas intervienen, constituye una creación original. Serán consideradas como titulares de las obras que se refiere en el numeral la persona o personas naturales o jurídicas que las coordinen, divulguen o publiquen bajo un nombre.

Los autores de las obras así utilizadas conservarán sus derechos sobre ellas y podrán reproducirlas separadamente.

[...]”

1.4. ¿Existe en la ley el derecho de distribución?

“Artículo 13 Decisión 351

“El autor o, en su caso, sus derechohabientes, tienen el derecho exclusivo de realizar, autorizar o prohibir:

[...]

c) La distribución pública de ejemplares o copias de la obra mediante la venta, arrendamiento o alquiler.

[...]"

1.5. ¿Existe en la ley el derecho de alquiler? En caso afirmativo, ¿Acuáles obras se aplica?

“Artículo 13 Decisión 351

“El autor o, en su caso, sus derechohabientes, tienen el derecho exclusivo de realizar, autorizar o prohibir:

[...]

c) La distribución pública de ejemplares o copias de la obra mediante la venta, arrendamiento o alquiler.

[...]"

1.6. ¿Existe en la ley el derecho de comunicación al público?

“Artículo 13 Decisión 351

“El autor o, en su caso, sus derechohabientes, tienen el derecho exclusivo de realizar, autorizar o prohibir:

[...]

b) La comunicación pública de la obra por cualquier medio que sirva para difundirlas palabras, los signos, los sonidos o las imágenes.

[...]"

“Artículo 12, literal c) Ley 23 de 1982

“El autor de una obra protegida tendrá el derecho exclusivo de realizar o de autorizar uno cualquiera de los actos siguientes:

[...]

C. Comunicar la obra al público mediante la representación, ejecución, radiodifusión o por cualquier otro medio.

1.7. ¿Existe en la ley el derecho de puesta a disposición al público de obras de tal manera que los miembros del público puedan acceder a éstas en el lugar y momento individualmente escogido por ellos?

“Artículo 8 WCT: Derecho de comunicación al público

“Sin perjuicio de lo previsto en los Artículos 11.1)ii), 11 bis.1)i) y ii), 11 ter.1)ii), 14.1)ii) y 14 bis.1) del Convenio de Berna, los autores de obras literarias y artísticas gozarán del derecho exclusivo de autorizar cualquier comunicación al público de sus obras por medios alámbricos o inalámbricos, comprendida la puesta a disposición del público de sus obras, de tal forma que los miembros del público puedan acceder a estas obras desde el lugar y en el momento que cada uno de ellos elija.”

“Declaración concertada respecto del Artículo 8

“Queda entendido que el simple suministro de instalaciones físicas para facilitar o realizar una comunicación, en sí mismo, no representa una comunicación en el sentido del presente Tratado del Convenio de Berna. También queda entendido que nada de lo dispuesto en el Artículo 8 impide que una Parte Contratante aplique el Artículo 11 bis.2).”

1.8. ¿Gozan las obras fotográficas del mismo término de duración de la protección establecido para el resto de las obras?

“Artículo 18 Decisión 351

“Sin perjuicio de lo dispuesto en el artículo 59, la duración de la protección de los derechos reconocidos en la presente Decisión, no será inferior a la vida del autor y cincuenta años después de su muerte.

Cuando la titularidad de los derechos corresponda a una persona jurídica, el plazo de protección no será inferior a cincuenta años contados a partir de la realización, divulgación o publicación de la obra, según el caso.”

“Artículo 19 Decisión 351

“Los Países Miembros podrán establecer, de conformidad con el Convenio de Berna para la Protección de las Obras Literarias y Artísticas, que el plazo de protección; para determinadas obras, se cuenta a partir de la fecha de su realización, divulgación o publicación.”

“Artículo 20 Decisión 351

“El plazo de protección se contará a partir del primer día de enero del año siguiente a la muerte del autor o a la realización, divulgación o publicación de la obra, según proceda.”

“Artículo 21 Ley 23 de 1982

“Los derechos de autor corresponden durante su vida, y después de su fallecimiento disfrutarán de ellos quienes legítimamente los hayan adquirido, por el término de ochenta años. En caso de colaboración debidamente establecida, el término de ochenta años se contará desde la muerte del último coautor.”

1.9. ¿Cuáles el plazo efectivo para la aplicación de los derechos en la ley?

*“Decisión 351
(17/12/93, fecha añadida)*

“En el WCT

“Artículo 13 WCT: Aplicación en el tiempo

“Las Partes Contratantes aplicarán las disposiciones del Artículo 18 del Convenio de Berna a toda la protección contemplada en el presente Tratado.”

(Fecha de entrada en vigor: 6 de marzo de 2002, fecha añadida.)

2. Disposiciones del WPPT

2.1. Definiciones

2.1.1 ¿Se encuentran las “interpretaciones o ejecuciones” o los “artistas intérpretes o ejecutantes” definidos en la ley?

“Artículo 3 Decisión 351

“A los efectos de esta Decisión se entiende por:

[...]

[...] Artista intérprete o ejecutante: Persona que representa, canta, lee, recita, interpreta o ejecuta en cualquier forma una obra.

[...]”

“Artículo 8 Ley 23 de 1982

“Para los efectos de la presente Ley se entiende por:

[...]

K. Artista intérprete o ejecutante: el actor, locutor, narrador, declamador, cantante, bailarín, músico o cualquier otro que interprete o ejecute una obra literaria o artística.”

2.1.2 ¿Se encuentra el “fonograma” definido en la ley?

“Artículo 3 Decisión 351

“A los efectos de esta Decisión se entiende por:

[...]

[...] Fonograma: Toda fijación exclusivamente sonora de los sonidos de una representación o ejecución de otros sonidos. Las grabaciones gramofónicas y magnetofónicas se consideran copias de fonogramas.

[...]”

“Artículo 8 Ley 23 de 1982

“Para los efectos de la presente Ley se entiende por:

[...]

M. Fonograma: la fijación, en soporte material, de los sonidos de una ejecución o de otros sonidos;”

2.1.3 ¿Se encuentra la “fijación” definida en la ley?

“Artículo 3 Decisión 351

“A los efectos de esta Decisión se entiende por:

[...]

[...] Fijación: Incorporación de signos, sonidos o imágenes sobre una base material que permita su percepción, reproducción o comunicación.

[...]”

“Artículo 8 Ley 23 de 1982

“Para los efectos de la presente Ley se entiende por:

[...]

T. Fijación: la incorporación de imágenes y/o sonidos sobre una base material suficientemente permanente o estable para permitir su percepción, reproducción o comunicación.”

2.1.4 ¿Se encuentra el “productor de fonogramas” definido en la ley?

“Artículo 3 Decisión 351

“A los efectos de esta Decisión se entiende por:

[...]

[...] Productor de fonogramas: Persona natural o jurídica bajo cuya iniciativa, responsabilidad y coordinación, se fijan por primera vez los sonidos de una ejecución u otros sonidos.

[...]”

“Artículo 8 Ley 23 de 1982

“Para los efectos de la presente Ley se entiende por:

[...]

L. Productor de fonograma: la persona natural o jurídica que fijó por primera vez los sonidos de una ejecución, u otro sonido.”

2.1.5 ¿Se encuentra la “publicación de una interpretación o ejecución fijada de un fonograma” definida en la ley?

“Artículo 3 Decisión 351

“A los efectos de esta Decisión se entiende por:

[...]

[...] Publicación: Producción de ejemplares para su puesta a disposición del público con el consentimiento del titular del respectivo derecho, siempre que la disponibilidad de tales ejemplares permita satisfacer las necesidades razonables del público, teniendo en cuenta la naturaleza de la obra.

[...]”

“Artículo 8 Ley 23 de 1982

“Para los efectos de la presente Ley se entiende por:

[...]

P. Publicación: la comunicación al público, por cualquier forma o sistema”,

2.1.6 ¿Se encuentra la “radiodifusión” definida en la ley?

“Artículo 2 WPPT: Definiciones

[...]

f) ‘radiodifusión’, la transmisión inalámbrica de sonidos o de imágenes y sonidos de las representaciones de éstos, para su recepción por el público; dicha transmisión por satélite también es una ‘radiodifusión’; la transmisión de señales codificadas será ‘radiodifusión’ cuando los medios de decodificación sean ofrecidos al público por el organismo de radiodifusión o con su consentimiento.

[...]”

2.1.7 ¿Se encuentra la “comunicación al público” definida en la ley?

“Artículo 2 WPPT: Definiciones

[...]

g) ‘comunicación al público’ de una interpretación o ejecución de un fonograma, la transmisión al público, por cualquier medio que no sea la radiodifusión, de sonidos de una interpretación o ejecución o los sonidos de las representaciones de sonidos fijadas en un fonograma. A los fines del Artículo 15, se entenderá que ‘comunicación al público’ incluye también hacer que los sonidos o las representaciones de sonidos fijados en un fonograma resulten audibles al público.”

2.2. ¿Se encuentra el concepto de “trato nacional” contenido en la ley?

“Artículo 2 Decisión 351

“Cada País Miembro concederá a los nacionales de otro país, una protección no menos favorable que la reconocida a sus propios nacionales en materia de Derecho de Autor y Derechos Conexos.”

“Artículo 4 WPPT: Tratado nacional

“1) Cada Parte Contratante concederá a los nacionales de otras Partes Contratantes, tal como se definió en el artículo 3.2), el trato que concede a sus propios nacionales respecto de los derechos exclusivos concedidos específicamente en el presente Tratado, y del derecho a una remuneración equitativa previsto en el artículo 15 del presente Tratado.

2) La obligación prevista en el párrafo 1) no será aplicable en la medida en que esa otra Parte Contratante haga uso de las reservas permitidas en virtud del artículo 15.3) del presente Tratado.”

2.3. ¿Gozan los artistas intérpretes o ejecutantes de derechos morales en la ley?

“Artículo 35 Decisión 351

“Además de los derechos reconocidos por el artículo anterior, los artistas intérpretes tienen el derecho de:

- a) Exigir que su nombre figure o esté asociado a cada interpretación o ejecución que se realice; y,
- b) Oponerse a toda deformación, mutilación o cualquier otro atentado sobre su interpretación o ejecución que pueda lesionar su prestigio o reputación.”

“Artículo 171 Ley 23 de 1982

“Los artistas, intérpretes o ejecutantes tienen los derechos morales consagrados por el artículo 30 de la presente Ley.”

“Artículo 30 Ley 23 de 1982

“El autor tendrá sobre su obra un derecho perpetuo, inalienable, irrenunciable para:

- A. Reivindicar todo el tiempo la paternidad de su obra, en especial, para que se indique su nombre o pseudónimo cuando se realice cualquier acto de los mencionados en el artículo 12 de esta Ley;
- B. A oponerse a toda deformación, mutilación u otra modificación de la obra, cuando tales actos puedan causar o causar perjuicio a su honor o a su reputación, o a la obra de mérito, y a pedir reparación por éstos;
- C. A conservar su obra inédita o anónima hasta su fallecimiento, o después de él cuando así lo ordenase por disposición testamentaria;
- D. modificarla, antes o después de su publicación;

E. Retirar la del circulación o suspender cualquier forma de utilización aunque ella hubiese sido previamente autorizada.

Parágrafo 1º. Los derechos anteriores no pueden ser renunciados ni cedidos. Los autores al transferir o autorizar el ejercicio de sus derechos patrimoniales no conceden sino los de goce y disposición a que se refiere el respectivo contrato, conservando los derechos consagrados en el presente artículo.

Parágrafo 2º. Al muerte del autor corresponde a su cónyuge y herederos consanguíneos el ejercicio de los derechos indicados en los numerales a) y b) del presente artículo. A falta del autor, de su cónyuge o herederos consanguíneos, el ejercicio de estos derechos corresponderá a cualquier persona natural o jurídica que acredite su carácter de titular sobre la obra respectiva.

Parágrafo 3º. La defensa de la paternidad, integridad y autenticidad de las obras que hayan pasado al dominio público estará a cargo del Instituto Colombiano de Cultura cuando tales obras no tengan titulares o causahabientes que puedan defender o tutelar estos derechos morales.

Parágrafo 4º. Los derechos mencionados en los numerales d) y e) sólo podrán ejercitarse a cambio de indemnizar previamente a terceros los perjuicios que se les pudiere ocasionar.”

2.4. ¿Gozan los artistas intérpretes o ejecutantes de derechos patrimoniales por sus interpretaciones o ejecuciones no fijadas?, y en caso afirmativo, ¿Cuáles son estos derechos?

“Artículo 34 Decisión 351

“Los artistas intérpretes o ejecutantes tienen el derecho de autorizar o prohibir la comunicación al público en cualquier forma de sus interpretaciones y ejecuciones no fijadas, así como la fijación y la reproducción de sus interpretaciones o ejecuciones. Sin embargo, los artistas intérpretes o ejecutantes no podrán oponerse a la comunicación pública de su interpretación o ejecución, cuando constituyan por sí mismas una ejecución radiodifundida o se hagan a partir de una fijación previamente autorizada.”

“Artículo 166 Ley 23 de 1982

“Los artistas intérpretes o ejecutantes, o sus representantes, tienen el derecho de autorizar o prohibir la fijación, la reproducción, la comunicación al público, la transmisión o cualquier otra forma de utilización de sus interpretaciones y ejecuciones. En consecuencia, nadie podrá, sin la autorización de los artistas intérpretes o ejecutantes, realizar ninguno de los actos siguientes:

A. La radiodifusión y la comunicación al público de la interpretación o ejecución de dichos artistas, salvo cuando ella se haga a partir de una fijación previamente autorizada o cuando se trate de una transmisión autorizada por el organismo de radiodifusión que transmite la primera interpretación o ejecución;

B. Lafijación de la interpretación o ejecución no fijada anteriormente sobre un soporte material;

C. La reproducción de una fijación de la interpretación o ejecución de dichos artistas en los siguientes casos: 1) Cuando la interpretación o la ejecución se hayan fijado inicialmente en su autorización; 2) Cuando la reproducción se hace con fines distintos de aquellos para los que fueron autorizados por los artistas, y, 3) Cuando la interpretación o la ejecución se haya fijado inicialmente de conformidad con las disposiciones de esta Ley y la reproducción se haga con fines distintos de los indicados”.

2.5. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de reproducción en la ley?

“Artículo 34 Decisión 351

“Los artistas intérpretes o ejecutantes tienen el derecho de autorizar o prohibir la comunicación al público en cualquier forma de sus interpretaciones y ejecuciones no fijadas, a sí como la fijación y la reproducción de sus interpretaciones y ejecuciones. Sin embargo, los artistas intérpretes o ejecutantes no podrán oponerse a la comunicación pública de su interpretación o ejecución, cuando constituyan por sí mismas una ejecución radiodifundida o se hagan a partir de una fijación previamente autorizada.”

“Artículo 166 Ley 23 de 1982

“Los artistas intérpretes o ejecutantes, o sus representantes, tienen el derecho de autorizar o prohibir la fijación, la reproducción, la comunicación al público, la transmisión o cualquier otra forma de utilización de sus interpretaciones y ejecuciones. En consecuencia, nadie podrá, sin la autorización de los artistas intérpretes o ejecutantes, realizar ninguno de los actos siguientes:

[...]

C. La reproducción de una fijación de la interpretación o ejecución de dichos artistas en los siguientes casos: 1) Cuando la interpretación o la ejecución se hayan fijado inicialmente en su autorización; 2) Cuando la reproducción se hace con fines distintos de aquellos para los que fueron autorizados por los artistas, y, 3) Cuando la interpretación o la ejecución se haya fijado inicialmente de conformidad con las disposiciones de esta Ley y la reproducción se haga con fines distintos de los indicados.”

2.6. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de distribución en la ley?

“Artículo 8 WPPT: Derecho de distribución

“1) Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizarla puesta a disposición del público del original y de los ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, mediante venta u otra transferencia de propiedad.

2) Nada en el presente Tratado afectará a la facultad de las Partes Contratantes de determinar las condiciones, si las hubiera, en las que se aplicará el agotamiento del derecho del párrafo 1) después de la primera venta u otra transferencia de propiedad del original o de un ejemplar de la interpretación o ejecución fijada con autorización del artista intérprete o ejecutante.”

“Declaración Concertada del Artículo 8 WPPT

“Tal como se utilizan en estos Artículos, las expresiones ‘copias’ y ‘original y copias’, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos Artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.7. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de alquiler en la ley?

“Artículo 9 WPPT: Derecho de alquiler

“1) Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizar el alquiler comercial al público del original y de los ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, tal como establezca la legislación nacional de las Partes Contratantes, incluso después de su distribución realizada por el artista intérprete o ejecutante o con su autorización.

2) Sin perjuicio de lo dispuesto en el párrafo 1), una Parte Contratante que al 15 de abril de 1994 tenía y continúa teniendo un sistema de remuneración equitativa para los artistas intérpretes o ejecutantes por el alquiler de ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, podrá mantener ese sistema a condición de que el alquiler comercial de fonogramas no dé lugar a un menoscabo considerable de los derechos de reproducción exclusivos de los artistas intérpretes o ejecutantes.”

“Declaración Concertada del Artículo 9 WPPT

“Tal como se utilizan en estos artículos, las expresiones ‘copias’ y ‘original y copias’, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.8. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de puesta a disposición de sus interpretaciones o ejecuciones fijadas en la ley?

“Artículo 10 WPPT: Derecho de poner a disposición interpretaciones o ejecuciones fijadas

“Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizar la puesta a disposición del público de sus interpretaciones o ejecuciones fijadas en fonogramas, yasea por hilo o por medios inalámbricos de tal manera que los miembros del público puedan tener acceso a ellas desde cualquier lugar y en el momento que cada uno de ellos elija.”

2.9. ¿Gozan los productores de fonogramas (“productores”) de un derecho de reproducción en la ley?

“Artículo 37 Decisión 351

“Los productores de fonogramas tienen el derecho de:

- a) Autorizar o prohibir la reproducción directa o indirecta de sus fonogramas;
- b) Impedir la importación de copias del fonograma, hechas sin autorización del titular;

[...]

“Artículo 172 Ley 23 de 1982

“El productor de un fonograma tiene el derecho de autorizar o prohibir la reproducción directa o indirecta del mismo.

Entiéndese por ejemplar ilícito el que, imitando o no las características externas del ejemplar legítimo, tiene incorporado el fonograma del productor, o parte de él, sin su autorización.”

2.10. ¿Gozan los productores de un derecho de distribución en la ley?

“Artículo 37 Decisión 351

“Los productores de fonogramas tienen el derecho de:

[...]

- c) Autorizar o prohibir la distribución pública del original y de cada copia del mismo, mediante la venta, alquiler o cualquier otro medio de distribución al público.

[...]

2.11. ¿Gozan los productores de un derecho de alquiler en la ley?

“Artículo 37 Decisión 351

“Los productores de fonogramas tienen el derecho de:

[...]

c) Autorizar o prohibir la distribución pública del original y de cada copia del mismo, mediante la venta, alquiler o cualquier otro medio de distribución al público.

[...]”

2.12. ¿Gozan los productores de un derecho de puesta a disposición de fonogramas en la ley?

“Artículo 14 WPPT: Derecho de poner a disposición los fonogramas

“Los productores de fonogramas gozarán del derecho exclusivo de autorizar la puesta a disposición del público de sus fonogramas y se autoriza a los miembros de la Organización Mundial de la Propiedad Intelectual, de tal manera que los miembros del público puedan tener acceso a ellos desde el lugar y en el momento que cada uno de ellos elija.”

2.13. ¿Gozan los productores y/o artistas intérpretes o ejecutantes de un derecho de remuneración por la radiodifusión o comunicación pública de fonogramas en la ley?

“Artículo 37 Decisión 351

“Los productores de fonogramas tienen el derecho de:

[...]

d) Percibir una remuneración por cada utilización del fonograma o copias del mismo con fines comerciales, la que podrá ser compartida con los artistas intérpretes o ejecutantes en los términos que establezcan las legislaciones internas de los Países Miembros.

[...]”

“Artículo 173 Ley 23 de 1982

“Cuando un fonograma publicado con fines comerciales, o una reproducción de ese fonograma, se utilice directamente para la radiodifusión o para cualquier otra forma de comunicación pública, el utilizador abonará una remuneración equitativa y única, destinada a la vez a los artistas intérpretes o ejecutantes y al productor del fonograma, suma que será pagada por el utilizador al productor.”

“Artículo 174 Ley 23 de 1982

“La limitación de la suma recibida por el productor, de acuerdo con el artículo anterior, será pagada por éste a los artistas intérpretes o ejecutantes, o quienes los representen, a menos que se convenga pagarles una suma superior.”

2.14. ¿Se encuentran estos derechos sujetos a formalidades?

“Artículo 52 Decisión 351

“La protección que se otorga a las obras literarias y artísticas, interpretaciones y demás producciones salvaguardadas por el Derecho de Autor y los Derechos Conexos, en los términos de la presente Decisión, no estará subordinada a ningún tipo de formalidad. En consecuencia, la omisión del registro no impide el goce o el ejercicio de los derechos reconocidos en la presente Decisión.”

“Artículo 9 Ley 23 de 1982

“La protección que esta Ley otorga al autor, tiene como título originario la creación intelectual, sin que se requiera registro alguno. Las formalidades que en ella se establecen son para la mayor seguridad jurídica de los titulares de los derechos que se protegen.”

“Artículo 3 Decreto 460 de 1995

“La protección que se brinda a las obras literarias y artísticas, así como a las interpretaciones y demás producciones salvaguardadas por el derecho conexo, no estará subordinada a ningún tipo de formalidad, y en consecuencia el registro que aquí se reglamenta será para otorgar mayor seguridad jurídica a los autores y titulares.”

2.15. ¿Cuáles es el término de protección para:

2.15.1 los artistas intérpretes o ejecutantes?

“Artículo 36 Decisión 351

“El término de la protección de los derechos patrimoniales de los artistas intérpretes o ejecutantes, no podrá ser menor de cincuenta años, contado a partir del primer día de enero de los años siguientes a aquél en que tuvo lugar la interpretación o ejecución, o de su fijación, si éste fuere el caso.”

“Artículo 29 Ley 23 de 1982

“La protección consagrada por la presente Ley a favor de los artistas intérpretes y ejecutantes, de los productores de fonogramas y de los organismos de radiodifusión, será de ochenta años a partir de la muerte del respectivo titular, si éste fuere persona natural; si el titular fuere persona jurídica, el término será de treinta años a partir de la fecha en que

tuvo lugar la interpretación o ejecución o la primera fijación del fonograma, o la emisión de la radiodifusión.

2.15.2 productores de fonogramas?

“Artículo 38 Decisión 351

“El término de protección de los derechos de los productores de fonogramas, no podrá ser menor a cincuenta años, contado a partir del primero de enero del año siguiente al que se realizó la fijación.”

“Artículo 29 Ley 23 de 1982

“La protección consagrada por la presente Ley a favor de los artistas intérpretes y ejecutantes, de los productores de fonogramas y de los organismos de radiodifusión, será de ochenta años a partir de la muerte del respectivo titular, si éste fuere persona natural; si el titular fuere persona jurídica, el término será de treinta años a partir de la fecha en que tuvo lugar la interpretación o ejecución o la primera fijación del fonograma, o la emisión de la radiodifusión.”

2.16. ¿Cuáles el plazo efectivo para la aplicación de los derechos en la ley?

*Decisión 351
(17/12/93, fecha añadida)*

En el WPPT

“Artículo 22 WPPT: Aplicación en el tiempo

“1) Las Partes Contratantes aplicarán las disposiciones del Artículo 18 del Convenio de Berna, *mutatis mutandis*, a los derechos de los artistas intérpretes o ejecutantes y de los productores de fonogramas contemplados en el presente Tratado.

2) No obstante lo dispuesto en el párrafo 1), una Parte Contratante podrá limitar la aplicación del Artículo 5 del presente Tratado a las interpretaciones o ejecuciones que tengan lugar después de la entrada en vigor del presente Tratado respectivamente de esa Parte.”

(Fecha de entrada en vigor: 20 de mayo de 2002, fecha añadida.)

3. Disposiciones comunes

3.1. ¿Cuáles son las limitaciones y excepciones en la ley?

“Artículo 21 Decisión 351

“Las limitaciones y excepciones al Derecho de Autor que se establezcan mediante las legislaciones internas de los Países Miembros, se circunscribirán a aquellos casos que no atenten contra la normal explotación de las obras ni causen perjuicio injustificado a los legítimos intereses del titular o titulares de los derechos.

“Artículo 22 Decisión 351

“Sin perjuicio de lo dispuesto en el Capítulo V y en el artículo anterior, será lícito realizar, sin autorización del autor y sin el pago de remuneración alguna, los siguientes actos:

- a) Citar en una obra, otras obras publicadas, siempre que se indique la fuente y el nombre del autor, a condición de que tales citas se hagan conforme a los usos honrados y en la medida justificada por el fin que se persiga;
- b) Reproducir por medios reprográficos para la enseñanza o para la realización de exámenes en instituciones educativas, en la medida justificada por el fin que se persiga, artículos lícitamente publicados en periódicos o colecciones periódicas, o breves extractos de las obras lícitamente publicadas, a condición de que tal utilización se haga conforme a los usos honrados y que el mismo sea objeto de venta u otra transacción a título oneroso, ni tenga directa o indirectamente fines de lucro;
- c) Reproducir en forma individual, una obra por una biblioteca o archivo y actividades que no tengan directa o indirectamente fines de lucro, cuando el ejemplar respectivo se encuentre en la colección permanente de la biblioteca o archivo, y dicha reproducción se realice con los siguientes fines:
 - 1) Preservar el ejemplar y sustituirlo en caso de extravío, destrucción o inutilización; o,
 - 2) Sustituir, en la colección permanente de otra biblioteca o archivo, un ejemplar que se haya extraviado, destruido o inutilizado.
- d) Reproducir una obra para actuaciones judiciales o administrativas, en la medida justificada por el fin que se persiga;
- e) Reproducir y distribuir por la prensa o emitir por radiodifusión o transmisión pública por cable, artículos de actualidad, de discusión económica, política o religiosa publicados en periódicos o colecciones periódicas, u obras radiodifundidas que tengan el mismo carácter, en los

casos en que la reproducción, la radiodifusión o la transmisión pública no se hayan reservado expresamente;

- f) Reproducir y poner a la disposición del público, con ocasión de las informaciones relativas a acontecimientos de actualidad por medio de la fotografía, la cinematografía o por la radiodifusión o transmisión pública por cable, obras vistas oídas en el curso de tales acontecimientos, en la medida justificada por el fin de la información;
- g) Reproducir por la prensa, la radiodifusión o la transmisión pública, discursos políticos, así como disertaciones, alocuciones, sermones, discursos pronunciados durante actuaciones judiciales u otras obras de carácter similar pronunciadas en público, con fines de información sobre los hechos de actualidad, en la medida en que lo justifiquen los fines perseguidos, y conservando los autores sus derechos a la publicación de colecciones de tales obras;
- h) Realizar la reproducción, emisión por radiodifusión o transmisión pública por cable, de la imagen de una obra arquitectónica, de una obra de bellas artes, de una obra fotográfica o de una obra de artes aplicadas, que se encuentre situada en forma permanente en un lugar abierto al público;
- i) La realización, por parte de los organismos de radiodifusión, de grabaciones efímeras mediante sus propios equipos y para su utilización en sus propias emisiones de radiodifusión, de una obra sobre la cual tenganel derecho a radiodifundirla. El organismo de radiodifusión estará obligado a destruir tal grabación en el plazo o condiciones previstas en cada legislación nacional;
- j) Realizar la representación o ejecución de una obra en el curso de las actividades de una institución de enseñanza por el personal y los estudiantes de tal institución, siempre que no se cobre por la entrada ni tenga algún fin lucrativo directo o indirecto, y el público esté compuesto exclusivamente por el personal y estudiantes de la institución o padres o tutores de los alumnos y otras personas directamente vinculadas con las actividades de la institución;
- k) La realización de una transmisión o retransmisión, por parte de un organismo de radiodifusión, de una obra originalmente radiodifundida por él, siempre que tal retransmisión no sea transmisión pública, sea simultánea con la radiodifusión original y que la obra se emita por radiodifusión o se transmita públicamente sin alteraciones.”

“Artículo 31 Ley 23 de 1982

Es permitido citar a un autor transcribiendo los pasajes necesarios, siempre que éstos no se antojen tan seguidos que razonablemente puedan considerarse como una reproducción simulada y sustancial, que redunde en perjuicio del autor de la obra de donde se toman. En cada caso deberá mencionarse el nombre del autor de la obra citada y el título de dicha obra.

Cuando la inclusión de obras ajenas constituya la parte principal de la nueva obra, a petición de parte interesada, los tribunales fijarán equitativamente y en juicio verbal la cantidad proporcional que corresponda a cada uno de los titulares de las obras incluidas.”

“Artículo 32 Ley 23 de 1982

“Es permitido utilizar obras literarias o artísticas o parte de ellas, a título de ilustración en obras destinadas a la enseñanza, por medio de publicaciones, emisiones de radio o televisión o grabaciones sonoras o visuales, dentro de los límites justificados por el fin propuesto, o comunicar con propósitos de enseñanza a obrar por radio o televisión para fines escolares, educativos, universitarios y de formación profesional sin fines de lucro, con la obligación de mencionar el nombre del autor y el título de las obras así utilizadas.”

“Artículo 33 Ley 23 de 1982

“Pueden ser reconocidas cualquier título, fotografía, ilustración y comentario relativo a acontecimiento de actualidad, publicados por la prensa o difundidos por la radio o la televisión, si ello no hubiere sido expresamente prohibido.”

“Artículo 34 Ley 23 de 1982

“Será lícita la reproducción, distribución y comunicación al público de noticias u otras informaciones relativas a hechos o sucesos que hayan sido públicamente difundidos por la prensa o por la radio o televisión.”

“Artículo 35 Ley 23 de 1982

“Pueden publicarse en la prensa periódica, por la radio o televisión o por la televisión, con carácter de noticias de actualidad, si no hay necesidad de autorización alguna, los discursos pronunciados o leídos en asambleas deliberantes, en los debates judiciales o en las que se promuevan ante otras autoridades públicas, o cualquier conferencia, discurso, sermón u otra obra similar pronunciada en público, siempre que se trate de obras cuya propiedad no haya sido previamente expresamente reservada. Es entendido que las obras de este género de un autor no pueden publicarse en colecciones separadas sin permiso del mismo.”

“Artículo 36 Ley 23 de 1982

“La publicación del retrato es libre cuando se relaciona con fines científicos, didácticos o culturales en general o con hechos o acontecimientos de interés público o que se hubieren desarrollado en público.”

“Artículo 37 Ley 23 de 1982

“Es lícita la reproducción, por cualquier medio, de una obra literaria o científica, ordenada u obtenida por el interesado en un solo ejemplar para su uso privado y sin fines de lucro.”

“Artículo 38 Ley 23 de 1982

“Las bibliotecas públicas pueden reproducir, para el uso exclusivo de sus lectores y cuando ello sea necesario para su conservación, o para el servicio de préstamo a otras bibliotecas, también públicas, una copia de obras protegidas depositadas en sus colecciones o archivos que se encuentren agotadas en el mercado local. Estas copias pueden ser también reproducidas, en una sola copia, por la biblioteca que las reciba, en caso de que ello sea necesario para su conservación, y con el único fin de que ellas sean utilizadas por sus lectores.”

“Artículo 39 Ley 23 de 1982

“Será permitido reproducir por medio de pinturas, dibujos, fotografías o películas cinematográficas, las obras que estén colocadas de modo permanente en vías públicas, calles o plazas, y distribuir y comunicar públicamente dichas reproducciones de sus obras. En lo que se refiere a las obras de arquitectura a esta disposición sólo es aplicable su aspecto exterior.”

“Artículo 40 Ley 23 de 1982

“Las conferencias o lecciones dictadas en establecimientos de enseñanza superior, secundaria o primaria, pueden ser anotadas y recogidas libremente por los estudiantes a quienes se están dirigiendo, pero es prohibida su publicación o reproducción integral o parcial, sin la autorización escrita de quien las pronunció.”

“Artículo 41 Ley 23 de 1982

“Es permitido a todos reproducir la Constitución, leyes, decretos, ordenanzas, acuerdos, reglamentos, demás actos administrativos y decisiones judiciales, bajo la obligación de conformarse puntualmente con la edición oficial, siempre y cuando no esté prohibido .”

“Artículo 42 Ley 23 de 1982

“Es permitida la reproducción de obras protegidas o de fragmentos de ellas, en la medida que se estime necesario por la autoridad competente, para su uso dentro de los procesos judiciales o por los órganos legislativo o administrativos del Estado.”

“Artículo 43 Ley 23 de 1982

“El autor de un proyecto arquitectónico no podrá impedir que el propietario introduzca modificaciones en él, pero tendrá la facultad de prohibir que su nombre sea asociado a la obra alterada.”

“Artículo 44 Ley 23 de 1982

“Es libre la utilización de obras científicas, literarias y artísticas en el domicilio privado sin ánimo de lucro.”

3.2. ¿Qué protección jurídica, y cuáles recursos jurídicos proporciona la ley contra la elisión de las medidas tecnológicas de protección eficaces?

“Artículo 272 Código Penal:

“Violación de los mecanismos de protección de los derechos patrimoniales de autor y otras defraudaciones. Incurrirán en multa quien:

- 1) Supere o eluda las medidas tecnológicas adoptadas para restringir los usos no autorizados;
- 2) Suprima o altere la información esencial para la gestión electrónica de derechos, o importe, distribuya o comunique ejemplares con la información suprimida o alterada...
- 3) Fabrique, importe, venda, arriende o de cualquier forma distribuya al público un dispositivo o sistema que permita descifrar una señal de satélite cifrada portadora de programas, sin autorización del distribuidor legítimo de esa señal, o de cualquier forma eludir, evadir, inutilizar o suprimir un dispositivo o sistema que permita a los titulares del derecho controlar la utilización de sus obras o producciones, o impedir o restringir cualquier uso no autorizado de éstos;
- 4) Presente declaraciones o informaciones destinadas directa o indirectamente al pago, recaudación, liquidación o distribución de derechos económicos de autor o derechos conexos, alterando o falseando, por cualquier medio o procedimiento, los datos necesarios para estos efectos.”

“Artículo 325 Código Penal

“Serán reprimidos con prisión de un mes a dos años y multa de doscientos cincuenta a dos mil quinientas unidades de valor constante (UVC), tomando en consideración el valor de los perjuicios ocasionados, quienes en violación de los derechos de autor o derechos conexos :

[...]

d) Introduzcan al país, almacenen, ofrezcan en venta, vendan, arrienden o de cualquier otra manera pongan en circulación o a disposición de terceros aparatos u otros medios destinados a descifrar o decodificar las señales codificadas o de cualquier otra manera burlar o quebrantar los medios técnicos de protección aplicados por el titular del derecho.

[...]

3.3. ¿Cuáles obligaciones se encuentran en la ley para la protección de “información sobre la gestión de derechos”?

“Artículo 272 del Código Penal:

“Violación a los mecanismos de protección de los derechos patrimoniales de autor y otras defraudaciones. Incurrirán en multa quien:

- 1) Supere o eluda las medidas tecnológicas adoptadas para restringir los usos no autorizados;
- 2) Suprima o altere la información esencial para la gestión electrónica de derechos, o importe, distribuya o comunique ejemplares con la información suprimida o alterada...
- 3) Fabrique, importe, venda, arriende o de cualquier forma distribuya al público un dispositivo o sistema que permita descifrar una señal de satélite cifrada portadora de programas, sin autorización del distribuidor legítimo de esa señal, o de cualquier forma eludir, evadir, inutilizar o suprimir un dispositivo o sistema que permita al titular de un derecho controlar la utilización de sus obras o producciones, o impedir o restringir cualquier uso no autorizado de éstos;
- 4) Presente declaraciones o informaciones destinadas directa o indirectamente al pago, recaudación, liquidación o distribución de derechos económicos de autor o derechos conexos, alterando o falseando, por cualquier medio o procedimiento, los datos necesarios para estos efectos.”

“Artículo 324 Código Penal

“Serán reprimidos con prisión de tres meses a tres años y multa de quinientas a cinco mil unidades de valor constante (UVC), tomando en consideración el valor de los perjuicios ocasionados, quienes en violación de los derechos de autor o derechos conexos:

- a) Alteren o utilicen una obra, inclusive a través de la remoción o alteración de información electrónica sobre el régimen de derechos aplicables;

[...]

- g) introduzcan al país, almacenen, ofrezcan en venta, vendan, arrienden o de cualquier otra manera pongan en circulación o a disposición de terceros

reproducciones de obras, fonogramas o videogramas en las cuales se ha alterado o removido información sobre el régimen de derechos aplicables.

[...]"

3.4. De manera general, ¿Cuáles son las medidas de observancia de derechos en la ley?

“Artículo 55 Decisión 351

“Los procedimientos que sigan ante las autoridades nacionales competentes, observarán el debido y adecuado proceso, según los principios de economía procesal, celeridad, igualdad de las partes ante la ley, eficacia e imparcialidad. Asimismo, permitirán que las partes conozcan de todas las actuaciones procesales, salvo disposiciones especiales en contrario.”

“Artículo 56 Decisión 351

“La autoridad nacional competente, podrá ordenar las medidas cautelares siguientes:

- a) El cese inmediato de la actividad ilícita;
- b) La incautación, el embargo, decomiso o secuestro preventivo, según corresponda, de los ejemplares producidos con infracción de cualquier derecho reconocido en la presente Decisión;
- c) La incautación, embargo, decomiso o secuestro, de los aparatos o medios utilizados para la comisión del ilícito.

Las medidas cautelares no se aplicarán respecto del ejemplar adquirido de buena fe y para el uso exclusivo personal.”

“Artículo 57 Decisión 351

“La autoridad nacional competente, podrá asimismo ordenar lo siguiente:

- a) El pago al titular del derecho infringido de una reparación o indemnización adecuada en compensación por los daños y perjuicios sufridos con motivo de la violación de su derecho;
- b) Que el infractor asuma el pago de las costas del proceso en que haya incurrido el titular del derecho infringido;
- c) El retiro definitivo de los canales comerciales, de los ejemplares que constituyan infracción de derecho;
- d) Las sanciones penales equivalentes a aquellas que se aplican a los delitos de similitud magnitud.”

3.5. ¿Cómo define la ley la responsabilidad de los proveedores de servicio?

“Declaración Concertada del Artículo 8 WCT

“Queda entendido que el simple suministro de instalaciones físicas para facilitar o realizar una comunicación, en sí mismo, no representa una comunicación en el sentido del presente Tratado o del Convenio de Berna. También queda entendido que nada de lo dispuesto en el Artículo 8 impide que una Parte Contratante aplique el Artículo 11bis.2).”

3.6. ¿Existen algunas disposiciones en la ley relativas al almacenamiento temporal?

“Artículo 13 Decisión 351

“El autor, en su caso, sus derechohabientes, tienen el derecho exclusivo de realizar, autorizar o prohibir:

a) La reproducción de la obra por cualquier forma o procedimiento.

[...]”

3.7. ¿Existen algunas disposiciones expresas para asegurar que las disposiciones en contra de la elisión no restrinjan el funcionamiento de las limitaciones o excepciones a los derechos otorgados en la ley?

No existen ninguna disposición al respecto en la ley.

COSTARICA

(Legislación revisada: Ley de Derechos de Autor y Derechos Conexos (Ley N° 6683) de 1982, reformada por Ley 6935 (9/11/84), Ley 7397 (10/5/94), federratas (24/5/94), y Ley 7979 (31/1/2000), y su Reglamento o Ley de Procedimientos de Observancia de los Derechos de Propiedad Intelectual (Ley N° 8039) de 2000 y WCTYWPPT⁵)

1. Disposiciones del WCT

1.1. ¿Se extiende el alcance de la protección del derecho de autor solamente a las expresiones, y no a las ideas, procedimientos, métodos de funcionamiento o conceptos matemáticos?

“Artículo 1

“Las producciones intelectuales originales confieren a sus autores los derechos referidos en esta ley. La protección del derecho de autor abarca a las expresiones, pero no a las ideas, los procedimientos, métodos de operación ni los conceptos matemáticos en sí. Los autores son los titulares de los derechos patrimoniales y morales sobre sus obras literarias o artísticas.”

1.2. ¿Se encuentran los programas de ordenador protegidos en la ley como obras literarias?

“Artículo 1

“Por ‘obras literarias y artísticas’ deben entenderse todas las producciones en los campos literario y artístico, cualquiera sea la forma de expresión, tales como: libros, folletos, cartas y otros escritos; además, los programas de computador dentro de los cuales se incluyen sus versiones sucesivas y los programas derivados...”

1.3. ¿Se encuentran las recopilaciones de datos u otro material, en cualquier forma, protegidas en la ley como creaciones intelectuales, en razón de la selección o arreglo de los contenidos?

“Artículo 8

“[...]”

Las bases de datos están protegidas como compilaciones.”

⁵ Constitución Política de la República de Costa Rica de 1949, con reforma 8106/2001, Artículo 7 “Lo tratado público, los convenios internacionales y los concordatos, debidamente aprobados por la Asamblea Legislativa, tendrán desde su promulgación desde el día que ellos designen, autoridad superior a las leyes.” *Este es el caso del WCT y WPPT (aclaratoria añadida).*

1.4. ¿Existe en la ley el derecho de distribución?

“Artículo 16

“1) Al autor de la obra literaria o artística le corresponde el derecho exclusivo de utilizarla. Los contratos sobre derechos de autor se interpretarán siempre restrictivamente y al adquirir en ellos el reconocimiento de derechos más amplios que los expresamente citados, salvo cuando resulten necesariamente de la naturaleza de sus términos. Por consiguiente, compete al autor autorizar:

[...]

g) La distribución

2) Los derechos conferidos por los incisos g) e i) del presente artículo no serán oponibles contra la venta o importación de originales o copias de una obra puestas legítimamente en el comercio, en cualquier país, por el titular de la obra protegida u otra persona que tenga el consentimiento de este, con la condición de que dichas obras no hayan sido alteradas ni modificadas.”

“Artículo 32

“La distribución comprende el derecho del autor de autorizar o no la puesta a disposición del público de los ejemplares de su obra, por medio de la venta u otra forma de transmisión de la propiedad, alquiler o cualquier otra modalidad de uso a título oneroso.

Cuando el autor u otro titular de los respectivos derechos sobre la obra autorice la comercialización de los ejemplares mediante venta, conservará siempre los derechos de modificación, comunicación pública y reproducción de la obra, así como el arrendamiento de los ejemplares y, en su caso, el derecho de persecución (‘droit de suite’).”

“Artículo 3 Reglamento

“A los efectos de la Ley y este Reglamento, las expresiones que siguen y sus respectivas formas derivadas tendrán el significado siguiente:

[...]

7) Distribución al público: Es la puesta a disposición del público del original o copias de la obra mediante su venta, alquiler, préstamo o de cualquier otra forma.”

1.5. ¿Existe en la ley el derecho de alquiler? En caso afirmativo, ¿a cuáles obras se aplica?

“Artículo 32

“La distribución comprende el derecho del autor o del autorizador en la puesta a disposición del público de los ejemplares de su obra, por medio de la venta u otra forma de transmisión de la propiedad, al alquiler o cualquier otra modalidad de uso atípico oneroso.

Cuando el autor u otro titular del respectivo derecho sobre la obra autorice la comercialización de los ejemplares mediante venta, conservará siempre los derechos de modificación, comunicación pública y reproducción de la obra, así como el arrendamiento de los ejemplares y, en su caso, el derecho de persecución (‘droit de suite’).”

El derecho de alquiler se aplica a todas las obras (aclaratoria añadida).

1.6. ¿Existe en la ley el derecho de comunicación al público?

“Artículo 16

“1) Al autor de la obra literaria o artística le corresponde el derecho exclusivo de utilizarla. Los contratos sobre derechos de autor se interpretarán siempre restrictivamente y al adquirente no se le reconocerán derechos más amplios que los expresamente citados, salvo cuando resulten necesariamente de la naturaleza de sus términos. Por consiguiente, compete al autor autorizar:

[...]

e) La comunicación al público, directa o indirectamente, por cualquier proceso y en especial por los siguiente:

- i La ejecución, representación o declaración;
- ii La radiodifusión sonora o audiovisual;
- iii Los parlantes, la telefonía o los aparatos electrónicos semejantes.

f) La disposición de sus obras al público, de tal forma que los miembros del público puedan acceder a ellas desde el momento y lugar que cada uno elija.

[...]”

1.7. ¿Existe en la ley el derecho de puesta a disposición al público de obras de tal manera que los miembros del público puedan acceder a éstas en el lugar y momento individualmente escogido por ellos?

“Artículo 16

“1) Al autor de la obra literaria o artística le corresponde el derecho exclusivo de utilizarla. Los contratos sobre derechos de autor se interpretarán siempre

restrictivamente y al adquirirtenoselereconocerá derechos más amplios que los expresamente citados, salvo cuando resulten necesariamente de la naturaleza de sus términos. Por consiguiente, compete al autor autorizar:

[...]

f) La disposición de sus obras al público, de tal forma que los miembros del público puedan acceder a ellas desde el momento y lugar que cada uno elija.”

1.8. ¿Gozan las obras fotográficas del mismo término de duración de la protección establecido para el resto de las obras?

“Artículo 58

“Los derechos de autor son permanentes durante toda su vida. Después de su fallecimiento, disfrutarán de ellos, por el término de setenta años, quienes los hayan adquirido legítimamente. Cuando la duración de la protección de una obra se calcule sobre una base distinta de la vida de una persona física, el término será de:

- a) Setenta años, contados desde el final del año civil de la primera publicación o divulgación autorizada de la obra;
- b) A falta de tal publicación dentro de un plazo de setenta años contados desde el final del año civil de la realización de la obra, la duración de la protección será de setenta años, contados desde el final del año civil de cualquier otra primera puesta de la obra a disposición del público con el consentimiento del autor;
- c) A falta de una publicación autorizada y de cualquier otra puesta a disposición del público, con el consentimiento del autor, dentro de un plazo de setenta años contados a partir de la realización de la obra, la duración de la protección será de setenta años desde el final del año civil de la realización.”

Este término de duración de la protección se aplica por igual a las obras fotográficas (aclaratoria añadida).

1.9. ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

“Artículo 159

“Las obras que, al entrar en vigencia esta ley, se encuentren registradas en la Biblioteca Nacional y que pertenezcan al dominio privado, mantendrán los derechos adquiridos, sin tener que llenar ninguna formalidad.”

“Artículo 162

“Rige a partir de su publicación.” (4/11/82, fecha añadida) más subsecuentes reformas de ley 6935 (9/11/84), ley 7397 (10/5/94), federratas (24/5/94), y ley 7979 (31/1/2000) fecha añadida).

EnelWCT

“Artículo13WCT:Aplicacióneneltiempo

“LasPartesContratantesaplicaránlasdisposicionesdelArtículo18de IConveniode BernaatodalaproteccióncontempladaenelpresenteTratado.”

(Fechadeentradaenvigor:6demarzode2002,fechaañadida).

2. DisposicionesdelWPPT

2.1. Definiciones

2.1.1 ¿Seencuentranlas“interpretacionesoejecuciones”olo s“artistasintérpreteso ejecutantes”definidosenlaley?

“Artículo77

“Seentiendepor:

- a) ‘Artistas’:todoactor,locutor,narrador,declamador,cantante,bailarín, músicoocualquierotrapersonaqueinterpreteoejecuteunaobraliterario artística.

[...]”

“Artículo3Reglamento

“AlosefectosdelaLeyesteReglamento,lasexpresionesquesiguensusrespectivas formasderivadastendránelsignificadosiguiente:

[...]

- 2) Artistaintérpreteoejecutante:Es lapersonaquerepresente,can te,lea, recite,interpreteoejecuteunaobraliterarioartística.

[...]”

2.1.2 ¿Se encuentra el “fonograma” definido en la ley?

“Artículo 81

“Se entiende por:

[...]

b) ‘Fonograma’: toda fijación sonora de los sonidos de una ejecución de otros sonidos.

[...]”

“Artículo 3 Reglamento

“A los efectos de la Ley y este Reglamento, las expresiones que siguen y sus respectivas formas derivadas tendrán el significado siguiente:

[...]

12) Fonograma: Es toda fijación sonora de los sonidos de una representación o ejecución de otros sonidos. Las grabaciones gramofónicas y magnetofónicas son copias de fonogramas.

[...]”

2.1.3 ¿Se encuentra la “fijación” definida en la ley?

“Artículo 77

“Se entiende por:

[...]

b) “Fijación”: la incorporación de sonidos, de imágenes o de sonidos e imágenes sobre un soporte material permanente, que permita su reproducción o su comunicación al público.

[...]”

“Artículo 3 Reglamento

“A los efectos de la Ley y este Reglamento, las expresiones que siguen y sus respectivas formas derivadas tendrán el significado siguiente:

[...]

11) Fijación: Es la incorporación de signos, sonidos o imágenes sobre una base material que permita su percepción, reproducción o comunicación.

[...]

2.1.4 ¿Se encuentra el “productor de fonogramas” definido en la ley?

“Artículo 81

“Se entiende por:

a) ‘Productor de fonogramas’: la empresa grabadora que fija por primera vez los sonidos de una ejecución u otros sonidos;

[...]

“Artículo 3 Reglamento

“A los efectos de la Ley y este Reglamento, las expresiones que siguen y sus respectivas formas derivadas tendrán el significado siguiente:

[...]

27) Productor de fonogramas: Es la persona natural o jurídica bajo cuya iniciativa, responsabilidad y coordinación, se fija por primera vez los sonidos de una ejecución u otros sonidos;”

[...]

2.1.5 ¿Se encuentra la “publicación de una interpretación o ejecución fijada de un fonograma” definida en la ley?

“Artículo 4

“Para los efectos de esta Ley se entiende por:

[...]

II) Publicación: es el hecho de poner copias de una obra o de una fijación visual o sonora a disposición del público.

[...]

“Artículo 4 Reglamento

“Para los efectos de esta Ley se entiende por:

[...]

29) **Publicación:** Es la producción de copias o ejemplares puestos a disposición del público con el consentimiento del titular del respectivo derecho;

[...]”

2.1.6 ¿Se encuentra la “radiodifusión” definida en la ley?

“Artículo 4 Reglamento

“Para los efectos de esta Ley se entiende por:

[...]

30) **Radiodifusión:** Es la comunicación pública de una obra por medio de una emisión o transmisión inalámbrica. La radiodifusión incluye también la realizada por un satélite desde la recepción de una obra o producción hacia un satélite, tanto en la etapa ascendente como en la descendente de la transmisión, hasta cuando la obra se comunica al público, poniéndose a su alcance, aunque no necesariamente haya sido recibida por él;

[...]”

2.1.7 ¿Se encuentra la “comunicación al público” definida en la ley?

“Artículo 4 Reglamento

“Para los efectos de esta Ley se entiende por:

[...]

4) **Comunicación pública:** Es la obra por medio de la cual se pone a disposición del público, por cualquier medio o procedimiento que no consista en la distribución de ejemplares. Todo el proceso necesario y conducente a que la obra se ponga a disposición del público constituye comunicación;

[...]”

2.2. ¿Se encuentra el concepto de “trato nacional” contenido en la ley?

“Artículo 2 Reglamento

“La presente ley protege las obras de autores costarricenses, domiciliados o no en el territorio nacional, y las de autores extranjeros domiciliados en el país.

“Artículo 3 Reglamento

“Las obras de autores extranjeros, domiciliados en el exterior, gozarán en Costa Rica de la protección que les acuerden las convenciones internacionales a que el país se adhiera. Para este efecto, los apátridas serán equiparados a nacionales del país de residencia.”

2.3. ¿Gozan los artistas intérpretes o ejecutantes de derechos morales en la ley?

“Artículo 79

“El intérprete puede oponer sea la emisión de sus interpretaciones, siempre que de ésta se origine un grave e injusto perjuicio a sus intereses artísticos o económicos; además, tiene el derecho de exigir la mención de su nombre, cuando la interpretación sea comunicada al público mediante la ejecución pública o la radiodifusión.”

2.4. ¿Gozan los artistas intérpretes o ejecutantes de derechos patrimoniales por sus interpretaciones o ejecuciones no fijadas?, y en caso afirmativo, ¿Cuáles son estos derechos?

“Artículo 78

“Sin perjuicio de los derechos conferidos a los titulares de derechos de autor, los artistas, intérpretes o ejecutantes, sus mandatarios, herederos, sucesores o cesionarios, a título oneroso o gratuito, tienen el derecho de autorizar o prohibir la fijación, la reproducción, la comunicación al público, la transmisión y retransmisión, por radio o televisión o cualquier otra forma de uso, de sus interpretaciones o ejecuciones.”

2.5. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de reproducción en la ley ?

“Artículo 78

“Sin perjuicio de los derechos conferidos a los titulares de derechos de autor, los artistas, intérpretes o ejecutantes, sus mandatarios, herederos, sucesores o cesionarios, a título oneroso o gratuito, tienen el derecho de autorizar o prohibir la fijación, la reproducción, la comunicación al público, la transmisión y retransmisión, por radio o televisión o cualquier otra forma de uso, de sus interpretaciones o ejecuciones.”

2.6. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de distribución en la ley?

“Artículo 78

“Sin perjuicio de los derechos conferidos a los titulares de derechos de autor, los artistas, intérpretes o ejecutantes, sus mandatarios, herederos, sucesores o cesionarios, a título oneroso o gratuito, tienen el derecho de autorizar o prohibir la fijación, la reproducción, la comunicación al público, la transmisión y retransmisión, por radio o televisión o cualquier otra forma de uso, de sus interpretaciones o ejecuciones.”

2.7. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de alquiler en la ley?

“Artículo 78

“Sin perjuicio de los derechos conferidos a los titulares de derechos de autor, los artistas, intérpretes o ejecutantes, sus mandatarios, herederos, sucesores o cesionarios, a título oneroso o gratuito, tienen el derecho de autorizar o prohibir la fijación, la reproducción, la comunicación al público, la transmisión y retransmisión, por radio o televisión o cualquier otra forma de uso, de sus interpretaciones o ejecuciones.”

2.8. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de puesta a disposición de sus interpretaciones o ejecuciones fijadas en la ley?

“Artículo 78

“Sin perjuicio de los derechos conferidos a los titulares de derechos de autor, los artistas, intérpretes o ejecutantes, sus mandatarios, herederos, sucesores o cesionarios, a título oneroso o gratuito, tienen el derecho de autorizar o prohibir la fijación, la reproducción, la comunicación al público, la transmisión y retransmisión, por radio o televisión o cualquier otra forma de uso, de sus interpretaciones o ejecuciones.”

2.9. ¿Gozan los productores de fonogramas (“productores”) de un derecho de reproducción en la ley?

“Artículo 82

“Sin perjuicio de los derechos conferidos a los titulares de derechos de autor, los productores de fonogramas o videogramas tienen el derecho exclusivo de autorizar o prohibir:

a) La reproducción, directa o indirecta, de sus fonogramas o videogramas;

[...]”

2.10. ¿Gozan los productores de un derecho de distribución en la ley?

“Artículo 82

“Sin perjuicio de los derechos conferidos a los titulares de derechos de autor, los productores de fonogramas o videogramas tienen el derecho exclusivo de autorizar o prohibir:

[...]

b) La primera distribución pública del original y de cada copia del fonograma mediante venta, arrendamiento o cualquier otro medio;

[...]”

2.11. ¿Gozan los productores de un derecho de alquiler en la ley?

“Artículo 82

“Sin perjuicio de los derechos conferidos a los titulares de derechos de autor, los productores de fonogramas o videogramas tienen el derecho exclusivo de autorizar o prohibir:

[...]

c) El arrendamiento comercial al público de los originales o las copias;

[...]”

2.12. ¿Gozan los productores de un derecho de puesta a disposición de fonogramas en la ley?

“Artículo 82

“Sin perjuicio de los derechos conferidos a los titulares de derechos de autor, los productores de fonogramas o videogramas tienen el derecho exclusivo de autorizar o prohibir:

[...]

g) La disposición pública de sus fonogramas y se a por hilo, cable, fibra óptica, ondas radioeléctricas, satélites o cualquier otro medio análogo que posibilite al público el acceso a la comunicación remota de obras protegidas, desde el lugar y en el momento que cada uno de ellos elija;

[...]”

2.13. ¿Gozan los productores y/o artistas intérpretes o ejecutantes de un derecho de remuneración por la radiodifusión y/o comunicación pública de fonogramas en la ley?

“Artículo 83

“Cuando un fonograma o videograma, publicado con fines comerciales, o una reproducción de ese fonograma o videograma, se utilice directamente para la radiodifusión o para cualquier forma de comunicación, en locales frecuentados por el público (como los citados en el artículo 49) el usuario obtendrá autorización previa del productor y le pagará a éste una remuneración equitativa y única, que será destinada a su propio pago, a los artistas, intérpretes y ejecutantes.

“Artículo 84

“Salvo convenio entre los artistas, intérpretes, ejecutantes y el productor, la mitad de la suma recibida por el productor, deducidos los gastos de recaudación y administración, será pagada por este a los artistas, intérpretes y ejecutantes, quienes, de no haber celebrado convenio especial, la dividirán entre ellos, de la siguiente forma :

- a) El cincuenta por ciento se abonará al intérprete; entendiéndose por tal al cantante o conjunto vocal u otro artista, que figure en primer plano en la etiqueta del fonograma.
- b) El cincuenta por ciento será abonado a los músicos acompañantes y miembros del coro, que participaron en la fijación, dividido en partes iguales entre todos ellos. Si estos no se presentaren a reclamar esas sumas, en un plazo de doce meses, el productor deberá girarlas, globalmente, a la asociación o sindicato de la categoría profesional correspondiente.”

2.14. ¿Se encuentran estos derechos sujetos a formalidades?

“Artículo 101

“La protección prevista en la presente ley lo es por el simple hecho de la creación independiente de cualquier formalidad o solemnidad.”

“Artículo 102

“Para mejor seguridad, los titulares de derechos de autor y conexos podrán registrar sus producciones en el Registro Nacional de Derechos de Autor y Conexos, lo cual sólo tendrá efectos declarativos. También podrán ser inscritos los actos o documentos relativos a negocios jurídicos de derechos de autor y conexos.”

2.15. ¿Cuáles el término de protección para:

2.15.1 los artistas intérpretes o ejecutantes?

“Artículo 87

“La duración de la protección concedida por la presente ley a los derechos conexos será de setenta años, contados a partir del 31 de diciembre de año en que se realizó la fijación, tuvo lugar la interpretación o ejecución o tuvo lugar la radiodifusión.”

2.15.2 productores de fonogramas?

“Artículo 87

“La duración de la protección concedida por la presente ley a los derechos conexos será de setenta años, contados a partir del 31 de diciembre de año en que se realizó la fijación, tuvo lugar la interpretación o ejecución o tuvo lugar la radiodifusión.”

2.16. ¿Cuál es la fecha efectiva para la aplicación de los derechos en la ley?

“Artículo 162

“Rige a partir de su publicación” (4/11/82, fecha añadida) más subsecuentes reformas de ley 6935 (9/11/84), ley 7397 (10/5/94), federratas (24/5/94), y ley 7979 (31/1/2000) (fecha añadida).

En el WPPT

“Artículo 22 WPPT: Aplicación en el tiempo

“1) Las Partes Contratantes aplicarán las disposiciones del Artículo 18 del Convenio de Berna, *mutatis mutandis*, a los derechos de los artistas intérpretes o ejecutantes y de los productores de fonogramas contemplados en el presente Tratado.

2) No obstante lo dispuesto en el párrafo 1), una Parte Contratante podrá limitar la aplicación del Artículo 5 del presente Tratado a las interpretaciones o ejecuciones que tengan lugar después de la entrada en vigor del presente Tratado respectivamente de esa Parte.”

(Fecha de entrada en vigor: 20 de mayo de 2002, fecha añadida).

3. Disposiciones comunes

3.1. ¿Cuáles son las limitaciones y excepciones en la ley?

“Artículo 67

“Las noticias con carácter de prensa informativa no gozan de la protección de esta ley; sin embargo, el medio que las reproduzca o retransmita estará obligado a consignar la fuente original de donde se tomó la información.”

“Artículo 68

“Los artículos de actualidad, publicados en revistas o periódicos, pueden ser reproducidos, si ello no ha sido expresamente prohibido, debiendo en todo caso citarse la fuente de origen.”

“Artículo 69

“Pueden publicarse en la prensa, radio y televisión periódica, sin necesidad de autorización alguna, los discursos pronunciados en las asambleas deliberadas o en reuniones públicas, así como los alegatos ante los tribunales de justicia; sin embargo, no podrán publicarse en impresos separados o en colección, sin el permiso de autor.”

“Artículo 70

“Es permitido citar a un autor, transcribiendo los pasajes pertinentes, siempre que éstos no sean tantos y seguidos, que puedan considerarse como una reproducción simulada y sustancial, que redunde en perjuicio del autor de la obra original.”

“Artículo 71

“Es lícita la reproducción fotográfica, o por otros procesos pictóricos, de las estatuas, monumentos y otras obras de arte, adquiridos por el poder público, expuestas en las calles, jardines y museos.”

“Artículo 72

“Es libre la ejecución de fonogramas y la recepción de transmisiones de radio o televisión, en los establecimientos comerciales que venden aparatos receptores electrodomésticos de fonogramas, para demostración a su clientela.”

“Artículo 73

“Es libre la representación teatral y la ejecución musical, cuando se realicen en el hogar para beneficio exclusivo del círculo familiar. También lo serán cuando se realicen para

fines exclusivamente didácticos, siempre que no haya ánimo de lucro ni ningún tipo de compensación económica.”

“Artículo 74

“También es libre la reproducción de una obra didáctica o científica, efectuada personal y exclusivamente por el interés de un propio o en su propio ánimo de lucro directo o indirecto. Es la reproducción que deberá realizarse en un solo ejemplar, mecanografiado o manuscrito.

Esta disposición no se aplicará a los programas de computación.”

“Artículo 75

“Se permite a todos reproducir, libremente, las constituciones, leyes, decretos, acuerdos municipales, reglamentos y demás actos públicos, bajo la obligación de conformarse estrictamente con la edición oficial. Los particulares también pueden publicarlos códigos y colecciones legislativas, con notas y comentarios, y cada autor será dueño de su propio trabajo.”

“Artículo 76

“La publicación del retrato es libre, cuando se relaciona con fines científicos, didácticos o culturales en general, o con hechos o acontecimientos de interés público, o que se hubieran desarrollado en público.”

“Artículo 35 Reglamento

“Por el carácter exclusivo de los derechos reconocidos al autor y demás titulares de derechos intelectuales, todas las excepciones contempladas en la Ley a esos derechos serán objeto de interpretación restrictiva y en respeto de los usos honrados.”

3.2. ¿Qué protección jurídica, y cuáles recursos jurídicos proporcionales a la ley contra la elisión de las medidas tecnológicas de protección eficaces?

“Artículo 62 Ley 8039

“Será sancionado con prisión de uno a tres años quien, en cualquier forma, altere, suprima, modifique o deteriore los mecanismos de protección electrónica o las señales codificadas de cualquier naturaleza que los titulares de derechos de autor, artistas, intérpretes o ejecutantes, o productores de fonogramas hayan introducido en las copias de sus obras, interpretaciones o fonogramas, con la finalidad de restringir su comunicación al público, reproducción o puesta a disposición del público.”

3.3. ¿Cuáles obligaciones se encuentran en la ley para la protección de “información sobre la gestión de derechos”?

“Artículo 63 Ley 803 9

“Será sancionado con prisión de uno a tres años quien altere o suprima, sin autorización, la información electrónica colocada por los titulares de los derechos de autor o conexos, para posibilitar la gestión de sus derechos patrimoniales y morales, demodo que puedan perjudicarse estos derechos.

La misma pena se aplicará a quien distribuya, importe con fines de distribución, emita o comunique al público, sin autorización, ejemplares de obras, interpretaciones o fonogramas, sabiendo que la información electrónica, colocada por los titulares de derechos de autor o conexos, ha sido suprimida o alterada sin autorización.”

3.4. De manera general ¿Cuáles son las medidas de observancia de derechos en la ley?

Los siguientes artículos son parte de la Ley 803 9

“Artículo 1: *Ámbito de aplicación*

“La violación de cualquier derecho sobre la propiedad intelectual establecido en la legislación nacional o en convenios internacionales vigentes, dará lugar al ejercicio de las acciones administrativas ejercidas ante el Registro de la Propiedad Industrial o el Registro Nacional de Derechos de Autor y Derechos Conexos y de las acciones judiciales ordenadas en la presente Ley, sin perjuicio de otras disposiciones del ordenamiento jurídico. Asimismo, esta Ley regulará la competencia del Tribunal Registral Administrativo en cuanto a las apelaciones de todos los registros del Registro Nacional.

La autorización del titular del derecho de propiedad intelectual será siempre expresamente por escrito.”

“Artículo 2: *Interpretación*

“En el examen judicial y administrativo de las lesiones causadas a los derechos consignados y protegidos en esta Ley, el juez, el Registro de la Propiedad Industrial o el Director del Registro Nacional de Derechos de Autor y Derechos Conexos podrá acudir a reglas de interpretación de las circunstancias de modo, tiempo y lugar de las acciones lesivas, de tal manera que las formalidades propias de los modos específicos de regular estos derechos no impidan la aplicación práctica de los supuestos legales de tutela a casos concretos.

En todo procedimiento administrativo, incoado ante el Registro de la Propiedad Industrial o el Registro Nacional de Derechos de Autor y Derechos Conexos, o proceso judicial, al aplicar las sanciones a la autoridad competente o a la autoridad de tutela, se tendrá en cuenta la proporcionalidad entre la conducta ilícita y el daño causado al bien jurídico tutelado.”

“Artículo3:Adopción demedidascautelares

“Antes de iniciar un proceso por infracción de un derecho de propiedad intelectual, durante su transcurso, en la fase de ejecución, la autoridad judicial competente, el Registro de la Propiedad Industrial o el Registro Nacional de Derechos de Autor y Derechos Conexos, según corresponda, adoptará las medidas cautelares adecuadas y suficientes para evitar la lesión grave y de difícil reparación al titular del derecho y garantizar, provisionalmente, la efectividad del acto final de la sentencia.

Una medida cautelar solo se ordenará cuando quien la pide acredite ser el titular del derecho o su representante. La autoridad judicial, el Registro de la Propiedad Industrial o el Registro Nacional de Derechos de Autor y Derechos Conexos, requerirá que quien solicite la medida otorgue garantías suficientes antes de que estas dicten para proteger al supuesto infractor y evitar abusos.”

“Artículo4:Proporcionalidad de la medida

“Toda decisión que resuelva la solicitud de adopción de medidas cautelares, deberá considerar tanto los intereses de terceros como la proporcionalidad entre los efectos de la medida y los daños y perjuicios que ella puede provocar.”

“Artículo5:Medidas

“Podrán ordenarse, entre otras, las siguientes medidas cautelares:

- a) El cese inmediato de los actos que constituyen la infracción;
- b) El embargo de las mercancías falsificadas o ilegales;
- c) La suspensión del despacho aduanero de las mercancías, materiales o medios referidos en el inciso b);
- d) La caución, por el presunto infractor, de una fianza u otra garantía suficiente.”

“Artículo6:Procedimiento

“La autoridad judicial, el Registro de la Propiedad Industrial o el Registro Nacional de Derechos de Autor y Derechos Conexos, dentro de las cuarenta y ocho horas después de presentada la solicitud de medida cautelar, deberá conceder audiencia a las partes para que, dentro del plazo de tres días hábiles, se manifiesten sobre la solicitud. Luego de transcurrido este plazo, el Registro de la Propiedad Industrial, el Registro Nacional de Derechos de Autor y Derechos Conexos o el tribunal competente procederá, con contestación si la hubiera, a resolver dentro de tres días lo procedente sobre la medida cautelar. La resolución tomada por el Registro de la Propiedad Industrial, el Registro Nacional de Derechos de Autor y Derechos Conexos o la autoridad judicial, deberá ejecutarse inmediatamente. El recurso de apelación no suspende los efectos de la ejecución de la medida. En los casos en que la audiencia a las partes pueda hacer

nugatorios los efectos de la medida, la autoridad judicial, el Registro de Derechos de Autor y Derechos Conexos o el Registro de la Propiedad Industrial, deberá resolver la procedencia de la solicitud de la medida cautelar en el plazo de cuarenta y ocho horas después de presentada.”

“Artículo 7: Medida cautelar sin participación del supuesto infractor

“Cuando se ejecute una medida cautelar sin haberlo sido previamente a la otra parte, el Registro de la Propiedad Industrial, el Registro Nacional de Derechos de Autor y Derechos Conexos o la autoridad judicial competente la notificará a la parte afectada, dentro de los tres días hábiles después de la ejecución. La parte afectada podrá recurrir la medida ejecutada.”

“Artículo 8: Plazo para presentar denuncia o demanda.

“Si la medida cautelar se pide antes de incoarse el proceso y es adoptada, la parte promotora deberá presentar la demanda judicial en el plazo de un mes, contado a partir de la notificación de la resolución que la acoge. De no presentarse en tiempo la demanda, o bien, cuando se determine que no se infringió un derecho de propiedad intelectual, la medida cautelar se tendrá por revocada y la parte que la solicitó será responsable por los daños y perjuicios ocasionados, los cuales se liquidarán siguiendo el trámite de ejecución de sentencia.”

“Artículo 9: Daños y perjuicios

“Si la demanda judicial no se presenta a tiempo, o bien, si la medida cautelar es revocada o por cualquier otra causa se declara inefecto, quien pretenda tener derecho al resarcimiento por los daños y perjuicios causados con su ejecución, deberá solicitarlo, dentro del plazo de un mes, a quien conozca del proceso de base. De no solicitarlo en el período señalado o si no se acredita el derecho, se ordenará devolver la caución por los daños y perjuicios.

Para los supuestos aludidos en el párrafo anterior, cuando la medida cautelar se origine en una decisión administrativa, la parte afectada deberá acudir a la vía judicial para demandar la indemnización por los daños y perjuicios que se le hayan ocasionado con la ejecución de la medida.”

“Artículo 10: Aplicación de medidas en frontera

“Cuando se requiera aplicar una medida cautelar en el momento del despacho aduanero de las mercancías falsificadas o ilegales, la decisión administrativa del Registro de la Propiedad Industrial, el Registro Nacional de Derechos de Autor y Derechos Conexos o la decisión judicial que ordena la medida, deberá ser comunicada de inmediato a las autoridades aduaneras y a la parte demandada.”

“Artículo 11: Solicitud de medidas en frontera

“El titular de un derecho de propiedad intelectual que tenga conocimiento fundado sobre la llegada o el despacho de mercancías que infringen un derecho, podrá solicitar al Registro de la Propiedad Industrial, al Registro Nacional de Derechos de Autor y Derechos Conexos o a la autoridad judicial, que ordene a las autoridades aduaneras suspender el despacho. A todo titular de un derecho de propiedad intelectual protegido, o su representante, que solicite la suspensión del despacho de las mercancías, se le exigirá, como mínimo, que:

- a) Acredite ser el titular o el representante de un derecho de propiedad intelectual;
- b) Otorgue una garantía por un monto razonable, antes de que se dicte, para proteger al supuesto infractor y evitar abusos;
- c) Aporte la información y descripción de la mercancía lo más detallada posible, para que las autoridades de aduana puedan identificarla con facilidad.

Ejecutada la suspensión del despacho de mercancías, el Registro de la Propiedad Industrial, el Registro Nacional de Derechos de Autor y Derechos Conexos o las autoridades judiciales, lo notificarán inmediatamente al importador o exportador de las mercancías y al solicitante de la medida.”

“Artículo 12: Casos en que no aplican las medidas en frontera

“No habrá obligación de aplicar las medidas en frontera contenidas en este artículo siguiente:

- a) Las importaciones de mercancías puestas en el mercado nacional por el titular del derecho o con su consentimiento y las importaciones hechas por quienes están autorizados por el Estado o de acuerdo con las leyes del país, una vez que el titular del derecho o su representante la haya introducido lícitamente en el país o en el extranjero;
- b) Las cantidades de mercancías que constituyan parte de equipaje personal del pasajero.

“Artículo 13: Duración de la suspensión

“Si transcurrieren diez días hábiles contados desde que la suspensión se notificó al solicitante de la medida, sin que esté hay presentado demanda o sin que se haya recibido comunicación del Registro de la Propiedad Industrial, del Registro Nacional de Derechos de Autor y Derechos Conexos o de una autoridad judicial, de que se han tomado las medidas precautorias que prolonguen la suspensión del despacho, el Registro de la Propiedad Industrial, el Registro Nacional de Derechos de Autor y Derechos Conexos o el juez competente, notificará a las autoridades aduaneras para que la medida se levante y se ordene el despacho de las mercancías, si se han cumplido las demás condiciones requeridas.”

“Artículo 15: Inspección

“Unavez suspendido por las autoridades de aduanas el despacho aduanero de las mercancías, el Registro de la Propiedad Industrial, el Registro Nacional de Derechos de Autor y Derechos Conexos o la autoridad judicial, le permitirá inspeccionar las al titular del derecho o su representante, con el único fin de fundamentar sus reclamaciones. Al permitir la inspección y cuando sea pertinente, la autoridad aduanera podrá disponer lo necesario para proteger cualquier derecho de información no divulgada (secretos comerciales o industriales). Comprobada una infracción por el Registro de la Propiedad Industrial, el Registro Nacional de Derechos de Autor y Derechos Conexos o la autoridad judicial, y a solicitud del titular del derecho o su representante, las autoridades de aduana deberán informar el nombre y la dirección del consignador, del importador o exportador y del consignatario de las mercancías; además, la cantidad y descripción de las mercancías objeto de la suspensión.”

“Artículo 16: Actuación de oficio

“Cuando las autoridades aduaneras tengan suficientes motivos para considerar que se vulnera un derecho de propiedad intelectual, deberán actuar de oficio y retener el despacho de las mercancías, sea por que alud directamente a tales motivos, o bien, porque pueden generar confusión en el público consumidor. Dentro de las veinticuatro horas siguientes a la retención de las mercancías, las autoridades de aduana deberán denunciar, ante el Ministerio Público, la comisión de algún delito contemplado en la presente Ley. De lo contrario, la mercancía deberá ser devuelta y la autoridad aduanera será responsable por los daños y perjuicios ocasionados, de conformidad con las normas de la Ley General de la Administración Pública. En la medida de lo posible, las autoridades de aduana informarán al titular sobre los derechos que puedan estar infringiéndose.”

“Artículo 17: Destrucción y comisod de mercancías

“Al emitir la autoridad judicial una resolución que autorice destruir mercancías, deberá considerar los intereses de terceros, así como la proporcionalidad entre la gravedad de la infracción y la medida ordenada. En la resolución firmada por la autoridad judicial, podrá disponerse que las autoridades de aduana destruyan o eliminen las mercancías falsificadas o ilegales. Las autoridades de aduana no permitirán que las mercancías falsificadas o ilegales se reexporten en el mismo estado ni las someterán a ningún procedimiento aduanero distinto, hasta que la autoridad judicial competente se pronuncie sobre el destino o la destrucción de tales mercancías. Sin embargo, si el titular del derecho de propiedad intelectual infringido consiente a las mercancías, la autoridad judicial podrá ordenar en sentencia firme el comisod de dichas mercancías en favor del Estado, que deberá donarlas a programas de bienestar social. Antes de realizar el comisod deberán retirarse de las mercancías aquellos elementos que infringen los derechos de propiedad intelectual.”

“Artículo 18: Retención infundada

“Cuando hay a habido retención infundada de las mercancías, las autoridades judiciales condenarán en abstracto al demandante al pago por los daños y perjuicios causados al importador, al consignatario y al propietario de las mercancías; dicho pago será liquidado o en ejecución de sentencia.”

“Artículo 37: Medidas cautelares en procesos civiles

“Sin perjuicio de lo ordenado por el título IV, libro I del Código Procesal Civil, en todo proceso relativo a la protección de los derechos de titulares de propiedad intelectual, el juez podrá adoptar las medidas cautelares referidas en esta Ley.”

“Artículo 38: Procesos civiles

“Las pretensiones de los titulares de propiedad intelectual se tramitarán y decidirán mediante el proceso abreviado que manda el título II, libro II del Código Procesal Civil. Los casos de incompetencia de sede se tramitarán en la vía sumaria, según el Artículo 17 de la Ley de promoción de la competencia y defensa del consumidor, N° 7472, de 20 de diciembre de 1994.”

“Artículo 39: Pruebas bajo el control de la parte contraria

“Dentro del proceso abreviado o en los casos de incompetencia de sede, dentro del proceso sumario, cuando una parte haya identificado alguna prueba pertinente para sustanciar sus alegaciones y estas se encuentren bajo el control de la parte contraria, el juez estará facultado para ordenarle que la aporte. Si procede, esta prueba será presentada a condición de que se garantice la protección de la información no divulgada. Respecto de las patentes de procedimiento, salvo prueba en contrario, se tendrá que todo producto idéntico, producido sin el consentimiento del titular de la patente, se ha obtenido mediante el procedimiento patentado, si el producto obtenido por el procedimiento patentado es nuevo.”

“Artículo 40: Criterios para fijar daños y perjuicios

“Los daños y perjuicios ocasionados por infracciones civiles y penales contra esta Ley serán fijados por el juez, preferentemente con base en un dictamen pericial. A falta de dictamen pericial, no serán menores que el valor correspondiente a un salario base, fijado según el Artículo 2 de la Ley N° 7337, de 5 de mayo de 1993.

Entodocaso, y sin perjuicio del mínimo establecido, en la resolución por la cual se finalice la causa, debentomarse en consideración los beneficios que el titular habría obtenido de no haberse producido la violación, los beneficios obtenidos por el infractor, el precio, la remuneración o el regalía que el infractor hubiera obtenido que pagar al titular para la explotación lícita de los derechos violados.”

“Artículo 41: Decomiso y destrucción de mercancías en sentencia civil

“Apetición de parte de oficio, la autoridad judicial podrá dictar, interlocutoriamente o en sentencia, el decomiso de las mercancías falsificadas o ilegales objeto de la demanda, y su destrucción solo podrá dictarse en sentencia.”

“Artículo 42: Medidas cautelares en los procesos penales

“Además de las medidas cautelares regidas por el Código Procesal Penal, serán de aplicación, en los procesos penales, las medidas cautelares mencionadas en la presente Ley, en cuanto resulte incompatible.”

“Artículo 43: Acción penal

“El régimen procesal penal común regirá los procesos relativos a los delitos referidos en la presente Ley, cuya acción será pública en instancia privada.”

“Artículo 51: Representación o comunicación pública sin autorización de obras literarias o artísticas

“Será sancionado con prisión de uno a tres años quien represente o comunique al público obras literarias o artísticas protegidas, sin autorización del autor, el titular o el representante del derecho.”

“Artículo 52: Comunicación de fonogramas, videogramas o emisiones sin autorización

“Será sancionado con prisión de uno a tres años quien comunique al público fonogramas, videogramas o emisiones, incluidas las satelitales, protegidas por la Ley de derechos de autor y derechos conexos, N° 6683, de 14 de octubre de 1982, y sus reformas, sin autorización del autor, el titular o el representante del derecho, de modo que pueda resultar perjuicio.”

“Artículo 53: Inscripción registral de derechos de autor y obras

“Será sancionado con prisión de uno a tres años quien inscriba como suyos, en el Registro Nacional de Derechos de Autor y Derechos Conexos, obras literarias o artísticas, fonogramas o videogramas, interpretaciones o ejecuciones fijadas o emisiones, incluidas las satelitales, protegidas en la Ley de derechos de autor y derechos conexos, N° 6683, de 14 de octubre de 1982, y sus reformas, siendo derechos ajenos.”

“Artículo 54: Reproducción no autorizada de obras literarias o artísticas, fonogramas o videogramas

“Será sancionado con prisión de uno a tres años quien fije y reproduzca obras literarias o artísticas, fonogramas o videogramas protegidos, sin autorización del autor, el titular o el representante del derecho, de modo que pueda resultar perjuicio.”

“Artículo 55: Fijación, reproducción y transmisión de ejecuciones e interpretaciones protegidas

“Será sancionado con prisión de uno a tres años quien fije y reproduzca o transmita interpretaciones o ejecuciones protegidas, sin autorización del titular, de modo que pueda resultar perjuicio. La misma pena se aplicará a quien fije, reproduzca o retransmita emisiones protegidas, incluidas las satelitales, sin autorización del autor, el titular o el representante del derecho, de modo que pueda resultar perjuicio.”

“Artículo 56: Impresión de un número superior de ejemplares de una obra

“Será sancionado con prisión de uno a tres años el editor o impresor que reproduzca un número de ejemplares superior al número convenido con el autor de la obra, de modo que pueda resultar perjuicio.”

“Artículo 57: Publicación como propias de obras ajenas

“Será sancionado con prisión de uno a tres años quien publique como propias o como de otro autor, obras ajenas protegidas, alas cuales se le haya cambiado o suprimido el título o se le haya alterado el texto, de modo que pueda resultar perjuicio.”

“Artículo 58: Adaptación, traducción, modificación y compendios sin autorización de obras literarias o artísticas

“Será sancionado con prisión de uno a tres años quien adapte, transforme, traduzca, modifique o compile obras literarias o artísticas protegidas, sin autorización del titular, de modo que pueda resultar perjuicio. No serán punibles los compendios de obras literarias o de artículos de revista científica o técnicos que tengan fin didáctico, siempre cuando hayan sido elaborados sin fines de lucro e indiquen la fuente de donde se extrajó la información.”

“Artículo 59: Venta, ofrecimiento, almacenamiento, depósito y distribución de ejemplares fraudulentos

“Será sancionado con prisión de uno a tres años quien venda, ofrezca para la venta, almacene, distribuya, guarde en depósito, importe o exporte, ejemplares fraudulentos de una obra literaria o artística, fonograma o videograma, de modo que se afecten los derechos que la Ley de derechos de autor y derechos conexos, N° 6683, de 14 de octubre de 1982, y sus reformas, confiere al titular.”

“Artículo 60: Arrendamiento de obras literarias o artísticas, fonogramas o videogramas sin autorización del autor

“Será sancionado con prisión de uno a tres años quien alquile o dé en arrendamiento obras literarias o artísticas, fonogramas o videogramas, sin autorización del autor, el titular o el representante del derecho, de modo que pueda resultar perjuicio.”

“Artículo 61: Fabricación, importación, venta y alquiler de aparatos y mecanismos descodificadores

“Será sancionado con prisión de uno a tres años quien fabrique, importe, venda u ofrezca para la venta, dé en arrendamiento o facilite un dispositivo o sistema útil para descifrar una señal de satélite portador de programas, sin autorización del distribuidor legítimo de esa señal, de modo que pueda resultar perjuicio a los derechos del distribuidor.”

“Artículo 62: Alteración, supresión, modificación de prioro de las defensas tecnológicas contra la reproducción de obras o la puesta a disposición del público

“Será sancionado con prisión de uno a tres años quien, en cualquier forma, altere, suprima, modifique o deteriore los mecanismos de protección electrónica de las señales codificadas de cualquier naturaleza que los titulares de derechos de autor, artistas, intérpretes o ejecutantes, o productores de fonogramas hayan introducido en las copias de sus obras, interpretaciones de fonogramas, con la finalidad de restringir su comunicación al público, reproducción o puesta a disposición del público.”

“Artículo 63: Alteración de información electrónica colocada para proteger derechos patrimoniales del titular

“Será sancionado con prisión de uno a tres años quien altere o suprima, sin autorización, la información electrónica colocada por los titulares de los derechos de autor o conexos, para posibilitar la gestión de sus derechos patrimoniales y morales, de modo que puedan perjudicarse estos derechos. La misma pena se aplicará a quien distribuya, importe con fines de distribución, emita o comunique al público, sin autorización, ejemplares de obras, interpretaciones de fonogramas, sabiendo que la información electrónica, colocada por los titulares de derechos de autor o conexos, ha sido suprimida o alterada sin autorización.”

“Artículo 70: Principio de lesividad e insignificancia

“Para cualquier de los artículos componentes del capítulo V de esta Ley, no correrá sanción alguna cuando los actos hayan sido cometidos sin fines de lucro o no lleguen a lesionar ni afectar, por su carácter de insignificancia, los intereses de los autores, los titulares de los derechos o sus representantes autorizados.”

“Artículo 71: Decomiso y destrucción de mercancías dictadas en sentencia penal

“A petición de parte o de oficio, la autoridad judicial podrá ordenar, interlocutoriamente o en la sentencia penal condenatoria, el decomiso de las mercancías falsificadas o ilegales, y la destrucción solo podrá dictarse en sentencia penal condenatoria.”

3.5. ¿Cómo define la ley la responsabilidad de los proveedores de servicio?

“Declaración Concertada del Artículo 8 WCT

“Queda entendido que el simple suministro de instalaciones físicas para facilitar o realizar una comunicación, e n sí mismo, no representa una comunicación en el sentido del presente Tratado o del Convenio de Berna. También queda entendido que nada de lo dispuesto en el Artículo 8 impide que una Parte Contratante aplique el Artículo 11 bis.2).”

3.6. ¿Existen algunas disposiciones en la ley relativas al almacenamiento temporal?

“Artículo 4

“Para los efectos de esta Ley se entiende por:

[...]

1) Reproducción: copia de obra literaria o artística o de una fijación visual o sonora, en forma parcial o total, en cualquier formato tangible, incluso cualquier almacenamiento permanente o temporal por medios electrónicos, aunque se trate de la realización bidimensional de una obra tridimensional o viceversa.

[...]”

3.7. ¿Existen algunas disposiciones expresas para asegurar que las disposiciones en contra de la elisión no restrinjan el funcionamiento de las limitaciones o excepciones a los derechos otorgados en la ley?

No existen ninguna disposición al respecto en la ley.

CROATIA

(Law Reviewed: Law of The Republic of Croatia”, No. 76/99“ Narodne Novine” No. 9/99, 76/99 and 127/99 ⁶)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

Not found in the Law reviewed.

1.2 Are computer programs protected in the Law as literary works?

“Article 3

“Unless otherwise provided in this Law, a creation in the literary, scientific or artistic field or in any other field of creation, whatever may be the kind, method or form of expression thereof, shall be considered an author’s work.

“The following, in particular, shall be considered authors’ works:

- written works of any kind, including computer programs;”

[...]”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 4

“Collection of author’s works, data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute individual intellectual creations shall as such, enjoy copyright protection.”

⁶ Article 140 of the Constitution of the Republic of Croatia provides that, international treaties that are concluded and ratified in compliance with the Constitution, being published, and in force, form part of the legal system of the Republic of Croatia, and override the law.

1.4 IstherearightofdistributionintheLaw?

“Article30

“Theauthorshallhavetheexclusiverighttoauthorizepublication, reproduction or multiplication of the work, putting into circulation the original or the copies of the work, including the importation thereof, the presentation, performance, alteration or the exploitation of the work in any other form, unless otherwise provided by this Law.

“Theexclusiverightofputtingintocirculationreferredtoinparagraph1ofthisArticle, shallbeexhaustedthroughthefirstsaleoftheoriginalorcopiesoftheauthor’sworkor throughanyothertransferofpropertyrightrelatingthereto, doneintheRepublicof Croatia,withtheauthor’sauthorization,concerningsuchoriginalorsuchcopyofthe work.

“Theprovisionreferredtoinparagraph2ofthisArticleshallnotprejudicetheauthor’s righttoauthorizeimportationoftheoriginalorcopiesoftheworkintoa particularState,unlessotherwiseprovidedforbytheinternationaltreatybindingthe RepublicofCroatia.”

1.5 IstherearightofrentalintheLaw, andifso, towhichworksdoesitapply?

“Article30a

“Theauthorsofthecomputerprograms, cinematographicworksandworksanalogousto themreferredtoinArticle3, paragraph2, subparagraph6, ofthisLaw, andoftheworks fixedonsoundcarriers (phonograms) shallhavetheexclusiverighttoauthorize the rentaloftheoriginalsorthe copiesofthoseworks.

“Theprovisionreferredtoinparagraph1ofthisArticleshallnotapplytotherentalof computerprogramsifthe programitselfisnotanessentialobjectoftherental.

“Theexclusiverightofrentalreferredtoinparagraph1ofthisArticleshallnotbe exhaustedwithrespecttotheoriginalorthe copiesoftheworkrespectively, whichhave beenputintocirculationwiththeauthor’s authorizationthroughsaleorinanyother way.”

1.6 IstherearightofcommunicationtothepublicintheLaw?

“Article31

“Authorsofdramatic, dramatico -musicalandmusicalworksshallhavetheexclusive righttoauthorize:

“[...]”

“2. thecommunicationtothepublicoftheperformanceofsuchworksbyany means.

“The author shall have the exclusive right to authorize:

- “1. the broadcasting of his work or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
- “2. any communication to the public, whether by wire or not, of the broadcast of his work, where such communication is made by an organization other than the one which originally broadcast it;
- “3. the communication to the public by loudspeaker or any other similar instrument transmitting, by signs, sounds or images, the broadcast of his work..”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

Not found in the Law reviewed.

1.8 Are photographic works given the same duration of protection as other works in the Law?

Not found in the Law reviewed.

1.9 What is the effective time-frame for a application of the rights in the Law?

Not found in the Law reviewed.

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 101

“For the purposes of this Law, performers are individuals and groups that in an artistic manner present, recite, declaim, sing, play, dance or in any other way perform literary or musical and other artistic works.”

2.1.2 Is “phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.3 Is ‘fixation’ defined in the Law?

Not found in the Law reviewed.

2.1.4 Is “producer of a phonogram” defined in the Law?

“Article 120a

“Producer of phonograms shall be considered the person who first fixes the sounds of a performance or other sounds.”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.6 Is “broadcasting” defined in the Law?

“Article 120b

“Broadcasting is, within the meaning of this Law, any transmission by wire or wireless means or by satellite intended for the public reception of sounds, or of images and sounds, or the representation thereof, including the transmission by the encrypted satellite signal where the means for decrypting such a signal are provided to the public by the broadcasting organization or with its authorization.”

2.1.7 Is “communication to the public” defined in the Law?

Not found in the Law reviewed.

2.2 Is the concept of “national treatment” contained in the Law?

“Article 102

“The performer who is a national of the Republic of Croatia, or a foreign national who has a usual residence in the Republic of Croatia, shall enjoy the rights provided by this Law in respect of his performances given or used in the Republic of Croatia or abroad.

“The performer who is a foreign national or stateless shall enjoy the rights in respect of his performances given or used in the Republic of Croatia, pursuant to this Law within the framework of the obligations which the Republic of Croatia has assumed under international treaties or on the basis of *de facto* reciprocity.”

“Article 120a

“Foreign producers of phonograms shall have the rights prescribed by this Law within the framework of the obligations assumed by the Republic of Croatia under international treaties or on the basis of the de facto reciprocity.”

2.3 Do performers have moral rights in the Law?

“Article 103

“The moral rights referred to in the first paragraph of this Article shall be understood to be the performer’s right to have his name or pseudonym mentioned on any communication of his performance to the public, and also on any recording or on the cover of any recording thereof, and his right to object to any distortion, mutilation or other alteration of his performance, to the use and distribution of his recorded performance if the recording has technical or other defects, and also to improper use of recordings that are prejudicial to his honor and reputation.”

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones?

Not found in the Law reviewed.

2.5 Do performers have a right of reproduction in the Law?

“Article 104

“If not otherwise provided by this Law, the performer has the exclusive right to authorize:

“[...]

“4) direct or indirect reproduction of his fixed performance in its entirety or in parts;

[...]”

2.6 Do performers have a right of distribution in the Law?

“Article 104

“If not otherwise provided by this Law, the performer has the exclusive right to authorize:

“[...]

“5) putting into circulation of the original or the copies of his fixed performance including the importation and the rental thereof.”

2.7 Do performers have a right of rental in the Law?

“Article 104

“If not otherwise provided by this Law, the performer has the exclusive right to authorize:

“[...]”

“5) putting into circulation of the original or the copies of his fixed performance including the importation and the rental thereof.”

2.8 Do performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 120a

“If not otherwise provided by this Law, producers of phonograms shall have the exclusive right of giving authorizations for:

“1) the direct or indirect reproduction, in whole or in part, of their phonograms;

“[...]”

2.10 Do producers have a right of distribution in the Law?

“Article 120a

“If not otherwise provided by this Law, producers of phonograms shall have the exclusive right of giving authorizations for:

“[...]”

“2) putting into circulation of the original or copies of their phonograms, including the importation and rental thereof;

[...]”

2.11 Do producers have a right of rental in the Law?

“Article 120a

“If not otherwise provided by this Law, producers of phonograms shall have the exclusive right of giving authorizations for:

[...]

- 2) putting into circulation of the original or copies of their phonograms, including the importation and rental thereof;

[...]”

2.12 Do producers have a right of making available of phonograms in the Law?

Not found in the Law reviewed.

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 120

“Producers of phonograms shall also have the right to remuneration in the case where the phonogram which is put into circulation is used for the radio or television broadcast or for other communication to the public (secondary use).

[...]”

2.14 Are rights in the Law subject to any formalities?

Not found in the Law reviewed.

2.15 What is the term of protection for:

2.15.1 performers?

“Article 113

“The term of the economic rights of performers provided for in this Law shall be fifty years, counted:

1. for recorded performances, from the end of the year in which they were recorded;
2. for unrecorded performances, from the end of the year in which they were given.”

2.15.2 producers of phonograms?

“Article 120

“[...]”

“The rights of the producers of phonograms shall last for fifty years, counting from the end of the year in which the phonogram was published, and if it has not been published, from the end of the year in which the fixation took place.”

2.16 What is the effective time-frame for application of rights in the Law?

Not found in the Law reviewed.

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 47

“The following shall be permissible in the territory of the Republic of Croatia without the authorization of the author:

1. the publication and reproduction of excerpts from a literary, scientific or artistic work for teaching purposes;
2. the reprinting in periodical publications of articles dealing with current matters of general public interest, provided that the reproduction of such articles has not been expressly prohibited by the author;
3. the reproduction in newspapers and periodical publications of single photographs of current events, illustrations, technical sketches, and the like, published in other newspapers and periodical publications;
4. the reproduction of artistic works exhibited in streets and squares, unless the reproduction of a work of sculpture has been obtained by means of a mould;
5. the publication, by means of photography, of works of sculpture and painting and works of architecture in newspapers and reviews, unless the author has expressly prohibited it.

“The provisions of the first paragraph of this Article shall, *mutatis mutandis*, apply to publication and reproduction in the daily and periodical press, in films, in newsreels and by means of broadcasting.

“In all the cases referred to in the first paragraph of this Article, the author’s full name, the original work and the origin of the borrowing must be clearly indicated.

“In the cases referred to in the first paragraph of this Article, the author shall have the right to remuneration and all other rights vested in him under this Law.”

“Article 48

“The following shall be permissible in the territory of the Republic of Croatia without the authorization of the author and without the payment of remuneration for use:

1. the performance of a literary or artistic work for the purposes of teaching or in the form thereof, provided that such performance involves no entrance fee or other form of payment or is given on the occasion of school celebrations where attendance is free of charge;
2. the publication of reviews of published literary, artistic or scientific works, where in the content of such works is reproduced in an original and abridged manner;
3. the public exhibition of works, except those the exhibition of which is prohibited by the author, provided that he has not renounced this right by a contract;
4. the reproduction of works already published, effected for purposes of improving one’s personal knowledge, provided that such reproduction is neither intended for nor accessible to the public;
5. the reproduction of works of painting by means of sculpture and *vice versa*, as well as the reproduction of works of architecture by means of painting or sculpture;
6. the faithful quotation of excerpts from a work that in a lawful way became available to the public, under the condition that it is in compliance with customary usage and in the measure justified by the purpose to be achieved, and that in the quotation, the source and the name of the author, if available in the source, are indicated.
7. the reproduction or adaptation, by the user, of copies of a computer program with a view to use for the purposes for which the program has been acquired, for archiving and for replacement of a lost, damaged or worn -out copy.

“In the cases referred to in the first paragraph of this Article, the author shall retain all other rights vested in him by this Law.

“Article 49

“Speeches intended for the public and made in the Parliament of the Republic of Croatia and in the bodies of local government and self-government, before courts and other

State authorities, in scientific, artistic and other organizations, as well as at public meetings and official celebrations, may, without the authorization of the author and without the payment of remuneration for their use, be made public by the press and radio or television for purposes of reporting current events.

“Other lectures, addresses and other works of the same nature may, without the authorization of the author and without the payment of remuneration for their use, only be reported briefly in the daily and periodical publications and by broadcasting.

“A collection of the works mentioned in the first and second paragraphs of this Article may not be compiled without the authorization of the author.

“In the cases provided for in the first and second paragraphs of this Article, the author shall retain all other rights vested in him by this Law.

“Article 50

“Remuneration shall be paid for the exploitation of creations of folk literature and art by means of public performance as for public performance of authors’ works. The remuneration shall be the revenue of the government budget.

“The exploitation of creations of folk literature and art in any other form shall be free.

“Persons who exploit creations of folk literature and art must indicate the origin of the work and abstain from any mutilation or any unworthy use thereof.

“The corresponding associations of authors and the Croatian Academy of Arts and Sciences shall be entrusted with the safeguarding of the rights referred to in the third paragraph of this Article.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

Not found in the Law reviewed.

3.3 What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4 Generally, what measures for enforcement of rights are in the Law?

“Article 95

“Any person whose authors’ rights, whether economic or moral, have been infringed may demand the protection of such rights and claim damages for the harms suffered by the infringement.”

“Article 96

“At the request of the plaintiff, the court may order in its decision:

1. that the defendant be prohibited to continue his infringement of copyright;
2. that the objects by means of which the infringement of the copyright was committed be destroyed or modified;
3. that the judgment be published at the expense of the defendant.”

“Article 97

“On the proposal of the author, or other copyright holder, or their association, or other legal entity specialized for the administration of copyrights, whereby it is made likely that the concerned copyright was infringed or that the infringement is imminent, the court may order:

- 1) the provisional seizure or withdrawal from circulation of articles or means respectively, infringing the copyright, or used for the infringement thereof, or which resulted from the infringement of the copyright, or which may be used as evidence of the infringement thereof;
- 2) the prohibition of the continuation of activities already started that would infringe copyright or the prohibition of the continuation of activities infringing it.

“If there is a likelihood that the later provision of evidence on infringement of copyright could be difficult or impossible, or if there is a likelihood of irreparable damage, or if there is a likelihood that the provisional measures laid down in paragraph 1 of this Article would not be effective, the court shall order such measures, without the prior notification of the other party to that effect.

“The procedure concerning the proposal for ordering provisional measures shall be urgent.

“The corresponding provisions of the Law on Enforcement shall be applied to any matter concerning the ordering of provisional measures, not regulated by this Law.”

“Article 125

“Any legal entity shall be punished for a misdemeanor by a fine amounting from 5.000,00 up to 50.000,00 kunas if:

- 1) without the author’s authorization, and under its own name or under the name of another publishes, presents, performs, transmits or otherwise communicates to the public somebody else’s work or allows it to be done (Article 27);

- 2) without the author's authorization destroys, deforms, distorts or otherwise modifies the author's work, without the author's authorization, or uses it in a manner which is offensive to the author's honor or reputation (Article 27);
- 3) without indicating the name or the pseudonym of the author, except where the author wants to be anonymous, publishes, presents, performs or otherwise communicates to the public his work (Article 28);
- 4) without the authorization of the author or other holder of copyright, the association of authors or other legal entity specialized for the administration of copyrights referred to in Article 90, paragraph 1 of this Law, where such authorization is required under the provisions of this Law, or, contrary to their prohibition, publishes, reproduces or multiplies, imports or distributes the original or the copies of the work, presents, performs, fixes on a material surface, broadcasts, communicates through mass media, translates, adapts, arranges, or otherwise alters the author's work or uses it in any other form (Article 30);
- 5) without the authorization of the author or other holder of copyright, the association of authors or other legal entity specialized for the administration of copyrights referred to in Article 90, paragraph 1 of this Law, where such authorization is required under the provisions of this Law, or, contrary to their prohibition rents the original or the copies of the computer program, the cinematographic and analogous work or of the work embodied in the phonogram (Article 30a).

“The responsible person in a legal entity shall be also punished for the misdemeanor referred to in paragraph 1 of this Article by a fine amounting from 5.000,00 up to 50.000,00 kunas.

“If the misdemeanor referred to in paragraph 1 of this Article has been committed by a natural person, she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas.”

“Article 126

“A legal entity shall be punished for a misdemeanor by a fine amounting from 5.000,00 up to 50.000,00 kunas if it:

- 1) without the performer's authorization, and under its name or under the name of another, publishes, presents, performs, transmits or otherwise communicates to the public somebody else's performance or allows it to be done (Article 103, paragraph 3);
- 2) without indicating the name or the pseudonym of the performer, except where the performer wants to be anonymous, publishes, presents, transmits or otherwise communicates to the public his performance (Article 103, paragraph 3);
- 3) without the performer's authorization, destroys, deforms, distorts, or otherwise modifies his fixed performance, or uses it in a manner which is offensive to the performer's honor or reputation (Article 103, paragraph 3);

4) without the authorization of the performer or other holder of the performer's right, the association of performers, or other legal entity specialized for the administration of the performers' rights referred to in Article 116, paragraph 1 of this Law, where such authorization is required under the provisions of this Law, or, contrary to their prohibition, broadcasts or communicates the performance to the public, fixes the performance, reproduces the fixed performance, imports, distributes or rents the original or copies of the fixed performance (Article 104);

“The responsible person in a legal entity shall be also punished for the misdemeanor referred to in paragraph 1 of this Article by a fine amounting from 5.000,00 up to 50.000,00 kunas.

“If the misdemeanor referred to in paragraph 1 of this Article has been committed by a natural person, she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas.”

“Article 126a

“A legal entity, which without the authorization of the producer of a phonogram, where such authorization is required under the provisions of this Law, or, contrary to their prohibition, reproduces, imports, distributes or rents the original or the copies of the phonogram (Article 120a, paragraph 2), shall be punished for a misdemeanor by a fine amounting from 5.000,00 up to 50.000,00 kunas;

“The responsible person in a legal entity shall be also punished for the misdemeanor referred to in paragraph 1 of this Article by a fine amounting from 5.000,00 up to 50.000,00 kunas.

“If the misdemeanor referred to in paragraph 1 of this Article has been committed by a natural person, she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas.”

“Article 126b

“The legal entity shall be punished for a misdemeanor by a fine amounting from 5.000,00 up to 50.000,00 kunas, if it:

- 1) without the authorization of the broadcasting organization, where such authorization is required under the provisions of this Law, or contrary to its prohibition, re-broadcasts or fixes its broadcast, reproduces the fixation of its broadcast or communicates to the public its television broadcast (Article 120b, paragraph 1);
- 2) without the authorization of the lawful distributor of the encrypted satellite signal manufacture or assembles, modifies, imports, exports, sells, rents or otherwise distributes a tangible or intangible device or system for decoding such a signal, if such a device or system is primarily used for decoding the encrypted satellite signal (Article 120b, paragraph 2);

3) receives an encrypted satellite signal that has been decoded without the authorization of its lawful distributor or further distributor such as signal (Article 120b, paragraph 2).

“The responsible person in a legal entity shall be also punished for the misdemeanor referred to in paragraph 1 of this Article by a fine amounting from 5.000,00 up to 50.000,00 kunas.

“If the misdemeanor referred to in paragraph 1 of this Article is committed by a natural person she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas.”

“Article 127

“A precautionary measure shall be ordered comprising the seizure of the objects intended or used for, or resulting from, the commitment of misdemeanors referred to in Articles 125, 126, 126 a and 126b, of this Law, irrespective of whether they are the property of the perpetrator or not.

“The decision relating to the misdemeanor referred to in paragraph 1 of this Article shall order the destruction of these seized objects.”

“Article 128

“A legal entity which doesn't submit complete information on the performance or on the presentation of the work to the association of performers or to other legal entity specialized for the administration of performers' rights (Article 94), shall be punished for a misdemeanor by a fine amounting from 3.000,00 up to 30.000,00.

“The responsible person in the legal entity shall be also punished for the misdemeanor referred to in paragraph 1 of this Article by a fine amounting from 3.000,00 up to 30.000,00 kunas.

“If the misdemeanor referred to in paragraph 1 of this Article is committed by a natural person she/he shall be punished by a fine amounting from 1.000,00 up to 5.000,00 kunas.”

“Article 129

“A legal entity which doesn't submit complete information on the use of the performance, or the copy of the performer's contract to the association of performers or to other legal entity specialized for the administration of performers' rights (Article 117), shall be punished for the misdemeanor by a fine amounting from 3.000,00 up to 30.000,00.

“Theresponsiblepersoninthelegalentityshallbealsopunishedforthemisdeemeanor referredtoinparagraph1ofthisArticle,byafineamountingfrom 3.000,00upto 30.000,00kunas.

“Ifthemisdemeanorreferredtoin paragraph1ofthisArticleiscommittedbyanatural personshe/heshallbepunishedbyafineamountingfrom1.000,00 upto 5.000,00 kunas.”

“Article129a

“Alegalentitywhichperformsstheactivityofadministeringcopyrights,performers’ rightsorr ightsoftheproducersofphonogramswithouttheauthorizationoftheOffice, orcontrarytoitsauthorization,(Article90,paragraph 1,andArticle116,paragraph1) shallbepunishedforamisdemeanorbyafineamountingfrom5.000,00upto 50.000,00kunas.

“Theresponsiblepersoninallegalentityshallbealsopunishedforthemisdeemeanor referredtoinparagraph1ofthisArticle,byafineamountingfrom5.000,00upto 50.000,00kunas.

“Ifthemisdemeanorreferredtoinparagraph1ofthisArticle hasbeencommittedbya naturalperson,she/heshallbepunishedbyafineamountingfrom1.000,00 upto 5.000,00kunas.”

“Article129b

“AlegalentitywhichcommitsthemisdemeanorreferredtoinArticles125,126,126a, 126b,128,129and129aofth isLawforthepurposeofacquiringfinancialgain,shallbe punishedbyafineamountingfrom20.000,00upto200.000,00 kunas.

“Theresponsiblepersoninallegalentityshallbealsopunishedformisdemeanors referredtoinparagraph1ofthisArticle, byafineamountingfrom20.000,00upto 200.000,00kunas.

“Ifthemisdemeanorreferredtoinparagraph1ofthisArticleiscommittedbyanatural personforthepurposeofacquiringfinancialgain,she/heshallbepunishedbyafine amountingfrom5.000 ,00upto20.000,00kunas.”

3.5 HowdoesthelawdefinetheliabilityoftheInternetserviceproviders?

NotfoundintheLawreviewed.

3.6 ArethereanyprovisionsintheLawontemporarystorage?

NotfoundintheLawreviewed.

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

CZECHREPUBLIC

(Law Reviewed: Law No. 121/2000 Coll. of 7 April 2000, on Copyright, Rights Related to Copyright and on the Amendment of Certain Laws (Copyright Act))

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Article 2: The Work

“[...]

“(6) For the purpose of the Copyright Act work shall not mean, namely, the subject of the work as such, the news of the day and any other fact as such, an idea, procedure, principle, method, discovery, scientific theory, mathematical and similar formula, statistical diagram and similar item as such.”

1.2 Are computer programs protected in the Law as literary works?

“Article 2: The Work

“(1) The subject of copyright shall be a literary work or other work of art or a scientific work which are the unique outcome of the creative activity of the author and are expressed in any objectively perceivable manner including electronic form, permanent or temporary, irrespective of their scope, purpose or significance (henceforth referred to as “work”). A work shall be namely a literary work expressed by speech or in writing, a musical work, a dramatic work or dramatico-musical work, a choreographic work and pantomimic work, a photographic work and a work produced by a process similar to photography, an audiovisual work like a cinematographic work, a work of fine arts like a painting, graphic or sculptural work, an architectonic work including a town-planning work, a work of applied art, and a cartographic work.

“(2) A computer program shall also be considered a work if it is original in the sense of being the author’s own intellectual creation; a database shall be considered a work if due to the manner of its selection or arrangement of its content it is the author’s own intellectual creation; a photograph which is original in the sense of the first clause shall be protected as a photographic work.”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 2: The Work

“(1) The subject of copyright shall be a literary work or other work of art or a scientific work which are the unique outcome of the creative activity of the author and are

expressed in any objectively perceivable manner including electronic form, permanent or temporary, irrespective of their scope, purpose or significance (henceforth referred to as “work”). A work shall be namely a literary work expressed by speech or in writing, a musical work, a dramatic work or dramatico-musical work, a choreographic work and pantomimic work, a photographic work and a work produced by a process similar to photography, an audiovisual work like a cinematographic work, a work of fine arts like a painting, graphic or sculptural work, an architectonic work including a town-planning work, a work of applied art, and a cartographic work.

“(2) A computer program shall also be considered a work if it is original in the sense of being the author’s own intellectual creation; a database shall be considered a work if due to the manner of its selection or arrangement of its content it is the author’s own intellectual creation; a photograph which is original in the sense of the first clause shall be protected as a photographic work.”

“(5) A collection like a journal, encyclopaedia, anthology, literary and other programme, exhibition, or other database (Art. 88), which is a collection of independent works or other elements that by reason of their selection and of the arrangement of the content constitute a unique outcome of the creative activity of the author, is a work of collection.”

1.4 Is there a right of distribution in the Law?

“Article 12: The right to use the work

“(1) The author shall have the right to use his work and to grant by contract authorisation to another person to exercise this right; the other person may use the work without such consent only in the cases stipulated by this Act.

“[...]

“(4) The right to use a work shall mean:

[...]

b) right of distribution of the original or a copy of the work (Art. 14).”

“Article 14: Distribution

“(1) The right to distribute the original or copies of the work shall mean making the work available in a tangible form by sale or other transfer of property right to the original or to the copies of the work, including their offer for such purpose.

“(2) The first sale or other transfer of property right to the original or a copy of the work, by which the work is distributed lawfully on the territory of the Czech Republic, shall exhaust the author’s right to distribute such original or a copy of the work on the territory of the Czech Republic; the right of rental and the right of lending of the work shall remain unaffected.”

1.5 IstherearightofrentalintheLaw,andifso,towhichworksdoesitapply?

“Article12:Therighttousethework

“(1) Theauthorshallhavetherighttousehisworkandtograntbycontract authorisationtoanotherpersontoexerciseth isright;theotherpersonmayusethe work withoutsuchconsentonlyinthecasesstipulatedbythisAct.

“[...]

“(4) Therighttouseaworkshallmean:

[...]

c) rightofrentaloftheoriginaloracopyofthework(Art.15).

“Article15:Rental

“Therentaloftheoriginaloracopyoftheworkshallmeanmakingtheworkavailable forthepurposeofdirectorindirecteconomicorcommercialadvantagebyprovidingthe originaloracopyoftheworkforalimitedperiodoftimeforpersonaluse.”

1.6 IstherearightofcommunicationtothepublicintheLaw?

“Article12:Therighttousethework

“(1) Theauthorshallhavetherighttousehisworkandtograntbycontract authorisationtoanotherpersontoexercisethisright;theotherperson mayusethe work withoutsuchconsentonlyinthecasesstipulatedbythisAct.

“[...]

“(4) Therighttouseaworkshallmean:

“[...]

“f) rightofcommunicationoftheworktothepublic(Art.18),namely:

1. therightofperformingliveorfromafixati on,andtherightof transmittingthepformanceofthework(Art.19and20);
2. therightofbroadcastingthework(Art.21);
3. therightofrebroadcastingandretransmittingofthebroadcastofthe work(Art.22);
4. therightofperformingofthe broadcastofthework(Art.23).”

“Article 18: Definition

“(1) The communication of the work to the public shall mean making the work available in an intangible form, live or from a recording, by wire or wireless means.

“(2) The communication of the work to the public pursuant to paragraph (1) shall mean also making the work available in such a way that members of the public may access to the work from a place and at a time individually chosen by them, especially by using a computer or similar network.

“(3) The communication of the work to the public shall not mean the mere operation of a facility enabling or facilitating such communication.

“Article 19: Live performance of the work and its transmission

“(1) The live performance of the work shall mean making available the work performed live by a performer, especially of live recited literary work, live performed musical work with or without words or of a dramatic or dramatico-musical, choreographic or pantomimic work performed live on stage.

“(2) The transmission of the live performance of a work shall mean making simultaneously available the live performance of the work by the means of a loudspeaker, screen or similar device located beyond the space of the live performance, with the exception of the uses of the work pursuant to Articles 21 to 23.”

“Article 20: Performance of the work from a recording and its transmission

“(1) The right to perform the work from a recording shall mean making the work available from an audio or audiovisual recording by means of a technical device, with the exception of the uses of the work in accordance with Articles 21 to 23.

“(2) Transmission of a performance of the work from a recording shall mean making the work available simultaneously by means of a loudspeaker, screen or similar device located beyond the space of the live performance.”

“Article 21: Broadcasting

“(1) Broadcasting the work shall mean making the work available by means of radio or television and other making of the work available by any other means designated for the communication by wire or over the air of sounds, or of sounds and images, or their expression by wire or wireless means including communication by cable or broadcasting by satellite, by the original broadcaster.

“(2) Broadcasting by satellite pursuant to paragraph (1) shall mean the introduction, under the control and responsibility of the broadcasting organization, of sounds, or of sounds and images, or of their expressions intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth.

“(3) Where the signals carrying signs, sounds or images are encrypted, the broadcasting shall fall within the definition pursuant to paragraph (1) if the broadcaster has facilitated, or has given consent to the facilitation of public access to decrypting devices.

“(4) Simultaneous, unabridged and unaltered cable retransmission of the broadcast executed by the same broadcasters shall also be regarded as broadcasting of the work in accordance with paragraph (1).

“(5) Broadcasting the work by satellite occurs on the territory of the Czech Republic if the signals carrying sounds, or sounds and images, or their expression intended for reception by the public are introduced under the control and responsibility of the broadcaster into an uninterrupted chain of communication leading to the satellite and down towards the earth.

“(6) Broadcasting the work by satellite shall be deemed to have occurred in the Czech Republic if the signals carrying sounds, or sounds and images, or their expression intended for reception by the public are introduced under the control and responsibility of the broadcaster into an uninterrupted chain of communication leading to the satellite and down towards the earth on the territory of a state which does not provide a level of copyright protection comparable or higher than that provided by this Act, where the transmission is executed by an uplink station situated in the Czech Republic. In such case, rights provided for under this Act shall be exercisable against the person operating the uplink station.

“(7) Broadcasting the work by satellite shall be deemed to have occurred in the Czech Republic also in the case when the signals carrying sounds, or sounds and images, or their expression intended for reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth on the territory of a state which does not provide a level of copyright protection comparable or higher than that provided by this Act, when commissioned by a broadcaster whose governing bodies have their principal establishment in the Czech Republic, when such comparable protection is not already provided on the territory of the state where the uplink station from which the transmission is being executed, is located. Rights ensuing from this Act shall be exercisable in such case against the broadcaster.”

“Article 22: Rebroadcasting and retransmitting of the broadcast

“(1) The rebroadcasting and retransmitting of the broadcast of the work shall mean making the work available by the simultaneous, unabridged and unaltered transmission of the broadcast of the work by radio or television, over the earth or by wire, if this is executed by a different entity than the original broadcaster of such broadcast.

“(2) Cable retransmission of the broadcast of the work shall mean the radio or television broadcasting of the work in accordance with paragraph (1) if it is executed by cable or microwave system, executed by a different entity than the original broadcaster of such broadcast. The provision of Article 21 paragraph (3) shall apply analogously.”

“Article 23: Performing of the broadcast

“The performing of the radio or television broadcast of the work shall mean making such broadcast work available by means of a device technically capable of receiving the broadcasting.”

1.7 Is a right of making available to the public of works in such a way that members of the public might access the works from a place and at a time individually chosen by them, contained in the Law?

“Article 12: The right to use the work

“(1) The author shall have the right to use his work and to grant by contract authorisation to another person to exercise this right; the other person may use the work without such consent only in the cases stipulated by this Act.

“[...]

“(4) The right to use a work shall mean:

[...]

f) right of communication of the work to the public (Art. 18), namely [...]

“Article 18: Definition

“(1) The communication of the work to the public shall mean making the work available in an intangible form, live or from a recording, by wire or wireless means.

“(2) The communication of the work to the public pursuant to paragraph (1) shall mean also making the work available in such a way that members of the public may access to the work from a place and at a time individually chosen by them, especially by using a computer or similar network.

“(3) The communication of the work to the public shall not mean the mere operation of a facility enabling or facilitating such communication.”

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Article 2: The Work

“(1) The subject of copyright shall be a literary work or other work of art or a scientific work which are the unique outcome of the creative activity of the author and are expressed in any objectively perceivable manner including electronic form, permanent or temporary, irrespective of their scope, purpose or significance (henceforth referred to as ‘work’). A work shall be namely a literary work expressed by speech or in writing, a musical work, a dramatic work or dramatico-musical work, a choreographic work and

pantomimic work, a photographic work and a work produced by a process similar to photography, an audiovisual work like a cinematographic work, a work of fine arts like a painting, graphic or sculptural work, an architectonic work including a town -planning work, a work of applied art, and a cartographic work.”

“Article 27: Duration of economic rights:

“(1) Unless stipulated otherwise, economic rights shall run for the life of the author and for 70 years after his death.”

1.9 What is the effective time -frame for application of the rights in the Law?

“Article 106: Transitional provisions

“(1) This Act shall govern legal relations established as of the date on which this Act comes into force. Legal relations in effect hitherto, and the rights and obligations arising from such legal relations, as well as the rights arising from liability for breach of contracts concluded before the date on which this Act comes into effect, shall be governed by provisions in effect before that date.

“(2) Provisions in effect before the date on which this Act comes into effect shall be applied in the judgement of all terms which have started running before the date on which this Act came into effect, as well as of terms for the application of rights which, pursuant to paragraph (1), shall be governed by provisions in force hitherto, even where such terms start running after the date of the coming into force of this Act.

“(3) The period of duration of economic rights shall be governed by this Act also where the term started before this Act came into effect. Where the term of duration of the right has expired before the date on which this Act comes into effect, the term shall be renewed as from the date on which this Act comes into effect for the remaining period. Reproductions of items of protection for which the term of duration of economic rights is being renewed, lawfully acquired before the date of the coming into effect of this Act, may however continue to be freely disseminated for a further two years after this Act comes into effect.

“(4) In accordance with this Act, protection shall be extended also to items protected by copyright which have not been hitherto protected according to existing provisions (Article 1b) items 3, 5 and 6 and Article 2 paragraph (2)), or whose content of protection is different than that defined by this Act. The National Film Archives shall be deemed to be the producer of any Czech audio -visual recording of a work made public in the period between January 1, 1950 and December 31, 1964. The State Fund of the Czech Republic for the Promotion and Development of Czech Cinematography which, in compliance with special legal provisions exercises the copyright to audio -visual recordings of audio -visual works made public in the period between January 1, 1965, and December 31, 1991, shall be deemed to be the producer of such works.

“(5) The provision of paragraph (4) shall not prejudice the right of the National Film Archive to manage the original carrier of the recording of an audio -visual work.

“(6) The provision of paragraph (4) first clause shall be applied appropriately where the works are databases pursuant to the provisions of Article 88, but only if they had been made not earlier than 15 years before the coming into effect of this Act.

“(7) Authorisation to execute collective administration, granted in compliance with legal provisions in effect hitherto, shall be considered authorization to execute collective administration of rights in accordance with this Act. The content and scope of such authorizations shall be brought into compliance with this Act by the Ministry which will issue, within 90 days from the date on which this Act comes into effect, new authorizations to the relevant persons.

“(8) Administrative proceedings started before the coming into effect of this Act shall be brought to conclusion in compliance with this Act.”

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performance” or “performers” defined in the Law?

“Article 67: Artistic performance and the performer

“(1) An artistic performance is the performance of an actor, singer, musician, dancer, conductor, choir master, director or other person who acts, sings, recites, presents or otherwise performs an artistic work including works of traditional folk culture. The performance of an artiste, although he does not perform an artistic work, shall also be deemed an artistic performance.

“(2) A performer is the natural person who has created the artistic performance.”

2.1.2 Is “phonogram” defined in the Law?

“Article 75: The phonogram and its producer

“(1) A phonogram is the fixation perceivable, exclusively, by hearing of the sounds of the performance of the performer or of other sounds, or of their expression.”

2.1.3 Is “fixation” defined in the Law?

Not found in the Law reviewed.

2.1.4 Is “producer of a phonogram” defined in the Law?

“Article 75: The phonogram and its producer

“[...]

“(2) The phonogram producer is the natural person or legal entity who, on his own responsibility, has fixed for the first time the sounds of the performance of the performer, or other sounds, or their expression, or who has had such fixation made by a third party.”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Article 4: The making public and publication of a work

“(1) A work is made public by its first authorised public recitation, performance, showing, exhibition, publication or other manner of making available to the public.

“(2) A work is published by the start of authorised public distribution of its reproductions.”

“Article 74: Application of the provisions of Title I

“The provisions of Article 2 paragraph (3), Articles 4, 6, and 7, Article 9 paragraphs (1) to (4), Article 11 paragraphs (4) and (5), Article 12 paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Articles 25 and 26, Article 27 paragraph (7), Article 28 paragraph (1), Article 29, Article 30 paragraphs (1), (2), (4) and (5), Article 31, Article 34 paragraph (1) a) and b), Article 35, Article 37 paragraph (1), Article 38 paragraphs (1) and (2), Articles 40 to 44, Articles 46 to 48, Article 49 paragraphs (1) to (5), Articles 50, 51, 53 to 55, 57 and Article 64 paragraphs (1) and (3), shall apply appropriately also to performer and his performances.”

“Article 78: Application of the provisions of Title I

“The provisions of Article 2 paragraph (3), Article 4, Article 6, Article 9 paragraphs (2) to (4), Article 12 paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Article 25, Article 27 paragraph (7), Article 28 paragraph (1), Article 29, Article 30 paragraphs (1), (2), (4) and (5), Article 31, Article 34 paragraph (1) a) and b), Article 35 paragraphs (1) and (4), Article 37 paragraph (1), Article 38 paragraphs (1) and (2), Articles 40 to 44, Articles 46 to 48, Article 49 paragraphs (1) to (5), Articles 50, 51, 55 and 57 shall apply analogously to the phonogram producer and his phonogram.”

2.1.6 Is “broadcasting” defined in the Law?

“Article 83: Broadcasting and the broadcaster

“(1) Broadcasting shall mean the result of the dissemination of sounds, or of images and sounds, or of their expression by means of radio or television for reception by the public.”

2.1.7 Is “communication to the public” defined in the Law?

“Article 18: Definition

“(1) The communication of the work to the public shall mean making the work available in an intangible form, live or from a recording, by wire or wireless means.

“(2) The communication of the work to the public pursuant to paragraph (1) shall mean also making the work available in such a way that members of the public may access to the work from a place and at a time individually chosen by them, especially by using a computer or similar network.

“(3) The communication of the work to the public shall not mean the mere operation of a facility enabling or facilitating such communication.

“Article 74: Application of the provisions of Title I

“The provisions of Article 2 paragraph (3), Articles 4, 6, and 7, Article 9 paragraphs (1) to (4), Article 11 paragraphs (4) and (5), Article 12 paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Articles 25 and 26, Article 27 paragraph (7), Article 28 paragraph (1), Article 29, Article 30 paragraphs (1), (2), (4) and (5), Article 31, Article 34 paragraph (1) a) and b), Article 35, Article 37 paragraph (1), Article 38 paragraphs (1) and (2), Articles 40 to 44, Articles 46 to 48, Article 49 paragraphs (1) to (5), Articles 50, 51, 53 to 55, 57 and Article 64 paragraphs (1) and (3), shall apply appropriately also to performer and his performances.”

“Article 78: Application of the provisions of Title I

“The provisions of Article 2 paragraph (3), Article 4, Article 6, Article 9 paragraphs (2) to (4), Article 12 paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Article 25, Article 27 paragraph (7), Article 28 paragraph (1), Article 29, Article 30 paragraphs (1), (2), (4) and (5), Article 31, Article 34 paragraph (1) a) and b), Article 35 paragraphs (1) and (4), Article 37 paragraph (1), Article 38 paragraphs (1) and (2), Articles 40 to 44, Articles 46 to 48, Article 49 paragraphs (1) to (5), Articles 50, 51, 55 and 57 shall apply analogously to the phonogram producer and his phonogram.”

2.2 Istheconceptof“nationaltreatment”containedintheLaw?

“Article107:Finalprovisions

“(1) TheprovisionsofthisActshallapplytotheworksofauthorsandartistic performancesofperformerswhoarecitizensoftheCzechRepublic,irrespectiveofthe placewherehavebeencreatedormadepublic.

“(2) TheprovisionsofthisActshallapply totheworksandperformancesofforeign nationalsandpeoplewithoutnationalityinaccordancewiththeinternationaltreaties bindingontheCzechRepublicor,intheabsenceofsuchtreaty,wherereciprocityis assured.

“(3) Ifnoneoftheconditionss tipulatedbyparagraph(2)aresatisfied,thisActshall applytoworksofauthorsandperformancesofperformerswhoarenotCzechnationals iftheirworksandperformanceswerefirstmadepublicintheCzechRepublicorifthe authororperformerresides intheCzechRepublic.

“(4) Copyrightintheworksofforeignnationalsshallnotsubsistforlongerthan copyrightinthecountryoforiginofthework.

“(5) TheprovisionsofthisActshallapplytothephonogramsoftheproducersof phonogramsdomiciledorresidentontheterritoryoftheCzechRepublic;tothe phonogramsoftheforeignproducersofphonogramstheyshallapplybytheappropriate applicationoftheprovisionsofparagraphs(2)and(3).

“(6) Theprovisionofparagraph(5)shallapply analogouslytoaudiovisualfixations, radioandtelevisionbroadcasting,worksinthepublicdomainpublishedpursuantto Article28paragraph(2),workspublishedbyapublisherpursuanttotheprovisionsof Article87,anddatabasespursuanttotheprovi sionofArticle 88.”

2.3 DopersformershavemoralrightsintheLaw?

“Article70:Moralrightsoftheperformer

“(1) Theperformersshallhavetherighttodecideaboutthemakingpublicofhisartistic performance.

“(2) Thesoloist,wherehecreate stheperformancealone,theconductor,choirmaster, theatredirectorandsoloist,wheretheycreatetheperformancetogetherwiththe membersofanartisticensemble,shallhavetherighttodecidewhetherandhowtheir nameshouldbeindicatedwhentheir performanceisbeingmadepublic.Performersas membersofanartisticensemblehallenjoytherightpursuanttotheprecedingclause onlyinrelationtothejointname(jointpseudonym)underwhichtheyjointlycreatethe performance;thisshallnotprejudiceanagreementontheindicationoftheirname pursuanttotheprecedingclause.

“(3) Theperformersshallhowevernotbeentitledtotherightpursuanttoparagraph (2) incasesjustifiedbythemanneroftheutilizationoftheperformance.

“(4) The performers shall have the right for his artistic performance not to be utilized, if used by another person, in a manner depreciating the value of the performance; performer artists as defined in Article 68 paragraph (1) shall be obliged to exercise appropriate mutual consideration.”

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones?

“Article 71: Economic rights of the performer

“(1) The performers shall have the right to use his artistic performance and to grant by contract to another person the authorisation to exercise this right; another person may use the artistic performance without such authorisation only in the cases stipulated by this Act.

“(2) The right to use an artistic performance shall mean:

- a) right of broadcasting and other communication of the live performance to the public;
- b) right of fixation of the live performance.”

2.5 Do performers have a right of reproduction in the Law?

“Article 71: Economic rights of the performer

“(1) The performers shall have the right to use his artistic performance and to grant by contract to another person the authorisation to exercise this right; another person may use the artistic performance without such authorisation only in the cases stipulated by this Act.

“(2) The right to use an artistic performance shall mean:

[...]

- c) right of reproduction of the fixed performance.”

2.6 Do performers have a right of distribution in the Law?

“Article 71: Economic rights of the performer

“(1) The performer shall have the right to use his artistic performance and to grant by contract to another person the authorisation to exercise this right; another person may use the artistic performance without such authorisation only in the cases stipulated by this Act.

“(2) Therighttouseanartisticperformanceshallmean:

“[...]

“d) rightofdistributionofthereproductionsofthefixedperformance.”

2.7 DoperformershavearightofrentalintheLaw?

“Article71:Economicrightsofthep Performer

“(1) Theperformershallhavetherighttousehisartisticperformanceandto grantby contracttoanotherpersontheauthorisationtoexercisethisright;anotherpersonmay use theartisticperformancewithoutsuchauthorisationonlyinthecasesstipulatedby thisAct. y

“(2) Therighttouseanartisticperformanceshallmean:

“[...]

“e) rightofrentalofcopiesofthefixedperformance.”

2.8 DoperformershavearightofmakingavailableoffixedperformancesintheLaw?

“Article71:Economicrights ofthep Performer

“(1) Theperformershallhavetherighttousehisartisticperformanceandto grantby contracttoanotherpersontheauthorisationtoexercisethisright;anotherpersonmay use theartisticperformancewithoutsuchauthorisationonly inthecasesstipulatedby thisAct.

“(2) Therighttouseanartisticperformanceshallmean:

“[...]

g) rightofcommunicationofthefixedperformancetothepublic.”

“Article18:Definition

“(1) Thecommunicationoftheworktothepublicshallmeanmakingthework availablein anintangibleform, liveorfromarecording, bywireorwirelessmeans.

“(2) Thecommunicationoftheworktothepublicpursuanttoparagraph(1)shall meanalsomakingtheworkavailableinsuchawaythatmembersofthepublicmay accesstotheworkfromaplaceandatatimeindividuallychosenbythem, especiallyby usingacomputerorsimilarnetwork.

“(3) Thecommunicationoftheworktothepublicshallnotmeanthemereoperationof afacilityenablingorfacilitating suchcommunication.”

“Article74:ApplicationoftheprovisionsofTitleI

“TheprovisionsofArticle2paragraph(3),Articles4,6,and7,Article9paragraphs(1) to(4),Article11paragraphs(4)and(5),Article12paragraphs(2)and(3),Articles13 to16,Articles18to23,Articles25and26,Article27paragraph(7),Article28 paragraph(1),Article29,Article30paragraphs(1),(2),(4)and(5),Article31, Article34paragraph(1)a)andb),Article35,Article37paragraph(1),Article38 paragraphs(1)and(2),Articles40to44,Articles46to48,Article49paragraphs(1) to(5),Articles50,51,53to55,57andArticle64paragraphs(1)and(3),shallapply appropriatelyalsotoperformerandhisperformances.”

2.9 Doproducersof phonograms(“producers”)havearightofreproductionintheLaw?

“Article76:Contentoftherightofthephonogramproducer

“(1) The phonogram producer shall have the exclusive economic right to use his phonogram and to transfer by contract the authorisation to the exercise of this right to another person; this other person may use the phonogram without giving of such authorisation only in the cases provided for by this Act.

“(2) Therighttousethephonogrammeans

“a) therightofreproductionofthephonogram.”

2.10 DoproducershavearightofdistributionintheLaw?

“Article76:Contentoftherightofthephonogramproducer

“(1) The phonogram producer shall have the exclusive economic right to use his phonogram and to transfer by contract the authorisation to the exercise of this right to another person; this other person may use the phonogram without giving of such authorisation only in the cases provided for by this Act.

“(2) Therighttousethephonogrammeans:

“[...]

“b) therightofdistributionoftheoriginalorcopiesofthephonogram.”

2.11 DoproducershavearightofrentalintheLaw?

“Article76:Contentoftherightofthephonogramproducer

“(1) Thephonogramproducershallhavetheexclusiveeconomicrighttouse his phonogram and to transfer by contract the authorisation to the exercise of this right to another person; this other person may use the phonogram without giving of such authorisation only in the cases provided for by this Act.

“(2) Therighttouse thephonogrammeans:

“[...]

“c) therightofrentaloftheoriginalorcopiesofthephonogram.”

2.12 Doproducershavearightofmakingavailableofphonogramsinthelaw?

“Article76:Contentoftherightofthephonogramproducer

“(1) Thephonogramproducershallhavetheexclusiveeconomicrighttousehis phonogramandtotransferbycontracttheauthorisationtotheexerciseofthisrightto anotherperson;thisotherpersonmayusethephonogramwithoutgivingofsuch authorisationonlyinthecasesprovidedforbythisAct.

“(2) Therighttousethephonogrammeans:

“[...]

“e) therightofbroadcastingandothercommunicationofthephonogramtothe public.”

“Article18:Definition

“(1) Thecommunicationoftheworktothepublicshallmeanmakingthework availableinanutangibleform,liveorfromarecording,bywireorwirelessmeans.

“(2) Thecommunicationoftheworktothepublicpursuanttoparagraph(1)shall meanalsomakingtheworkavailableinsuchawaythatmembersofthepublicmay accesstotheworkfromaplaceandatimeindividuallychosenbythem,especiallyby usingacomputerorsimilarnetwork.

“(3) Thecommunicationoftheworktothepublicshallnotmeanthemereoperationof afacilityenablingorfacilitating suchcommunication.”

“Article78:ApplicationoftheprovisionsofTitleI

“TheprovisionsofArticle2paragraph(3),Article4,Article6,Article9paragraphs(2) to(4),Article12paragraphs(2)and(3),Articles13to16,Articles 18to23, Article25, Article27paragraph(7),Article28paragraph(1),Article29,Article30paragraphs(1), (2),(4)and(5),Article31,Article34paragraph(1)a)andb),Article35paragraphs(1) and(4),Article37paragraph(1),Article38paragraphs(1) and(2),Articles40to44, Articles46to48,Article 49paragraphs(1)to(5),Articles50,51,55and57shallapply analogouslytothephonogramproducerandhisphonogram.”

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 71: Economic rights of the performer

“(1) The performer shall have the right to use his artistic performance and to grant by contract to another person the authorisation to exercise this right; another person may use the artistic performance without such authorisation only in the cases stipulated by this Act.

“(2) The right to use an artistic performance shall mean:

[...]

g) right of communication of the fixed performance to the public.”

“Article 72: Statutory licences subject to payment

“(1) The right of the performer shall not be infringed by whoever uses the artistic performance fixed as a phonogram published for commercial purposes by broadcasting or by retransmitting the broadcast; the performer shall however be entitled to remuneration for such use. This right may be exercised by the performer only through the relevant collective administrator.

“(2) A phonogram published for commercial purposes shall mean a phonogram whose reproductions are distributed by sale.

“(3) The right of the performer shall however be infringed by whoever does not, before the use in the manner referred to in paragraph (1), conclude an agreement with the relevant collective administrator, stipulating the amount of the remuneration for such use and the manner of its payment.

“(4) The right of the performer shall also be infringed by whoever has been forbidden by the relevant collective administrator to utilise further the performance in the manner referred to in paragraph (1) for being in arrears with the payment to the collective administrator of the remuneration for such manner of use, and for not paying the remuneration even during the additional thirty day period extended by the collective administrator for this purpose. Unless the collective administrator limits such ban to a shorter period, the ban shall be in effect until such time when the liability to pay the remuneration is met or expires in any other manner; however, should the ban be violated, the duration of the ban shall not be ended without the consent of the collective administrator before the settlement of, also, the claims arising from such violation.”

“Article 76: Content of the right of the phonogram producer

“(1) The phonogram producer shall have the exclusive economic right to use his phonogram and to transfer by contract the authorisation to the exercise of this right to another person; this other person may use the phonogram without giving of such authorisation only in the cases provided for by this Act.

“(2) Therighttousesthephonogrammeans:

[...]

e) therightofbroadcastingandothercommunicationofthephonogramtothepublic.”

“(3) TheprovisionsofArticle72shallapplyanalogouslytothephonogram producer.”

2.14 AretherightsintheLawsubjecttoanyformalities?

NorequirementsregardingformalitiesarefoundintheLaw.

2.15 Whatisthetermofprotectionfor:

2.15.1performers?

“Article73:Durationofeconomicrightsoftheperformer

“Theeconomicrightsoftheperformershallrunfor50yearsfromthecreationofthep performance. Wherehoweverafixationofsuchperformanceismadepublicduringthis period,therightsoftheperformershallnotexpireuntil50yearsfromthetimewhen suchfixationwasmadepublic.”

2.15.2producersofphonograms?

“Article77:Durationoftherightofthephonogramproducer

“Therightofthephonogramproducershallrunfor50yearsfromthemakingofthephonogram. Wherehoweveraphonogramisl awfullymadepublicduringthisperiod, therightoftheproducershallnotexpireuntil50yearsfromthedatewhensuch phonogramwasmadepublic.”

2.16 Whatistheeffectivetime -frameforapplicationofrightsinthelaw?

“Article106:Transitional provisions

“(1) ThisActshallgovernlegalrelationsestablishedasofthedateonwhichthisAct comesintoforce. Legalrelationsineffecthitherto, andtherightsandobligations arisingfromsuchlegalrelations, aswellastherightsarisingfrom liabilityforbreachof contractsconcludedbeforethedateonwhichthisActcomesintoeffect, shallbe governedbyprovisionsineffectbeforethatdate.

“(2) ProvisionssineffectbeforethedateonwhichthisActcomesintoeffectshallbe appliedin thejudgementofalltermsofwhichhavestartedrunningbeforethedateon whichthisActcameintoeffect, aswellasoftermsoftheapplicationofrightswhich,

pursuant to paragraph (1), shall be governed by provisions in force hitherto, even where such terms start running after the date of the coming into force of this Act.

“(3) The period of duration of economic rights shall be governed by this Act also where the term started before this Act came into effect. Where the term of duration of these rights has expired before the date on which this Act comes into effect, the term shall be renewed as from the date on which this Act comes into effect for the remaining period. Reproductions of items of protection for which the term of duration of economic rights is being renewed, lawfully acquired before the date of the coming into effect of this Act, may however continue to be freely disseminated for a further two years after this Act comes into effect.

“(4) In accordance with this Act, protection shall be extended also to items protected by copyright which have not been hitherto protected according to existing provisions (Article 1b) items 3, 5 and 6 and Article 2 paragraph (2)), or whose content of protection is different than that defined by this Act. The National Film Archives shall be deemed to be the producer of any Czech audio-visual recording of a work made public in the period between January 1, 1950 and December 31, 1964. The State Fund of the Czech Republic for the Promotion and Development of Czech Cinematography which, in compliance with special legal provisions exercises the copyright to audio-visual recordings of audio-visual works made public in the period between January 1, 1965 and December 31, 1991, shall be deemed to be the producer of such works.

“(5) The provision of paragraph (4) shall not prejudice the right of the National Film Archive to manage the original carrier of the recording of an audio-visual work.

“(6) The provision of paragraph (4) first clause shall be applied appropriately where the works are databases pursuant to the provisions of Article 88, but only if they had been made not earlier than 15 years before the coming into effect of this Act.

“(7) Authorisation to execute collective administration, granted in compliance with legal provisions in effect hitherto, shall be considered authorisation to execute collective administration of rights in accordance with this Act. The content and scope of such authorizations shall be brought into compliance with this Act by the Ministry which will issue, within 90 days from the date on which this Act comes into effect, new authorizations to the relevant persons.

“(8) Administrative proceedings started before the coming into effect of this Act shall be brought to conclusion in compliance with this Act.”

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 29

“(1) Copyright may be restricted only in certain special cases provided for by this Act; these may not however be interpreted in a manner that would conflict with a normal

exercise of copyright and would unreasonably prejudice the legitimate interests of the author.

“(2) A reproduction made pursuant to the provisions of Article 31 a) and b), Articles 32 to 34, and Article 37 paragraph (2) b) and c) may also be distributed non-gainfully within the scope justified by the purpose of the lawfully made reproduction.

“Subsection 2: Free use

“Article 30

“(1) The use of the work pursuant to this Act shall not mean its use for personal need; this shall not apply to the making of a reproduction of a computer program or electronic database or of a reproduction or imitation of an architectural work by the construction.

“(2) Copyright shall therefore not be infringed by whoever

a) for his own personal use makes a recording, reproduction or imitation of a work; a reproduction or imitation of a work of fine arts must be clearly labeled as such,

b) during the sale of the original or reproductions of works, of technical devices for their reproduction or for their communication to the public, of radio and television sets and computers, distributes or makes an temporary reproduction of the work within the scope necessary for the demonstration of the goods to a customer.

“(3) Copyright shall also not be infringed by whoever makes at the order of and for the personal use of the customer a print reproduction of the work on paper or others similar base using photography technique or other procedure with similar effect, on condition that the work is not a published musical work in score and that such person is paying in an orderly and timely manner the remuneration in accordance with Article 25.

“(4) A reproduction made for personal use may not be used for any other purpose.

“(5) The provisions of Articles 43 to 45 shall not be prejudiced by the provisions of paragraphs (1) and (3).

“Subsection 3: Gratuitous legal licences

“Article 31: Quotation

“Copyright shall not be infringed by whoever

a) quotes, to a justified degree, in his own work, excerpts from the published works of other authors;

b) includes into his independent scientific, critical or technical work, or into a work designated for teaching purposes, for the clarification of its content, small published works in their entirety;

- c) uses a published work in a lecture exclusively for scientific, teaching or other instructive or educational purposes;

the name of the author, unless the work is an anonymous work, or the name of the person under whose name the work is being introduced in public must however always be indicated; the title of the work and source must also be indicated.”

“Article 32: Catalogue license

“Copyright shall not be infringed by whoever includes into a catalogue of an exhibition, auction, fair or other similar event or organized by him a picture of the work exhibited on such occasion; the author’s consent shall not be needed also for the utilization of the depiction of this work by reproduction and dissemination of the catalogue. It shall however always be necessary to indicate the name of the author, unless the work is an anonymous work, or the name of the person under whose name the work is being introduced in public; the title of the work and source must also be indicated.”

“Article 33: Utilization of a work located in a public area

“(1) Copyright shall not be infringed by whoever records or expresses by drawing, painting, graphic art, photography or film a work located on a square, in a street, in a park, on a public route or in any other public place; the author’s consent shall not be needed also for the reproduction, dissemination and communication to the public of the work recorded or expressed by such means. The provision of Article 31 of the clause following these semicolons shall apply appropriately.

“(2) The provisions of paragraph (1) shall not apply to the reproduction and distribution of the work by means of a three-dimensional reproduction.”

“Article 34: Official and reporting license

“(1) Copyright shall not be infringed by whoever uses, to a justifiable degree, the work:

- a) for official purposes in compliance with the law,
- b) within the course of reporting on a current event during which such work is being performed, exhibited or otherwise used,
- c) borrows in the periodical press or other mass communication medium articles with a content of topical importance on political, economic or religious matters, which have already been published in another mass communication medium, or their translations; such borrowings shall not be admissible if it is explicitly forbidden.

“(2) The provision of Article 31 of the clause following these semicolons shall apply appropriately.

“Article 35: Utilization of the work as a part of civil and religious ceremonies, as a part of school performances and the utilisation of a schoolwork

“(1) Copyright shall not be infringed by whoever utilizes a work for non-commercial purposes during civil and religious ceremonies.

“(2) Copyright shall not be infringed by whoever utilizes a work for non-commercial purposes during school performances performed exclusively by the pupils, students or teachers of the school or of the school or educational establishment.

“(3) Copyright shall also not be infringed by the school or school or educational establishment if they use for non-commercial purposes for their own internal needs a work created by a pupil or student as a part of their school or educational assignments ensuing from their legal relationship with the school or school or educational establishment (schoolwork).

“(4) The provision of Article 31 of the clause following the semicolon shall apply for paragraphs (2) and (3) appropriately.”

“Article 36: Restriction of copyright to a collection

“Copyright to a collection shall not be infringed by the legitimate user of the collection work if he uses such work for the purposes of accessing its content and for the normal utilisation of its content.” n

“Article 37: Use of the work by reproduction and distribution of reproductions

“(1) Copyright shall not be infringed by the library, archive and other non-commercial school, educational and cultural establishment which makes a reproduction of the work for their archival and conservation purposes.

“(2) Copyright shall not be infringed by whoever:

a) makes, during the use of the work, a transient and incidental reproduction of the work in electronic form, which on its own has no economic significance, and the purpose of which is the facilitation of the use of the work, and whose making is an inseparable and indivisible part of the technological process of making the work available, including such reproduction which allows the effective functioning of the transmission system,

b) makes a reproduction of a photographic work which is his own portrait and which has been commissioned for a charge,

c) for the benefit of people with a disability, makes a reproduction or has a reproduction made, non-commercially, of a published work to the extent required by the specific disability.

“(3) The provisions of Article 30 paragraphs (4) to (5) shall apply appropriately.”

“Article 38: Use of the work by lending and rental of the original or a copy

“(1) Copyright shall not be infringed by the entity referred to in Article 37 paragraph (1) which lends the original or copies of published works.

“(2) The provision of paragraph (1) shall not apply to computer programs and to copies of audio or audiovisual fixations, unless the lending occurs for exclusive use by persons with health disabilities in connection with their disability.

“(3) Copyright shall not be infringed by whoever rents or lends the original or a copy of the work of applied art expressed in the form of a utility object, or of the architectonic work expressed in the form of a construction.”

“Article 39: Use of the original or reproduction of a work of fine arts or of a photographic work by exhibiting

“Copyright shall not be infringed by the owner of the original or reproduction of a work of fine arts, or of a photographic work, who exhibits such work or provides such work for exhibition free of charge, unless such use was excluded by the author during the transfer of ownership to such original or such reproduction of the work.

“Article 74 provides that Article 29, Article 30(1), (2), (4) and (5), Article 31, Article 34(1)a) and b), Article 35, Article 37(1), Article 38(1) and (2) apply appropriately to the performer and his performances.

“Article 78 provides that Article 29, Article 30(1), (2), (4) and (5), Article 31, Article 34(1)a) and b), Article 35(1) and (4), Article 37(1), Article 38(1) and (2) apply appropriately to the phonogram producer and his phonograms.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Article 43

“(1) Copyright shall also be infringed by whoever, for the purpose of achieving economic gain, develops, produces, offers for sale, rental or lending, imports, disseminates or utilizes, as a part of the provision of services or for any other purpose, aids designed for the removal, deactivation, or limitation of the function of technical devices or of other means applied for the protection of rights.

“(2) Other means pursuant to paragraph (1) shall mean any procedure, product or component integrated into a procedure, device or product designed to avoid or prevent infringement of copyright to a work which is made available only by application of a code or of another method enabling decoding.”

“Article74:ApplicationoftheprovisionsofTitleI

“TheprovisionsofArticle2paragraph(3),Articles4,6,and7,Article9paragraphs(1) to(4),Article11paragraphs(4)and(5),Article12paragraphs(2)and(3),Articles13 to16,Articles18to23,Articles25and26,Article27paragraph (7),Article28 paragraph(1),Article29,Article30paragraphs(1),(2),(4)and(5),Article31, Article34paragraph(1)a)andb),Article35,Article37paragraph(1),Article38 paragraphs(1)and(2),Articles40to44,Articles46to48,Article49paragraph s(1) to(5),Articles50,51,53to55,57andArticle64paragraphs(1)and(3),shallapply appropriatelyalsotoperformerandhisperformances.”

“Article78:ApplicationoftheprovisionsofTitleI

“TheprovisionsofArticle2paragraph(3),Article4,Article6,Article9paragraphs(2) to(4),Article12paragraphs(2)and(3),Articles13to16,Articles 18to23,Article25, Article27paragraph(7),Article28paragraph(1),Article29,Article30paragraphs(1), (2),(4)and(5),Article31 ,Article34paragraph(1)a)andb),Article35paragraphs(1) and(4),Article37paragraph (1),Article38paragraphs(1)and(2),Articles40to44, Articles46to48,Article49paragraphs(1)to(5),Articles50,51,55and57shallapply analogouslytothephonogramproducerandhisphonogram.”

3.3 WhatobligationsareintheLawfortheProtectionof“rightsmanagementinformation?”

“Article44

“(1) Unauthorisedinterventionintocopyrightshallalsomean:

- a) removaloralterationofanyelectronicdataidentifyingrights;
- b) distributionofreproductionsofthework,includingtheirimport,aswellas communicationtothepublicofworkswhoseelectronicdataidentifyingtherights totheworkhavebeenremovedoralteredwithouttheauthor’s consent.

“(2) Dataidentifyingrightstoaworkpursuanttoparagraph(1)shallmeandata expressedinfigures, codesorinanyothermanner, whichbydecisionoftheauthor accompanytheworktoidentifytheworkandtherightsrelatingtoit.”

“Article74:ApplicationoftheprovisionsofTitleI

“TheprovisionsofArticle2paragraph(3),Articles4,6,and7,Article9paragraphs(1) to(4),Article11paragraphs(4)and(5),Article12paragraphs(2)and(3),Articles13 to16,Articles18to23, Articles25and26,Article27paragraph (7),Article28 paragraph(1),Article29,Article30paragraphs(1),(2),(4)and(5),Article31, Article34paragraph(1)a)andb),Article35,Article37paragraph(1),Article38 paragraphs(1)and(2),Articles40to44,Articles46to48,Article49paragraphs(1) to(5),Articles50,51,53to55,57andArticle64paragraphs(1)and(3),shallapply appropriatelyalsotoperformerandhisperformances.”

“Article 78: Application of the provisions of Title I

“The provisions of Article 2 paragraph (3), Article 4, Article 6, Article 9 paragraphs (2) to (4), Article 12 paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Article 25, Article 27 paragraph (7), Article 28 paragraph (1), Article 29, Article 30 paragraphs (1), (2), (4) and (5), Article 31, Article 34 paragraph (1) a) and b), Article 35 paragraphs (1) and (4), Article 37 paragraph (1), Article 38 paragraphs (1) and (2), Articles 40 to 44, Articles 46 to 48, Article 49 paragraphs (1) to (5), Articles 50, 51, 55 and 57 shall apply analogously to the phonogram producer and his phonogram.”

3.4 Generally, what measures for enforcement of rights are in the Law?

“Section 5: Copyright protection

“Article 40

“(1) The author whose rights have been infringed or whose rights have been exposed to infringement may claim, namely:

- a) recognition of his authorship;
- b) prohibition of the exposure of his right, including impending repetition of exposure, or of the infringement of his right, especially the prohibition of the unauthorized production, unauthorized commercial sale, unauthorized import or export of the original or reproduction or imitation of his work, unauthorized communication of the work to the public, as well as its unauthorized promotion including advertising and other forms of campaigns;
- c) disclosure of details of the origin of the illicitly made reproduction or imitation of his work, of the manner and scope of its utilization, and of the identity of the persons who have participated in the unauthorized making of the reproduction or of its unauthorized distribution, as the case may be;
- d) remedy of the consequences of the infringement of his right, namely by:
 1. seizure of the illicitly made reproduction or imitation of the work or of the aid pursuant to Article 43 from sale or other utilization;
 2. the destruction of the illicitly made reproduction or imitation of the work or of the aid pursuant to Article 43.
- e) provision of appropriate satisfaction for the non-financial damage caused, namely in the form of:
 1. apology;
 2. payment of a financial amount where the acknowledgement of a different kind of satisfaction would prove inadequate; the amount of the financial satisfaction shall be determined by a court which will take into account, especially, the gravity of the damage incurred and the

circumstances under which the infringement of the right occurred; this shall not preclude an amicable settlement.

“(2) The court may recognize in its judgment the right of the author whose claim has been acquitted to publish the decision at the cost of the party who lost the action and, depending on circumstances, also determine the scope, form and manner of publication.

“(3) The entitlement to compensation of damage and to the surrender of unjust enrichment pursuant to a special law shall remain unaffected; the amount of unjust enrichment incurred on the part of whoever uses the work unlawfully without having been granted the necessary licenses shall be double the remuneration that would have been awarded under habitual conditions at the time of unauthorized use of the work.”

“Article 41

“Where the author grants another person exclusive authorization to exercise the right to use the work, or where the exercise of economic rights to the work is entrusted to such person by statute, the right to claim damages in accordance with Article 40 paragraph (1) b) to d), and paragraphs (2) and (3) shall be extended only to such person whose exclusive authorization acquired thus by contract or by statute has been exposed or infringed; the entitlement of the author to make the remaining claims, as well as in this context the claim pursuant to Article 40 paragraph (2) shall remain unaffected.”

“Article 42

“(1) The author may also require from customs authorities information on the content and scope of imports of a commodity which:

- a) is a reproduction of his work or an audio or audiovisual fixation of such work;
- b) is intended to serve as a carrier for the making of such a reproduction (empty carrier);
- c) is a device for making audio or audiovisual fixations or printed copies; or
- d) which falls under the definition of aids pursuant to Art. 43, and have access to customs documentation to know whether the import of such commodities for use on the territory of the Czech Republic is in compliance with this Act, or to learn details necessary for the enforcement of rights ensuing from this Act.

“(2) The provision of paragraph (1) shall apply analogously also for export.

“(3) The information referred to in paragraphs (1) and (2) may be requested also by the relevant collective administrator as well as by the legal entity authorized to defend the interests of authors.”

“Article45

“Copyrightshallalsobeinfringedbywhoeverusesforhisworkatitleor external designthathasbeenlegitimatelyusedearlierbyanotherauthorforaworkofthesame kindifthiscouldleadtothedangerofconfusionofthetwoworks,unlessensuing otherwisefromthenatureoftheworkorfromitsdesignation.”

“Article74:ApplicationoftheprovisionsofTitleI

“TheprovisionsofArticle2paragraph(3),Articles4,6,and7,Article9paragraphs(1) to(4),Article11paragraphs(4)and(5),Article12paragraphs(2)and(3),Articles13 to16,Articles18to23,Articles25and26,Article27paragraph (7),Article28 paragraph(1),Article29,Article30paragraphs(1),(2),(4)and(5),Article31, Article34paragraph(1)a)andb),Article35,Article37paragraph(1),Article38 paragraphs(1)and(2),Articles 40to44,Articles46to48,Article49paragraphs(1) to (5),Articles50,51,53to55,57andArticle64paragraphs(1)and(3),shallapply appropriatelyalsotoperformerandhisperformances.”

“Article78:ApplicationoftheprovisionsofTitleI

“TheprovisionsofArticle2paragraph(3),Article4,Article6,Article9paragraphs (2) to(4),Article12paragraphs(2)and(3),Articles13to16,Articles 18to23,Article25, Article27paragraph(7),Article28paragraph(1),Article29,Article30paragraphs(1), (2),(4)and(5),Article31,Article34paragraph(1)a)andb),Article35paragraphs(1) and(4),Article37paragraph(1),Article38paragraphs(1)and(2),Articles40to44, Articles46to48,Article49paragraphs (1)to(5), Articles50,51,55and57shallapply analogouslytothephonogramproducerandhisphonogram.”

3.5 HowdoesthelawdefinetheliabilityoftheInternetserviceproviders?

WIPOreceivedthefollowinginformationfromthecopyrightofficeoftheCzech Republic:

“IntheCzechRepublicthereisnospecificlegislationontheliabilityofservice providers.Generalprinciplesofcivilorcriminalliabilityshouldbeappliedalsofor them.

“ThemostimportantprovisionsareinArt.415 -450oftheCivillcodeNo.40/1964 Coll.(generalcivilliability),Art.40ofCopyrightActNo.121/2000Coll.(especiallyfor authorsrights),inArt.373 -386oftheCommercialcodeNo.513/1991Coll.andin Art. 152,178and257aoftheCriminalcodeNo.140/1961Coll.(especially).

“IntheCzechRepublictheaccessproviderscannotbeheldliableforanymaterialsand activitiesusedbythethirdparties(usersoftheirservices)accordingtoArt.18par.3of CopyrightActandalsoaccordingtoArt.83par.5ActNo .151/2000Coll.on TelecommunicationsandAmendmentstoOtherActs.

“The hosting providers can be held liable for illegal content which is under their control.

“Content providers should be held liable for all materials and content used by them according to general principles of liability.”

“Article 18: Definition

“[...]

“(3) The communication of the work to the public shall not mean the mere operation of the facility enabling or facilitating such communication.”

3.6 Are there any provisions in the Law on temporary storage?

“Article 13: Reproduction

“(1) The reproduction of the work shall mean the making of permanent or temporary, direct or indirect reproductions of the work, and that by any means and in any form, for the purpose of making the work available by means of such reproductions.

“(2) The work is reproduced especially in the form of a printed, photographic, audio, visual or audiovisual reproduction, of an erection of an architectural work or in the form of another three-dimensional reproduction, or in an electronic form including its analogue and digital expression.”

“Article 74: Application of the provisions of Title I

“The provisions of Article 2 paragraph (3), Articles 4, 6, and 7, Article 9 paragraphs (1) to (4), Article 11 paragraphs (4) and (5), Article 12 paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Articles 25 and 26, Article 27 paragraph (7), Article 28 paragraph (1), Article 29, Article 30 paragraphs (1), (2), (4) and (5), Article 31, Article 34 paragraph (1) a) and b), Article 35, Article 37 paragraph (1), Article 38 paragraphs (1) and (2), Articles 40 to 44, Articles 46 to 48, Article 49 paragraphs (1) to (5), Articles 50, 51, 53 to 55, 57 and Article 64 paragraphs (1) and (3), shall apply appropriately to the performer and his performances.”

“Article 78: Application of the provisions of Title I

“The provisions of Article 2 paragraph (3), Article 4, Article 6, Article 9 paragraphs (1) to (4), Article 12 paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Article 25, Article 27 paragraph (7), Article 28 paragraph (1), Article 29, Article 30 paragraphs (1), (2), (4) and (5), Article 31, Article 34 paragraph (1) a) and b), Article 35 paragraphs (1) and (4), Article 37 paragraph (1), Article 38 paragraphs (1) and (2), Articles 40 to 44, Articles 46 to 48, Article 49 paragraphs (1) to (5), Articles 50, 51, 55 and 57 shall apply analogously to the phonogram producer and his phonogram.”

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exception to rights provided in the Law?

“Article 30

“(1) The use of the work pursuant to this Act shall not mean its use for personal need; this shall not apply to the making of a reproduction of a computer program or electronic database or of a reproduction or imitation of an architectural work by the construction.

“[...]

“(3) Copyright shall also not be infringed by whoever makes at the order of and for the personal use of the customer a print reproduction of the work on paper or other similar base using photography technique or other procedure with similar effect, on condition that the work is not a published musical work in score and that such person is paying in an orderly and timely manner the remuneration in accordance with Article 25.

“[...]

“(5) The provisions of Articles 43 to 45 shall not be prejudiced by the provisions of paragraphs (1) and (3).”

“Article 43

“(1) Copyright shall also be infringed by whoever, for the purpose of achieving economic gain, develops, produces, offers for sale, rental or lending, imports, disseminates or utilizes, as a part of the provision of services or for any other purpose, aids designed for the removal, deactivation, or limitation of the function of technical devices or of other means applied for the protection of rights.

“(2) Other means pursuant to paragraph (1) shall mean any procedure, product or component integrated into a procedure, device or product designed to avoid or prevent infringement of copyright to a work which is made available only by application of a code or of another method enabling decoding.”

“Article 74: Application of the provisions of Title I

“The provisions of Article 2 paragraph (3), Articles 4, 6, and 7, Article 9 paragraphs (1) to (4), Article 11 paragraphs (4) and (5), Article 12 paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Articles 25 and 26, Article 27 paragraph (7), Article 28 paragraph (1), Article 29, Article 30 paragraphs (1), (2), (4) and (5), Article 31, Article 34 paragraph (1) a) and b), Article 35, Article 37 paragraph (1), Article 38 paragraphs (1) and (2), Articles 40 to 44, Articles 46 to 48, Article 49 paragraphs (1) to (5), Articles 50, 51, 53 to 55, 57 and Article 64 paragraphs (1) and (3), shall apply appropriately also to performer and his performances.”

“Article 78: Application of the provisions of Title I

“The provisions of Article 2 paragraph (3), Article 4, Article 6, Article 9 paragraphs (2) to (4), Article 12 paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Article 25, Article 27 paragraph (7), Article 28 paragraph (1), Article 29, Article 30 paragraphs (1), (2), (4) and (5), Article 31, Article 34 paragraph (1) a) and b), Article 35 paragraphs (1) and (4), Article 37 paragraph (1), Article 38 paragraphs (1) and (2), Articles 40 to 44, Articles 46 to 48, Article 49 paragraphs (1) to (5), Articles 50, 51, 55 and 57 shall apply analogously to the phonogram producer and his phonogram.”

“Article 44

“(1) Unauthorised intervention into copyright shall also mean:

- a) removal or alteration of any electronic data identifying rights;
- b) distribution of reproductions of the work, including their import, as well as communication to the public of works whose electronic data identifying the rights to the work have been removed or altered without the author's consent.

“(2) Data identifying rights to a work pursuant to paragraph (1) shall mean data expressed in figures, codes or in any other manner, which by decision of the author accompany the work to identify the work and the rights relating to it.”

ECUADOR

(Law Reviewed: Intellectual Property Law, 08/05/1998, No. 83)

1. WCT provisions

1.1. Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“5. Copyright shall come into being and be protected by virtue of the mere fact of the creation of the work, regardless of its merit, purpose or means of expression.

“[...]”

“10. Copyright also protects the form of expression by which the ideas of the author are described, explained, illustrated or incorporated in his works.

“The following do not qualify for protection:

(a) the ideas embodied in the works, processes, operating methods or mathematical concepts in themselves, systems or the ideological or technical content of scientific works or the industrial or commercial exploitation thereof;

(b) legal and regulatory provisions, judicial decisions and the enactments, agreements, deliberations and rulings of public bodies, including official translations thereof.”

1.2. Are computer programs protected in the Law as literary works?

“7. For the purposes of this Title, the terms listed below shall have the following meanings:

“[...]”

“Computer program (software): Any sequence of instructions or information intended to be directly or indirectly used in an automated reading device, computer or electronic or similar contrivance capable of processing data, for the performance of a function or task or the production of a specific result, whatever the form in which it is expressed or fixed. The computer program includes also the preparatory documentation, flowcharts and diagrams, the technical documentation and users’ manuals .

“[...]”

“8. Copyright protection shall cover all works of the mind in the literary or artistic field, regardless of their type, form of expression, merit or purpose. The right recognized by this Title shall be independent of the ownership of the material object in which the work is embodied, and their enjoyment and exercise shall not be subject to the requirement of registration or compliance with any other formality.

“Protected works shall include the following among other things:

[...]

(k) computer programs;

[...]

“28. Computer programs shall be considered literary works and protected as such. That protection shall be granted independently of whether or not they have been stored in a computer and regardless of the form in which they are expressed, namely in man-readable form (source code) or in machine-readable form (object code), and whether or not they are operating programs or application programs, including flowcharts, plans, users’ manuals and generally those elements that determine the structure, sequence and organization of the program.”

1.3. Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“7. For the purposes of this Title, the terms listed below shall have the following meanings:

[...]

Compilation: Grouping within a single body of scientific or literary text of various laws, items of information or other material.

[...]

“8. Copyright protection shall cover all works of the mind in the literary or artistic field, regardless of their type, form of expression, merit or purpose. The right recognized by this Title shall be independent of the ownership of the material object in which the work is embodied, and the mere enjoyment and exercise shall not be subject to the requirement of registration or compliance with any other formality.

“Protected works shall include the following among other things:

[...]

(b) collections of works, such as anthologies or compilations and databases of all kinds which, by reason of the selection or arrangement of their contents, constitute intellectual creations, without prejudice to the copyright subsisting in the said material or data;

[...]”

1.4. Istherearightofdistribution intheLaw?

“7. ForthepurposesofthisTitle,thetermslistedbelowshallhavethefollowing meanings:

[...]

Distribution:Themakingavailabletothepublicoftheoriginalorcopiesofthe workbymeansofsale,rental,publiclendingoranyotherknownoryettobe knownformoftransferofownership, possessionortenancyofthesaidoriginalor copy.”

[...]

“20. Theexclusiverightofexploitationoftheworkshallinparticularincludetheright toeffect,authorizeorprohibitthefollowing:

[...]

(c) distributionoforiginalsorcopiesoftheworktothepublicbymeansofsale, rentalorlease;

[...]”

1.5. IstherearightofrentalintheLaw,andifso,towhichworksdoesitapply?

“7. ForthepurposesofthisTitle,thetermslistedbelowshallhavethefollowing meanings:

[...]

Distribution:Themakingavailabletothepublicoftheoriginalorcopiesofthe workbymeansofsale,rental,publiclendingoranyotherknownoryettobe knownformoftransferofownership, possessionortenancyofthesaidoriginalor copy.

[...]

Work:Anyoriginalintellectualcreationcapableofbeingdisclosedorreproduced inanyknownorasyetunknownform.

[...]”

“20. The exclusive right of exploitation of the work shall in particular include the right to effect, authorize or prohibit the following:

[...]

(c) distribution of originals or copies of the work to the public by means of sale, rental or lease.

[...]”

1.6. Is there a right of communication to the public in the Law?

“20. The exclusive right of exploitation of the work shall in particular include the right to effect, authorize or prohibit the following:

[...]

(b) communication of the work to the public by any medium serving to disseminate words, signs, sounds or images;

[...]

“22. Communication to the public shall be understood to mean any act by which two or more persons, whether in the same place or not, may, at a time individually chosen by them, have access to the work without the prior distribution of copies to each one of them, as in the following cases:

(a) stage performances, recitals, dissertations and public performances of dramatic; dramatico -musical, literary and musical works in any medium or by any process;

(b) the public projection or showing of cinematographic and other audiovisual works;

(c) the broadcasting or communication to the public of any works by any medium that serves to disseminate, by wireless means, signs, sounds or images, or the digital representation thereof, whether simultaneously or not.

The transmission of coded program -carrying signals is likewise an act of communication to the public insofar as means of decoding the signals are made available to the public by the broadcasting organization or with its consent.

For the purposes of the foregoing two paragraphs, satellite means any satellite that operates on frequency bands reserved by telecommunications legislation for the dissemination of signals for reception by the public or for non -public individual communication, provided that in the latter case the circumstances in which individual reception of the signal takes place are comparable to those applicable in the first case;

- (d) transmission of works to the public by wire, cable, optic fiber or other comparable medium, whether on subscription or not;
- (e) the retransmission of a broadcast work by radio, television or any other wire or wireless means where it is effected by an entity different from the original one;
- (f) the emission, transmission or reception of the broadcast work in a place accessible to the public by means of any appropriated device;
- (g) public presentation and exhibition;
- (h) public access to computer databases by telecommunication where the said databases incorporate or constitute protected works;
- (i) the diffusion by any known or yet to be known process of signs, words, sounds or images, or the representation thereof, or other forms of expression of works.

“Any communication shall be considered public where it goes beyond the strictly domestic circle.”

1.7. Is it right to make available to the public works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

“23. By virtue of the right of distribution the owner of the copy right is entitled to make the original or copies of the work available to the public by means of sale, rental, public lending or any other form of transfer.”

1.8. Are photographic works given the same duration of protection as other works in the Law?

“8. Copyright protection shall cover all works of the mind in the literary or artistic field, regardless of their type, form of expression, merit or purpose. The right recognized by this Title shall be independent of the ownership of the material object in which the work is embodied, and their enjoyment and exercise shall not be subject to the requirement of registration or compliance with any other formality.

“Protected works shall include the following among other things:

[...]

- (i) photographic works and works expressed by processes analogous to photography;

[...]”

“80. Economic right shall last for the lifetime of the author and for 70 years following his death, regardless of the country of origin of the work.”

1.9. Whatistheeffectivetime -frame forapplicationoftherightsintheLaw?

“TransitionalProvisions

“[...]

“Third. ThisLawshallapplytoallworks,performances,productions,broadcastsor othersubjectmatterofcopyrightorrelatedrights,andtothelayout -designsof semiconductorcircuits,referredtointhisLawandcreatedpriortoitsentryintoforce, providedthattheyhavenotpassedintothepublicdomain.Thedateonwhichtheywill passintothepublicdomain,oncethisLawhasbeenpromulgated,shallbedetermined byrefere nce totheterms ofprotectionspecifiedinit.

“PendingapplicationsshallbesettledinaccordancewiththisLaw.”

2. WPPTprovisions

2.1. Definitions:

2.1.1 Is“performer”or“performers”definedintheLaw?

“7. ForthepurposesofthisTitle, thetermslistedbelowshallhavethefollowing meanings:

[...]

Performer:Thepersonwhopresents,sings,reads,recites,interpretsorinany otherwayperformsawork.

[...]”

2.1.2 Is“phonogram”definedintheLaw?

“7. ForthepurposesofthisTitle ,thetermslistedbelowshallhavethefollowing meanings:

[...]

Phonogram:Anyexclusivelyaudiofixationofthesoundsofaperformanceorof othersounds,orofthedigitalrepresentationthereof.Phonographic,magneticand digitalrecordingsarecopiesofphonograms.

[...]”

2.1.3 Is ‘fixation’ defined in the Law?

“7. For the purposes of this Title, the terms listed below shall have the following meanings:

[...]

Fixation: The incorporation of signs, sounds or images, or the digital representation thereof, in a material medium that permits them to be read, perceived, reproduced, communicated or used.

[...]”

2.1.4 Is “producer of a phonogram” defined in the Law?

“7. For the purposes of this Title, the terms listed below shall have the following meanings:

[...]

Phonogram producer: A person, whether a natural person or legal entity, on whose initiative and responsibility and under whose coordination the sounds of a performance or other sounds, or digital representations thereof, are first fixed.

[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“7. For the purposes of this Title, the terms listed below shall have the following meanings:

[...]

Publication: The production of copies placed at the disposal of the public with the consent of the owner of the rights concerned, provided that the availability of such copies allows the reasonable needs of the public to be satisfied, due account being taken of the nature of the work.

[...]”

2.1.6 Is “broadcasting” defined in the Law?

“7. For the purposes of this Title, the terms listed below shall have the following meanings:

[...]

Broadcasting: Communication to the public by wireless transmission. Broadcasting includes that which passes through a satellite from the injection of the signal, both in the upward stage (uplink) and in the downward stage (downlink) of the transmission, until such time as the program carried by the signal becomes accessible to the public.

[...]"

2.1.7 Is "communication to the public" defined in the Law?

"22. Communication to the public shall be understood to mean any act by which two or more persons, whether in the same place or not, may, at a time individually chosen by them, have access to the work without the prior distribution of copies to each one of them, as in the following cases:

- (a) stage performances, recitals, dissertations and public performances of dramatic; dramatico-musical, literary and musical works in any medium or by any process;
- (b) the public projection or showing of cinematographic and other audiovisual works;
- (c) the broadcasting or communication to the public of any works by any medium that serves to disseminate, by wireless means, signs, sounds or images, or the digital representation thereof, whether simultaneously or not.

The transmission of coded program-carrying signals is likewise an act of communication to the public insofar as means of decoding the signals are made available to the public by the broadcasting organization or with its consent.

For the purposes of the foregoing two paragraphs, satellite means any satellite that operates on frequency bands reserved by telecommunications legislation for the dissemination of signals for reception by the public or for non-public individual communication, provided that in the latter case the circumstances in which individual reception of the signal takes place are comparable to those applicable in the first case;

- (d) transmission of works to the public by wire, cable, optic fiber or other comparable medium, whether or not on subscription or not;
- (e) the retransmission of a broadcast work by radio, television or any other wire or wireless means where it is effected by an entity different from the original one;
- (f) the emission, transmission or reception of the broadcast work in a place accessible to the public by means of any appropriated device;
- (g) public presentation and exhibition;
- (h) public access to computer databases by telecommunication where the said databases incorporate or constitute protected works;

(i) the diffusion by any known or yet to be known process of signs, words, sounds or images, or the representation thereof, or other forms of expression of works.

“Any communications shall be considered public where it goes beyond the strictly domestic circle.”

2.2. Is the concept of “national treatment” contained in the Law?

“5. Copyright shall come into being and be protected by virtue of the mere fact of the creation of the work, regardless of its merit, purpose or means of expression.

“All works, performances, productions or broadcasts shall be protected, regardless of the country of origin of the work or the nationality or residence of the author or owner of rights. This protection shall likewise be recognized regardless of the place of publication or disclosure.”

2.3. Do performers have moral rights in the Law?

“87. Without regard to the economic rights and even after the transfer thereof, performers shall enjoy, in relation to their live performances or performances fixed on phonograms, the right to be identified as such, except where omission is dictated by the manner in which the performance is used, and also the right to object to any distortion, mutilation or other alteration of their performances insofar as such acts may be prejudicial to their reputation. Those rights shall not lapse on the death of their owners.”

2.4. Do performers have economic rights in their unfixed performances, and if so, which ones?

“88. Performers shall have the right to authorize or prohibit the communication to the public of their live performances, and also the fixing of their performances and the reproduction of the fixations by any means or process.”

“89. Notwithstanding the provisions of the foregoing Article, performers may not object to the communication of their performances to the public when they constitute a broadcast performance in themselves, or where the communication is done from a fixation made with their prior consent and published for commercial purposes.”

2.5. Do performers have a right of reproduction in the Law?

“88. Performers shall have the right to authorize or prohibit the communication to the public of their live performances, and also the fixing of their performances and the reproduction of the fixations by any means or process.”

2.6. Do performers have a right of distribution in the Law?

Not found in the Law reviewed

2.7. Do performers have a right of rental in the Law?

Not found in the Law reviewed.

2.8. Do performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9. Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“92. Phonogram producers shall have the exclusive right to effect, authorize or prohibit the following:

(a) direct or indirect reproduction of their phonograms by any means and in any form;

[...]”

2.10. Do producers have a right of distribution in the Law?

“92. Phonogram producers shall have the exclusive right to effect, authorize or prohibit the following:

[...]

(b) distribution to the public.”

2.11. Do producers have a right of rental in the Law?

“7. For the purposes of this Title, the terms listed below shall have the following meanings:

[...]

Distribution: The making available to the public of the original or copies of the work by means of sale, rental, public lending or any other known or yet to be known form of transfer of ownership, possession or tenancy of the said original or copy.

“92. Phonogram producers shall have the exclusive right to effect, authorize or prohibit the following:

[...]

“(b) distribution to the public;

[...]”

2.12. Do producers have a right of making available of phonograms in the Law?

“7. For the purposes of this Title, the terms listed below shall have the following meanings:

[...]

Distribution: The making available to the public of the original or copies of the work by means of sale, rental, public lending or any other known or yet to be known form of transfer of ownership, possession or tenancy of the said original or copy.

[...]”

“92. Phonogram producers shall have the exclusive right to effect, authorize or prohibit the following:

[...]

(b) distribution to the public.

[...]”

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“89. Notwithstanding the provisions of the foregoing Article, performers may not object to the communication of their performance to the public when they constitute a broadcast performance in themselves, or where the communication is done from a fixation made with their prior consent and published for commercial purposes.

“Without prejudice to the exclusive right accorded them by the foregoing Article, performers shall have the right, in the cases provided for in the foregoing paragraph, to receive remuneration for the communication to the public of a phonogram containing their performances.

“Unless otherwise agreed, remuneration collected pursuant to the foregoing paragraph shall be shared equitably between the phonogram producers and the performers in accordance with international conventions, independently of the economic rights of the author that are already provided for in the articles relating thereto.”

2.14. Are rights in the Law subject to any formalities?

“5. Copyright shall come into being and be protected by virtue of the mere fact of the creation of the work, regardless of its merit, purpose or means of expression.

“All works, performances, productions or broadcasts shall be protected, regardless of the country of origin of the work or the nationality or residence of the author or owner of rights. This protection shall likewise be recognized regardless of the place of publication or disclosure.

“The recognition of copyright and related rights shall not be subject to registration or deposit or to compliance with any formality.”

2.15. What is the term of protection for:

2.15.1 performers?

“91. The term of protection of the rights of performers shall be 70 years, counted from the first of January of the year following that in which the performance took place or in which it was fixed, as the case may be.”

2.15.2 producers of phonograms?

“96. The term of protection of the rights of the phonogram producers shall be 70 years, counted from the first of January of the year following the date of first publication of the phonogram.”

2.16. What is the effective time-frame for application of rights in the Law?

“Transitional Provisions

“[...]

“Third. This Law shall apply to all works, performances, productions, broadcasts or other subject matter of copyright or related rights, and to the layout-designs of semiconductor circuits, referred to in this Law and created prior to its entry into force, provided that they have not passed into the public domain. The date on which they will pass into the public domain, once this Law has been promulgated, shall be determined by reference to the terms of protection specified in it.

“Pending applications shall be settled in accordance with this Law.”

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“83. The following acts, which shall not require authorization by the owner of the rights or be subject to any remuneration, shall exclusively be lawful subject to respect for proper practice and provided that the normal exploitation of the work is not adversely affected or the owner of the rights prejudiced thereby:

- (a) inclusion in a given work of fragments of other, different works in written, audio or audiovisual form, and also that of isolated works of three-dimensional, photographic, figurative or other character, provided that the works have already been disclosed and that their inclusion is by way of quotation or for analysis, comment or critical assessment; such use may only take place for teaching or research purposes to the extent justified by the purpose of the incorporation, and the source and the name of the author of the work used shall be stated;
- (b) the performance of musical works at official events connected with State institutions or religious ceremonies where attendance is free of charge, provided that the participants in the communication receive no specific remuneration for their involvement in the event;
- (c) the reproduction, distribution and communication to the public of articles and comments on current events and matters of collective interest that are disseminated by social communication media, provided that the source and the name of the author are given if the original article mentions them, and that no reserved rights notice has been included;
- (d) dissemination by the press or broadcasting for informative purposes of lectures, speeches and similar works disclosed at assemblies, public meetings or public debates on matters of general interest;
- (e) the reproduction of news of the day or miscellaneous news items that have the character of mere press information published by the press or broadcast, provided that the origin is stated;
- (f) the reproduction, communication and distribution of works permanently located in public places by means of photography, painting, drawing or any audiovisual process, provided that the name of the author of the original work and the place in which it is located are mentioned, and that the purpose is strictly the dissemination of art, science and culture;
- (g) the reproduction in a single copy of a work forming part of the permanent collection of a library or archive for the sole purpose of replacing it where necessary, insofar as the said work is not available commercially;
- (h) ephemeral recordings that are immediately destroyed after broadcasting;
- (i) the reproduction or communication of a disclosed work for the purpose of judicial or administrative proceedings;

(j) the parodying of a disclosed work, provided that this does not carry the risk of confusion with that work, or do harm to the work or to the reputation of the author or performer, as the case may be;

(k) lessons and lectures given in universities, colleges, schools and teaching and training centers in general, which may be annotated and collected by those to whom they are addressed for their personal use.”

3.2. What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“25. The owner of the copyright shall have the right to apply, or demand that others apply, such means of technical protection as he considers appropriate, by the incorporation of devices or contrivances, the coding of signals or other tangible or intangible protection systems, to prevent the violation of his rights or make it impossible. Acts consisting in the importation, manufacture, sale, rental, servicing or distribution of any other dealing in apparatus or means of deciphering or decoding coded signals or of evading or otherwise disabling the protection incorporated by the copyright owner, done without his consent, shall be assimilated to copyright infringement for the purposes of such civil actions and also for the exercise of such precautionary measures as may be appropriate, without prejudice to whatever penalties may be applicable to the offense.”

3.3. What obligations are in the Law for the protection of “rights management information?”

“26. Any of the following acts shall likewise constitute violations of the rights provided for in this Book:

(a) the removal or alteration of electronic rights management information without the appropriate authority;

(b) the distribution, importation or communication to the public of the original or copies of the work in the knowledge that electronic rights management information has been removed or altered without authority.

“Electronic rights management shall be taken to mean that embodied in copies of works or appearing in connection with the communication of a work to the public which identifies the work, the author, the owners of any copyright or related right or information on the terms and conditions governing the use of the work, as well as the number and code that represents such information.”

3.4. Generally, what measures for enforcement of rights are in the Law?

“288. The violation of any of the intellectual property rights established by this Law shall give rise to the institution of civil and administrative proceedings, without prejudice to any criminal action that might be available where the act has been categorized as an offense.

“The administrative protection of intellectual property rights shall be governed by the provisions of Book V of this Law.

“289. In the event of infringement of the rights recognized by this Law, the following may be sought:

- (a) the cessation of the infringing acts;
- (b) the permanent confiscation of the goods or other objects resulting from the infringement, the definitive withdrawal of the merchandise constituting the infringement from commercial channels, and also its destruction;
- (c) the definitive confiscation of the apparatus and other means used to commit the infringement;
- (d) the definitive confiscation of the apparatus and other means used to store copies;
- (e) indemnification for damages and prejudice;
- (f) reparation in any other form for the effects caused by the violation of the rights;
- (g) the total value of procedural costs.

“The rights laid down in international treaties in force in Ecuador may also be demanded, especially those specified in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization.

“290. For the owner of the copyright or related rights recognized by this Law to be recognized as such before any judicial or administrative authority, it shall be sufficient for the name or pseudonym or any other denomination that leaves no doubt as to the identity of the natural person or legal entity concerned to appear in the usual way or in connection with the work, performance, production or broadcast.

“291. No authority, natural person or legal entity may authorize the use of a work, performance, phonographic production or broadcast or any other production protected by this Law, or lend support for its use, if the user does not have the express prior permission of the owner of the rights or his representative. He or it shall be jointly liable in the event of non-compliance.

“292. Where the violation of rights takes place on digital communication networks, joint liability shall attach to the operator or any other person, whether natural person or legal entity, who has control over a computer system connected to the said network by means of which the communication, reproduction, transmission or any other act in violation of the rights provided for in this Law is permitted, promoted or facilitated, provided that the party concerned is aware or has been warned of the possible infringement, or could not have been unaware of it without serious negligence on his part.

“It shall be understood that a person has been warned of the possibility of infringement when notified thereof, with a statement of reasons, has been served on him.

“The operators or persons, whether natural persons or legal entities, referred to in this provision shall be exempted from liability for whatever acts they perform and technical measures that they take with a view to avoiding the occurrence or continuation of the infringement.”

“303. Indemnification for damages and prejudices shall include losses sustained and loss of profit caused by the infringement. The amount of unrealized incomes shall be determined according to the following criteria among others:

- (a) the profits that the owner would have earned if the violation had not taken place;
- (b) the profits that the infringer earned as a result of the violation;
- (c) the price, remuneration or royalty that the infringer would have had to pay the owner for lawful exploitation of the infringed rights;
- (d) the reasonable costs, including fees for professional advice and assistance incurred by the owner in relation to the dispute.”

“307. The judge shall demand of the plaintiff, given the circumstances, that the deposit be a bond of sufficient security to protect the plaintiff and prevent abuse.

“308. In order to prevent the infringement of any of the rights provided for in this Law from occurring or continuing, to prevent merchandise, including imported merchandise, from entering commercial channels, or to preserve relevant evidence relating to the alleged infringement, the courts shall be entitled to order, at the request of a party, such provisional or precautionary measures as may be necessary, according to the circumstances, for the urgent protection of the said rights, including the following:

- (a) immediate cessation of the unlawful activity;
- (b) suspension of the activity consisting in use, exploitation, sale, offering for sale, importation or exportation, reproduction, communication or distribution, as the case may be;
- (c) any other measure that would prevent the continued violation of rights.

“A confiscation order may be issued on the income earned by means of the infringing activity, property guaranteeing payment of indemnification and the goods or merchandise violating an intellectual property right, and also on the equipment, apparatus and other means used to commit the infringement and the originals that served for the reproduction or communication.

“Retention may be ordered in respect of money owed for exploitation or remuneration.

“A ban on leaving the country shall be ordered where the defendant has no domicile or permanent establishment in Ecuador.

“309. Immediate cessation of the unlawful activity may include the following:

- (a) suspension of the infringing activity or prohibition of the infringer from resuming it, or both;
- (b) provisional closure of the premises or establishment, which shall be ordered where the infringing merchandise or unlawful copies represent a substantial part of the usual business of the infringer;
- (c) withdrawal of the merchandise, unlawful copies or infringing objects from the market, and their judicial deposit;
- (d) disablement of materials or objects connected with the infringement, and where necessary destruction of molds, plates, printing blocks, instruments, negatives, plants or parts thereof and other material intended for the use of patented inventions, the printing of trademarks, unauthorized reproduction or communication, or anything used predominantly to facilitate the removal or disablement of any technical protection or electronic information device, the intended use thereof being mainly for acts in violation of any intellectual property rights;
- (e) any other measure that proves necessary for the urgent protection of intellectual property rights, given the nature and circumstances of the infringement.”

3.5. How does the law define the liability of the Internet service providers?

“292. Where the violation of right takes place on digital communication networks, joint liability shall attach to the operator or any other person, whether natural person or legal entity, who has control over a computer system connected to the said network by means of which the communication, reproduction, transmission or any other act in violation of the rights provided for in this Law is permitted, promoted or facilitated, provided that the party concerned is aware or has been warned of the possible infringement, or could not have been unaware of it without serious negligence on his part.

“It shall be understood that a person has been warned of the possibility of infringement when notified thereof, with a statement of reasons, has been served on him.

“The operators or persons, whether natural persons or legal entities, referred to in this provision shall be exempted from liability for whatever acts they perform and technical measures that they take with a view to avoiding the occurrence or continuation of the infringement.”

3.6. Are there any provisions in the Law on temporary storage?

Not found in the Law reviewed.

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

ELSALVADOR

(Legislación revisada: Ley de Fomento y Protección a la Propiedad Intelectual (Decreto N° 604) de 1993, Código Penal y WCTYWPPT ⁷)

1. Disposiciones del WCT

1.1. ¿Se extiende el alcance de la protección del derecho de autores solamente a las expresiones, y no a las ideas, procedimientos, métodos de funcionamiento o conceptos matemáticos?

“Artículo 12

“La presente ley protege las obras de espíritu manifestadas en formas sensibles, cualquiera que sea el modo o la forma de su expresión, de su mérito o de su destino, con tal que dichas obras tengan un carácter de creación intelectual o personal, es decir, originalidad.”

“Artículo 2 WCT: Ámbito de la protección del derecho de autor

“La protección del derecho de autor abarca a las expresiones pero no a las ideas, procedimientos, métodos de operación o conceptos matemáticos en sí.”

1.2. ¿Se encuentran los programas de ordenador protegidos en la ley como obras literarias?

Artículo 32

“Programa de ordenador, yasea programa fuente o programa objeto, es la obra literaria constituida por un conjunto de instrucciones expresadas mediante palabras, códigos, planes o en cualquier otra forma que, al ser incorporadas en un dispositivo de lectura automatizada, es capaz de hacer que un ordenador, o sea, un aparato electrónico o similar capaz de elaborar informaciones, ejecute determinada tarea u obtenga determinado resultado. Se presume que es productor del programa de ordenador, la persona que aparece indicada como tal en la obra de la manera acostumbrada, salvo prueba en contrario.”

⁷ Constitución Política de la República de El Salvador de 1983, actualizada hasta la reforma introducida por el DLN° 56, del 06.07.2000. Artículo 144 “Lo tratados internacionales celebrados por El Salvador con otros estados o con organismos internacionales, constituyen leyes de la República a partir de su vigencia, conforme a las disposiciones del mismo tratado y de esta Constitución” *Este es el caso del WCT y WPPT (aclaratoria añadida).*

“Artículo 12

Lapresente ley protege las obras del espíritu manifestadas en formas sensibles, cualquiera que sea el modo o la forma de su expresión, de su mérito o de su destino, con tal que dichas obras tengan un carácter de creación intelectual o personal, es decir, originalidad.”

“Artículo 13

“En las creaciones a que se refiere el artículo anterior, están comprendidas todas las obras literarias, científicas y artísticas, tales como libros, folletos y escritos de toda naturaleza y extensión, incluidos los programas de ordenador [...].”

1.3. ¿Se encuentran las recopilaciones de datos suotromaterial, en cualquier forma, protegidas en la ley como creaciones intelectuales, en razón de la selección o arreglo de los contenidos?

“Artículo 14

“Sin perjuicio de los derechos sobre la obra originaria, son también objeto de protección las traducciones, adaptaciones, transformaciones, o arreglos de obras, así como también las antologías o compilaciones de obras diversas o datos suotromateriales con inclusión de las bases de datos en forma legible por máquina o en otra forma, que por la selección o disposición de las materias, constituyan creaciones originales.”

1.3. ¿Existe en la ley el derecho de distribución?

“Artículo 7

“El derecho pecuniario de los autores la facultad de percibir beneficios económicos provenientes de la utilización de las obras y comprende especialmente las siguientes facultades:

[...]

d) La distribución de la obra, es decir, la de poner a disposición del público los ejemplares de la obra, por medio de la venta u otra forma de transferencia de la propiedad, pero cuando la comercialización de los ejemplares se realice mediante venta, esta facultad se extingue a partir de la primera venta, salvo las excepciones legales; conservando el titular de los derechos patrimoniales, es de autorizar o el arrendamiento de dichos ejemplares, así como los de modificar, comunicar públicamente y reproducir la obra;

[...]”

1.5. ¿Existe en la ley el derecho de alquiler? En caso afirmativo, ¿cómo se aplica?

“Artículo 7

“El derecho pecuniario del autor es la facultad de percibir beneficios económicos provenientes de la utilización de las obras y comprende especialmente las siguientes facultades:

[...]

d) La distribución de la obra, es decir, la de poner a disposición del público los ejemplares de la obra, por medio de la venta u otra forma de transferencia de la propiedad, pero cuando la comercialización de los ejemplares se realice mediante venta, esta facultad se extingue a partir de la primera venta, salvo las excepciones legales; conservando el titular de los derechos patrimoniales, es de autorizar o no el arrendamiento de dichos ejemplares, así como los de modificar, comunicar públicamente y reproducir la obra.

[...]”

“Artículo 89

“Constituye violación de los derechos de autor, todo acto que en cualquier forma menoscabe o perjudique los intereses morales o pecuniarios del autor, tales como:

[...]

g) La representación, ejecución, difusión, arrendamiento, comunicación o reproducción de obras en cualquier forma y por cualquier medio, con fines de lucro, sin la autorización del autor o de sus causahabientes.

[...]”

El derecho de alquiler se aplica a todas las obras (aclaratoria añadida)

1.6. ¿Existe en la ley el derecho de comunicación al público?

“Artículo 7

“El derecho pecuniario del autor es la facultad de percibir beneficios económicos provenientes de la utilización de las obras y comprende especialmente las siguientes facultades:

a) La reproducción de la obra, fijándola materialmente por cualquier procedimiento que permita comunicarla al público de una manera indirecta y

durable o la obtención de copias de toda la obra o parte de ella; puede efectuarse por medios de reproducción mecánica, tales como la imprenta, la litografía, el polígrafo, el cinematógrafo, el fonógrafo, las grabaciones magnetofónicas, la fotografía y cualquier otro medio de fijación; comprendetambién la reproducción de improvisaciones, discursos, lecturas y en general, recitaciones públicas hechas mediante la estenografía, la dactilografía y otros procedimientos análogos;

b) La ejecución y representación de la creación compuesta expresamente con tal propósito, comunicándola al público directamente o momentáneamente, tales como la representación teatral, la ejecución musical y coreografía, la escenificación para cinematografía y televisión, y el montaje de cualesquiera otra forma de espectáculo público;

c) La difusión de la obra por cualquier medio que sirva para transmitir los sonidos y las imágenes, tales como el teléfono, el radio, la televisión, el cable, el teletipo, el satélite, y cualquier otro medio ya conocido o que se desarrolle en el futuro.

[...]

“Artículo 9

“Comunicación pública es el acto mediante el cual la obra se pone al alcance del público por cualquier medio o procedimiento, así como el proceso necesario y conducente a que la obra se ponga al alcance del público. Son actos de comunicación pública los siguientes:

a) Las representaciones escénicas, recitaciones, disertaciones y ejecuciones públicas de las obras dramáticas, dramático-musicales, literarias y musicales mediante cualquier forma o procedimiento;

b) La proyección o exhibición pública de las obras audiovisuales;

c) La emisión de cualesquiera obras por radiodifusión o por cualquier medio que sirva para la difusión inalámbrica de signos, sonidos o imágenes;

d) La transmisión de cualesquiera obras al público por hilo, cable, fibra óptica u otro procedimiento análogo;

e) La retransmisión, por cualquier de los medios citados en las letras anteriores y por entidad emisora distinta del origen, de la obra radiodifundida o televisada;

f) La captación, en lugar accesible al público mediante cualquier procedimiento idóneo, de la obra radiodifundida por radio o televisión;

g) La presentación y exposición públicas de obras de arte o sus reproducciones;

h) El acceso público a bases de datos de ordenador por medio de telecomunicaciones, cuando éstas se incorporen o no constituyan obras protegidas; y

i) Ladifusión,porcualquierprocedimientoqueseaconocidoo porconocerse, delos signos, las palabras, los sonidos o las imágenes.”

1.7. ¿Existeenlaleyelderechodepuestaadisposiciónalpúblicodeobrasdetalmanera que los miembros del público puedan acceder a éstas en el lugar y momento individualmente escogido por ellos?

“*Artículo 7*

“El derecho pecuniario del autor es la facultad de percibir beneficio económico proveniente de la utilización de las obras y comprende especialmente las siguientes facultades:

[...]

c) Ladedifundirlaobra por cualquier medio que sirva para transmitir los sonidos y las imágenes, tales como el teléfono, la radio, la televisión, el cable, el teletipo, el satélite, y cualquier otro medio ya conocido o que se desarrolle en el futuro.

[...]”

1.8. ¿Gozan las obras fotográficas de un mismo término de duración de la protección establecido para el resto de las obras?

“*Artículo 12*

“La presente ley protege las obras del espíritu manifestadas en formas sensibles, cualquiera que sea el modo de su expresión, desde el momento de su destino, con tal que dichas obras tengan un carácter de creación intelectual o personal, es decir, originalidad.”

“*Artículo 13*

“En las creaciones a que se refiere el artículo anterior, están comprendidas todas las obras literarias, científicas y artísticas, tales como libros, folletos y escritos de toda naturaleza y extensión, incluidos los programas de ordenador; obras musicales como sinfonías; obras de oratoria, plástica, de arte aplicado, versiones escritas o grabadas de las conferencias, discursos, lecciones, sermones y otras de la misma clase; obras dramáticas o dramático-musicales y coreografía; las puestas en escena de las obras dramáticas y ópera; obras de arquitectura o de ingeniería, esfera, cartas, atlas y mapas relativos a geografía, geología, topografía, astronomía o cualquier otra ciencia; fotografías, litografías y grabados; obras audiovisuales, yasea de cinematografía muda, hablada o musicalizada; obras de radio, televisión, modelos o creaciones que tengan valor artístico en materia de vestuario, mobiliario, decorado, ornamentación, tocado, galas u objetos preciosos; planos u otras reproducciones gráficas y

traducciones; todas las demás que por analogía pudieran considerarse comprendidas dentro de los tipos genéricos de las obras mencionadas.”

“Artículo 86

“La duración de la protección de los derechos regulados por esta ley, es el siguiente:

- a) Si el autor es una persona natural, la protección comprende la vida de éste y cincuenta años a contar del día de su muerte, en favor de sus herederos o causahabientes. En caso de tratarse de una obra compleja, los cincuenta años comenzarán a contarse a partir de la muerte del último superviviente de los coautores, y si en vida de alguno falleciera otro, sin herederos, su parte acrecerá a los supervivientes;

[...]”

1.9. ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

“Artículo 182

“Las solicitudes de registro de derechos de autor y de patentes de invención que se encontraren en tramitación ante el Registro de Comercio a la fecha de la vigencia de la presente Ley [...]”

“Artículo 183

“Los registros de los derechos de autor y las patentes de invención concedidas al amparo de la legislación anterior se registrarán por las disposiciones de esta ley, con excepción de las disposiciones sobre acciones por infracción de derechos contenidas en esta Ley.”

“Artículo 185

“Los derechos regulados en el Título Segundo de esta Ley, que no gozaban de tutela conforme a las leyes anteriores, pero no haber sido registrados, gozarán automáticamente de la protección que concede la presente Ley, sin perjuicio de los derechos adquiridos por terceros con anterioridad a la entrada en vigencia de ésta, siempre que se trate de utilidades ya realizadas o en curso a la fecha de promulgación de esta Ley.

Salvo lo dispuesto en el artículo siguiente, no serán lícitas las utilidades no autorizadas de las obras, bajo cualquier modalidad reservada al autor o a sus causahabientes, cuando se inicien a partir de la vigencia de esta Ley.”

“Artículo 186

“Los que actualmente sin autorización del titular de los derechos respectivos, se dediquen a la reproducción, venta, arrendamiento o a cualquier otra forma de comercialización de obras audiovisuales y grabaciones sonoras reguladas en el Título Segundo de esta Ley, gozarán del plazo de cuatro meses contados a partir de la vigencia de la misma, a efectos de obtener las autorizaciones correspondientes y vencido dicho plazo sin que éstas sean obtenidas, tales actividades se volverán ilícitas y sujetas a las sanciones pertinentes.”

“Artículo 187

“Las entidades existentes relacionadas con los derechos de autor y conexos, para ejercer las actividades de gestión colectiva, deberán adaptar sus documentos constitutivos a las disposiciones de esta Ley.”

“Artículo 190

“El presente Decreto entrará en vigencia sesenta días después de su publicación en el Diario Oficial.” (16-08-93) *fecha de publicación en el Diario Oficial añadida.*

En el WCT

“Artículo 13 WCT: Aplicación en el tiempo”

“Las Partes Contratantes aplicarán las disposiciones del Artículo 18 del Convenio de Berna a toda la protección contemplada en el presente Tratado.”

(Fecha de entrada en vigor: 6 de marzo de 2002.)

2. Disposiciones del WPPT

2.1. Definiciones

2.1.1 ¿Se encuentran las “interpretaciones o ejecuciones” o los “artistas intérpretes o ejecutantes” definidos en la ley?

“Artículo 80

“Para los efectos de la presente ley se consideran como artistas intérpretes y ejecutantes, todo actor, cantante, músico, bailarín u otra que represente un papel, cante, recite, declare, interprete o ejecute en cualquier forma una obra literaria o artística.”

2.1.2 ¿Se encuentra el “fonograma” definido en la ley?

“Artículo 2 WPPT

“[...]

b) ‘fonograma’, toda fijación de los sonidos de una ejecución o interpretación de otros sonidos, o de una representación de sonidos que no sea en forma de una fijación incluida en una obra cinematográfica o audiovisual;

[...]”

“Declaración concertada respecto del Artículo 2.b)

“Queda entendido que la definición de fonograma prevista en el Artículo 2.b) no sugiere que los derechos sobre el fonograma sean afectados en modo alguno por su incorporación en una obra cinematográfica u otra obra audiovisual.”

2.1.3 ¿Se encuentra la “fijación” definida en la ley?

“Artículo 2 WPPT

“[...]

c) ‘fijación’, la incorporación de sonidos, o la representación de éstos, a partir de la cual puedan percibirse, reproducirse o comunicarse mediante un dispositivo;”

[...]”

2.1.4 ¿Se encuentra el “productor de fonogramas” definido en la ley?

“Artículo 2 WPPT

“[...]

d) ‘productor de fonogramas’, la persona natural o jurídica que toma la iniciativa y tiene la responsabilidad de la primera fijación de los sonidos de una ejecución o interpretación u otros sonidos o las representaciones de sonidos;”

[...]”

2.1.5 ¿Se encuentra la “publicación de una interpretación o ejecución fijada de un fonograma” definida en la ley?

“Artículo 2 WPPT

[...]

e) ‘publicación’ de una interpretación o ejecución fijada de un fonograma, la oferta al público de la interpretación o ejecución fijada del fonograma con el consentimiento del titular del derecho o siempre que los ejemplares se ofrezcan al público en cantidad suficiente.

[...]”

“Declaración Concertada del Artículo 2 WPPT

“Tal como se utilizan en estos artículos, las expresiones “copias” y “original y copias”, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.1.6 ¿Se encuentra la “radiodifusión” definida en la ley?

“Artículo 2 WPPT

[...]

f) ‘radiodifusión’, la transmisión en alámbrica de sonidos o de imágenes y sonidos de las representaciones de éstos, para su recepción por el público; dicha transmisión por satélite también es una ‘radiodifusión’; la transmisión de señales codificadas será ‘radiodifusión’ cuando los medios de decodificación sean ofrecidos al público por el organismo de radiodifusión o con su consentimiento;

[...]”

2.1.7 ¿Se encuentra la “comunicación al público” definida en la ley?

“Artículo 9

“Comunicación pública es el acto mediante el cual la obra se pone al alcance del público por cualquier medio o procedimiento, así como el proceso necesario y conducente a que la obra se ponga al alcance del público. Son actos de comunicación pública los siguientes:

a) Las representaciones escénicas, recitaciones, disertaciones y ejecuciones públicas de las obras dramáticas, dramático-musicales, literarias y musicales mediante cualquier forma o procedimiento;

- b) La proyección o exhibición pública de las obras audiovisuales;
- c) La emisión de cualesquiera obras por radiodifusión o por cualquier medio que sirva para la difusión en alámbricas de signos, sonidos o imágenes;
- d) La transmisión de cualesquiera obra al público por hilo, cable, fibra óptica u otro procedimiento análogo;
- e) La retransmisión, por cualquier de los medios citados en las letras anteriores y por entidad emisora distinta del origen, de la obra radiodifundida o televisada;
- f) La captación, en lugar accesible al público mediante cualquier procedimiento idóneo, de la obra radiodifundida por radio o televisión;
- g) La presentación y exposición públicas de obras de arte o sus reproducciones;
- h) El acceso público a bases de datos de ordenador por medio de telecomunicaciones, cuando éstas se incorporen o constituyan obras protegidas; e
- i) La difusión, por cualquier procedimiento que se conozca o por conocerse, de los signos, las palabras, los sonidos o las imágenes.”

2.2. ¿Se encuentra el concepto de “trato nacional” contenido en la ley?

“Artículo 11

“El extranjero que publique una obra en El Salvador, gozará de los mismos derechos que los salvadoreños. Las obras publicadas en el extranjero gozarán de protección en el territorio nacional, de acuerdo con los términos establecidos en los tratados y convenios internacionales vigentes, ratificados por El Salvador. En los demás casos, para gozar de la protección de la ley salvadoreña, se exigirá el requisito de reciprocidad, el autor debe probar que ha cumplido con las formalidades establecidas para su protección en las leyes del país en que fue publicada.”

2.3. ¿Gozan los artistas intérpretes o ejecutantes de derechos morales en la ley?

“Artículo 81

“Los artistas intérpretes o ejecutantes o sus derechohabientes, tienen el derecho de autorizar o la fijación, reproducción o comunicación pública, por cualquier medio o procedimiento, de sus interpretaciones o ejecuciones. Sin embargo, no podrán oponerse a la comunicación cuando ésta se efectúe a partir de una fijación realizada con su previo consentimiento, publicada con fines comerciales. Los artistas intérpretes tendrán igualmente el derecho moral de vincular su nombre o pseudónimo a la interpretación y de impedir cualquier deformación de la misma que ponga en peligro su decoro o reputación.”

2.4. ¿Gozan los artistas intérpretes o ejecutantes de derechos patrimoniales por sus interpretaciones o ejecuciones no fijadas?, y en caso afirmativo, ¿Cuáles son estos derechos?

“Artículo 8I

“Los artistas intérpretes y ejecutantes o sus derechohabientes, tienen el derecho de autorizar o la fijación, reproducción o comunicación pública, por cualquier medio o procedimiento, de sus interpretaciones o ejecuciones. Sin embargo, no podrán oponerse a la comunicación cuando ésta se efectúe a partir de una fijación realizada con su previo consentimiento, publicada con fines comerciales. Los artistas intérpretes tendrán igualmente el derecho moral de vincular su nombre o seudónimo a la interpretación y de impedir cualquier deformación de la misma que ponga en peligro su decoro o reputación.”

2.5. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de reproducción en la ley?

“Artículo 8I

“Los artistas intérpretes y ejecutantes o sus derechohabientes, tienen el derecho de autorizar o la fijación, reproducción o comunicación pública, por cualquier medio o procedimiento, de sus interpretaciones o ejecuciones. Sin embargo, no podrán oponerse a la comunicación cuando ésta se efectúe a partir de una fijación realizada con su previo consentimiento, publicada con fines comerciales. Los artistas intérpretes tendrán igualmente el derecho moral de vincular su nombre o seudónimo a la interpretación y de impedir cualquier deformación de la misma que ponga en peligro su decoro o reputación.”

2.6. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de distribución en la ley?

“Artículo 8WPPT: Derecho de distribución

“1) Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizar la puesta a disposición del público del original y de los ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, mediante venta u otra transferencia de propiedad.

2) Nada en el presente Tratado afectará a la facultad de las Partes Contratantes de determinar las condiciones, si las hubiera, en las que se aplicará el agotamiento del derecho del párrafo 1) después de la primera venta u otra transferencia de propiedad del original o de un ejemplar de la interpretación o ejecución fijada con autorización del artista intérprete o ejecutante.”

“Declaración Concertada del Artículo 8WPPT

“Tal como se utilizan en estos Artículos, las expresiones “copias” y “originales o copias”, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos Artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.7. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de alquiler en la ley?

“Artículo 9 WPPT: Derecho de alquiler

“1) Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizar el alquiler comercial al público del original y de los ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, tal como establezca la legislación nacional de las Partes Contratantes, incluso después de su distribución realizada por el artista intérprete o ejecutante o su autorización.

2) Sin perjuicio de lo dispuesto en el párrafo 1), una Parte Contratante que al 15 de abril de 1994 tenía y continúa teniendo un sistema de remuneración equitativa para los artistas intérpretes o ejecutantes por el alquiler de ejemplares de sus interpretaciones o ejecuciones fijadas en fonogramas, podrá mantener ese sistema a condición de que el alquiler comercial de fonogramas no dé lugar a un menoscabo considerable de los derechos de reproducción exclusivos de los artistas intérpretes o ejecutantes.”

“Declaración Concertada del Artículo 8 WPPT

“Tal como se utilizan en estos artículos, las expresiones “copias” y “original y copias”, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.8. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de puesta a disposición de sus interpretaciones o ejecuciones fijadas en la ley?

“Artículo 10 WPPT: Derecho de poner a disposición interpretaciones o ejecuciones fijadas

“Los artistas intérpretes o ejecutantes gozarán del derecho exclusivo de autorizar la puesta a disposición del público de sus interpretaciones o ejecuciones fijadas en fonogramas, yasea por hilo o por medios inalámbricos de tal manera que los miembros del público puedan tener acceso a ellas desde el lugar y en el momento que cada uno de ellos elija.”

2.9. ¿Gozan los productores de fonogramas (“productores”) de un derecho de reproducción en la ley?

“Artículo 83

“Los productores fonográficos autorizados de acuerdo a un contrato de inclusión fonográfica, tienen el derecho de autorizar o la reproducción de sus fonogramas, así como la importación, arrendamiento, distribución al público o su utilización, por cualquier forma o medio, de las copias de sus fonogramas.”

2.10. ¿Gozan los productores de un derecho de distribución en la ley?

“Artículo 83

“Los productores fonográficos autorizados de acuerdo a un contrato de inclusión fonográfica, tienen el derecho de autorizar o la reproducción de sus fonogramas, así como la importación, arrendamiento, distribución al público o su utilización, por cualquier forma o medio, de las copias de sus fonogramas.”

2.11. ¿Gozan los productores de un derecho de alquiler en la ley?

“Artículo 83

“Los productores fonográficos autorizados de acuerdo a un contrato de inclusión fonográfica, tienen el derecho de autorizar o la reproducción de sus fonogramas, así como la importación, arrendamiento, distribución al público o su utilización, por cualquier forma o medio, de las copias de sus fonogramas.”

2.12. ¿Gozan los productores de un derecho de puesta a disposición de fonogramas en la ley?

“Artículo 83

“Los productores fonográficos autorizados de acuerdo a un contrato de inclusión fonográfica, tienen el derecho de autorizar o la reproducción de sus fonogramas, así como la importación, arrendamiento, distribución al público o su utilización, por cualquier forma o medio, de las copias de sus fonogramas.”

2.13. ¿Gozan los productores y/o artistas intérpretes o ejecutantes de un derecho de remuneración por la radiodifusión y/o comunicación al público de fonogramas en la ley?

“Artículo 15 WPPT: *Derecho a remuneración por radiodifusión o comunicación al público*

“1) Los artistas intérpretes o ejecutantes y los productores de fonogramas gozarán del derecho a una remuneración equitativa y única por la utilización directa o indirecta para la radiodifusión o para cualquier comunicación al público de los fonogramas publicados en los confines comerciales.

2) Las Partes Contratantes pueden establecer en su legislación nacional que la remuneración equitativa y única debe ser reclamada al usuario por el artista intérprete o ejecutante o por el productor de un fonograma o por ambos. Las Partes Contratantes pueden establecer legislación nacional que, en ausencia de un acuerdo entre el artista intérprete o ejecutante y el productor del fonograma, fijar los términos en los que la remuneración equitativa y única será compartida entre los artistas intérpretes o ejecutantes y los productores de fonogramas.

3) Toda Parte Contratante podrá, mediante una notificación depositada en poder del Director General de la OMPI, declarar que aplicará las disposiciones del párrafo 1)

únicamente respecto de ciertas utilizaciones o que limitará su aplicación de alguna otra manera o que no aplicará ninguna de estas disposiciones.

4) A los fines de este artículo, los fonogramas puestos a disposición del público, ya sea por hilo o por medios inalámbricos de tal manera que los miembros del público puedan tener acceso a ellos desde el lugar y en el momento que cada uno de ellos elija, serán considerados como si se hubiesen publicado con fines comerciales.”

2.14. ¿Se encuentran estos derechos sujetos a formalidades?

“Artículo 96

“Las formalidades establecidas en los artículos anteriores (artículos 93 al 95, aclaratoria añadida), no son constitutivas de derechos, teniendo sólo carácter declarativo para la mayor seguridad jurídica de los titulares y como un medio probatorio de sus derechos. En consecuencia, la omisión del depósito, no perjudica el goce ni el ejercicio de los derechos reconocidos en la presente Ley.”

2.15. ¿Cuál es el término de protección para:

2.15.1 los artistas intérpretes o ejecutantes?

“Artículo 86

“La duración de la protección de los derechos regulados por esta ley, es la siguiente:

[...]

b) La protección de los derechos de los intérpretes, será de cincuenta años contados a partir del primer día de enero del año siguiente a la actuación, cuando se trate de interpretaciones o ejecuciones no fijadas; o de la publicación, cuando la actuación esté grabada en un soporte sonoro o audiovisual.

[...]”

2.15.2 productores de fonogramas?

“Artículo 86

“La duración de la protección de los derechos regulados por esta ley, es la siguiente:

a) La protección de los derechos de los productores de fonogramas, será de cincuenta años siguientes al que se fijaron por primera vez los sonidos incorporados al fonograma;

[...]”

2.16. ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

“Artículo 182

“Las solicitudes de registro de derechos de autor y de patentes de invención que se encontraron en tramitación ante el Registro de Comercio a la fecha de la vigencia de la presente Ley, continúan su tramitación de acuerdo con la legislación anterior; pero los registros y patentes que se concedan quedarán sujetos a las disposiciones de esta Ley [...]”

“Artículo 183

“Los registros de los derechos de autor y las patentes de invención concedidas al amparo de la legislación anterior se registrarán por las disposiciones de esta legislación, con excepción de las disposiciones sobre acciones por infracción de derechos contenidas en esta Ley.”

“Artículo 185

“Los derechos regulados en el Título Segundo de esta Ley, que no gozaban de tutela conforme a las leyes anteriores, pero no habiendo sido registrados, gozarán automáticamente de la protección que concede la presente Ley, sin perjuicio de los derechos adquiridos por terceros con anterioridad a la entrada en vigencia de ésta, siempre que se trate de utilidades y realizaciones o en curso a la fecha de promulgación de esta Ley. Salvo lo dispuesto en el artículo siguiente, no serán lícitas las utilidades no autorizadas de las obras, bajo cualquier modalidad reservada al autor o sus causahabientes, cuando se inicien a la entrada en vigencia de esta Ley.”

En el WPPT

“Artículo 22 WPPT: Aplicación en el tiempo

“1) Las Partes Contratantes aplicarán las disposiciones del Artículo 18 del Convenio de Berna, *mutatis mutandis*, a los derechos de los artistas intérpretes o ejecutantes y de los productores de fonogramas contemplados en el presente Tratado.

2) No obstante lo dispuesto en el párrafo 1), una Parte Contratante podrá limitar la aplicación del Artículo 5 de la presente Tratado a las interpretaciones o ejecuciones que tengan lugar después de la entrada en vigor del presente Tratado respectivamente de esa Parte.”

(Fecha de entrada en vigor: 20 de mayo de 2002, fecha añadida.)

3. Disposiciones comunes

3.1. ¿Cuáles son las limitaciones y excepciones en la ley?

“Artículo 39

“Las leyes, reglamentos, acuerdos y demás disposiciones emanadas de los órganos correspondientes del Gobierno de la República, podrán ser publicados o sueltos en colección por los particulares, después que lo hayan sido por el Gobierno y con apego al texto oficial, sin necesidad de autorización del Gobierno. Asimismo, podrán insertarse sin autorización en los periódicos y en otras obras que por su naturaleza u objeto convenga citarlos, comentarlos, criticarlos o copiarlos a la letra.”

“Artículo 40

“Las sentencias dictadas por los Tribunales de cualquier orden podrán publicarse, salvo disposición legal en contrario, si su contenido no afecta a la moral o las buenas costumbres. Los escritos presentados por las partes en cualquier causa, serán propiedad de las mismas y podrán publicarse sin más limitaciones que las comprendidas en el Artículo 6 de la Constitución.

“Artículo 41

“Será lícita la reproducción de breves fragmentos de obras literarias, científicas o artísticas, en publicaciones o crestomatías o confines didácticos, científicos o de crítica literaria o de investigación, siempre que se indique de manera inconfundible, la fuente de donde proceden; que los textos reproducidos no sean alterados y que la reproducción no atente contra la explotación normal de la obra, ni cause perjuicio a los intereses legítimos del autor. Para los mismos efectos y con iguales restricciones, podrán publicarse breves fragmentos o traducciones.”

“Artículo 42

“Las cartas de interés público pueden ser publicadas sin dañar el honor o intereses del remitente o del destinatario y siempre que no se contraríen las limitaciones comprendidas en el Artículo 6 de la Constitución. El provecho pecuniario de la publicación corresponderá al autor o a sus causahabientes.”

“Artículo 43

“El titular de los derechos de autor tiene la facultad exclusiva de autorizar o prohibir que la obra protegida seacomunicada o difundida públicamente, por medio de cable, satélite o por cualquier otro tipo de señales que sirvan para difundirlos o en imágenes, o por cualquier otro medio de comunicación o difusión. El acto de comunicación pública que se efectúe en el territorio de El Salvador de toda obra, causará utilidad pecuniaria a favor del titular de los derechos de autor y de las demás personas que tengan derechos sobre obra de acuerdo con la ley, sin perjuicio de las sanciones penales a que hubiere lugar.”

“Artículo 44

“Son comunicaciones lícitas, sin autorización del autor ni remuneración:

- a) Las realizadas en un círculo familiar siempre que no exista un interés lucrativo, directo o indirecto;
- b) Las efectuadas con fines de utilidad general en el curso de actos oficiales, ceremonias religiosas y benéficas siempre que el público pueda asistir a ellas gratuitamente y ninguno de los participantes en la comunicación perciba una remuneración específica por su intervención en el acto. No obstante lo dispuesto en el inciso anterior, cuando se perciban fondos en diversas actividades, estas deberán destinarse exclusivamente para fines de utilidad general;
- c) Las verificadas con fines exclusivamente didácticos, en establecimientos de enseñanza, siempre que no haya fines lucrativos;
- d) Las que se efectúen para apoyar a evidentes y otras personas incapacitadas, siempre que éstas puedan asistir a la comunicación en forma gratuita y ninguno de los participantes en el acto reciba una retribución específica por su intervención en el mismo;
- e) Las que se realicen dentro de establecimientos de comercio, para los solos fines demostrativos de la clientela, de equipos receptores, reproductores u otros similares o para la venta de los soportes sonoro o audiovisuales que contienen las obras;
- f) Las realizadas como indispensables para llevar a una prueba judicial o administrativa;
- g) Los discursos, entrevistas o declaraciones, realizados por miembros de los partidos políticos debidamente legalizados;
- h) Las realizadas por solistas o grupos musicales en reuniones privadas, cuando no se perciban fines de lucro;
- i) Las realizadas por solistas o grupos musicales en reuniones públicas, siempre que cuando la entrada sea en forma gratuita.

“Artículo 45

“Respecto de las obras ya divulgadas lícitamente, es permitida sin autorización del autor ni remuneración:

- a) La reproducción de una copia de la obra para el uso personal y exclusivo del usuario, realizada por el propio interesado con sus propios medios, siempre que no sea en detrimento de la explotación normal de la obra, ni sea causa de perjuicio injustificado a los intereses legítimos del autor;

- b) Las reproducciones fotomecánicas para el uso personal, como la fotocopia y el microfilm, siempre que se limiten a pequeñas partes de una obra protegida o a obras agotadas. Se equipara a la reproducción ilícita toda utilización de las piezas reproducidas por cualquier medio o procedimiento, para un uso distinto del personal que se haga en concurrencia con el derecho exclusivo del autor de explotar su obra;
- c) La reproducción por medios reprográficos, para la enseñanza o la realización de exámenes en instituciones educativas siempre que no haya fines de lucro y en la medida justificada por el objetivo perseguido, de artículos, breves extractos o obras breves lícitamente publicadas, a condición de que tal utilización se haga conforme a los usos honrados;
- d) La reproducción individual de una obra por biblioteca o archivos que no tengan fines de lucro, cuando el ejemplar se encuentra en su colección permanente, para preservar dicho ejemplar y sustituirlo en caso de necesidad para sustituir en la colección permanente de otra biblioteca o archivo, un ejemplar que se haya extraviado, destruido o inutilizado, siempre que no resulte posible adquirir tal ejemplar en plazo o en condiciones razonables;
- e) La reproducción de una obra para actuaciones judiciales o administrativas, en la medida justificada por el fin que se persiga;
- f) La reproducción de una obra de arte expuesta permanentemente en las calles, plazas u otros lugares públicos, por medio de un arte diverso al empleado para la elaboración del original. Respecto de los edificios, dicha facultad se limita a la fachada exterior;
- g) La reproducción de una sola copia del programa de ordenador, exclusivamente con fines de resguardo o seguridad; y
- h) La introducción del programa de ordenador en la memoria interna del equipo, a los solos efectos de su utilización por el usuario.”

“Artículo 46

“Es permitido realizar en forma breve, sin autorización del autor ni pago de remuneración, citas de obras lícitamente publicadas, con la obligación de indicar el nombre del autor y la fuente, ya condición de que tales citas se hagan conforme a los usos honrados y en la medida justificada por el fin que se persiga.”

“Artículo 47

“Es lícita también, sin autorización ni remuneración, siempre que se indique el nombre del autor y la fuente:

- a) La reproducción y distribución por la prensa, o la transmisión por cualquier medio, de artículos de actualidad sobre cuestiones económicas, sociales, artísticas,

políticas o religiosas, publicadas en medios de comunicación social, siempre que la reproducción o transmisión no haya sido reservada expresamente;

b) La difusión, con ocasión de las informaciones relativas a acontecimientos de actualidad por medios sonoros o audiovisuales, de imágenes o sonidos de las obras vistas u oídas en el curso de tales acontecimientos, en la medida justificada por el fin de la información; y

c) La difusión por la prensa o la transmisión por cualquier medio, a título de información de actualidad, de los discursos, disertaciones, alocuciones, sermones y otras obras de carácter similar pronunciadas en público y, los discursos pronunciados en público y los discursos pronunciados durante actuaciones judiciales, en la medida en que lo justifiquen los fines de información que se persiguen, y sin perjuicio del derecho que conservan los autores de las obras difundidas para publicarlas individualmente o en forma de colección.”

“Artículo 48

“Es lícito que los organismos de radiodifusión, sin autorización del autor ni pago de una remuneración especial, realicen grabaciones efímeras con sus propios equipos y para la utilización en sus propias emisiones de radiodifusión, de una obra que tenga el derecho de radiodifundir. Sin embargo, el organismo o radioemisor deberá destruir la grabación en el plazo de seis meses desde su realización, a menos que se haya convenido con el autor un plazo mayor, pero la grabación podrá conservarse en archivos oficiales cuando tengan un carácter documental excepcional.”

“Artículo 49

“No constituye modificación de la obra, la adaptación de un programa de ordenador realizada por el propio usuario y para su utilización exclusiva.”

3.2. ¿Qué protección jurídica, y cuáles recursos jurídicos proporciona la ley contra la elisión de las medidas tecnológicas de protección eficaces?

No existiendo ninguna disposición al respecto en la ley.

3.3. ¿Cuáles obligaciones se encuentran en la ley para la protección de “información sobre la gestión de derechos”?

No existiendo ninguna disposición al respecto en la ley.

3.4. De manera general; ¿Cuáles son las medidas de observancia de derechos en la ley?

“Artículo 89

“Constituye violación de los derechos de autor, todo acto que en cualquier forma menoscabe o perjudique los intereses morales o pecuniarios del autor, tales como:

- a) El empleo sin el consentimiento del autor, del título de una obra que individualice efectivamente a ésta, para identificar o trad del mismo género, cuando exista peligro de confusión entre ambas;
- b) La publicación por cualquier medio, de un escrito sin el consentimiento del autor, se haga o no a nombre de éste;
- c) La impresión por el editor de un mayor número de ejemplares que el convenido, salvo el exceso de cincop o ciento para dar cumplimiento a sus obligaciones con las autoridades públicas y efectos de propaganda;
- d) La traducción, adaptación, arreglo o transformación de una obra, sin autorización del autor o de sus causahabientes;
- e) La publicación de una obra con supresiones, modificaciones o alteraciones no autorizadas por el autor o sus causahabientes o con errores que constituyan una grave adulteración;
- f) La publicación de antologías o recopilaciones, sin el consentimiento de los autores respectivos o de sus causahabientes;
- g) La representación, ejecución, difusión, arrendamiento, comunicación o reproducción de obras en cualquier forma y por cualquier medio, con fines de lucro, sin la autorización del autor o de sus causahabientes;
- h) La representación, ejecución, exhibición y exposición de la obra en lugares distintos de los convenidos;
- i) La adaptación, transformación o versión en cualquier forma de una obra ajena o parte de ella, sin consentimiento del autor respectivo o sus causahabientes;
- j) La representación o ejecución de una obra con supresiones, modificaciones o alteraciones, no autorizadas por el autor o sus causahabientes;
- k) Las adaptaciones, arreglos o limitaciones que impliquen una reproducción disimulada del original;
- l) La retransmisión por cualquier medio alámbrico o inalámbrico, de una emisión de radiodifusión, sin el consentimiento del organismo de radiodifusión;
- m) La reproducción, importación, exportación con fines convencionales, venta y alquiler de reproducciones o copias de las obras protegidas, en todo o en parte, sin autorización del titular de los derechos, incluyendo las actuaciones de los intérpretes o ejecutantes, fonogramas y emisiones de radiodifusión.

Enningúncasolosdependientes,comisionistasocualquiertrapersonaque desempeñeunaactividadlaboraldecualse, bajoremuneración, para la persona que realice actos de violación de los derechos de autor, será responsable de tales actos, niquiera en forma subsidiaria.”

“Artículo 90

“Sin perjuicio de las acciones penales correspondientes a los titulares de los derechos conferidos por esta ley, tienen acción para reclamar ante los tribunales competentes, el cese de la violación de cualquier de sus derechos y la reparación de daños y perjuicio El cese de la violación de sus derechos comprende: s.

- a) La suspensión inmediata de la actividad ilícita;
- b) La prohibición al infractor de reanudarla;
- c) El retiro del comercio de los ejemplares ilícitos;
- d) La inutilización de los moldes, planchas, matrices, negativos y demás elementos utilizados predominantemente para la reproducción ilícita y en caso necesario, la destrucción de tales elementos; y
- e) La remoción o la guardabaja y sello, de los aparatos utilizados en la comunicación pública no autorizada.

“El titular de derecho infringido podrá pedir la destrucción de los ejemplares ilícitos sola entrega de los mismos y del material utilizado para la reproducción, a precio de costo y acuentadel correspondiente indemnización por daños y perjuicios. El cálculo de la indemnización de daños y perjuicios en lo que se refiere a los lucros que deba repararse, se estimará con base en uno de los siguientes criterios, a elección del perjudicado:

- a) En base a los beneficios que el titular del derecho habría obtenido previsiblemente, de no haber ocurrido la infracción;
- b) En base a los beneficios obtenidos por el infractor como resultado de los actos de infracción;
- c) En base al precio o regalía que el infractor habría pagado al titular del derecho, si se hubiera concertado una licencia contractual, teniendo en cuenta el valor comercial del objeto del derecho infringido y las licencias contractuales que ya se hubieran concedido.

“Artículo 91

“En caso de violación de los derechos cuando se tenga el temor fundado de que se inicie o repita una violación ya realizada, el Juez al comprobar las circunstancias anteriores y el derecho que asiste al actor, decretará, a solicitud del titular de los derechos lesionados, previa rendición de fianza, que fijará atendiendo al daño producido

o que pudieran producirse, y sin noticia al infractor, una o varias de las siguientes medidas cautelares que, según las circunstancias, fuesen necesarias para la protección urgente de tales derechos:

- a) El secuestro preventivo del producto líquido obtenido con la utilización ilícita;
- b) El secuestro preventivo de los ejemplares ilícitamente reproducidos;
- c) La suspensión de la actividad de reproducción, comunicación o distribución no autorizadas, según proceda; y
- d) La prohibición de importar o exportar los ejemplares ilícitamente reproducidos, librando la orden correspondiente a la Dirección General de la Rentada Aduanas.

“La suspensión de un espectáculo público por la utilización ilícita de las obras, interpretaciones o producciones protegidas, podrá ser decretada por el Juez del lugar de la infracción, aún cuando no se acompetente para conocer del juicio principal. El secuestro a que se refiere el literal “b” del presente artículo, no surtirá efecto contra quien haya adquirido de buena fe y para su uso personal un ejemplar o copia ilícitamente reproducidos. Quien solicite las medidas cautelares a que se refiere este artículo, deberá interponer la demanda respectiva dentro de los ocho días siguientes a aquél en que se decretó cualquier de tales medidas, caso contrario, responderá por los daños y perjuicios ocasionados.”

“Artículo 92

“El que ejerza las acciones consagradas en el presente capítulo, está obligado a presentar con la demanda la personería con que actúa o la representación que invoca.”

Artículo 227 Código Penal

“Será sancionado con pena de prisión de tres a cinco años quien realice cualquier de las conductas descritas en el artículo anterior, concurriendo alguna de las circunstancias siguientes: 1) Usurpando la condición de autor sobre una obra o parte de ella o el nombre de un artista en una interpretación o ejecución, 2) Modificando sustancialmente la integridad de la obra sin autorización del autor, y 3) Si la calidad o el valor de la copia ilícita fuere de especial trascendencia económica.”

3.5. ¿Cómo define la ley la responsabilidad de los proveedores de servicio?

“Declaración Concertada del Artículo 8 WCT

“Queda entendido que el simple suministro de instalaciones físicas para facilitar o realizar una comunicación, en sí mismo, no representa una comunicación en el sentido del presente Tratado o del Convenio de Berna. También queda entendido que nada de

lo dispuesto en el Artículo 8 impide que una Parte Contratante aplique el Artículo 11bis.2).”

3.6. ¿Existen algunas disposiciones en la ley relativa al almacenamiento temporal?

“Artículo 89

“Constituye violación de los derechos de autor, todo acto que en cualquier forma menoscabe o perjudique los intereses morales o pecuniarios del autor, tales como:

[...]

g) La representación, ejecución, difusión, arrendamiento, comunicación o reproducción de obras en cualquier forma y por cualquier medio, con fines de lucro, sin la autorización del autor o de sus causahabientes;

[...]”

3.7. ¿Existen algunas disposiciones expresas para asegurar que las disposiciones en contra de la elisión no restrinjan el funcionamiento de las limitaciones o excepciones a los derechos otorgados en la ley?

No existen ninguna disposición al respecto en la ley.

GABON

(Law Reviewed: Law Instituting Protection for Copyright and Neighboring Rights, Date of Law (No. 1/87): July 29, 1987. Date of entry into force: July 29, 1987)

1. WCT provisions

1.1. Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

Not found in the Law reviewed.

1.2. Are computer programs protected in the Law as literary works?

Not found in the Law reviewed.

1.3. Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 5

“The same shall apply to collections of literary or artistic works such as encyclopedias or anthologies which, by reason of the selection or arrangement of the subject matter, constitute intellectual creations.”

1.4. Is there a right of distribution in the Law?

“Article 29.

“The exclusive right to authorize exploitation of his work, afforded to the author, shall cover:

[...]

– placing in circulation of the reproduced work.

[...]”

1.5. Is there a right of rental in the Law, and if so, to which works does it apply?

Not found in the Law reviewed.

1.6. Is there a right of communication to the public in the Law?

“Article 28

“The economic attributes belonging to the author shall comprise the exclusive right to exploit this work in any form whatsoever and to derive pecuniary profit therefrom. They shall permit, in particular, the exercise of the rights of performance, public execution, reproduction and of resale royalty (*droit desuite*).

“Performances shall mean the direct communication of the work to the public.

“Public execution shall consist in communicating the work to the public by any means or process whatsoever, including broadcasting and audiovisual means.”

1.7. Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

Not found in the Law reviewed.

1.8. Are photographic works given the same duration of protection as other works in the Law?

Not found in the Law reviewed.

1.9. What is the effective time -frame for application of the rights in the Law?

Not found in the Law reviewed.

2. WPPT provisions

2.1. Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

Not found in the Law reviewed.

2.1.2 Is “phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.3 Is “fixation” defined in the Law?

Not found in the Law reviewed.

2.1.4 Is “producer of a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.6 Is “broadcasting” defined in the Law?

Not found in the Law reviewed.

2.1.7 Is “communication to the public” defined in the Law?

Not found in the Law reviewed.

2.2. Is the concept of “national treatment” contained in the Law?

Not found in the Law reviewed.

2.3. Do performers have moral rights in the Law?

Not found in the Law reviewed.

2.4. Do performers have economic rights in their unfixed performances, and if so, which ones?

Not found in the Law reviewed.

2.5. Do performers have a right of reproduction in the Law?

“Article 80

“No one may accomplish any of the following acts without the authorization of the performers or their duly accredited representatives: the diffusion of their performance, except where diffusion is effected from a fixation or where it is a broadcast authorized by the radio or television organization that emitted the original performance; communication to the public of their performance, except where communication is made from a fixation of the performance; fixation of their unfixed performance; reproduction of a fixation of their performance in any of the following cases: where the performance has been initially fixed without their authorization, where the reproduction is made for purposes other than those for which the performers gave their authorization, where the performance has been initially fixed, but the reproduction alone is made for purposes other than those referred to in Article 85 below.”

2.6. Do performers have a right of distribution in the Law?

Not found in the Law reviewed.

2.7. Do performers have a right of rental in the Law?

Not found in the Law reviewed.

2.8. Do performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9. Do producers of phonograms (“producers”) have a right of reproduction in the Law?

Not found in the Law reviewed.

2.10. Do producers have a right of distribution in the Law?

Not found in the Law reviewed.

2.11. Do producers have a right of rental in the Law?

Not found in the Law reviewed.

2.12. Do producers have a right of making available of phonograms in the Law?

Not found in the Law reviewed.

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

Not found in the Law reviewed.

2.14. Are rights in the Law subject to any formalities?

“Article 3

“The provisions of this Law shall protect the rights of authors in all works of the mind, whatever their type, value, purpose, mode or form of expression, without the need for any formality.”

2.15. What is the term of protection for:

2.15.1 performers?

Not found in the Law reviewed.

2.15.2 producers of phonograms?

Not found in the Law reviewed.

2.16. What is the effective time-frame for application of rights in the Law?

Not found in the Law reviewed.

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Article 33

“When the work has been lawfully made available to the public, the author may not prohibit: communication such as performance, execution, diffusion: where they are private, made exclusively within a family circle and generate no receipt of any kind; if they are made free of charge for strictly educational or welfare purposes or during a religious service in premises reserved for that purpose; reproductions, translations and adaptations intended for strictly personal and private use.”

“Article 34

“Subject to mention of the title of the work and the name of the author, analyses and short quotations taken from a work already made lawfully available to the public shall be lawful on condition that they comply with fair use and to the extent that they are justified by the scientific, critical, polemic, teaching or informative purpose, including quotations from newspaper articles and periodicals in the form of press reviews.

“Such analyses and quotations may be used in their original version or in translation.”

“Article 35

“Literary, scientific or artistic works seen or heard in the course of a current event may, for the purposes of information, be reproduced and made available to the public in a report on that event by means of photography, cinematography or sound [...]”

“Article 36

“Subject to mention of the name of the author and of the source and provided that the rights of reproduction or diffusion have not been expressly reserved, the following may be reproduced by the press or diffused for informative purposes: articles on current economic, political or religious topics published in the original version or in translation in newspapers or periodicals or diffused; speeches intended for the public, made at deliberative assemblies, public court hearings or at public political meetings and official ceremonies.”

“Article 37

“Works of art, including architectural works, permanently located in a public place, may be reproduced and made available to the public by means of cinematography, photography or television. The same shall apply where the inclusion of such a work in a film or a broadcast is of an accessory or incidental nature only in relation to the main subject.”

“Article 38

“Unless otherwise stipulated, the authorization for sound or visual diffusions shall cover all free communication, either sound or visual, made by the radio and television broadcasting organization using its own technical and artistic facilities and under its own responsibility Pursuant to the provisions of Article 28 above, this authorization shall not cover church clubs and public places such as cafes, restaurants, hotels, cabarets, shops in general, cultural centers, private clubs, for which prior authorization must be requested in accordance with the fifth paragraph of Article 29a above.”

“Article 39

“By derogation from Article 30 above and without prejudice to the rights of the author in the diffusion of his work, the radio and television broadcasting organization may, for its own broadcasts, record the work by means of its own technical facilities for the purpose of subsequent diffusion dictated by timetable or technical reasons.”

“The diffusion of such recordings shall require declaration.”

3.2. What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

Not found in the Law reviewed.

3.3. What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4. Generally, what measures for enforcement of rights are in the Law?

“Chapter VII Procedure and Sanctions

“Article 63

“All disputes arising from the application of the provisions of this Law which are within the jurisdiction of the judiciary shall be submitted to the competent courts, without prejudice to the right of the injured party to institute criminal proceedings under the general rules of law.”

“Article 64

“ANPAC may institute legal proceedings to defend the interests of the authors in their stead.”

“Article 65

“Any infringement of any of the moral or economic rights defined in this Law shall constitute an offense punishable by the articles of the Criminal Code penalizing infringement of literary and artistic property.”

“Article 66

“At the request of any author of a work protected by this Law, of his successors in title or of ANPAC, the examining magistrate investigating an action for infringement or the presiding judge may, in all such cases, order: these seizure at any place of the copies already manufactured or in the process of manufacture of an unlawfully reproduced work; these seizure of revenue from any reproduction, performance or diffusion made unlawfully of a protected work; the suspension of any manufacture or public performance, in progress or announced, that constitutes infringement or an act preparatory to infringement; any other measure deemed necessary.

“The above provisions shall also apply in cases of unauthorized exploitation of works constituting expressions of folklore or that have fallen into the public domain.”

“Article 67

“The distrainee or the garnishee may request the magistrate who has ordered seizure to end seizure or to limit its effects. The magistrate may further authorize resumption of manufacture or of public performance under the authority of an administrator appointed as a receiver of the proceeds of such manufacture or exploitation on behalf of the person to whom the work belongs.”

“Article 68

“The judges sitting in chambers may, if he accepts the request of the distrainee or garnishee, order the deposit by the petitioner of an amount to guarantee the damage to which the author of the work or his successors in title may be entitled.”

“Article 69

“The measures ordered by the magistrate under Article 65 above shall be automatically lifted in the event of a *nonsuit* or a *nolle prosequi*.”

“Article 70

“The measures ordered by the presiding judges shall be lifted automatically on the thirtieth day following the decision if the petitioner fails to submit the matter to the competent civil court, unless criminal proceedings are in progress.”

“Article 71

“ANPAC shall be authorized to appoint agents to secure proof of the existence of a performance or an execution or a public diffusion of any kind or of any infringement of the provisions of this Law on the territory of the Gabonese Republic. These agents shall be sworn before the first instance court of their district in accordance with conditions set out by decree.”

“Article 72

“The authorities of all security forces and the customs administrations shall be required, at the request of the representatives of ANPAC, to give their assistance and, where appropriate, their protection.”

“Article 73

“Any legal or natural person who has permitted unlawful reproduction or communication to the public in his establishment of protected works shall be deemed to have civil responsibility for such unlawful reproduction or public communication, together with any other person, whether his agent or not, who has materially committed the infringement.”

“Article 74

“The exploitation of a work of folklore or of a work in the public domain for which prior authorization has not been obtained from ANPAC shall be liable to a civil fine amounting to twice the due fee, in accordance with the regulations in force.”

“Article75

“Anypersonwhohasinfringedthecopyrightaffordedtoanyprotectedworkshallbe liablefordamagesofanamounttobedeterminedbythecompetentcourt.”

“Article76

“InallthosescasesprovidedforinthisChapter,thecour tshallorderexofficiothe confiscationoftheunlawfullycollectedamountsandofallinfringingcopiesand objects.Itmayalsoorderconfiscationoftheequipmentusedtocommitthe infringement.”

3.5. HowdoesthelawdefinetheliabilityoftheI nternetserviceproviders?

NotfoundintheLawreviewed.

3.6 ArethereanyprovisionsintheLawontemporarystorage?

NotfoundintheLawreviewed.

3.7 Arethereanyexplicitprovisionstoensurethattheanti -circumventionprovisionsdonot restricttheoperationoflimitations/exceptionstorightsprovidedintheLaw?

NotfoundintheLawreviewed.

GEORGIA

(Law Reviewed: Law of Georgia on Copyright and Neighboring Rights of June 22, 1999)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Article 5. Subject Matter of Copyright

“[...]

“3. Copyright does not apply to ideas, methods, processes, systems, means, concepts, principles, discoveries and facts, even if they are expressed, described, explained, illustrated or embodied in a work.”

1.2 Are computer programs protected in the Law as literary works?

“Article 4. Explanation of Terms Used in the Law

“The terms used in the Law have the following meaning:

[...]

j) “computer program” – a set of instructions expressed in words, codes, charts or in any other machine-readable form, which activates a computer in order to achieve a certain result. The term includes preparatory material for computer program design;

[...]”

“Article 6. Scientific, Literary and Art Works

“1. As a work of science, literature and art shall be deemed the following:

a) literary works (books, brochures, articles, computer program, etc.);

“[...]

“4. The protection of computer programs extends to any kind of computer program (including operational systems), expressed in any language and from, including initial text and objective code.”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 4. Explanation of Terms Used in the Law

“The terms used in the Law have the following meaning:

[...]

m) ‘database’ – a collection of works, independent information, data and set of other materials placed in respect to systematic or methodical rule available by electronic or other media. This term does not include a computer program, applied data and operation of database available by electronic means;

[...]”

“Article 6. Scientific, Literary and Art Works

“1. A work of science, literature and art shall be deemed the following:

[...]

l) compilation works, in particular, collections (encyclopedias, anthology, database) and other works, provided that the selection and arrangement of the contents is the result of intellectual creative efforts;

[...]”

1.4 Is there a right of distribution in the Law?

“Article 18. Economic Rights of the Author of Work

“1. The author or other holder of copyright has the exclusive right to the use of the work in any form.

“2. The exclusive right to the use of the work means the right to exercise, permit or prohibit the following:

[...]

b) distribution of the original or copies of the work among public by sale or lease or transfer of property or ownership in other way (right of distribution);

[...]”

1.5 IstherearightofrentalintheLaw,andifso,towhichworksdoesitapply?

“Article4.E xplanationofTermsUsedintheLaw

“ThetermsusedintheLawhavethefollowingmeaning:

[...]

f) ‘renting’ –availabilityoforiginalorcopyoftheworkorobjectof neighboringrightstobeusedinacertainperiodoftimewiththepurposeof gainingp rofit;

[...]”

“Article18.EconomicRightsoftheAuthorofWork

“1. Theauthororotherholderofcopyrighthavetheexclusiverighttotheuseofthe workinanyform.

“2. Theexclusiverighttotheuseoftheworkmeanstherighttoexercise,permi tor prohibitthefollowing:

[...]

b) distributionoftheoriginalorcopiesoftheworkamongpublicbysaleor leaseortransferofpropertyorownershiponotherway(rightondistribution);

[...]”

1.6 Istherearightofcommunicationtothepublic intheLaw?

“Article4.ExplanationofTermsUsedintheLaw

“ThetermsusedintheLawhavethefollowingmeaning:

[...]

p) ‘publictransmission(transmissionforgeneralinformation)’ –transmission inetherofimageorsoundofawork,performance,ph onogram,videogram, programofbroadcastingorganizationbycableorbyothermeans,wheresuch imagesand/orsounds canbereceivedbypersonsoutsideofanormalcircleofa familyanditssocialacquaintancesinaplace(places),whosedistancefrom transmissionplaceissuch,thatwithoutthistransmissiontheimagesorsounds couldnotbereceivedinsaidplace(places);

[...]”

“Article 18. Economic Rights of the Author of Work

“1. The author or other holder of copyright has the exclusive right to the use of the work in any form.

“2. The exclusive right to the use of the work means the right to exercise, permit or prohibit the following:

[...]

f) public transmission of the work in ether or by cable including primary and/or secondary transmission (right of public transmission);

[...]”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

Not found in the Law reviewed.

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Article 6. Scientific, Literary and Art Works

“1. A work of science, literature and art shall be deemed the following:

[...]

i) photographic work or work created through means analogous to photography. Separate images of audiovisual work shall not be deemed as photographic works;

[...]”

“Article 31. Arising of Copyright and Duration

“1. The copyright arises at the moment of creation of the work and is valid during the author’s life and during 70 years from his death, with the exception of cases provided for by the Article 32 of this Law.

“2. Calculation of the terms defined by this Article and Article 32 of this Law starts from January 1 of the year following the year in which the legal fact, being basis for beginning calculation of said terms, has taken place.”

1.9 What is the effective time -frame for application of the rights in the Law?

“Article 67. Spreading of the Norms of this Law on Relations Established Earlier

- “1. This Law covers the relations arisen after enactment of this Law related to creation and use of copyright and neighboring rights objects.
 - “2. To the work for which 70 years validity term of copyright has not expired, are applied the validity terms defined by the Articles 31 -32 of this Law.
- “[...]”

2. WPPT provisions

2.1. Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 4. Explanation of Terms Used in the Law

“The terms used in the Law have the following meaning:

[...]

- x) ‘performer’ – an actor (in the theater, cinema, etc.), singer, musician, dancer or other person, who acts, recites, sings, declaims, plays a musical instrument or performs otherwise literary or art work, including variety, circus, puppet or folkloreshow;

[...]”

2.1.2 Is “phonogram” defined in the Law?

“Article 4. Explanation of Terms Used in the Law

“The terms used in the Law have the following meaning:

[...]

- u) ‘phonogram’ – only sound record of performance or other sounds. The term does not include the sounds, recorded together with images, such as a musical background of audiovisual work;

[...]”

2.1.3 Is “fixation” defined in the Law?

“Article 4. Explanation of Terms Used in the Law

“The terms used in the Law have the following meaning:

[...]

w) ‘record’ – fixing of image and/or sound by technical means in any objective form, which enable their multiple perception, reproduction and transmission;

[...]”

2.1.4 Is “producer of phonogram” defined in the Law?

“Article 4. Explanation of Terms Used in the Law

“The terms used in the Law have the following meaning:

[...]

v) ‘phonogram producer’ – a natural person or legal entity, who has taken initiative and responsibility for fixing performance or for first recording of other sounds; if the contrary is not proved, as a producer of phonogram shall be deemed a natural person or legal entity, the name and/or title of which is indicated on the phonogram and/or its case according to respective rule;

[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Article 4. Explanation of Terms Used in the Law

“The terms used in the Law have the following meaning:

[...]

e) ‘publication’ – including into course of trade or renting, by consent of an author or other holder of neighboring rights, copies of work, phonogram and videogram, or by transfer in another way of property or ownership on work, phonogram and videogram in the quantity, which satisfies reasonable requirements. The work, phonogram and videogram shall be considered published, if they are available by means of information electronics systems;

[...]”

2.1.6 Is “broadcasting” defined in the Law?

“Article 4. Explanation of Terms Used in the Law

“The terms used in the Law have the following meaning:

[...]

k) ‘broadcasting’ – transmission of a work or object of neighboring rights by wireless communication, including satellite (“satellite” means every satellite working in the range of frequencies intended for broadcast signals for public. “Transmission via satellite” means receiving of program carrier signals under control and responsibility of broadcasting organization. The programs intended for public are received as a continuous chain of communication - up in the direction of satellite and down to the earth. If program carrier signals are coded, the satellite communication is conducted, if the broadcasting organization agrees to provide the public with decoding means);

[...]”

2.1.7 Is “communication to the public” defined in the Law?

“Article 4. Explanation of Terms Used in the Law

“The terms used in the Law have the following meaning:

[...]

p) ‘public transmission (transmission for general information)’ – transmission in the form of image or sound of a work, performance, phonogram, videogram, program of broadcasting organization by cable or by other means, where such images and/or sounds can be received by persons outside of a normal circle of a family and its social acquaintances in a place (places), whose distance from transmission place is such, that without this transmission the images or sounds could not be received in said place (places);

[...]”

2.2 Is the concept of “national treatment” contained in the Law?

“Article 3. Subject Matter of the Law

“This Law shall apply to:

a) scientific, literary and artistic works, performance, phonogram and videograms, the holder of copyright and/or neighboring right of which is citizen of Georgia, a natural person having permanent residence with in the territory of Georgia or a legal entity registered in respect to the rule prescribed by the legislation of Georgia;

- b) scientific, literary and artistic works, phonogram and videogram first published in the territory of Georgia. The work, phonogram or videogram shall be deemed as first published in Georgia, if after first publication abroad within 30 days they are republished within the territory of Georgia;
- c) performance, first performed within the territory of Georgia; performance fixed on a phonogram or videogram, which is protected in respect to the subparagraph “b” of this Article; performance, which is fixed on a phonogram or videogram, but is included in the program of a broadcasting organization protected in respect to the subparagraph “d” of this Article;
- d) programs of those broadcasting organizations, which are legal entities established in respect to the rule prescribed by the legislation of Georgia broadcast by means of transmitters disposed on the territory of Georgia;
- e) architectural works located within the territory of Georgia, artistic works incorporated in an architectural work on the territory of Georgia, in spite of citizenship and permanent residence of their authors;
- f) other works of science, literature and art, performance, phonogram, videogram and programs of broadcasting organizations, protected in respect to the international agreements to which Georgia is a party.”

2.3 Do performers have moral rights in the Law?

“Article 47. Rights of Performer

- “1. A performer on his performance has the following personal and economic rights:
- a) the right on the name;
 - b) the right to protect his performance from any distribution, or other infringing, which may damage the honor, dignity or business reputation (right on respect of reputation);
- [...]”

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones?

“Article 47. Rights of Performer

- “1. A performer on his performance has the following personal and economic rights:
- [...]”

c) the right to use the performance in any form, including the right to receive royalty for the use of the performance in any form;

[...]"

"2. The exclusive right to the use of the performance means to permit or prohibit the following:

a) recording of the performance, which was not recorded before;

[...]

c) transmission of the performance by broadcast or cable, or other communication to the public of the performance, with the exception of cases, when there is retransmitted the earlier recorded or transmitted performance with the consent of the performer;

[...]"

2.5 Do performers have a right of reproduction in the Law?

"Article 47. Rights of Performer"

"1. A performer on his performance has the following personal and economic rights:

[...]

c) the right to use the performance in any form, including the right to receive royalty for the use of the performance in any form;

[...]"

"2. The exclusive right to the use of the performance means to permit or prohibit the following:

[...]

b) reproduction of the performance record, with the exception of the cases, when the performance was recorded with the consent of the performer and the reproduction is carried for the same purpose, for which it was recorded;

[...]"

2.6 Do performers have a right of distribution in the Law?

Not found in the Law reviewed.

2.7 Do performers have a right of rental in the Law?

“Article 47. Rights of Performer

“1. A performer on his performance has the following personal and economic rights:

[...]

c) the right to use the performance in any form, including the right to receive royalty for the use of the performance in any form;

[...]”

“2. The exclusive right to the use of the performance means to permit or prohibit the following:

[...]

e) renting of the published phonogram or videogram, on which the performance with the participation of the performer is fixed;

[...]”

2.8 Do performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 48. Exclusive Rights of Phonogram Producer

“1. The producer of the phonogram enjoys the exclusive right to use the phonogram in any form, including the right to receive the royalty for using the phonogram in each form.

“2. The exclusive right to the use of phonograms means the right to conduct, permit or prohibit:

a) reproduction of the phonogram;

[...]”

2.10 Do producers have a right of distribution in the Law?

“Article 48. Exclusive Rights of Phonogram Producer

“1. The producer of the phonogram enjoys the exclusive right to use the phonogram in any form, including the right to receive the royalty for using the phonogram in each form.

“2. The exclusive right to the use of phonograms means the right to conduct, permit or prohibit:

[...]

b) first distribution of the phonogram copies;

[...]

d) distribution of the phonogram copies in the public through renting, or transfer of the property or ownership in any way;

[...]”

2.11 Do producers have a right of rental in the Law?

“Article 48. Exclusive Rights of Phonogram Producer

“1. The producer of the phonogram enjoys the exclusive right to use the phonogram in any form, including the right to receive the royalty for using the phonogram in each form.

“2. The exclusive right to the use of phonograms means the right to conduct, permit or prohibit:

[...]

c) renting of phonogram copies;

d) distribution of the phonogram copies in the public through renting, or transfer of the property or ownership in any way;

[...]”

2.12 Do producers have a right of making available of phonograms in the Law?

Not found in the Law reviewed.

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 52. Use of Phonograms Produced for Commercial Purposes

“1. It is permitted, without consent of the producer of phonogram produced for the purpose of gaining profit and the performer of the work fixed in the phonogram, but by paying the royalty to do the following:

- a) public performance of phonogram;
- b) transmission of the phonogram by aerial or cable.

“2. Collection and distribution of the royalty provided for by the paragraph 1 of this Article is executed by one of those organizations, which govern the rights of the performers and phonogram producer on collective basis.

“3. The amount of the royalty and rule of its payment is defined, on the one hand, between the phonogram users, and, on the other hand, one of the organizations administering the economic rights of phonogram producers and performer on collective basis. If the parties fail to reach the agreement the amount of the royalty shall be determined by Sakpatenti. The amount of the royalty shall be determined for each form of phonogram use.

“4. Users of the phonogram shall submit to the organizations mentioned in the paragraph 2 of this Article the programs (plans) including the precise information on the amount of phonogram use, as well as other certificates and documents needed for collection and distribution of the royalty.”

2.14 Are rights in the Law subject to any formalities?

“Article 46. Subjects of Neighboring Rights

“1. The subjects of the neighboring rights are: performers, producers of phonograms or videograms and broadcasting organizations.

“[...]

“4. It is not obligatory to observe any formalities for arising and execution of the neighboring rights. The producer of a phonogram or performer for declaration of the their right may apply the sign protecting the neighboring rights, which shall be affixed to each copy of the phonogram and/or its case and consists of three elements:

- a) the Latin letter P in a circle: P; 

- b) the name (title) of the holder of exclusive rights;
- c) the year of phonogram's first publication."

2.15 What is the term of protection for:

2.15.1 performers?

"Article 57. Validity Terms of Neighboring Rights

"1. The performers' rights defined by Article 47 of this Law is valid within 50 years from the first performance. If within this term the record of the performance was lawfully disclosed or displayed publicly, this term continues for 50 years from the first disclosure or display.

"2. The right of the performer on the name and on respect to his reputation is protected without any time limit. These rights are not transferred by inheritance. The protection of performer's personal rights, after his death is carried out in respect to the rule protecting the personal moral rights of scientific, literary and artworks authors.

"[...]"

2.15.2 producers of phonograms?

"Article 57. Validity Terms of Neighboring Rights

"[...]"

"3. The right of phonogram or videogram producer provided for by the Articles 48 -49 of this Law is valid during 50 years from the first disclosure of the phonogram or videogram. If within this term the phonogram or videogram was lawfully disclosed or displayed publicly, this term is from the first disclosure or public display during 50 years.

"[...]"

2.16 What is the effective time-frame for application of rights in the Law?

"Article 67. Spreading of the Norms of this Law on Relations Established Earlier

"1. This Law covers the relations arisen after enactment of this Law related to creation and use of copyright and neighboring rights objects.

"[...]"

“3. To the performance, on which 50 years has not expired from its first performance, applies the validity term of performers' rights defined by the paragraph 1 Article 57 of this Law.

“4. To the phonogram and videogram, on which 50 years from their first lawful display or creation have not expired before enactment of this Law, in the case, where they were not displayed within the mentioned term, applies the neighboring rights validity term defined by the paragraph 3 Article 57 of this Law.

“[...]

“Article 57. Validity Terms of Neighboring Rights

“1. The performers' rights defined by Article 47 of this law is valid within 50 years from the first performance. If within this term the record of the performance was lawfully disclosed or displayed publicly, this term continues for 50 years from the first disclosure or display.

“[...]

“3. The right of phonogram or videogram producer provided for by the Articles 48 -49 of this Law is valid during 50 years from the first disclosure of the phonogram or videogram. If within this term the phonogram or videogram was lawfully disclosed or displayed publicly, this term is continued from the first disclosure or public display during 50 years.

“[...]

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 18. Economic Rights of the Author of Work

“[...]

“9. The limitations of economic rights stipulated by paragraph 2 of this Article are defined by the Articles 21 -30 of this law, provided that, such limitations do not prevent the normal use of the work and do not damage unreasonably the legal interests of the author or other holder of copyright.”

*“Chapter III
“Limitation of Economic Rights*

“Article 21. Reproduction of the Work by the Natural Person for the Personal Purposes

“1. It is permitted to reproduce the lawfully published work by the natural persons only for personal purposes without consent or payment of the royalty to the author or other holder of copyright, with the exception of cases provided for in the paragraph 2 and 3 of this Article.

“2. The first paragraph of this Article shall not be applied:

- a) at reproduction of architectural works in the form of buildings;
- b) at reproduction of databases;
- c) at reproduction of computer programs, with the exception of the cases provided for by the Articles 28 and 29 of this Law;
- d) reprographic reproduction of books (completely), music notations and works of fine arts;
- e) at reproduction of audiovisual work or the work fixed as phonogram.

“3. At reproduction of the audiovisual work or the work fixed on a phonogram by the natural person for personal purposes, the author or other holder of copyright in difference from the rule provided for in the first paragraph of this Article, has the right to receive respective royalty.

“4. The royalty shall be paid at reproduction for personal purposes by producers and importers of equipment (audio- and video recorders and other equipment) and material carriers (phono and video tapes, cassettes, laser disks, compact disks and other material carriers).

“5. Collection and distribution is executed by one of those organizations, which govern the economic rights of the authors, performers and phonogram producers on collective basis, in respect to the contract concluded between these organizations. If there is not provided for otherwise by the contract the royalty is distributed in the following way: 40 percent - to the authors, 30 percent - to performers, 30 percent - to phonogram producers. Said organizations are entitled to claim information on production and importation of equipment and material carriers referred to in the paragraph 4 of this Article from natural persons and legal entities, as well as from state organizations and institutions.

“6. The amount of the royalty and payment order are defined, on the one hand, between said producers and importers and, on the other hand, by the contract with one of those organizations, which govern the economic rights of authors, performers and phonogram producers on collective basis. If the parties fail to reach the agreement, the amount of the royalty is determined by the Sakpatenti.

“7. The royalty is distributed among those authors and other holders of copyright and neighboring rights of the work mentioned in paragraphs 3 and 5 of this Article and which, possibly, were reproducing it for personal purposes.

“8. The royalty shall not be paid for the equipment and material carriers provided for by paragraph 4 of this Article which are:

- a) the subject of export;
- b) professional equipment, which is not intended for domestic use.

“9. The royalty shall not be paid at importation of said equipment and material carriers by natural persons for personal purposes.

“Article 22. Reprographic Reproduction of Work by Libraries, Archives and Educational Institutions

“The reprographic reproduction without direct or indirect gaining of profit is permitted, without consent of the author or other holder of copyright and without paying him the royalty but with mandatory indication of the work author's name and of the borrowed source, and in separate cases - in the volume defined by the set aim. Such reprographic reproduction is admissible:

- a) in a single copy for substitution of destroyed, lost or indecent copies of lawfully published work by libraries and archives; for substitution of lost, destroyed or indecent copies from the funds of other libraries with the purpose of supplying the copies to these libraries, if receiving of such copies in ordinary conditions through other means is impossible;
- b) in a single copy of lawfully published works and other small volume works, or excerpts from written works (with the exception of computer programs), by libraries and archives at the request of natural persons for educational, scientific or personal purposes;
- c) of the lawfully published separate articles and other small volume works, or small excerpts from written works (with the exception of computer programs), by the educational institutions for teaching purposes.”

“Article 23. Exploitation of the Work Without Consent of the Author and Without Paying Him the Royalty

“It is permitted, without consent of the author or other holder of the copyright, and without payment of the royalty but with obligatory indication of the author's name of the used work and of the borrowed source, to do the following:

- a) to cite from the lawfully published works original or translation, for scientific, research, polemic, critical and information purposes in the volume justified for the purposes of citing, including reproduction of excerpts from newspapers and journals in the form of printed survey;

- b) to use excerpts from the lawfully published works in the form of illustrations, printed matter, radio and teleprograms, phonograms and videorecording of educational character in the volume defined by these items;
- c) reproduction by means of newspaper or public transmission of lawfully published articles on current economic, political, social and religious issues in periodic publications or similar works transmitted by aerial, only in the cases where such reproduction or public transmission is not specially prohibited by the author or other holder of copyright. Whereasthe author shall preserve the right on publication of such work in collection;
- d) reproduction or communication to the public of the work seen or heard in the process of reviewing current events, by means of taking photos, broadcast or cable transmission in the volume justified for information purposes;
- e) reproduction or communication to the public of delivered publicly political speeches, reports, lectures, addresses, sermons or other similar works, including speeches made at court sessions, through newspapers, journals and other periodical editions in the volume justified for information purposes. Whereas, the author shall preserve the exclusive right on publication of such a work either in the form of separate collections, or a book.
- f) reproduction of the lawfully published work with relief -dotted print, or of other special means for the blind persons, with the exception of the works specially created for such methods of use.”

“Article 24. Use of Works Permanently Disposed in Places for Free Attendance

“It is permitted, without consent of the author or other holder of copyright and without paying the royalty to him, to make reproduction or communication to the public of architectural, photographic and fine arts work permanently disposed in places open to free attendance, with the exception of cases, when the image of the work represents the main object of such reproduction or public communication or is used for gaining profit.”

“Article 25. Public Performance of Musical Work at Ceremony

“Without consent of the author or other holder of copyright and paying him the royalty, it is permitted to perform publicly the lawfully published musical works at official, funeral and religious ceremonies only in a volume justified by the character of such ceremony.”

“Article 26. Reproduction of the Work for Court Proceedings

“Without consent of the author or other holder of copyright and paying him the royalty, it is permitted to reproduce the work for court proceedings, only in the volume defined by set purpose.”

“Article 27. Short Term Recording of Work by Broadcasting Organization

“The broadcasting organization is authorized, without consent of the author or other holder of copyright and without payment of additional royalty to him, to record for short term use of the work for which this organization has secured the right on broadcasting with the observation of the following conditions:

- a) making of record by means of own equipment for own program;
- b) destruction of the record within six months from the date of making, if a longer period has not been agreed upon with the author of the recorded work. Only the recording of documentary character can be kept in the official archive without the author's consent.”

“Article 28. Limitations of the Computer Program and Database Owners Rights

“1. A person, who owns lawfully a copy of a computer program or database, is authorized without consent of an author or other holder of copyright and without paying him a royalty to do the following:

- a) to enter changes in the computer program or database, necessary for functioning of users of technical facilities, also carry out any action related to functioning of the computer program or database, including recording and saving in computer memory (for one computer or one user of network), correction of apparent mistakes, if there is not provided for otherwise by the copyright contract;
- b) make a reserve copy of computer program or database provided that this copy is intended only for archive and for substitution of the lost, destroyed or indecent copy of lawful owner.

“2. The reserve copy of computer program or database shall not be used for the purposes other than the rules defined by paragraph 1 of this Article and shall be destroyed at termination of computer program or database owner's rights.”

“Article 29. Free use of Computer Program (Decompilation)

“The person, who lawfully owns the copy of computer program is entitled without consent of the author or other holder of copyright and without paying him the copyright royalty, to conduct decompilation (reproduce and transform the objective coded in initial text) of computer program, also order decompilation of the other persons in the case, when it is necessary to achieve interoperability among the computer program created by him and other programs, provided that the following conditions are met:

- a) these actions are performed by the person having permission to use the program copy, or on his behalf another person having the respective permission;

- b) the information necessary to achieve interoperability has not been available for him by the other sources;
- c) these actions relate only to the parts of decompiled program necessary for achievement of interoperability;
- d) the information received in result of decompilation shall be applied only for achieving interoperability among the computer program created independently and other computer programs. This information shall not be disclosed to other persons or used for creation of a new computer program, which is substantially similar to the decompiled program, or for any other action, which infringes copyright.”

“Article 30. Free use of Database

“The lawful user of database or original or copy can without consent of the database author or other holder of copyright, conduct actions defined by the Article 19 of this Law, when it is necessary to access the database and for its normal use, if the lawful user has the right to use the part of database, said rights apply only to this part.”

“Article 51. Free use of Neighboring Rights Object

“1. The limitations of neighboring rights provided for by this Law does not prevent the normal use of the performance, phonogram, videogram, program of broadcasting organization and does not damage unreasonably the lawful interests of the performer, phonogram or videogram producer and broadcasting organization.

“2. The use of performance, phonogram, videogram, broadcasting organization programs and their records without consent of the performer, phonogram or videogram producer and broadcasting organization and without payment of the royalty to the performer, is permitted in the following cases:

- a) at citing in the form of excerpts from the performance, phonogram, videogram, the program of broadcasting organizations, provided that such citation is carried out for scientific, research, polemic, critical and information purposes - only in such volume, which is justified by the set purpose;
- b) at attaching or scientific research in the form of excerpts and illustrations - only in the volume justified by the set purpose;
- c) at reviewing of current events inserting of short excerpts from the performance, phonogram, videogram, the program of broadcasting organization.

“3. The use of performance, program of broadcasting organization and their records by the natural persons, as well as the reproduction of phonogram or videogram for personal purposes without the consent of the performer, broadcasting organization, phonogram or videogram producer is permitted. Such reproduction is conducted under the condition of paying the royalty by the rule defined by the Article 21 of this Law.”

“Article 53. Recording of Performance of Program by the Broadcasting Organization for Short -Term Use

“The wireless broadcasting organization is authorized, without consent of the performer, phonogram or videogram producer and broadcasting organization, to conduct recording of performance or program for short -term use and reproduction of such record provided that the following conditions are met:

- a) receiving of the preliminary consent on transmission of the performance or program;
- b) making of short -term recording and its reproduction by means of the own equipment for the own program;
- c) destruction of the short -term record under the conditions provided for the short term records of scientific, literary and art works.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Article 4. Explanation of Terms Used in the Law

“The terms used in the Law have the following meaning:

[...]

- s) “technical means” – an equipment or its component, intended to prevent any infringement of copyright and neighboring rights.

[...]”

3.3 What obligations are in the Law for the protection of “rights management information?”

“Article 4. Explanation of Terms Used in the Law

“The terms used in the Law have the following meaning:

[...]

- t) ‘information administering right’ – an information, in which there is indicated the author, work, performer, performance, phonogram producer, videogram, videogram producer, broadcasting organization, broadcasting organization program, database, author of database and holder of any rights provided for by this Law, or an information on work or neighboring rights object, exploitation terms and conditions, digits and codes representing the information, when the work, fixed performance, phonogram, videogram or broadcasting organization program is completed by the information components

or is displayed at public demonstration of work, fixed performance, phonogram, videogram or broadcasting organization program;

[...]"

"Article 58. Infringement of Copyright and Neighboring Rights"

"1. Infringement of copyright and neighboring rights defined by this Law shall result in the civil, criminal and administrative responsibilities. The legal entity for infringement of copyright and neighboring rights shall be liable under the civil law.

"2. The natural person or legal entity, who does not meet the requirements of this Law, shall be considered to be the infringer of copyright and neighboring rights.

"3. The following shall be deemed to be the infringement of copyright and neighboring rights:

- a) deleting of the electronic information managing the right without the consent of the holder of the right;
- b) publication of the work or neighboring rights object by any means, when the person was aware or had the basis to know, that the electronic information managing the rights was deleted or altered without the consent of the holder of the right."

3.4 Generally, what measures forenforcement of rights are in the Law?

"Article 58. Infringement of Copyright and Neighboring Rights"

"1. Infringement of copyright and neighboring rights defined by this Law shall result in the civil, criminal and administrative responsibilities. The legal entity for infringement of copyright and neighboring rights shall be liable under the civil law.

"2. The natural person or legal entity, who does not meet the requirements of this Law, shall be considered to be the infringer of copyright and neighboring rights.

"[...]"

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

Not found in the Law reviewed.

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

GUATEMALA

Legislación revisada: Ley de Derecho de Autor y Derechos Conexos (Decreto No. 33 -98 de mayo 1998, modificada por Decreto 56 -2000) y Código Penal (con reforma del Decreto 56 -2000)

1. Disposiciones del WCT

1.1. ¿Se extiende el alcance de la protección del derecho de autor solamente a las expresiones, y no a las ideas, procedimientos, métodos de funcionamiento o conceptos matemáticos?

“Artículo 24

“Por el derecho de autor queda protegida exclusivamente la forma mediante la cual las ideas del autor son descritas, explicadas, ilustradas o incorporadas a las obras. No son objeto de protección las ideas contenidas en las obras literarias y artísticas, el contenido ideológico o técnico de las obras científicas, ni su aprovechamiento industrial o comercial.

Los descubrimientos, los conocimientos y las enseñanzas, así como los métodos de investigación no están protegidos por el derecho de autor.”

1.2. ¿Se encuentran los programas de ordenador protegidos en la ley como obras literarias?

“Artículo 2

“Se consideran obras todas las producciones en el campo literario, científico y artístico, cualquiera que sea el modo o forma de expresión, siempre que constituya una creación intelectual original. En particular, las siguientes:

- a) Las expresadas por escrito, mediante letras, signos o marcas convencionales, incluidos los programas de ordenador;

[...]”

1.3. ¿Se encuentran las recopilaciones de datos u otro material, en cualquier forma, protegidas en la ley como creaciones intelectuales, en razón de la selección o arreglo de los contenidos?

“Artículo 16

“También se consideran obras, sin perjuicio de los derechos de autor sobre las obras originales, en su caso:

[...]

b) Las antologías, diccionarios, compilaciones, bases de datos similares, cuando la selección o disposición de las materias constituyan una creación original.”

1.4. ¿Existe en la ley el derecho de distribución?

“Artículo 21

“El derecho pecuniario o patrimonial, confiere al titular del derecho de autor las facultades de utilizar directa y personalmente la obra, de transferir total o parcialmente sus derechos sobre ella y de autorizar su utilización o aprovechamiento por terceros.

Sólo el titular del derecho de autor o quien se estuvieren expresamente autorizados por él, tendrán el derecho de utilizar la obra por cualquier medio, forma o proceso; por consiguiente les corresponde autorizar cualquier de los actos siguientes:

[...]

e) La distribución al público del original o copias de su obra, yasea por medio de la venta, arrendamiento, alquiler, préstamo o cualquier otra forma. Cuando la distribución debidamente autorizada por el titular del derecho se realice mediante venta, el derecho de controlar las sucesivas ventas se extingue únicamente cuando la primera venta original o copias de la obra hubieren tenido lugar dentro del territorio guatemalteco, salvo el caso establecido en el artículo 38 de esta ley y cualesquiera otras excepciones legales. No se extinguen por la distribución autorizada mediante venta, los derechos de reproducción, arrendamiento, alquiler, préstamo, modificación, adaptación, arreglo, transformación, traducción, importación ni comunicación al público.

[...]”

1.5. ¿Existe en la ley el derecho de alquiler? En caso afirmativo, ¿Acuáles obras se aplica?

“Artículo 21

“El derecho pecuniario o patrimonial, confiere al titular del derecho de autor las facultades de utilizar directa y personalmente la obra, de transferir total o parcialmente sus derechos sobre ella y de autorizar su utilización o aprovechamiento por terceros.

Sólo el titular del derecho de autor o quien se estuvieren expresamente autorizados por él, tendrán el derecho de utilizar la obra por cualquier medio, forma o proceso; por consiguiente les corresponde autorizar cualquier de los actos siguientes:

[...]

e) La distribución al público del original o copias de su obra, yasea por medio de la venta, arrendamiento, alquiler, préstamo o cualquier otra forma. Cuando la distribución debidamente autorizada por el titular del derecho se realice mediante

venta, el derecho de controlar las sucesivas ventas se extingue únicamente cuando la primera venta original copia de la obra hubiere tenido lugar dentro del territorio guatemalteco, salvo el caso establecido en el artículo 38 de esta ley y cualesquiera otras excepciones legales. No se extinguen por la distribución autorizada mediante venta, los derechos de reproducción, arrendamiento, alquiler, préstamo, modificación, adaptación, arreglo, transformación, traducción, importación ni comunicación pública.

[...]

1.6. ¿Existe en la ley el derecho de comunicación pública?

“Artículo 21

“El derecho pecuniario o patrimonial, confiere al titular del derecho de autor las facultades de utilizar directa y personalmente la obra, de transferir total o parcialmente sus derechos sobre ella y de autorizar su utilización o aprovechamiento por terceros.

Sólo el titular del derecho de autor o quien se estuvieren expresamente autorizados por él, tendrán el derecho de utilizar la obra por cualquier medio, forma o proceso; por consiguiente les corresponde autorizar cualquier acto de los siguientes:

[...]

d) La comunicación pública, directa o indirectamente, por cualquier procedimiento o medio, conocido o por conocerse, en particular los actos siguientes:

- i) La declamación, representación o ejecución;
- ii) La proyección o exhibición pública;
- iii) La radiodifusión;
- iv) La transmisión por hilo, cable, fibra óptica u otro procedimiento análogo;
- v) La retransmisión por cualquier medio de los citados en los numerales iii) y iv) anteriores,
- vi) La difusión por medio de parlantes, telefonía o aparatos electrónicos semejantes;
- vii) El acceso público a bases de datos de ordenadores por medio de telecomunicación;
- viii) La puesta a disposición del público de las obras, de tal forma que los miembros del público puedan acceder a estas obras desde el lugar y en el momento que cada uno de ellos elija.

[...]"

1.7. ¿Existe en la ley el derecho de puesta a disposición al público de obras de tal manera que los miembros del público puedan acceder a éstas en el lugar y momento individualmente escogido por ellos?

“Artículo 21

“El derecho pecuniario o patrimonial, confiere al titular del derecho de autor las facultades de utilizar directa y personalmente la obra, de transferir total o parcialmente sus derechos sobre ella y de autorizar su utilización o aprovechamiento por terceros.

Sólo el titular del derecho de autor o quien se estuvieren expresamente autorizados por él, tendrán el derecho de utilizar la obra por cualquier medio, forma o proceso; por consiguiente les corresponde autorizar cualquier de los actos siguientes:

[...]

d) La comunicación al público, directa o indirectamente, por cualquier procedimiento o medio, conocido o por conocerse, en particular los actos siguientes:

[...]

viii) La puesta a disposición del público de las obras, de tal forma que los miembros del público puedan acceder a estas obras desde el lugar y en el momento que cada uno de ellos elija.

[...]"

1.8. ¿Gozan las obras fotográficas del mismo término de duración de la protección establecido para el resto de las obras?

“Artículo 43

“Salvo disposición en contrario en la presente ley, los derechos patrimoniales se protegen durante toda la vida del autor y setenta y cinco años después de su muerte. Cuando se trate de obras creadas por dos o más autores, el plazo comenzará a contarse después de la muerte del último coautor.

El derecho de autor puede transmitirse por acto entre vivos y por causa de muerte; cuando seapor causa de muerte, se hará de conformidad con las disposiciones del Código Civil.

Cuando se trate de obras de autores extranjeros publicadas por primera vez fuera del territorio de la República de Guatemala, el plazo de protección no excederá del reconocido por la ley del país donde se haya publicado la obra; sin embargo, aquella acordase una protección mayor que la otorgada por esta ley, registren disposiciones de ésta última.”

1.9. ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

“Artículo 135

“Las disposiciones de esta ley se aplicarán a las obras nacionales existentes que no hayan pasado al dominio público por expiración del plazo de protección previsto en el Decreto Número 1037 del Congreso de la República.

En cuanto a la protección de las obras extranjeras existentes, las mismas serán protegidas sólo si conforme a la ley de su país de origen no han pasado al dominio público por expiración del plazo de protección, aún cuando éste fueren menor al plazo de protección previsto en la legislación guatemalteca.”

“Artículo 139

“El presente decreto entrará en vigencia treinta días después de su publicación en el diario oficial. (1/11/2000, fecha añadida).”

2. Disposiciones del WPPT

2.1. Definiciones

2.1.1 ¿Se encuentran las “interpretaciones o ejecuciones” o los “artistas intérpretes o ejecutantes” definidos en la ley?

“Artículo 4

“Para efectos de esta ley se entiende por:

Artista intérprete o ejecutante: Todo actor, cantante, músico, bailarín u otra persona que represente un papel, cante, recite, declame, interprete o ejecute en cualquier forma obras literarias o artísticas o expresiones del folclore.

[...]

2.1.2 ¿Se encuentra el “fonograma” definido en la ley?

“Artículo 4

“Para efectos de esta ley se entiende por:

[...]

Fonograma: Toda fijación exclusivamente sonora de una interpretación, ejecución o de otros sonidos, o de representaciones digitales de cualquier forma de los mismos, sin tener en cuenta el método por el que se hizo la fijación ni el medio en que se hizo.

[...]"

2.1.3.¿Se encuentra la "fijación" definida en la ley?

"Artículo 4

"Para efectos de esta ley se entiende por:

[...]

Fijación: La incorporación de sonidos, imágenes o sonidos sincronizados con imágenes, o la representación de estos, sobre una base material que permita su percepción, reproducción o comunicación al público.

[...]"

2.1.4.¿Se encuentra el "productor de fonogramas" definido en la ley?

No existe ninguna disposición al respecto en la ley.

2.1.5.¿Se encuentra la "publicación de una interpretación o ejecución fijada de un fonograma" definida en la ley?

"Artículo 4

"Para efectos de esta ley se entiende por:

[...]

Publicación: El hecho de poner a disposición del público, con la autorización del titular del derecho, copias de una obra de un fonograma.

[...]"

2.1.6 ¿Se encuentra la "radiodifusión" definida en la ley?

"Artículo 4

"Para efectos de esta ley se entiende por:

[...]

Radiodifusión: La comunicación a distancia de sonidos o de imágenes y sonidos, por ondas electromagnéticas propagadas en el espacio, con o sin guía artificial para su recepción por el público, incluso la transmisión por vía satélite.

[...]"

2.1.7. ¿Se encuentra la "comunicación pública" definida en la ley?

"Artículo 4

"Para efectos de esta ley se entiende por:

[...]

Comunicación Pública: Todo acto por el cual una o más personas, reunidas o no en un mismo lugar, al mismo o en distinto tiempo, incluso en el momento que cada una de ellas elija, puedan tener acceso a una obra sin previa distribución de ejemplares a cada una de ellas, por cualquier medio o procedimiento, análogo o digital, conocido o por conocerse, que sirva para difundir los signos, las palabras, los sonidos o las imágenes. Todo proceso necesario y conducente a que la obra sea accesible al público constituye comunicación.

[...]"

2.2. ¿Se encuentra el concepto de "trato nacional" contenido en la ley?

"Artículo 2

"En la materia que regula la presente ley, los nacionales de cualquier país gozando de los mismos derechos, recursos y medios legales para defender sus derechos, que los guatemaltecos.

Las obras publicadas en el extranjero gozando de protección en el territorio nacional, de conformidad con los tratados y convenios internacionales aprobados y ratificados por Guatemala. En los términos, se protegen las interpretaciones y ejecuciones, los fonogramas y las emisiones de radiodifusión, cuyos titulares sean extranjeros no residentes en el país."

2.3. ¿Gozan los artistas intérpretes o ejecutantes de derechos morales en la ley?

"Artículo 57

"Los artistas intérpretes tienen, además, el derecho personal, irrenunciable, inalienable y perpetuo de vincular su nombre o pseudónimo artístico a su interpretación y de oponerse a la deformación o mutilación de la misma. Al fallecimiento del artista se aplicará, en lo que corresponda, lo que dispone el artículo 20 de esta ley."

"Artículo 20

"Al fallecimiento del autor, únicamente se transmiten a sus herederos, sin límite de tiempo, el ejercicio de los derechos a que se refieren los incisos a) y b) del artículo 19 de esta Ley. A falta de herederos, el ejercicio de esos derechos corresponde al Estado."

2.4. ¿Gozan los artistas intérpretes o ejecutantes de derechos patrimoniales por sus interpretaciones o ejecuciones no fijadas?, y en caso afirmativo, ¿Cuáles son estos derechos?

“Artículo 53

“Los artistas intérpretes o ejecutantes, y sus derechos -habientes tienen el derecho exclusivo de autorizar o prohibir la fijación, la reproducción, la comunicación al público por cualquier medio, la radiodifusión o cualquier otra forma de utilización de sus interpretaciones de obras audiovisuales.

[...]”

“Artículo 54

“Salvo estipulación en contrario, se entiende que:

- a) La autorización para la radiodifusión no implica la autorización para permitir a otros organismos de radiodifusión que retransmitan la interpretación o ejecución;
- b) La autorización para la radiodifusión no implica la autorización para fijar la interpretación o ejecución;
- c) La autorización para la radiodifusión y para fijar la interpretación o ejecución, no implica la autorización para reproducir la fijación; y
- d) La autorización para la interpretación o ejecución y para reproducir esta fijación, no implica la autorización para transmitir la interpretación o la ejecución a partir de la fijación de sus reproducciones.”

2.5. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de reproducción en la ley?

“Artículo 53

“Los artistas intérpretes o ejecutantes, y sus derechos -habientes tienen el derecho exclusivo de autorizar o prohibir la fijación, la reproducción, la comunicación al público por cualquier medio, la radiodifusión o cualquier otra forma de utilización de sus interpretaciones de obras audiovisuales.

[...]”

2.6. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de distribución en la ley?

No existiendo una disposición al respecto en la ley.

2.7. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de alquiler en la ley?

No existiendo una disposición al respecto en la ley.

2.8. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de puesta a disposición de sus interpretaciones o ejecuciones fijadas en la ley?

“Artículo 53

“Los artistas intérpretes o ejecutantes, y sus derechos -habientes tienen el derecho exclusivo de autorizar o prohibir la fijación, la reproducción, la comunicación al público por cualquier medio, la radiodifusión o cualquier otra forma de utilización de sus interpretaciones de obras audiovisuales.

[...]”

“Artículo 54

“Salvo estipulación en contrario, se entiende que:

- a) La autorización para la radiodifusión no implica la autorización para permitir a otros organismos de radiodifusión que retransmitan la interpretación o ejecución;
- b) La autorización para la radiodifusión no implica la autorización para fijar la interpretación o ejecución;
- c) La autorización para la radiodifusión y para fijar la interpretación o ejecución, no implica la autorización para reproducirla fijación; y
- d) La autorización para la interpretación o ejecución y para reproducirla fijación, no implica la autorización para transmitir la interpretación o la ejecución a partir de la fijación de sus reproducciones.”

2.9. ¿Gozan los productores de fonogramas (“productores”) de un derecho de reproducción en la ley?

“Artículo 58

“Los productores de fonogramas tienen el derecho exclusivo de autorizar o prohibir la reproducción, directa o indirecta; la distribución y comunicación al público o cualquier otra forma de utilización de sus fonogramas o de sus reproducciones y la puesta a disposición del público de los fonogramas, por cualquier medio, de tal manera que los miembros del público puedan tener acceso a ellos, desde el lugar y en el momento que cada uno de ellos elija.

[...]”

2.10. ¿Gozan los productores de un derecho de distribución en la ley?

“Artículo 58

“Los productores de fonogramas tienen el derecho exclusivo de autorizar o prohibir la reproducción, directa o indirecta; la distribución y comunicación al público o cualquier otra forma o medio de utilización de sus fonogramas o de sus reproducciones y la puesta a disposición del público de los fonogramas, por cualquier medio, de tal manera que los miembros del público puedan tener acceso a ellos, desde el lugar y en el momento que cada uno de ellos elija.

El derecho de distribución comprende la facultad de autorizar la distribución de los fonogramas, yasea por medio de la venta, el arrendamiento o cualquier otra forma.

Cuando la distribución se efectúe mediante la venta, este derecho se extingue a partir de la primera venta realizada, salvo las excepciones legales. Cuando la distribución se efectúe mediante el arrendamiento, la colocación en el mercado de los originales o copias autorizadas del fonograma no extingue el mismo.

El derecho de importación comprende la facultad de autorizar o prohibir la importación de copias de fonogramas legalmente fabricados y de impedir la importación de copias fabricadas sin la autorización del titular del derecho.”

2.11. ¿Gozan los productores de un derecho de alquiler en la ley?

“Artículo 58

“Los productores de fonogramas tienen el derecho exclusivo de autorizar o prohibir la reproducción, directa o indirecta; la distribución y comunicación al público o cualquier otra forma o medio de utilización de sus fonogramas o de sus reproducciones y la puesta a disposición del público de los fonogramas, por cualquier medio, de tal manera que los miembros del público puedan tener acceso a ellos, desde el lugar y en el momento que cada uno de ellos elija.

El derecho de distribución comprende la facultad de autorizar la distribución de los fonogramas, yasea por medio de la venta, el arrendamiento o cualquier otra forma.

Cuando la distribución se efectúe mediante la venta, este derecho se extingue a partir de la primera venta realizada, salvo las excepciones legales. Cuando la distribución se efectúe mediante el arrendamiento, la colocación en el mercado de los originales o copias autorizadas del fonograma no extingue el mismo.

[...]”

2.12. ¿Gozan los productores de un derecho de puesta a disposición de fonogramas en la ley?

“Artículo 58

“Los productores de fonogramas tienen el derecho exclusivo de autorizar o prohibir la reproducción, directa o indirecta; la distribución y comunicación al público o cualquier otra forma o medio de utilización de sus fonogramas o de sus reproducciones y la puesta a disposición del público de los fonogramas, por cualquier medio, de tal manera que los miembros del público puedan tener acceso a ellos, desde el lugar y en el momento que cada uno de ellos elija.

[...]”

2.13. ¿Gozan los productores y/o artistas intérpretes o ejecutantes de un derecho de remuneración por la radiodifusión o comunicación al público de fonogramas en la ley?

“Artículo 59

Quien ejecute o haga ejecutar públicamente en cualquier forma un fonograma publicado para fines comerciales, deberá obtener autorización previa y escrita del productor y pagarle a éste una remuneración.”

“Artículo 60

“El productor o su representante recaudará la suma debida por los usuarios de ejecución pública de fonogramas y las repartirá con los artistas, en las proporciones contractualmente convenidas con ellos.

En defecto del contrato, la mitad de la suma recibida por el productor, deducidos los gastos de recaudación y administración, será pagada por éste a los artistas intérpretes o ejecutantes, quienes no haber celebrado convenio especial, la dividirán entre ellos, de la siguiente forma:

- a) El cincuenta por ciento se abonará al intérprete, entendiéndose por tal el cantante o conjunto vocal y otro artista que figure en primer plan de la etiqueta del fonograma;
- b) El cincuenta por ciento será abonado a los músicos acompañantes y miembros del coro, que participaron en la fijación, dividido en partes iguales entre todos ellos. Si éstos no se presentaren a reclamar sus partes, en un plazo de ochenta días, el productor deberá entregarlas a la asociación de la categoría profesional correspondiente, quienes las deberán destinar exclusivamente para fines asistenciales de sus miembros.”

2.14. ¿Se encuentran estos derechos sujetos a formalidades?

“Artículo 3

“El goce y el ejercicio de los derechos de autor y los derechos conexos reconocidos en este Ley no están supeditados a la formalidad de registro o cualquier otro requisito independientes y compatibles entre sí, así como en relación con la propiedad y otros derechos que tengan por objeto el soporte material al que esté incorporada la obra, la interpretación artística, la producción fonográfica o con los derechos de propiedad industrial. Las obras de arte creadas para fines industriales también estarán protegidas por este Ley en cuanto a su contenido artístico.”

2.15. ¿Cuáles es el término de protección para:

2.15.1. los artistas intérpretes o ejecutantes?

“Artículo 51

“Los derechos conexos gozando de protección por el plazo de setenta y cinco años contados, a partir del uno de enero de la año siguiente a aquel en que ocurra el hecho que les da inicio, de conformidad con las reglas siguientes:

- a) En el caso de los fonogramas y las interpretaciones o ejecuciones grabadas en ellos, a partir de su fijación;
 - b) En el caso de actuaciones no grabadas en un fonograma, a partir de la realización del espectáculo; y
- [...]

2.15.2. productores de fonogramas?

“Artículo 51

“Los derechos conexos gozando de protección por el plazo de setenta y cinco años contados, a partir del uno de enero de la año siguiente a aquel en que ocurra el hecho que les da inicio, de conformidad con las reglas siguientes:

- a) En el caso de los fonogramas y las interpretaciones o ejecuciones grabadas en ellos, a partir de su fijación;
- [...]

2.16. ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

“Artículo 135

“Las disposiciones de esta ley se aplicarán a las obras nacionales existentes que no hayan pasado al dominio público por expiración del plazo de protección previsto en el Decreto Número 1037 del Congreso de la República.

En cuanto a la protección de las obras extranjeras existentes, las mismas serán protegidas sólo si conforme a la ley de su país de origen no han pasado al dominio público por expiración del plazo de protección, aún cuando éste fueren menor al plazo de protección previsto en la legislación guatemalteca.”

“Artículo 139

“El presente decreto entrará en vigencia treinta días después de su publicación en el diario oficial. (1/11/2000, fecha añadida).

3. Disposiciones comunes

3.1. ¿Cuáles son las limitaciones y excepciones en la ley?

(Relativas a los derechos de autor, aclaratoria añadida.)

“Artículo 63

“Las obras protegidas por la presente ley podrán ser comunicadas lícitamente, sin necesidad de la autorización del autor ni el pago de remuneración alguna cuando la comunicación:

- a) Se realice en un ámbito exclusivamente doméstico, siempre que no exista un interés económico, directo o indirecto, y que la comunicación no fueren deliberadamente difundida al exterior, en todo o en parte, por cualquier medio.
- b) Se efectúe con fines exclusivamente didácticos, en el curso de las actividades de una institución de enseñanza por el personal y los estudiantes de dicha institución, siempre que la comunicación no persiga fines lucrativos, directos o indirectos, y el público esté compuesto exclusivamente por el personal y estudiantes del centro educativo o padres tutores de alumnos y otras personas directamente vinculadas con las actividades de la institución.
- c) Sea indispensable para la práctica de una diligencia judicial o administrativa.”

“Artículo64

“Respecto de las obras ya divulgadas también es permitida, sin autorización del autor, además del dispuesto en el artículo 32:

- a) La reproducción por medios reprográficos, de artículos breves extractos de obras lícitamente publicadas, para la enseñanza o la realización de exámenes en instituciones educativas, siempre que no haya fines de lucro y que tal utilización no interfiera con la explotación normal de la obra ni cause perjuicio a los intereses legítimos del autor;
- b) La reproducción individual de una obra por biblioteca o archivos que no tengan fines de lucro, cuando el ejemplar se encuentre en su colección permanente, con el objeto de preservar dicho ejemplar y sustituirlo en caso de necesidad, o bien para sustituir un ejemplar similar, en la colección permanente de una biblioteca o archivo, cuando éste se haya extraviado, destruido o inutilizado, siempre que no resulte posible adquirir el ejemplar en plazo o condiciones razonables;
- c) La reproducción de una obra para actuaciones judiciales o administrativas; y
- d) La reproducción de una obra de arte expuesta permanentemente en lugares públicos, o de la fachada exterior de los edificios, realizada por medio de un arte distinto al empleado para la elaboración del original, siempre que se indique el nombre del autor, si se conociere, el título de la obra, el título de la obra, si lo tuviere, y el lugar donde se encuentra.”

“Artículo65

“Es permitido el préstamo al público de un ejemplar lícito de una obra expresada por escrito, por una biblioteca o archivo cuyas actividades no tengan carácter indirectamente de fines de lucro.”

“Artículo66

“Será lícito, sin autorización del titular del derecho y sin pago de remuneración, con obligación de mencionar la fuente y el nombre del autor de la obra utilizada, si están indicados.

- a) Reproducir y distribuir por la prensa o emitir por radiodifusión o transmisión por cable, las informaciones, noticias y artículos de actualidad en los casos que la reproducción, radiodifusión o transmisión pública no se haya reservado expresamente;
- b) Reproducir y poner a la disposición del público, con ocasión de informaciones relativas a acontecimientos de actualidad, por medio de la fotografía, videogramas, la radiodifusión o transmisión por cable, fragmentos de obras

vistas u oídas en el curso de tales acontecimientos, en la medida justificada por el fin de la información;

c) Utilizar por cualquier forma de comunicación pública, con fines de información sobre hechos de actualidad, discursos políticos, judiciales, disertaciones, alocuciones, sermones y otras obras similares pronunciadas en público, conservando los autores el derecho exclusivo de publicarlos para otros fines; y

d) Incluir en una obra propia, fragmentos de otras obras de naturaleza escrita, sonora o audiovisual, así como obras de carácter plástico, fotográfico y otras análogas, siempre que se trate de obras ya divulgadas y su inclusión se realice, a título de cita o para su análisis, con fines docentes o de investigación.”

“Artículo 67

“Las conferencias o lecciones dictadas en establecimientos de enseñanza pueden ser anotadas y recogidas libremente pero está prohibida su publicación o reproducción, total o parcial, sin la autorización escrita de quien las pronunció.”

“Artículo 68

“La publicación de leyes, decretos, reglamentos, órdenes, acuerdos, resoluciones, las decisiones judiciales y de órganos administrativos, así como la traducción de oficiales de estos textos, podrá efectuarse libremente siempre que se apege a la publicación oficial.

La traducción y compilaciones hechas por particulares de los textos mencionados serán protegidas como obras originales.”

“Artículo 69

“Es libre la publicación del retrato o fotografía de una persona sólo para fines informativos, científicos, culturales, didácticos o cuando se relacione con hechos o acontecimientos de interés público o social, siempre que no sufra menoscabo el prestigio o reputación de la persona y que tal publicación no vaya en contra de la moral o las buenas costumbres.”

“Artículo 70

“Es lícita la ejecución de fonogramas y la recepción de transmisiones de radio o televisión, que se realicen, para fines demostrativos de la pantalla, dentro de establecimientos de comercio que expongan y vendan equipos receptores, reproductores u otros similares, o portos sonoro o audiovisuales que contengan las obras utilizadas.”

“Artículo 71

“Los organismos de radiodifusión pueden, sin autorización del autor, pagar de una remuneración especial, realizar grabaciones efímeras con sus propios equipos y para la utilización en sus propias emisiones de radiodifusión, de una obra que tenga el derecho de radiodifundir. Sin embargo, el organismo de radiodifusión deberá destruir la grabación en el plazo de seis meses contados a partir de su realización, salvo que se haya convenido con el autor un plazo mayor.

La grabación podrá conservarse en archivos oficiales cuando tenga un carácter documental excepcional.”

3.2. ¿Qué protección jurídica, y cuáles recursos jurídicos proporcionales a la ley contra la elisión de las medidas tecnológicas de protección eficaces?

“Artículo 274 del Código Penal: Violación de Derecho de Autor y Derechos Conexos

“Salvo los casos de excepción contemplados expresamente en las leyes tratadas sobre la materia de los que Guatemala se aparte, será sancionado con prisión de uno a cuatro años y multa de un mil a quinientos mil quetzales, quien realice cualquier acto de los siguientes:

[...]

l) La realización de cualquier acto que eluda o pretenda eludir una medida tecnológica implementada por el autor o el titular del respectivo derecho del titular de un derecho conexo, para evitar la utilización no autorizada de toda obra, de un fonograma, de una interpretación o ejecución artística o de una emisión protegidas; po

m) La realización de cualquier acto que induzca, permita, facilite u oculte una infracción a cualesquiera de los derechos exclusivos correspondientes a los autores, a los titulares de un derecho de autor, a los artistas intérpretes o ejecutantes, a los productores de fonogramas o a los organismos de radiodifusión;

[...]”

3.3. ¿Cuáles obligaciones se encuentran en la ley para la protección de “información sobre la gestión de derechos”?

“Artículo 274 del Código Penal: Violación de Derecho de Autor y Derechos Conexos

“Salvo los casos de excepción contemplados expresamente en las leyes tratadas sobre la materia de los que Guatemala se aparte, será sancionado con prisión de uno a cuatro años y multa de un mil a quinientos mil quetzales, quien realice cualquier acto de los siguientes:

[...]

- m) La realización de cualquier acto que induzca, permita, facilite u oculte una infracción a cualesquiera de los derechos exclusivos correspondientes a los autores, a los titulares de un derecho de autor, a los artistas intérpretes o ejecutantes, a los productores de fonogramas o a los organismos de radiodifusión;
- n) La supresión o alteración no autorizadas de cualquier información electrónica sobre la gestión colectiva de los derechos de autor o derechos conexos;
- o) La distribución, comercialización, promoción, importación, emisión o comunicación al público sin autorización de obras, interpretaciones o ejecuciones artísticas, producciones fonográficas o emisiones, sabiendo que la información electrónica sobre la gestión colectiva de cualesquiera de esos derechos ha sido suprimida o alterada sin autorización;
- [...]"

3.4. De manera general ¿Cuáles son las medidas de observancia de derechos en la ley?

“Artículo 127

“Corresponde al Ministerio Público el ejercicio de la acción penal en contra de los responsables de los delitos y faltas tipificados en materia de Derechos de Autor y Derechos Conexos en el Código Penal y otras leyes. El titular o licenciario de los derechos infringidos podrá provocar la persecución penal denunciando la violación de tales derechos o adherirse a la ya iniciada por el Ministerio Público, entidad que estará obligada a actuar directamente e inmediatamente en contra de los responsables. Podrá también instar la persecución penal a cualquier asociación u organización representativa de algún sector de la producción o de los consumidores.”

“Artículo 128

“El Ministerio Público, de oficio o a solicitud del titular del derecho o agraviado, al tener conocimiento de un acto ilícito, dentro de los plazos que correspondan según las disposiciones del Código Procesal Penal, deberá requerir al Juez competente que autorice a cualesquiera de las providencias cautelares establecidas en esta ley o en el citado Código, que resulten necesarias para salvaguardar los derechos reconocidos y protegidos por esta ley, y en los tratados internacionales sobre la materia de los que Guatemala se aparta, y que estén resultando infringidos o bien cuando su violación sea inminente.

Presentada la solicitud ante el Juez que corresponde, éste estará obligado a decretar las con carácter de urgente de conformidad con las disposiciones procesales aplicables, autorizando al Ministerio Público para que proceda a su ejecución con el auxilio de la autoridad policial necesaria.”

“Artículo 128bis

“Se podrán decretar como medidas cautelares las siguientes:

- a) Cesación de los actos ilícitos o comercio ilegal de la obra protegida de forma inmediata; n
- b) El allanamiento y registro de inmuebles públicos o privados, abiertos o cerrados, el que se efectuará de conformidad al establecido al respecto en el Código Procesal Penal;
- c) El embargo de bienes muebles o inmuebles y, entre otros, de las cuentas bancarias a nombre de las empresas o personas individuales señaladas como posibles autores o cómplices responsables del acto ilícito denunciado y el embargo del producto neto de los ingresos del posible infractor;
- d) El secuestro o comiso inmediato responsables de las copias o ejemplares ilícitamente elaboradas de obras fonogramas, o bien, de mercancías que de forma ilícita incorporan obras fonogramas; los instrumentos empleados para producirlas, transportarlas, conservarlas, distribuir las, ofertarlas para la venta, rentarlas o comunicarlas al público de cualquier forma. Los bienes en comiso o secuestrados quedarán en depósito del Ministerio Público;
- e) La suspensión del despacho en aduanas de copias o ejemplares ilícitamente elaboradas de obras fonogramas o el secuestro de mercancías que de forma ilícita incorporan obras fonogramas, que vayan a ser internadas en Guatemala, las que quedarán en depósito de las autoridades aduaneras;
- f) La orden de revisión de los registros contables de las personas individuales o jurídicas señaladas como posibles responsables del acto ilícito;
- g) El secuestro de los registros contables o de los equipos de cómputo que los contengan, de las personas individuales o jurídicas señaladas como posibles responsables del acto ilícito;
- h) La clausura temporal del local o cierre temporal del negocio en el cual se encuentren copias ilícitas de obras fonogramas o cualquier mercadería infractora o medio o instrumentos empleados para producirlas. Esta medida se mantendrá por el plazo necesario para asegurar los resultados del proceso y no podrá levantarse en tanto existiere riesgo de que se repita la infracción u otra violación a los derechos establecidos en esta ley y en los tratados en materia de derechos de autor y derechos conexos de los que se aparte Guatemala; e
- i) Las medidas cautelares o precautorias, medios auxiliares o medidas de coerción que, según las circunstancias, parezcan más idóneas para asegurar provisionalmente la cesación del ilícito, la protección de los derechos reconocidos en esta ley, o la preservación de la evidencia o pruebas relacionadas con una violación real o inminente.

Los instrumentos y objetos del delito que hubieren caído en comiso o secuestro, se tendrán como evidencia en contra de los responsables del acto ilícito.”

Artículo 128ter

“Si existe acuerdo entre elagraviado y la persona o personas sindicadas del ilícito penal y el primero ha sido resarcido satisfactoriamente del daño ocasionado y se ha pagado, o se ha garantizado debidamente los perjuicios producidos por la comisión del delito, podrá darse por terminado el procedimiento legal iniciado, en cualquier estado del proceso.”

Artículo 129

“Cuando el titular de un derecho protegido por esta ley tuviera motivos fundados para suponer que se prepara una importación o exportación de productos que infringen su derecho, podrá:

- a) Solicitar a las autoridades aduanales correspondientes la suspensión de la importación o exportación de que se trate, por un plazo no mayor de diez días hábiles; o
- b) Solicitar al juez competente que ordene a las autoridades de aduanas suspender el despacho de esa importación o exportación.”

Artículo 130

“El titular del derecho que solicite las medidas en frontera a que se refiere el artículo 129 de esta ley, deberá proporcionar a las autoridades aduanales o al juez competente, pruebas suficientes que demuestren que existe presunción de infracción o la información necesaria sobre la infracción cometida; además, una descripción suficientemente precisa de los ejemplares ilícitos de la obra o fonograma protegido para que éstos puedan ser reconocidos con facilidad. A la solicitud que se presente serán aplicables las disposiciones y garantías relativas a las medidas precautorias establecidas para los procedimientos civiles.

Ejecutada la suspensión de la importación o exportación de las mercancías consideradas infractoras, la autoridad aduanera que la haya dictado lo notificará inmediatamente al importador o exportador de las mercancías y al solicitante de la medida.

Transcurridos diez días hábiles contados a partir de la fecha de la notificación al solicitante si no ha recibido orden del juez competente para mantener la vigencia, la autoridad aduanera levantará de oficio la suspensión y ordenará el despacho de las mercancías retenidas. El incumplimiento o en el levantamiento puntual de la suspensión causará la responsabilidad del funcionario responsable.”

“Artículo 131

“A efectos de justificar la prolongación de la suspensión de despacho de las mercancías retenidas por las autoridades aduaneras, o para sustentar una acción de infracción, el juez permitirá al titular del derecho inspeccionar las mercancías. Igual derecho corresponderá al importador o exportador de las mercancías.”

“Artículo 132

El solicitante de la aplicación de medidas en frontera quedará sujeto al pago de los daños y perjuicios que cause al importador o al exportador en los casos siguientes:

- a) Cuando no inicie la acción por la supuesta infracción cometida, dentro de los diez días siguientes a la notificación de la suspensión de la importación o exportación; y
- b) Cuando la retención fuere infundada.

En los casos señalados en el párrafo anterior, las autoridades judiciales y administrativas que hubieren ordenado la suspensión de la importación o exportación no serán responsables si hubieren procedido de buena fe.”

“Artículo 133

“Los procesos civiles que se promuevan para hacer valer derechos reconocidos en esta ley se tramitarán de acuerdo con el procedimiento del juicio oral, establecido en el Libro Segundo, Título II, Capítulos I y II del Código Procesal Civil y Mercantil.

No obstante lo dispuesto en este artículo y cualquier otra disposición contenida en la presente ley que dé lugar a acciones civiles o mercantiles, los interesados también podrán utilizar métodos alternativos de resolución de controversias, tales como la conciliación y el arbitraje”

“Artículo 133bis

“Quien inicie o pretenda iniciar una acción civil relativa a derecho de autor o derechos conexos, podrá pedir al juez competente que ordene medidas de garantía y providencias de urgencia de eficacia inmediata, con el objeto de proteger sus derechos, impedir o prevenir la comisión de una infracción, evitar sus consecuencias y obtener o conservar pruebas. Si el Juez lo considera necesario, en la misma resolución en la que decretar las medidas solicitadas podrá requerir al actor que previamente a su ejecución preste fianza u otorgar garantías suficientes para proteger a la parte afectada por la medida y a la propia autoridad y a sí mismo para impedir abusos.

El Juez deberá ordenar las providencias que prudentemente tiendan a la protección del derecho del autor o petitionerio, tales como:

- a) La cesación inmediata de la violación que se alegue por parte del titular del derecho;
- b) El comiso de los productos infractores, incluyendo los envases, empaques, embalajes, etiquetas, material impreso de publicidad, equipos, maquinaria y otros materiales resultantes de la infracción usados para cometerlay de los medios que sirvieran para realizar la infracción;
- c) La prohibición de la importación de los productos, materiales o medios referidos en el inciso anterior;
- d) La confiscación y traslado a los depósitos judiciales de los productos, materiales o medios referidos en el inciso b);
- e) Las medidas necesarias para evitar la continuación o la repetición de la infracción, incluyendo la destrucción de los productos, materiales, equipos o medios referidos en el inciso b) cuando los mismos causen un daño o constituyen un riesgo que atente con la salud o la vida humana, animal o vegetal, o con el medio ambiente; y
- f) La suspensión o cancelación de los registros o licencias sanitarias de otra naturaleza, que resulten necesarios para la internación, distribución, venta o comercialización de los productos infractores.”

“Artículo 133ter

“El juez deberá ordenar y ejecutar las medidas que se solicitan dentro del improrrogable plazo de dos días. Cuando las medidas se soliciten previa demanda, el plazo establecido se contará a partir de la presentación de la fianza o garantía requerida.

Todas las providencias cautelares se tramitarán y ejecutarán sin notificación, ni intervención de la parte demandada, pero deberán notificarse a ésta en el momento de su ejecución o inmediatamente después de ello. Los tribunales tomarán las medidas necesarias para asegurar que las solicitudes de medidas cautelares se mantengan en reserva, de conformidad con lo establecido en el literal e) del artículo 133 de esta ley.

Si las providencias se ordenan antes de iniciarse la acción, las mismas quedarán sin efectos si quien las obtuvo no presenta la demanda correspondiente dentro de un plazo de quince días, contados desde la fecha en que se hayan ejecutado las medidas.”

“Artículo 133quater

“Cuando las medidas cautelares se soliciten con la demanda o con posterioridad a ésta, no será necesario constituir garantía alguna.

Una vez otorgada o concedida una providencia o medida cautelar que tienda a asegurar las resoluciones del proceso o en cuanto a la pretensión restauradora en una acción civil, la misma no podrá ser dejada sin efecto mediante una caución o garantía. La caución o

garantías solamente podrá ser otorgada para el logro del levantamiento de providencias o medidas cautelares que tiendan a asegurar o proteger una pretensión indemnizatoria propia de dicha.”

“Artículo 134

“Las acciones civiles derivadas de los derechos establecidos en esta ley caducarán en un plazo de cinco años, contados a partir del conocimiento de la violación del derecho o derechos de que se trate.

La acción penal podrá ejercerse conjunta o independientemente de la acción civil y caducará conforme a las normas establecidas en el derecho penal.”

“Artículo 134bis

“Las entidades que declare con lugar alguna de las acciones previstas en esta ley, además de resolver sobre el fondo del asunto, según el caso y teniendo en cuenta la necesidad de que haya proporción entre la gravedad de la infracción, las medidas ordenadas y los derechos de terceros, deberá:

- a) Ordenar que las mercancías infractoras sean, sin indemnización alguna, apartadas del comercio de forma que se evite causar daños al titular del derecho, o que se destruyan como objetos de ilícito comercio. Cuando se trate de prendas de vestir de las que pueda eliminarse el elemento violatorio, el Juez podrá ordenar una vez hayasido retirado éste y si lo estima conveniente, que sean entregadas gratuitamente a entidades no lucrativas, privadas o públicas para que puedan utilizarlas exclusivamente en obras o actividades de beneficencia social, debiendo quedar constancia escrita de la entrega;
- b) Disponer que los materiales e instrumentos que se hayan utilizado predominantemente en la producción de las mercancías infractoras, sean apartados del comercio y, cuando así se estime conveniente, que sean entregadas gratuitamente por el Juez a entidades no lucrativas, privadas o públicas, para que puedan utilizarlas exclusivamente en obras o actividades de beneficencia social, sin indemnización alguna para su propietario, debiendo quedar constancia escrita de la entrega.
- c) Prohibir que las mercancías infractoras ingresen al comercio;
- d) Disponer que cesen los actos infractores y que se tomen las medidas necesarias para impedir sus consecuencias y para evitar su repetición, así como el resarcimiento de los daños y perjuicios.”

“Artículo 274 del Código Penal: Violación de Derecho de Autor y Derechos Conexos

“Salvo los casos de excepción contemplados expresamente en la ley o tratados sobre la materia de los que Guatemala se aparte, será sancionado con prisión de uno a cuatro

años y multade un mil a quinientos mil quetzales, quien realizare cualquier de los actos siguientes:

- a) La atribución falsa de la calidad de autor y/o titular de un derecho de autor, de artista, intérprete o ejecutante, de productor de fonograma o de un organismo de radiodifusión;
- b) La deformación, mutilación, modificación o cualquier atentado que cause perjuicio a la integridad de la obra o al honor y reputación del autor;
- c) La reproducción de cualquier obra, de una interpretación o ejecución, de un fonograma o de una emisión, sin la autorización del autor o titular del derecho correspondiente;
- d) La adaptación, arreglo o transformación de una obra protegida o de parte de ella, sin autorización del autor o del titular del derecho;
- e) La comunicación al público por cualquier medio o procedimiento de una obra protegida o de un fonograma, sin la autorización del titular del derecho correspondiente;
- f) La distribución de reproducciones no autorizadas, totales o parciales, de una obra protegida o de un fonograma, ya sea por medio de la venta, el arrendamiento, el alquiler, el arrendamiento con opción a compra, el préstamo o en cualquier otra forma;
- g) La fijación, reproducción o comunicación al público, por cualquier medio o procedimiento de una interpretación o ejecución artística, sin la autorización del artista intérprete o ejecutante o del titular del derecho;
- h) La fijación, reproducción o transmisión de una emisión, transmitida por satélite, radiodifusión por hilo, cable, fibra óptica o cualquier otro procedimiento, sin autorización del titular;
- i) La comunicación al público de una emisión o transmisión efectuada en un lugar al que el público pueda acceder mediante el pago de un derecho de admisión, o bien, para efectos de consumo o adquirir productos o servicios, sin la autorización del titular del derecho correspondiente;
- j) La publicación de una obra protegida con el título cambiado o suprimido, con o sin alteración de la misma;
- k) La decodificación de señales transmitidas por satélite o cualquier otro medio de telecomunicación, portadoras de programas de cualquier tipo, sin la autorización del distribuidor legítimo;
- l) La realización de cualquier acto que eluda o pretenda eludir una medida tecnológica implementada por el autor o el titular del respectivo derecho del titular de un derecho conexo, para evitar la utilización no autorizada de todo tipo de obra, de un fonograma, de una interpretación o ejecución artística o de una emisión protegidas;

- m) La realización de cualquier acto que induzca, permita, facilite u oculte una infracción a cualesquiera de los derechos exclusivos correspondientes a los autores, a los titulares de un derecho de autor, a los artistas intérpretes o ejecutantes, a los productores de fonogramas o a los organismos de radiodifusión;
- n) La supresión o alteración no autorizadas de cualquier información electrónica sobre la gestión colectiva de los derechos de autor o derechos conexos;
- o) La distribución, comercialización, promoción, importación, emisión o comunicación al público sin autorización de obras, interpretaciones o ejecuciones artísticas, producciones fonográficas o emisiones, sabiendo que la información electrónica sobre la gestión colectiva de cualesquiera de esos derechos ha sido suprimida o alterada sin autorización;
- p) El transporte, almacenamiento u ocultamiento de reproducciones o ejemplares, en cualquier tipo de soporte material, de obras protegidas, de fonogramas, de interpretaciones o ejecuciones artísticas o de emisiones, fabricadas sin el consentimiento del autor o el titular del derecho correspondiente; y
- q) La recaudación de beneficios económicos por la utilización de obras, de interpretaciones artísticas o ejecuciones, de fonogramas o de emisiones de organismos de radiodifusión protegidos, o la realización de cualesquiera otras actividades propias de una sociedad de gestión colectiva, sin estar facultado para tales efectos;
- r) La divulgación de una obra inédita sin el consentimiento del autor o del titular del respectivo derecho;
- s) La traducción, total o parcial, de una obra sin la autorización del autor o titular del derecho correspondiente;
- t) La distribución no autorizada del original o reproducciones legítimas de una obra protegida o de un fonograma, y sea por medio de la venta, el arrendamiento, el alquiler, el arrendamiento con opción a compra, el préstamo o en cualquier otra forma; y
- u) La importación o exportación del original o reproducciones de toda obra protegida, con fines de explotación comercial, en cualquier tipo de soporte de fonogramas, sin la autorización del titular del derecho respectivo.

La determinación de los supuestos contenidos en esta norma se hará con base en las disposiciones aplicables de la Ley de Derechos de Autor y Derechos Conexos.”

3.5. ¿Cómo define la ley la responsabilidad de los proveedores de servicio?

No existiendo ninguna disposición al respecto en la ley.

3.6. ¿Existen algunas disposiciones en la ley relativas al almacenamiento temporal?

“Artículo 4

“Para efectos de esta ley se entiende por:

[...]

Reproducción: La realización por cualquier medio, de uno o más ejemplares de una obra fonograma, sea total o parcial, permanente o temporal, en cualquier tipo de soporte.

[...]”

“Artículo 21

“El derecho pecuniario o patrimonial, confiere al titular del derecho de autor las facultades de utilizar directa y personalmente la obra, de transferir total o parcialmente sus derechos sobre ella y de autorizar su utilización o aprovechamiento por terceros.

Sólo el titular del derecho de autor o quien se estuvieren expresamente autorizados por él, tendrán el derecho de utilizar la obra por cualquier medio, forma o proceso; por consiguiente les corresponde autorizar cualquier acto de los siguientes:

a) La reproducción por cualquier procedimiento;

[...]”

3.7. ¿Existen algunas disposiciones expresas para asegurar que las disposiciones en contra de la eliminación o restricción de la función de las limitaciones o excepciones a los derechos otorgados en la ley?

No existen ninguna disposición al respecto en la ley.

HONDURAS

(Legislación revisada: Ley de Derecho de Autor y Derechos Conexos (Decreto No. 4-99-E, enero 2000), Código Penal y WCT y WPPT⁸)

1. Disposiciones del WCT

1.1. ¿Se extiende el alcance de la protección del derecho de autor solamente a las expresiones, y no a las ideas, procedimientos, métodos de funcionamiento o conceptos matemáticos?

“Artículo 2 WCT: Ámbito de la protección del derecho de autor

“La protección del derecho de autor abarca a las expresiones pero no a las ideas, procedimientos, métodos de operación o conceptos matemáticos en sí.”

1.2. ¿Se encuentran los programas de ordenador protegidos en la ley como obras literarias?

“Artículo 2

“Son obras literarias o artísticas, todas las creaciones originales con independencia de su género y cualquiera que sea el modo o forma de expresión, calidad o propósito. En particular, las expresadas por escrito, incluyendo los programas de computadoras.”

[...]”

1.3. ¿Se encuentran las recopilaciones de datos u otro material, en cualquier forma, protegidas en la ley como creaciones intelectuales, en razón de la selección o arreglo de los contenidos?

“Artículo 9

“Para los efectos de la presente Ley se entiende por:

“[...]”

Obra Derivada: Es la creación que resulta de la adaptación, traducción, arreglo u otra transformación de una obra originaria, las colecciones de obras y colecciones de simples datos, si en ellas se reúnen obras o colecciones de obras originales en razón de su selección, coordinación o disposición de su contenido.

⁸ Constitución de la República de Honduras, 1982, con reformas hasta el Decreto 2 de 1999. Artículo 16: “... Lo tratados internacionales celebrados por Honduras con otros estados, una vez que entran en vigor, forman parte del derecho interno” *Este es el caso del WCT y WPPT (aclaratoria añadida).*

[...]

“Artículo 39

“Al autor corresponde el derecho de percibir beneficios económicos, provenientes de la utilización de la obra por cualquier medio, forma o proceso. Por consiguiente, podrá realizar o autorizar en especial, cualesquiera de los actos siguientes:

[...]

5) la comunicación al público, directa o indirectamente, por cualquier procedimiento o medio conocido o por conocer y en particular:

[...]

e) el acceso público a bases de datos de ordenadores por medio de telecomunicaciones.

[...]”

1.4. ¿Existe en la ley el derecho de distribución?

“Artículo 39

“Al autor corresponde el derecho de percibir beneficios económicos, proveniente de la utilización de la obra por cualquier medio, forma o proceso. Por consiguiente, podrá realizar o autorizar en especial, cualesquiera de los actos siguientes:

[...]

6) La distribución al público mediante venta, alquiler, préstamo público o cualquier otro transferencia de propiedad de posesión, del original o de los ejemplares de su obra que no hayan sido objeto de una distribución autorizada por él.

[...]”

1.5. ¿Existe en la ley el derecho de alquiler? En caso afirmativo, ¿cuáles obras se aplican a?

“Artículo 39

“Al autor corresponde el derecho de percibir beneficios económicos, provenientes de la utilización de la obra por cualquier medio, forma o proceso. Por consiguiente, podrá realizar o autorizar en especial, cualesquiera de los actos siguientes:

[...]

7) El alquiler de un ejemplar de una obra audiovisual, de obra incorporada en una grabación sonora, un programa de ordenador con independencia de la titularidad del ejemplar.

[...]"

1.6. ¿Existe en la ley el derecho de comunicación al público?

“Artículo 39

“Al autor corresponde el derecho de percibir beneficios económicos, provenientes de la utilización de la obra por cualquier medio, forma o proceso. Por consiguiente, podrá realizar o autorizar en especial, cualesquiera de los actos siguientes:

[...]

5) La comunicación al público, directa o indirectamente, por cualquier procedimiento o medio conocido o por conocer.

[...]"

1.7. ¿Existe en la ley el derecho de puesta a disposición al público de obras de tal manera que los miembros del público puedan acceder a éstas en el lugar y momento individualmente escogido por ellos?

“Artículo 39

“Al autor corresponde el derecho de percibir beneficios económicos, provenientes de la utilización de la obra por cualquier medio, forma o proceso. Por consiguiente, podrá realizar o autorizar en especial, cualesquiera de los actos siguientes:

[...]

5) La comunicación al público, directa o indirectamente, por cualquier procedimiento o medio conocido o por conocer y en particular [...].

f) La puesta a disposición del público de las obras de tal forma que los miembros del público puedan acceder a ellas desde el lugar y el momento en que cada uno de ellos elija.”

1.8. ¿Gozan las obras fotográficas del mismo término de duración de la protección establecido para el resto de las obras?

“Artículo 45

“Los plazos de protección se aplicarán así:

[...]

5) Obras Fotográficas: cincuenta (50) años contados a partir del final del año calendario de su realización.

[...]”

1.9. ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

“Artículo 190

“Las disposiciones de la presente Ley se aplicarán asimismo a las obras que hayan sido creadas, a las interpretaciones o ejecuciones que hayan tenido lugar o que hayan sido fijadas a los fonogramas que hayan sido fijados y a las emisiones, que hayan tenido lugar, antes de la fecha de entrada en vigor de la presente Ley, a condición de que estas obras, interpretaciones o ejecuciones, fonogramas y emisiones de radiodifusión no sean todavía del dominio público debido a la expiración de la duración de la protección a la que éstas estaban sometidos en la legislación precedente o en la legislación de su país de origen.

Los efectos legales de los actos y contratos concertados o estipulados antes de la entrada en vigor de la presente Ley permanecerán intactos.”

“Artículo 195

“El presente Decreto entrará en vigencia a partir de la fecha de su publicación en el Diario Oficial La Gaceta.” (15/01/00) fecha añadida.

En el WCT

“Artículo 13 WCT: Aplicación en el tiempo

“Las Partes Contratantes aplicarán las disposiciones del Artículo 18 del Convenio de Berna a toda la protección contemplada en el presente Tratado.”

(Fecha de entrada en vigor: 6 de marzo de 2002, fecha añadida.).

2. Disposiciones del WPPT

2.1. Definiciones

2.1.1 ¿Se encuentran las “interpretaciones o ejecuciones” o los “artistas intérpretes o ejecutantes” definidos en la ley?

“Artículo 9

“Para los efectos de la presente Ley se entiende por:

[...]

21) Artista-Intérprete o Ejecutante: Todo actor, cantante, músico, bailarín u otra persona que represente un papel, cante, recite, declame, interprete o ejecute, en cualquier forma una obra literaria o artística o expresiones del folklore.

[...]”

2.1.2. ¿Se encuentra el “fonograma” definido en la ley?

“Artículo 9

“Para los efectos de la presente Ley se entiende por:

[...]

17) Fonograma: Toda fijación de los sonidos de una ejecución o interpretación o de otros sonidos, o de una representación de sonidos que se aenformadeuna fijación incluida en una obra cinematográfica o audiovisual.

[...]”

2.1.3. ¿Se encuentra la “fijación” definida en la ley?

“Artículo 9

“Para los efectos de la presente Ley se entiende por:

[...]

15) Fijación: La incorporación de imágenes, sonidos o de ambos, en la representación o ejecución de éstos sobre un soporte material duradero, que permita la percepción, reproducción o comunicación.

[...]”

2.1.4. ¿Se encuentra el “productor de fonogramas” definido en la ley?

“Artículo 9

“Para los efectos de la presente Ley se entiende por:

[...]

19) Productor de Fonograma: La persona natural o jurídica que por su iniciativa y bajo su responsabilidad y coordinación fija por primera vez los sonidos de una interpretación, ejecución u otros sonidos, o la representación de los mismos.

[...]”

2.1.5 ¿Se encuentra la “publicación de una interpretación o ejecución fijada de un fonograma” definida en la ley?

“Artículo 2 WPPT: Definiciones

“[...]

e) ‘publicación’ de una interpretación o ejecución fijada de un fonograma, la oferta al público de la interpretación o ejecución fijada del fonograma con el consentimiento del titular del derecho y siempre que los ejemplares se ofrezcan al público en cantidad suficiente.

[...]”

“Declaración Concertada del Artículo 2 WPPT

“Tal como se utilizan en estos Artículos, las expresiones ‘copias’ y ‘original y copias’, sujetas al derecho de distribución y al derecho de alquiler en virtud de dichos Artículos, se refieren exclusivamente a copias fijadas que pueden ponerse en circulación como objetos tangibles.”

2.1.6 ¿Se encuentra la “radiodifusión” definida en la ley?

“Artículo 9

“Para los efectos de la presente Ley se entiende por:

[...]

23) Radiodifusión: La comunicación a distancia de sonidos, o de imágenes y sonidos, o las representaciones de ambos por ondas electromagnéticas propagadas en el espacio, singular o artificialmente para su recepción por el público.

[...]”

2.1.7. ¿Se encuentra la “comunicación pública” definida en la ley?

“Artículo 2 WPPT: Definiciones

[...]

g) ‘comunicación pública’ de una interpretación o ejecución de un fonograma, la transmisión pública, por cualquier medio que sea la radiodifusión, de sonidos de una interpretación o ejecución o los sonidos o las representaciones de sonidos fijadas en un fonograma. A los fines del Artículo 15, se entenderá que ‘comunicación pública’ incluye también hacer que los sonidos o las representaciones de sonidos fijados en un fonograma resulten audibles al público.”

2.2. ¿Se encuentra el concepto de “tratamiento nacional” contenido en la ley?

“Artículo 4

“La presente Ley ampara los derechos de los autores hondureños, de los extranjeros residentes en el país y las obras extranjeras publicadas por primera vez en Honduras, las obras audiovisuales cuyo productor sea hondureño o que tenga su residencia habitual o su sede en Honduras, así como las obras de arquitectura erigidas en Honduras o las obras de bellas artes que sean parte de un edificio situado en Honduras.

Los derechos de los extranjeros no residentes en el país, cuyas obras hayan sido publicadas por primera vez en el exterior, gozarán de la protección de esta Ley conforme a las convenciones internacionales de las cuales Honduras forma parte. A falta de convención se aplicará el principio de reciprocidad. Los apátridas y refugiados se les dará los derechos del Estado donde tengan su domicilio.

Tendrán validez frente a terceros los contratos celebrados en el extranjero sobre derecho de autor y de los derechos conexos que deban cumplirse en Honduras, cuando los mismos sean inscritos ante la Oficina Administrativa del Derecho de Autor y de los Derechos Conexos. Dichos contratos se sujetarán a formalidades exigidas en el lugar de su celebración, a reserva de lo establecido en la legislación hondureña sin perjuicio de lo estipulado en las convenciones internacionales, de las cuales Honduras forma parte.”

“Artículo 5

“La protección a los artistas -intérpretes o ejecutantes se aplicará en los casos siguientes:

- 1) el artista -intérprete o ejecutante sea hondureño;
- 2) la interpretación o ejecución haya tenido lugar en el territorio nacional; y,
- 3) la interpretación o ejecución haya sido fijada en un fonograma que reúna los requisitos preceptuados para su protección en el Artículo 6 de esta Ley o que no habiéndose fijado ser radiodifundido o emisión protegida.”

“Artículo6

“Laprotecciónde los fonogramas conforme a la presente Ley será aplicable en los casos siguientes:

- 1) cuando el productor se hondureño;
- 2) la primera fijación se haya efectuado en el territorio nacional; y,
- 3) cuando el fonograma se haya publicado por primera vez en Honduras.”

“Artículo7

“Laprotección de las emisiones de radiodifusión por la presente Ley se aplicará en los casos siguientes:

- 1) la sede de la radiodifusora se encuentre situada en Honduras; y,
- 2) la emisión se haya efectuado a partir de un transmisor situado en Honduras.”

“Artículo8

“Quedan protegidas las interpretaciones y ejecuciones, los fonogramas y las emisiones de radiodifusión, cuyos titulares sean extranjeros no residentes en el país, conforme a las convenciones internacionales a las cuales la República de Honduras se ha adherido, o en su falta, cuando el Estado de su nacionalidad asegure protección efectiva a los titulares hondureños.”

2.3. ¿Gozan los artistas intérpretes o ejecutantes de derechos morales en la ley?

“Artículo117

“Los artistas intérpretes tendrán los derechos morales reconocidos en los numerales 1 y 2 del Artículo 36 de esta Ley; las disposiciones del Artículo 35 de la misma, se aplicarán igualmente a los derechos morales de los artistas intérpretes o ejecutantes.”

“Artículo35

“Independientemente de sus derechos patrimoniales y aun con posterioridad a su transferencia, el autor conservará sobre la obra, un derecho personalísimo, inalienable, irrenunciable e imprescriptible, denominado derecho moral.”

“Artículo 36

“El derecho moral del autor comprende las facultades siguientes:

- 1) Reivindicar todo tiempo y lugar, la paternidad de su obra y en especial la que se mencione su nombre o pseudónimo como autor de ella, en todas sus reproducciones y utilizaciones;
- 2) Oponerse a toda deformación, mutilación u otra modificación de la obra, cuando pueda causar o causar perjuicio a su honor o reputación o a la obra pierda mérito literario, académico, artístico o científico.”

2.4. ¿Gozan los artistas intérpretes o ejecutantes de derechos patrimoniales por sus interpretaciones o ejecuciones no fijadas?, y en caso afirmativo, ¿Cuáles son estos derechos?

“Artículo 113

“Los artistas, intérpretes o ejecutantes tienen derecho exclusivo de realizar o de autorizarlos actos siguientes:

- 1) la radiodifusión de sus interpretaciones o ejecuciones, salvo cuando dicha radiodifusión:
 - a) se efectúe a partir de una fijación de la interpretación o ejecución distinta de una fijación realizada en el Artículo 71 de la presente Ley; y,
 - b) sea una reemisión autorizada por los organismos de radiodifusión que es el primero en emitir la interpretación o ejecución.
- 2) la comunicación al público de sus interpretaciones o ejecuciones, salvo cuando dicha comunicación:
 - a) se realice a partir de una fijación de la interpretación o ejecución; y,
 - b) se realice a partir de una radiodifusión de la interpretación o ejecución.
- 3) la fijación de sus interpretaciones o ejecuciones no fijadas;
- 4) la reproducción de una fijación de sus interpretaciones o ejecuciones;
- 5) la primera distribución al público de una fijación de sus interpretaciones o ejecuciones, mediante la venta o por cualquier otro tipo de transferencia de propiedad;
- 6) el alquiler al público o el préstamo al público de una fijación de sus interpretaciones o ejecuciones; y,

7) la puesta a disposición del público, por hilo o por medios analógicos, de sus interpretaciones o ejecuciones fijadas en un fonograma, de forma que cada uno pueda tener acceso a ellas del lugar y el momento que elija individualmente.”

“Artículo 114

“Salvo estipulación en contrario se entenderá que:

- 1) la autorización para la radiodifusión no implica la autorización para permitir a otros organismos de radiodifusión que retransmitan la interpretación o ejecución;
- 2) la autorización para la radiodifusión no implica la autorización para fijarla interpretación o ejecución con propósito distinto a la radiodifusión;
- 3) la autorización para radiodifusión y para fijar la interpretación o ejecución, no implica la autorización para reproducirla fijación; y,
- 4) la autorización para fijar la interpretación o ejecución, y para reproducirla fijación, no implica la autorización para transmitir la interpretación o la ejecución a partir de la fijación de sus reproducciones.”

“Artículo 115

“Cuando varios artistas, intérpretes o ejecutantes participen en una misma ejecución, se entenderá que el consentimiento previsto será dado por el representante legal del grupo o de su mayoría.”

“Artículo 116

“Los artistas de variedad tendrán el derecho de oponerse a la fijación, reproducción, exhibición o radiodifusión de sus actuaciones.”

“Artículo 117

“Los artistas intérpretes tendrán los derechos morales reconocidos en los numerales 1 y 2 del Artículo 36 de esta Ley; las disposiciones del Artículo 35 de la misma, se aplicarán igualmente a los derechos morales de los artistas intérpretes o ejecutantes.”

2.5. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de reproducción en la ley?

“Artículo 113

“Los artistas, intérpretes o ejecutantes tienen derecho exclusivo de realizar o autorizarlos actos siguientes:

[...]

4) la reproducción de una fijación de sus interpretaciones o ejecuciones.

[...]"

2.6. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de distribución en la ley?

“Artículo 113

“Los artistas, intérpretes o ejecutantes tienen derecho exclusivo de realizar o autorizarlos actos siguientes:

[...]

5) la primera distribución al público de una fijación de sus interpretaciones o ejecuciones, mediante la venta o por cualquier otro tipo de transferencia de propiedad.

[...]"

2.7. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de alquiler en la ley?

“Artículo 113

“Los artistas, intérpretes o ejecutantes tienen derecho exclusivo de realizar o autorizarlos actos siguientes:

[...]

6) el alquiler al público o el préstamo al público de una fijación de sus interpretaciones o ejecuciones.

[...]"

2.8. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de puesta a disposición de sus interpretaciones o ejecuciones fijadas en la ley?

“Artículo 113

“Los artistas, intérpretes o ejecutantes tienen derecho exclusivo de realizar o autorizarlos actos siguientes:

[...]

7) la puesta a disposición del público, por hilo o por medios inalámbricos, de sus interpretaciones o ejecuciones fijadas en un fonograma, de forma que cada uno pueda tener acceso a ellas del lugar y el momento que elija individualmente.”

2.9. ¿Gozan los productores de fonogramas (“productores”) de un derecho de reproducción en la ley?

“Artículo 118

“Los productores de fonogramas tienen el derecho exclusivo de autorizar o prohibir la reproducción, directa o indirecta, la comunicación y distribución al público, del original y de los ejemplares de sus fonogramas mediante venta o transferencia de propiedad, el arrendamiento, el mutuo, la importación, la puesta a disposición del público de los fonogramas por cualquier medio, de tal manera que los miembros del público puedan tener acceso a ellos, desde el lugar y en el momento que cada uno de ellos elija o cualquier otra forma de utilización de sus fonogramas.”

2.10. ¿Gozan los productores de un derecho de distribución en la ley?

“Artículo 118

“Los productores de fonogramas tienen el derecho exclusivo de autorizar o prohibir la reproducción, directa o indirecta, la comunicación y distribución al público, del original y de los ejemplares de sus fonogramas mediante venta o transferencia de propiedad, el arrendamiento, el mutuo, la importación, la puesta a disposición del público de los fonogramas por cualquier medio, de tal manera que los miembros del público puedan tener acceso a ellos, desde el lugar y en el momento que cada uno de ellos elija o cualquier otra forma de utilización de sus fonogramas.”

2.11. ¿Gozan los productores de un derecho de alquiler en la ley?

“Artículo 118

“Los productores de fonogramas tienen el derecho exclusivo de autorizar o prohibir la reproducción, directa o indirecta, la comunicación y distribución al público, del original y de los ejemplares de sus fonogramas mediante venta o transferencia de propiedad, el arrendamiento, el mutuo, la importación, la puesta a disposición del público de los fonogramas por cualquier medio, de tal manera que los miembros del público puedan tener acceso a ellos, desde el lugar y en el momento que cada uno de ellos elija o cualquier otra forma de utilización de sus fonogramas.”

2.12. ¿Gozan los productores de un derecho de puesta a disposición de fonogramas en la ley?

“Artículo 118

“Los productores de fonogramas tienen el derecho exclusivo de autorizar o prohibir la reproducción, directa o indirecta, la comunicación y distribución al público, del original y de los ejemplares de sus fonogramas mediante venta o transferencia de propiedad, el arrendamiento, el mutuo, la importación, la puesta a disposición del público de los fonogramas por cualquier medio, de tal manera que los miembros del público puedan tener acceso a ellos, desde el lugar y en el momento que cada uno de ellos elija o cualquier otra forma de utilización de sus fonogramas.”

2.13. ¿Gozan los productores y/o artistas intérpretes o ejecutantes de un derecho de remuneración por la radiodifusión y/o comunicación pública de fonogramas en la ley?

“Artículo 15 WPPT: Derecho a remuneración por radiodifusión y comunicación pública

“1) Los artistas intérpretes o ejecutantes y los productores de fonogramas gozarán del derecho a una remuneración equitativa y única por la utilización directa o indirecta para la radiodifusión o para cualquier comunicación pública de los fonogramas publicados con fines comerciales.

2) Las Partes Contratantes pueden establecer en su legislación nacional que la remuneración equitativa y única debe reclamarse al usuario por el artista intérprete o ejecutante o por el productor de un fonograma o por ambos. Las Partes Contratantes pueden establecer legislación nacional que, en ausencia de un acuerdo entre el artista intérprete o ejecutante y el productor del fonograma, fije los términos en los que la remuneración equitativa y única será compartida entre los artistas intérpretes o ejecutantes y los productores de fonogramas.

3) Toda Parte Contratante podrá, mediante una notificación depositada en poder del Director General de la OMPI, declarar que aplicará las disposiciones del párrafo 1) únicamente respecto de ciertas utilidades o que limitará su aplicación de alguna otra manera o que no aplicará ninguna de estas disposiciones.

4) A los fines de este Artículo, los fonogramas puestos a disposición del público, ya sea por hilo o por medios inalámbricos de tal manera que los miembros del público puedan tener acceso a ellos desde el lugar y en el momento que cada uno de ellos elija, serán considerados como si se hubiesen publicado con fines comerciales.”

2.14. ¿Se encuentran estos derechos sujetos a formalidades?

“Artículo 130

“El registro es declarativo y no constitutivo de derecho. No obstante, las inscripciones en el registro establecen la presunción de ciertos hechos y actos que en ellas consten, salvo prueba en contrario. Toda inscripción deja a salvo los derechos de terceros.”

2.15. ¿Cuáles es el término de protección para:

2.15.1. los artistas intérpretes o ejecutantes?

“Artículo 120

“La duración de los derechos intelectuales de los artistas intérpretes o ejecutantes, de los productores de fonogramas y de los organismos de radiodifusión, será de setenta y cinco (75) años contados a partir:

- 1) Delfinaldelañodelafijación, enloqueserefierealosfonogramasyalas interpretacionesoejecucionesgrabadasenellos;
- 2) Delfinaldelañoenquesehayarealizadolaactuaciónenloqueserefierea lasinterpretacionesoejecucionesquenoesténgrabadasenunfonograma.”

2.15.2productoresdefonogramas?

“Artículo120

“Laduracióndelosderechosintelectualesdelosartistas losproductoresdefonogramasydelosorganismosdera -intérpretesoejecutantes,de diodifusión,serádesetentay cinco(75)añoscontadosapartir:

- 1) Delfinaldelañodelafijación, enloqueserefierealosfonogramasyalas interpretacionesoejecucionesgrabadasenellos;
- 2) Delfinaldelañoenquesehayarealizadolaactuaciónenloqueserefierea lasinterpretacionesoejecucionesquenoesténgrabadasenunfonograma.”

2.16.¿Cuáleslafechaefectivaparalaaplicacióndelosderechosenlaley?

“Artículo190

“LasdisposicionesdelapresenteLeyseaplicaránas imismoalabrasquehayansido creadas, alasinterpretacionesoejecucionesquehayantenidolugaroquehayansido fijadasalosfonogramasquehayansidofijadosyalasemisiones,quehayantenido lugar, antesdelafechadeentradaenvigordela presenteLey, acondicióndequeestas obras, interpretacionesoejecuciones, fonogramasyemisionesderadiodifusiónnosean todavíadeldominiopúblicodebidoalaexpiracióndeladuracióndelaprotecciónala queéstosestabansometidosenlalegisla ciónprecedenteoenlaleislacióndesupaís deorígen.

Los efectos legales de los actos y contratos concertados o estipulados antes de la entrada envigordelapresenteLeypermaneceránintactos.”

“Artículo195

“El presente Decreto entrará envigencia apartir de la fecha de su publicación en el Diario Oficial La Gaceta.” (15/01/00) fechaañadida.

EnelWPPT

Artículo22WPPT:Aplicacióneneltiempo

“1) LasPartesContratantesaplicaránlasdisposicionesdelArtículo18delConvenio deBerna, *mutatismutandis*, a los derechos de los artistas intérpretesoejecutantesyde losproductoresdefonogramascontempladosenelpresenteTratado.

“2) Noobstantelodispuestoenelpárrafo1),unaParteContratante podrálimitarla aplicacióndelArtículo 5delpresente Tratadoalasinterpretacionesoejecucionesque tenganelugardespúesdelaentradaenvigordelpresente TratadorespectodeesaParte”

(Fechadeentradaenvigor:20demayode2002,fechaañadida).

3. Disposicionescomunes

3.1. ¿Cuálesonlaslimitacionesyexcepcionesenlaley?

(Relativasalosderechosdeautor,aclaratoriaañadida.)

“Artículo46

“Serálicito,sinautorizacióndeltitular delderechoysinpagoder remuneración,con obligacióndemencionarlafuente yelno mbredelautor,cuandoenlaobraestén indicados,realizarlosactossiguientes:

- 1) Reproducir y distribuir por la prensa o emitir por radiodifusión, por transmisión por cable, las informaciones, noticias y artículos de actualidad, en los casos que la reproducción, radiodifusión o transmisión pública no se haya reservado expresamente;
- 2) Reproducir y poner al alcance del público, con ocasión de informaciones relativas a acontecimientos de actualidad por medio de la fotografía, de la obra audiovisual, por la radiodifusión o transmisión por cable, fragmentos de obras vistas u oídas en el curso de tales acontecimientos, en la medida justificada por el fin de la información; y,
- 3) Utilizar por cualquier forma de comunicación al público, discursos políticos, judiciales, disertaciones, alocuciones, sermones y otras obras similares, pronunciadas en público, con fines de información, sobre hechos de actualidad, conservando los autores el derecho exclusivo de publicarlos para otros fines.”

“Artículo47

“Respectodelasobras yadivulgadaslicitamente,espermitidasinautorizacióndelautor niremuneración,lareproducción de unacopiadelaobra para elusopersonaly exclusivodelusuario,realizadaporelpropio interesado, consus propios medios.”

“Artículo48

“También son lícitas las reproducciones fotomecánicas para el uso personal, como la fotocopia y el microfilm siempre que se limiten a pequeñas partes de una obra protegida o a obras agotadas.”

“Artículo 49

“Cuando no sea posible adquirir un ejemplar en condiciones razonables, las bibliotecas públicas pueden reproducir para el uso exclusivo de sus lectores y cuando ello sea necesario para su conservación y para el servicio de préstamo a otras bibliotecas públicas, una copia de obras protegidas depositadas en sus colecciones de archivos que se encuentren agotadas.

Estas copias pueden ser también reproducidas, en una sola copia, por la biblioteca que las reciba en caso de que ello sea necesario para su conservación, y con el único fin de que sean utilizadas por sus lectores, a condición de que el acto de reproducción reprográfice a un caso aislado que, de repetirse, ocurra en ocasiones aisladas y no relacionadas entre sí.”

“Artículo 50

“Es permitida la reproducción por medios reprográficos, para la enseñanza o la realización de exámenes en instituciones educativas, siempre que no haya fines de lucro y la medida justificada por el objetivo perseguido de artículos, conferencias, lecciones, breves extractos de obras breves lícitamente publicadas, a condición de que tal utilización se haga conforme a los usos honrados.”

“Artículo 51

“Es libre la reproducción en un solo ejemplar manuscrito o mecanografiado o efectuada personalmente o exclusivamente por el interesado, de una obra didáctica o científica, para su propio uso o sin ánimo de lucro, directo o indirecto.”

“Artículo 52

“Es lícita la reproducción de una obra de arte expuesta permanentemente en las calles, plazas u otros lugares públicos, por medio de un arte diverso al empleado para la elaboración del original. Respecto de los edificios, dicha facultad se limita a la fachada exterior.”

“Artículo 53

“La reproducción de una sola copia del programa de ordenador, exclusivamente con fines de resguardo o seguridad, es lícita, así como, la introducción del programa de ordenador en la memoria interna de los equipos solo para efectos de su utilización por el usuario.”

“Artículo 54

“Las Leyes, reglamentos, acuerdos y demás disposiciones emanadas de los órganos correspondientes del Estado, podrán ser publicadas sueltas o en colección por los

particulares, después que lo hayan sido en el Diario Oficial La Gaceta, respetando su texto oficial completo. Asimismo, podrán insertarse sin autorización en los periódicos y en obras que por su naturaleza u objeto convenga citarlos, comentarlos, criticarlos o copiarlos textualmente.”

“Artículo 55

“Es libre la ejecución de fonogramas y la recepción de transmisiones de radio y televisión, en los establecimientos comerciales, que vendan aparatos receptor es, electrodomésticos de fonogramas, para demostración a su clientela, en la medida necesaria para los fines de demostración perseguidos.”

“Artículo 56

“Es libre la representación teatral y la ejecución musical, cuando se realicen en el hogar para beneficio exclusivo del círculo familiar o de sus invitados, en celebración de fiestas o reuniones. También lo será cuando se realicen en establecimientos de enseñanza para fines didácticos, celebraciones cívicas o actividades de beneficio social, cultural y deportivo, siempre que no haya ánimo de lucro ni ningún tipo de compensación económica.”

“Artículo 57

“Quien tenga los derechos sobre una obra arquitectónica puede alterar los planos y proyectos, así como, disponer en cualquier momento de demolición total o parcial, la ampliación o reducción o cualquier otra modificación. Cuando el autor del plano y proyecto original no hayadado su consentimiento a esas modificaciones, podrá exigir la supresión de su nombre, si éste apareciera consignado a la obra modificada.”

(Relativas a los derechos de artistas intérpretes o ejecutantes y productores de fonogramas, aclaratoria añadida.)

“Artículo 121

“Constituyen limitaciones a los derechos contenidos en los artículos 113, 118 y 119 la presente Ley, cuando los actos que se refieren en estos artículos tienen por objeto:

- 1) Su utilización para uso privado;
- 2) Informar sobre sucesos de actualidad a condición de que sólo se haga uso de fragmentos con duración máxima de sesenta (60) segundos de una interpretación o ejecución de un fonograma o de una emisión de radiodifusión;
- 3) La utilización hecha con fines de enseñanza o de investigación científica; y,
- 4) Las grabaciones efímeras realizadas por un organismo de radiodifusión por sus propios medios y para sus propias emisiones.”

3.2. ¿Qué protección jurídica, y cuáles recursos jurídicos proporcionales a la ley contra la elisión de las medidas tecnológicas de protección eficaces?

“Artículo 167

“Constituye violación del derecho de autor y de los derechos conexos, y por lo tanto será sujeto a sanción todo acto ilícito, que en cualquier forma restrinja o perjudique los derechos morales o patrimoniales del autor y titulares, tales como:

[...]

18) La fabricación o la importación, para la venta o el alquiler, de un dispositivo o medio especialmente concebido o adaptado para volver inoperante, todo dispositivo o medio destinado a impedir o limitar la reproducción de una obra o deteriorar la calidad de ejemplares realizados;

19) La fabricación o la importación, para la venta o el alquiler de un dispositivo o medio que permita facilitar la recepción de un programa codificado, radiodifundido o comunicado en cualquier forma al público, por personas que no están habilitadas a recibirlo.

[...]”

3.3. ¿Cuáles obligaciones se encuentran en la ley para la protección de “información sobre la gestión de derechos”?

“Artículo 167

“Constituye violación del derecho de autor y de los derechos conexos, y por lo tanto será sujeto a sanción todo acto ilícito, que en cualquier forma restrinja o perjudique los derechos morales o patrimoniales del autor y titulares, tales como:

[...]

20) La supresión o modificación, sin estar habilitado para ello, de cualquier información relativa a la gestión de derechos que se presente en forma electrónica;

21) La distribución o la importación con fines de distribución, la radio distribución, la radiodifusión, la comunicación al público o la puesta a disposición del público, sin estar habilitado para ello, de obras, interpretaciones o ejecuciones, fonogramas o emisiones de radiodifusión, así como de obras que se han suprimido o modificados sin autorización, informaciónes relativas a la gestión de derechos que se presentan en forma electrónica.

Todo dispositivo o medio mencionado en este Artículo, y todo ejemplar en el que se haya suprimido o modificado una información sobre la gestión de derechos, serán asimilados a las copias o ejemplares falsificados de obras.”

“Artículo 168

“A los efectos del Artículo anterior, se entenderá por “información sobre la gestión de derechos”, la información que permita identificar al autor, a la obra, al artista intérprete o ejecutante, a la interpretación o ejecución, al productor de fonograma, al organismo de radiodifusión y a todo titular de derechos en virtud de esta Ley, o toda información relativa a las condiciones y modalidades de utilización de la obra y de las producciones contempladas por la presente Ley, y de todo número o código que represente dicha información, cuando se hayan adjuntado cualesquiera de esos elementos de información a: el ejemplar de una obra, de una interpretación o ejecución fijada, a un ejemplar de un fonograma o a una emisión de radiodifusión fijada, o que figure en relación con la radiodifusión, la comunicación pública o la puesta a disposición del público de una obra, de una interpretación o ejecución fijada, de un fonograma o de una emisión de radiodifusión.”

3.4. De manera general; ¿Cuáles son las medidas de observancia de derechos en la ley?

“Artículo 156

“La Oficina Administrativa sancionará con multa de diez (10) a doscientos (200) salarios mínimos, de acuerdo a la gravedad de la infracción, a los responsables de las violaciones del derecho de autor y derechos conexos establecidos en esta Ley o a las asociaciones de gestión colectiva.

En caso de reincidencia se aplicará el doble de la multa impuesta, y además se sancionará con la suspensión temporal o la cancelación definitiva del permiso concedido para operar por medio de la autoridad correspondiente, en aquellos casos en que el permiso searequerido. El monto de la multa se aplicará dependiendo de la gravedad de la infracción y la capacidad económica del infractor.

En ningún caso, los dependientes, comisionistas o cualquier otra persona que desempeñe una actividad laboral de cualquier clase, bajo remuneración, para la persona que realice actos de violación de los derechos de autor, será responsable de tales actos, ni siquiera en forma subsidiaria.”

“Artículo 157

“Las multas a que se refiere el artículo anterior serán aplicadas por la Oficina Administrativa e ingresarán a la Tesorería General de la República.

Las sanciones pecuniarias se harán efectivas por la vía de apremio, sin perjuicio de poder instar las demás acciones a que hubiere lugar conforme a derecho.”

“Artículo 158

“La Oficina Administrativa conocerá de oficio o por denuncia de cualquier infracción a la presente Ley e iniciará la instrucción del expediente.”

“Artículo 159

“Ladenunciase formulará p o escrito y en la misma se expresará y acompañará lo siguiente:

- 1) Suma que indique su contenido o el trámite de que se trata;
- 2) La indicación del órgano al que se dirige;
- 3) El nombre y apellidos, estado, profesión u oficio y domicilio del solicitante o del representante, en cuyo caso deberá presentarse el documento que acredite su representación;
- 4) Los hechos y razones en que se funde y la expresión clara de lo que se solicita; y,
- 5) Lugar, fecha y firma o huella digital cuando no supiere firmar.

Además, con el escrito de la denuncia se acompañarán los documentos en que el denunciante se fundamenta y sin los tuviera a su disposición, indicará con precisión el lugar donde se encuentren. Enunciará, además, los otros medios de prueba con que quisiera justificar su petición.”

“Artículo 160

“Recibida la denuncia en los términos del artículo anterior, se procederá a citar al denunciado para ponerle en conocimiento la infracción imputada, dándole el derecho a defenderse presentando sus alegatos, p o escrito, en los mismos términos del artículo anterior.”

“Artículo 161

“La citación se hará al supuesto infractor p o mediode cédula que le será entregada personalmente y no hallándose, la entrega se hará a cualesquiera de sus familiares o dependientes que se encuentren.”

“Artículo 162

“Si el citado no compareciere, p o sí o p o mediode un representante, al lugar, hora y fecha a la cual se refiere la citación, se citará nuevamente. En caso de que no comparezca se tendrán p o ciertos los hechos que se le imputan y se dictará la resolución correspondiente.”

“Artículo 163

“Si el citado compareciera, se le hará entrega de la copia de la denuncia o del acta de inspección cuando se haya procedido de oficio, así como, de las pruebas que se tengan,

para que en el término de cinco (5) días conteste sus alegatos de descargo, consignando lo actuado.”

“Artículo 164

“La Oficina Administrativa, una vez contestada la denuncia, y cuando las pruebas presentadas por el denunciante o las que consten en el acta levantada de oficio, se consideren suficientes o el inculpado admita los cargos formulados, dictará la resolución correspondiente.”

“Artículo 165

“Si las pruebas fueren insuficientes y el inculpado negare los cargos, se abrirá la causa a prueba por el término de diez (10) días, transcurridos los cuales la Oficina Administrativa dictará la resolución correspondiente.”

“Artículo 166

“La Oficina Administrativa podrá declarar procedente o improcedente la acción entablada.

Si la resolución es procedente deberá disponer:

- 1) La determinación de la violación de esta Ley y la imposición de la sanción correspondiente al infractor; y,
- 2) La prohibición de continuar con los actos violatorios de la Ley.
“El plazo para hacer efectiva la sanción será de quince (15) días hábiles, contados a partir del día siguiente a la notificación.”

“Artículo 169

“Sin perjuicio de las sanciones establecidas en la presente Ley, las acciones constitutivas de delitos contra el derecho de autory de los derechos conexos, estarán sujetas a las penas que determina el Código Penal.”

En el Código Penal, con referencia a los Delitos contra Propiedades Especiales, los Artículos 248, 248 -Ay 249 establecen las penas de reclusión de 3 a 6 años más multa de 50.000 a 100.000 Lempiras (aclaratoria añadida).

“Artículo 173

“Las acciones civiles que se ejerciten con motivo de esta Ley, y a sea en la aplicación de sus disposiciones o como consecuencia de los actos y hechos jurídicos vinculados con el Derecho de Autory de los Derechos Conexos, serán de conocimiento de los Tribunales

Civiles, de acuerdo al precepto en el Código de Procedimientos Civiles vigente, sin perjuicio del establecido en el Código de Procedimientos Penales.”

“Artículo 174

“El titular de los derechos correspondientes o quien tenga la representación legal convencional de ellos puede pedir a la autoridad judicial, como medida precautoria el decomiso preventivo de:

- 1) Toda obra, edición y ejemplares fraudulentamente reproducidos;
- 2) El producto que se haya obtenido con la enajenación o alquiler de tales obras, edición y ejemplares;
- 3) El producto de los espectáculos teatrales, cinematográficos, filarmónicos o cualquier otro similar.

Estos sin perjuicio del derecho de exigir la indemnización por daños y perjuicios a que da lugar la infracción.

- 4) El secuestro de ejemplares de obras de grabación sonora de las que se tenga indicio racional que hayansido realizadas o importadas sin autorización del titular del derecho protegido en virtud de la presente Ley, cuando la realización o la importación de los ejemplares se esté sujeta a autorización, así como, los embalajes de esos ejemplares, de los medios que puedan haberse utilizado para realizarlas, y de los documentos, cuentas o papeles de negocios relativos a dichos ejemplares, así como, los depósitos de los ingresos obtenidos de actividad infractora; y,
- 5) Las disposiciones del Código de Aduanas relativas a la suspensión de la puesta en libre circulación de mercancías de las que se tenga indicio racional que puedan ser ilegales, se aplicarán igualmente a los objetos o al material protegidos en virtud de la presente Ley.”

“Artículo 175

“Las indemnizaciones por daños y perjuicios son aplicables para el caso de que el perjudicado o sus derechohabientes ejerciten junto con la acción penal, la acción civil correspondiente.

Para los efectos del cálculo de dicha indemnización en lo que se refiere al lucro cesante que deba repararse, se estimará con base en uno de los siguientes criterios, a elección del perjudicado:

- 1) Los beneficios que el titular del derecho habría obtenido previsiblemente, de no haber ocurrido la infracción;
- 2) Los beneficios obtenidos por el infractor como resultado de los actos de la infracción; y,

3) El precio o regalía que el infractor habría pagado al titular del derecho, si se hubiese concertado una licencia contractual, teniendo en cuenta el valor comercial del objeto del derecho infringido y las licencias contractuales que ya se hubieran concedido.”

“Artículo 176

“Las personas indicadas en el Artículo 174 de esta Ley, podrán solicitar ante los juzgados competentes, que se prohíba o se suspenda la representación, ejecución o exhibición pública de una obra fonograma que se haga sin la debida autorización del titular del derecho de Autor de los Derechos Conexos.”

“Artículo 177

“Para poder ejercer la acción indicada en los artículos anteriores, es necesario:

- 1) Que la persona que pida de comiso, prohibición o suspensión del acto, haya entablado la acción judicial correspondiente; y,
- 2) Que la persona rinda garantía suficiente, para asegurar, los posibles perjuicios que pudiere ocasionar con su acción al demandado.”

“Artículo 178

“El juzgado competente decretará de inmediato las medidas precautorias referidas, de acuerdo con lo que dispone el Código de Procedimientos Civiles. Regístrate en el mismo Código para todos los procedimientos incluyendo los arbitrales.

“Los acreedores de una empresa teatral o cualquier otra semejante, no pueden secuestrar la parte del producto de los espectáculos que correspondan al autor o los artistas, suma que tampoco se considerará incluida en el Decreto de Embargo ordenado por la autoridad judicial.”

“Artículo 179

“Las acciones civiles previstas en esta Ley podrán ser ejercidas durante los tres (3) años posteriores al conocimiento de los hechos que las motiven.”

“Artículo 180

“El autor de una obra, sus derecho habientes o sus representantes, podrán solicitar a los juzgados competentes, sin perjuicio de las responsabilidades civiles pertinentes, que se ordena la suspensión de una representación teatral o ejecución de música instrumental o vocal, radiodifundida, efectuada sin el consentimiento del autor, excepto en los casos consignados en esta Ley.”

3.5. ¿Cómo define la ley la responsabilidad de los proveedores de servicio?

“Declaración Conc ertada del Artículo 8 WCT

“Queda entendido que el simple suministro de instalaciones físicas para facilitar o realizar una comunicación, en sí mismo, no representa una comunicación en el sentido del presente Tratado o del Convenio de Berna. También queda entendido que nada de lo dispuesto en el Artículo 8 impide que una Parte Contratante aplique el Artículo 11 bis.2).”

3.6. ¿Existen algunas disposiciones en la ley relativa al almacenamiento temporal?

“Artículo 9

“Para los efectos de la presente Ley se entiende por:

[...]

16) Reproducción: La realización por cualquier medio de uno o más ejemplares de una obra, de un fonograma o de una fijación sonora o audiovisual, total o parcial, permanente o temporal, en cualquier tipo de soporte material, incluyendo cualquier almacenamiento por medio electrónico.

[...]”

“Artículo 39

“Al autor corresponde el derecho de percibir beneficios económicos, provenientes de la utilización de la obra por cualquier medio, forma o proceso. Por consiguiente, podrá realizar o autorizar en especial, cualesquiera de los actos siguientes:

1) La reproducción por cualquier procedimiento y bajo cualquier forma, sea total o parcial, permanente o temporal.

[...]”

3.7. ¿Existen algunas disposiciones expresas para asegurar que la disposiciones en contra de la elisión no restrinjan el funcionamiento de las limitaciones o excepciones a los derechos otorgados en la ley?

No existen ninguna disposición al respecto en la ley.

HUNGARY

(Law Reviewed: Act No. LXXVI of 1999 on Copyright amended by the Act XLVIII of 2001 on the Legal Protection of Designs and the Act LXXVII of 2001 amending Act No. LXXVI of 1999 on Copyright)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“The Object of Copyright Protection

“Article 1

“(1) This Act shall provide protection for literary, scientific and artistic creations.

“(2) All creations of literature, science and art—whether or not specified by this Act—shall fall under the protection of this Act, in particular:

“[...]

“(3) The copyright protection shall derive from the individual and original nature of the creation conceived by the intellectual activity of the author, and it shall not be subject to any quantitative, qualitative and aesthetic characteristics or to value judgements relating to the standards of the creation.

“[...]

“(5) The copyright protection shall not cover the measures, or the drafts of measures, brought about and laid down in any form in the course of business of economic organizations (Civil Code, Article 685, Item (c)) and of legal entities other than economic organizations.

“(6) No idea, principle, concept, procedure, method of operation or mathematical operation may be the subject of copyright protection.”

1.2 Are computer programs protected in the Law as literary works?

“The Object of Copyright Protection

“Article 1

“(1) This Act shall provide protection for literary, scientific and artistic creations.

“(2) All creations of literature, science and art – whether or not specified by this Act – shall fall under the protection of this Act, in particular:

[...]

c) computer program creations and related documentation (hereinafter referred to as software), whether fixed in source code or object code or any other form, including application programs and operations systems [...].

[...]”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Collection of Works

“Article 7

“(1) A collection shall be protected by copyright, if the selection, arrangement or editing of its contents is of an individual and original nature (collection of works). Copyright protection shall apply to a collection of works even if its parts or elements do not or may not enjoy copyright protection.

“(2) Regarding the whole of the collection of works, the copyright shall belong to the editor, however, this shall be without prejudice to the independent rights of the authors of those individual works and of the right-holders of those performances protected by neighbouring rights which were selected for inclusion in the collection.

“(3) The copyright protection of a collection of works shall not extend to the elements making up the contents of the collection of works.”

1.4 Is there a right of distribution in the Law?

“The Right of Distribution

“Article 23

“(1) The author shall have the exclusive right to distribute his work and to authorize others therefor. The making accessible to the public of the original copy or the reproduced copies of the work through putting into circulation or their offer for putting into circulation shall be taken to mean distribution.

“(2) The distribution shall in particular imply the transfer of the title of ownership of the copy of the work and the rental of the copy of the work as well as the importation into the country of the copy of the work with the purpose of putting it into circulation.

“(3) In the case of cinematographic creations, works included in sound recordings and software, the lending to the public of individual copies of the work shall likewise be covered by the right of distribution.

“(4) Therightofdis tributionthroughrentalshallonlycoverthedesignswithinthe domains of architecture, applied arts and industrial designing.

“(5) Ifthecopyoftheworkhasbeenputintocirculationdomesticallybythe rightholderorbyanotherpersonexpresslyauthorizedthereforbytherightholder throughsaleorthetransferoftitleofownershipinanyothermanner,therightof distributionshallfurtheronbeexhaustedwithregardtothecopyoftheworkthusput intocirculation,however,thisshallbewithoutprejudicetotherightofrental,lending andimportation.

“(6) Iftherightofrentalrelatingtoacinematographiccreationoraworkincludedina soundrecordinghasbeentransferred,orotherwiselicensed,bytheauthor tothe producerofthefilm orsoundrecording,theauthorshallretainaclaimtotheproducer ofthefilmorsoundrecordingforafairandequitableremunerationregardingthe distributionoftheworkthroughrental.Thisrightmaynotbewaivedbytheauthor, however,hemayenforcehisclaimtoaremunerationonlyviaanorganization performingthecollectiveadministrationofrights(Articles85to93).

“(7) InthecaseofthelendingtothepublicofworksnotreferredtoinParagraph (3)– asfarasarchitectural,appliedart andindustrialcreationsareconcerned,oftheir design–,afairandequitableremunerationshallbeduetotheauthors.Thisclaimtoa remunerationmaybeenforcedonlyviathecollectiveadministrationofrightsandthe rightholdersmaywaivesuchremunerationonlyfollowingthedateofitsdistribution andtotheextentoftheamountdueto them.”

1.5 IstherearightofrentalintheLaw,andifso,towhichworksdoesitapply?

“TheRightofDistribution

“Article23

“(1) Theauthorshallhavetheexclusive righttodistributehisworkandtoauthorize otherstherefor.Themakingaccessibletothepublicoftheoriginalcopyorthe reproducedcopiesoftheworkthroughputtingintocirculationortheir offerforputting intocirculationshallbe taken to mean distribution.

“(2) Thedistributionshallinparticularimplythetransferofthetitleofownershipof thecopyoftheworkandtherentalofthecopyoftheworkaswellastheimportation intothecountryofthecopyoftheworkwiththepurposeofputtingitintocirculation.

“(3) Inthecaseofcinematographiccreations,worksincludedinsoundrecordingsand software,thelendingtothepublicofindividualcopiesoftheworkshalllikewisebe coveredbytherightofdistribution.

“(4) Therightofdistributionthroughrentalshallonlycoverthedesignswithinthe domains of architecture, applied arts and industrial designing.

“(5) Ifthecopyoftheworkhasbeenputintocirculationdomesticallybythe rightholderorbyanother personexpresslyauthorizedthereforbytherightholder

through sale or the transfer of title of ownership in any other manner, the right of distribution shall further be exhausted with regard to the copy of the work thus put into circulation, however, this shall be without prejudice to the right of rental, lending and importation.

“(6) If the right of rental relating to a cinematographic creation or a work included in a sound recording has been transferred, or otherwise licensed, by the author to the producer of the film or sound recording, the author shall retain a claim to the producer of the film or sound recording for a fair and equitable remuneration regarding the distribution of the work through rental. This right may not be waived by the author, however, he may enforce his claim to remuneration only via an organization performing the collective administration of rights (Articles 85 to 93).”

“(7) In the case of the lending to the public of works not referred to in Paragraph (3) – as far as architectural, applied art and industrial creations are concerned, of their design –, a fair and equitable remuneration shall be due to the authors. This claim to remuneration may be enforced only via the collective administration of rights and the right holder may waive such remuneration only following the date of its distribution and to the extent of the amount due to them.”

1.6 Is there a right of communication to the public in the Law?

“The Right of Communication of the Work to the Public

“Article 26

“(1) The author shall have the exclusive right to have his work communicated to the public by broadcasting and to authorize another person therefor. The making of the work perceptible to people at a distance by the transmission of sounds or pictures and sounds or the technical presentation of these without the use of cable or other like devices shall be taken to mean broadcasting.

“(2) Satellite broadcastings shall be taken to be covered by the broadcasting of the work in case the programme broadcast can be directly received by the public. The programme broadcast by satellites shall be regarded to be accessible to direct reception by the public if, under the responsibility and control of the radio or television organization, signals carrying the work are uplinked to the satellite and from there back to the ground by uninterrupted transmission with the purpose that the signals can be received by the public.

“(3) As broadcasting of the work shall further be a direct broadcast which can be directly received by the public only after the organization concerned with the communication to the public has made the signals carrying the programme suitable for reception by the use of a device for decryption procured from the original radio or television organization on the basis of an agreement concluded with it or from another organization authorized by the original one to sell the said device. The original radio or television organization and the organization concerned with communication to the public and using the device for decryption shall jointly and severally be held liable for such use.

“(4) As broadcasting of the work shall also be rated if the signals of the broadcast programme are encrypted by the organization concerned with communication to the public and the work is accessible for undisturbed perception by the members of the public only by the use of a device for decryption procured from the said organization on the basis of an agreement concluded with it or from another organization authorized for the sale of the said device by the original organization.

“(5) A broadcast in which the signals carrying the programme are transformed in any manner in order to restrict the access thereto to a limited part of the public shall be considered as an encrypted broadcast.

“(6) The fixation of the work permitting its repeated broadcasting is subject to the author’s special license. Each and every use of the recording is subject to the payment of remuneration.

“(7) The communication to the public of any programme by cable or any like device or in any like manner shall be subject, *mutatis mutandis*, to the provisions relating to broadcasting.

“(8) The author shall further have the exclusive right to communicate his work to the public in a manner other than broadcasting or the means referred to in Paragraph (7) and to authorize another person therefor. This right shall in particular cover the case when the work is made available to the public by cable or any other means or in any other manner so that the members of the public can choose the place and time of the availability individually.”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

“The Right of Communication of the Work to the Public

“Article 26

“(1) The author shall have the exclusive right to have his work communicated to the public by broadcasting and to authorize another person therefor. The making of the work perceptible to people at a distance by the transmission of sounds or pictures and sounds or the technical presentation of these without the use of cable or other like devices shall be taken to mean broadcasting.

“[...]

“(8) The author shall further have the exclusive right to communicate his work to the public in a manner other than broadcasting or the means referred to in Paragraph (7) and to authorize another person therefor. This right shall in particular cover the case when the work is made available to the public by cable or any other means or in any other manner so that the members of the public can choose the place and time of the availability individually.”

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Article 1

[...]

“(2) All creations of literature, science and art – whether or not specified by this Act – shall fall under the protection of this Act, in particular:

i) artistic photographs.

[...]”

“Article 31

“(1) The authors’ rights shall enjoy protection during the lifetime of the author and for seventy years following his death.

“[...]”

1.9 What is the effective time-frame for application of the rights in the Law?

“Article 108

“(1) The provisions of Article 31 shall, among others, apply to the works whose term of protection calculated according to the provisions previously in force had expired before the entry into force of Act VII of 1994 on the amendment of specific legal rules relating to copyright and the protection of industrial law.

“(2) The rights determined by this Act shall be due to performers, the producers of sound recordings, the radio and television organizations and those transmitting by cable their own programmes to the public even if the twenty years’ term – relating to them – calculated from the end of the year referred to by Article 84 had expired by the time of the entry into force of Act VII of 1994.

“(3) In case the term of protection relating to the authors’ economic rights and the neighboring rights related to the copyright had expired by the time of the entry into force of Act VII of 1994, the uses performed in the period between the expiration and the time of the entry into force of this Act shall be treated as free uses, irrespective of whether these rights will again, or will not, fall under protection following the entry into force of this Act.

“(4) The uses referred to in Paragraph (3) will be possible to be continued – in the case of sound recordings regarding copies manufactured before the entry into force – for one year more following the entry into force of this Act, but only to the extent existing at the time of the entry into force. The right of such uses performed within the framework of economic activity may be transferred only jointly with the authorized economic organization or its organizational unit performing the use. An equitable remuneration

shall be due to the rightholder on any use performed even after the entry into force of this Act.

“(5) The provisions of Paragraph (4) shall be applied as appropriate even if definite preparations have been made toward the use before the date of the promulgation of this Act, on the understanding that in this case the use may be begun and carried on to the extent of the preparation that existed at the promulgation of this Act.

“(6) The alteration, adaptation or translation performed in the period of time referred to in Paragraph (3) shall be regarded as if it had been performed with the authorization of the author.

“(7) On the use after the entry into force of this Act of the alteration, adaptation or translation referred to in Paragraph (6) an equitable remuneration shall be due to the rightholder who holds copyright in the work serving as a basis for the action mentioned.

“(8) Any debates concerning remuneration considered as due on the basis of the provisions of Paragraphs (3) and (7) shall be settled through judicial procedure.

“(9) The right of use acquired through a contract for use concluded prior to the entry into force of Act VII of 1994 for the full term of protection or for an indefinite period of time shall be due to the user –under the terms and conditions of the contract for use –after the entry into force of this Act, if the copyright or the neighboring right related to the copyright falls again under protection pursuant to this Act.”

“Article 109

“The provision of Paragraph (6) of Article 31 shall be applied in case it does not result in shortening of the term of protection calculated according to the provisions previously in effect. The provision of Paragraph (6) of Article 31 shall be applied also to cinematographic creations of which the term of protection had already expired before the entry into force of this Act. The provisions of Paragraphs (3) to (9) of Article 108 shall, *mutatis mutandis*, apply in this case, too, on the understanding that the entry into force of this Act shall replace the entry into force of Act VII of 1994.”

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

Not found in the Law reviewed.

2.1.2 Is phonogram defined in the Law?

Not found in the Law reviewed.

2.1.3 Is fixation defined in the Law?

Not found in the Law reviewed.

2.1.4 Is “Producer of a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Article 77

“(1) In the case of the broadcasting, or communication to the public in any other manner, of a sound recording released for commercial purposes or of its copy, the user must pay an additional remuneration, in addition to the royalty to be paid for the use of the works under copyright protection, which shall be due to the producer of the sound recording and the performer on an equal basis, unless otherwise agreed between those entitled.

“(2) For purposes of the provision of Paragraph (1) a sound recording shall be considered as released for commercial purposes if it is made available to the public in the manner provided in Item e) of Paragraph (1) of Article 73 and Item c) of Paragraph (1) of Article 76.”

“Article 76

“(1) Unless otherwise provided by statute, the consent of the producer of a sound recording shall be required for the sound recording to be:

[...]

c) made available to the public by cable or any other means or in any other manner so that the members of the public can choose the place and time of the availability individually.

[...]”

“Article 73

“(1) Unless otherwise provided by statute, the performer’s consent shall be sought for:

[...]

e) making his performance available to the public by cable or any other device or in any other manner so that the members of the public can choose the place and time of the availability individually.

[...]"

2.1.6 Is "broadcasting" defined in the Law?

"The Right of Communication of the Work to the Public"

"Article 26"

"(1) The author shall have the exclusive right to have his work communicated to the public by broadcasting and to authorize another person therefor. The making of the work perceptible to people at a distance by the transmission of sounds or pictures and sounds or the technical presentation of these without the use of cable or other like devices shall be taken to mean broadcasting.

"(2) Satellite broadcastings shall be taken to be covered by the broadcasting of the work in case the programme broadcast and directly be received by the public. The programme broadcast by satellites shall be regarded to be accessible to direct reception by the public if, under the responsibility and control of the radio or television organization, signals carrying the work are uplinked to the satellite and from there back to the ground by uninterrupted transmission with the purpose that the signals can be received by the public.

"(3) As broadcasting of the work shall further be a broadcasted and encrypted broadcasting which can be directly received by the public only after the organization concerned with the communication to the public has made the signals carrying the programme suitable for reception by the use of a device for decryption procured from the original radio or television organization on the basis of an agreement concluded with it or from another organization authorized by the original one to sell the said device. The original radio or television organization and the organization concerned with communication to the public and using the device for decryption shall jointly and severally be held liable for such use.

"(4) As broadcasting of the work shall also be a broadcasted if the signals of the broadcast programme are encrypted by the organization concerned with communication to the public and the work is accessible for undisturbed perception by the members of the public only by the use of a device for decryption procured from the said organization on the basis of an agreement concluded with it or from another organization authorized for the sale of the said device by the original organization.

"[...]"

"(7) The communication to the public of a own programme by cable or any like device or in any like manners shall be subject, *mutatis mutandis*, to the provisions relating to broadcasting."

2.1.7 Is “communication to the public” defined in the Law?

“The Right of Communication of the Work to the Public

“Article 26

“(1) The author shall have the exclusive right to have his work communicated to the public by broadcasting and to authorize another person therefor. The making of the work perceptible to people at a distance by the transmission of sounds or pictures and sounds or the technical presentation of these without the use of cable or other like devices shall be taken to mean broadcasting.

“[...]

“(7) The communication to the public of an own programme by cable or any like device or in any like manners shall be subject, *mutatis mutandis*, to the provisions relating to broadcasting.

“(8) The author shall further have the exclusive right to communicate his work to the public in a manner other than broadcasting or the means referred to in Paragraph (7) and to authorize another person therefor. This right shall in particular cover the case when the work is made available to the public by cable or any other means or in any other manners so that the members of the public can choose the place and time of the availability individually.”

2.2 Is the concept of “national treatment” contained in the Law?

“The Scope of the Act

“Article 2

“The copyright protection shall extend to a work first disclosed abroad only if the author is a Hungarian national or if protection accrues to the author pursuant to international conventions or by reciprocity.”

2.3 Do performers have moral rights in the Law?

“Article 75

“(1) In the case of the uses referred to in Article 73, Paragraph (1), the performers shall have the moral right to have his name indicated, depending on the nature of the use and in a manner consistent with it. In the case of ensembles of performers, this right shall apply to the indication of the names of the ensemble, the leader of the ensemble, and the chief performers.

“(2) The distortion, mutilation or any other alteration of a performance which prejudices the honor or reputation of the performers shall be taken to infringe his moral right.”

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones.

“The Protection of Performers

“Article 73

“(1) Unless otherwise provided by statute, the performer’s consent shall be sought for:

- a) the fixation of his unfixed performance;
- b) the broadcasting or the communication in another manner to the public of his unfixed performance, unless the performance broadcast or communicated in another manner to the public is a broadcast performance itself;

[...]”

2.5 Do performers have a right of reproduction in the Law?

“The Protection of Performers

“Article 73

“(1) Unless otherwise provided by statute, the performer’s consent shall be sought for:

[...]

- c) the reproduction of his fixed performance;

[...]”

2.6 Do performers have a right of distribution in the Law?

“The Protection of Performers

“Article 73

“(1) Unless otherwise provided by statute, the performer’s consent shall be sought for:

[...]

- d) the distribution of his fixed performance;

[...]”

2.7 Do performers have a right of rental in the Law?

“The Protection of Performers

“Article 73

“(1) Unless otherwise provided by statute, the performer’s consent shall be sought for:

[...]”

d) the distribution of his fixed performance;

[...]”

“The Right of Distribution

“Article 23

“(1) The author shall have the exclusive right to distribute his work and to authorize others therefor. The making accessible to the public of the original copy or the reproduced copies of the work through putting into circulation or their offer for putting into circulation shall be taken to mean distribution.

“(2) The distribution shall in particular imply the transfer of the title of ownership of the copy of the work and the rental of the copy of the work as well as the importation into the country of the copy of the work with the purpose of putting it into circulation.”

2.8 Do performers have a right of making available in the Law?

“The Protection of Performers

“Article 73

“(1) Unless otherwise provided by statute, the performer’s consent shall be sought for:

[...]”

e) making his performance available to the public by cable or any other device or in any other manner so that the members of the public can choose the place and time of the availability individually.”

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“The Protection of Phonogram Producers

“Article 76

“(1) Unless otherwise provided by statute, the consent of the producer of a sound recording shall be required for the sound recording to be:

a) reproduced;

[...]

“(2) Unless otherwise provided by statute, the producer of the sound recording shall have a right to remuneration for the uses referred to in Paragraph (1).”

2.10 Do producers have a right of distribution in the Law?

“The Protection of Phonogram Producers

“Article 76

“(1) Unless otherwise provided by statute, the consent of the producer of a sound recording shall be required for the sound recording to be:

b) distributed;

[...]

“(2) Unless otherwise provided by statute, the producer of the sound recording shall have a right to remuneration for the uses referred to in Paragraph (1).”

2.11 Do producers have a right of rental in the Law?

“The Protection of Phonogram Producers

“Article 76

“(1) Unless otherwise provided by statute, the consent of the producer of a sound recording shall be required for the sound recording to be:

[...]

b) distributed;

[...]

“(2) Unless otherwise provided by statute, the producer of the sound recording shall have a right to remuneration for the uses referred to in Paragraph (1).”

“The Right of Distribution

“Article 23

“(1) The author shall have the exclusive right to distribute his work and to authorize others therefor. The making accessible to the public of the original copy or the reproduced copies of the work through putting into circulation or their offer for putting into circulation shall be taken to mean distribution.

“(2) The distributions shall in particular imply the transfer of the title of ownership of the copy of the work and the rental of the copy of the work as well as the importation into the country of the copy of the work with the purpose of putting it into circulation.”

2.12 Do producers have a right of making available in the Law?

“The Protection of Phonogram Producers

“Article 76

“(1) Unless otherwise provided by statute, the consent of the producer of a sound recording shall be required for the sound recording to be:

[...]

c) made available to the public by cable or any other means or in any other manner so that the members of the public can choose the place and time of the availability individually.

“(2) Unless otherwise provided by statute, the producer of the sound recording shall have a right to remuneration for the uses referred to in Paragraph (1).”

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 77

“(1) In the case of the broadcasting, or communication to the public in any other manner, of a sound recording released for commercial purposes or of its copy, the user must pay an additional remuneration, in addition to the royalty to be paid for the use of the works under copyright protection, which shall be due to the producer of the sound recording and the performer on an equal basis, unless otherwise agreed between those entitled.

eof

“(2) For purposes of the provision of Paragraph (1) a sound recording shall be considered as released for commercial purposes if it is made available to the public in the manner provided in Item e) of Paragraph (1) of Article 73 and Item c) of Paragraph (1) of Article 76.

“(3) Therightholdersmayenforcetheirclaimtor emunerationonlythroughthe organizationsperformingthecollectiveadministrationoftheirrights(Articles 85 to93) andtheymayrenouncetheremunerationonlywiththeeffectfollowingthedataofthe distributionandtotheextentoftheamountduetothe em.”

2.14 ArerightsintheLawsubjecttoanyformalities?

NotfoundintheLawreviewed.

2.15 Whatisthetermofprotectionfor:

2.15.1performers?

“TheTermofProtection

“Article84

“(1) TherightscoveredbytheprovisionsofthisChaptershallallbeprotectedforthe followingperiodsofetime:

- a) phonogramsandperformancesfixedtherein,fiftyyearsfromthefirstdayof theyearfollowingtheyearinwhichthephonogramwasfirstputintocirculation orforfiftyyearsfromthefirstdayof theyearfollowingtheyearinwhichthe fixationofthephonogramwasmade,ifthephonogramwasnotputinto circulationduringthelatterperiod;
- b) unfixedperformances,fiftyyearsfromthefirstdayoftheyearfollowingthe yearinwhichthepformancewasheld;

“(2) Ifthephonogramhasnotbeenputintocirculationforfiftyyearsfromthefirstday oftheyearfollowingtheyearinwhichthephonogramwasmade,butitwas communicatedtothepublicduringthisperiod,thetermreferredtoinpara (1)of paragraph(1)shallbecalculatedasabasisfromtheyearfollowingtheyearinwhichit wasfirstcommunicatedtothepublic.”

2.15.2producersofphonograms?

“TheTermofProtection

“Article84

“(1) TherightscoveredbytheprovisionsofthisChaptershallbeprotectedforthe followingperiodsofetime:

- a) phonogramsandperformancesfixedtherein,fiftyyearsfromthefirstdayof theyearfollowingtheyearinwhichthephonogramwasfirstputintocirculation orforfiftyyearsfrom thefirstdayoftheyearfollowingtheyearinwhichthe

fixation of the phonogram was made, if the phonogram was not put into circulation during the latter period;

b) unfixed performances, fifty years from the first day of the year following the year in which the performance was held;

“(2) If the phonogram has not been put into circulation for fifty years from the first day of the year following the year in which the phonogram was made, but it was communicated to the public during this period, the term referred to in point a) of paragraph (1) shall be calculated as a basis from the year following the year in which it was first communicated to the public.”

2.16 What is the effective time -frame for application of rights in the Law?

“Article 108

“[...]

“(2) The rights determined by this Act shall be due to performers, the producers of sound recordings, the radio and television organizations and those transmitting by cable their own programmes to the public even if the twenty years’ term – relating to them – calculated from the end of the year referred to by Article 84 had expired by the time of the entry into force of Act VII of 1994.”

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Chapter Four

“The Free Use of the Work and Other Limitations to the Copyright

“General Provisions

“Article 33

“(1) Uses falling within the scope of the free uses shall not be subject to the payment of any consideration and to any authorization of the author. Only works disclosed to the public may be used freely pursuant to the provisions of this Act.

“(2) The use under the provisions relating to free use is permitted and not subject to the payment of a fee only so far as it does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, and it is in compliance with the requirements of fairness and is not designed for a purpose incompatible with the intention of free use.

“(3) The provisions relating to free uses shall not be interpreted in an extensive manner.

“(4) For purposes of the provisions of this chapter the uses shall be taken to serve the purposes of academic education if it is implemented in accordance with the requirements of education and with the curricula respectively used in kindergarten, primary school, secondary school, industrial school, vocational school education, the primary education of arts, as well as in higher education falling under the scope of the law on higher education.

“The Cases of Free Use

“Article 34

“(1) From a disclosed work any part may be cited by indication of the source and naming the author indicated as such. Such citations shall be true to the original and its scope shall be justified by the nature and purpose of the borrowing work.

“(2) Part of a literary or musical work or a work of minor size disclosed to the public may be borrowed for purposes of school education and scientific educational lectures with the indication of the source and the author referred to therein. The inclusion of work in another work to an extent which goes beyond the scope of citations shall be taken to mean borrowing. a

“(3) The reproduction and distribution of the borrowing work referred to in Paragraph (2) are not subject to the author’s authorization if the borrowing work is, pursuant to the relevant legislation, declared to be a textbook or reference book and the academic purpose is indicated on the title page.

“Article 35

“(1) A copy of the work may be made by anyone for private purpose if it is not designed for earning or increasing income even in an indirect way. This provision shall not apply to architectural works, engineering structures, software and databases operated by a computing device as well as to the fixation of the public performance of a work on video or sound carrier.

“(2) A complete book as well as the whole of a periodical or daily may be copied even for private purpose only by hand writing or typing.

“(3) Having a work copied by someone else with computer or one electronic data carrier, even if this is done for private purpose, shall not be considered as falling within the scope of free use.

“(4) In a manner and to the extent complying with the intended purpose as well as for internal use in an institution, if this is outside the scope of commercial activity, a copy may be made for own purposes if it is not designed for earning or increasing income even in an indirect way and:

- a) it is required for scientific research;
- b) it is made from an own copy for the file to be used for scientific purpose or for the supply of a public library; or

c) itismadeofalimitedpartofapublishedworkorofanarticleina newspaperorperiodical.

“(5) Specificpartsofaworkpublishedasabookaswellasnewspaperandperiodical articlesmaybe reproducedforeducationalpurposesinanumbercorrespondingtothe numberofpupilsinaclassorforpurposesofexaminpublicandhighereducationina numbernecessaryforthesaidpurpose.

“(6) Thetemporaryreproductionofaworkdonewiththeexclusivepurpose to permit therealizationoftheuseoftheworkauthorizedbytheauthororpermittedpursuantto theprovisionsofthisActshallbetakentofallwithinthescopeoffreeuseonthe conditionthatthetemporaryreproductionisanintegralpartofthetechnologicalprocess aimingtoachievethesaiduseandlackinganyeconomicsignificanceofitsown.”

“Article36

“(1) Communicationscontainingfactsandnews mayfreelybeborrowed,withthe indicationofthesource.Thecontentsofpublicnegotiationsandspeechesmayfreely beused,however,theuseofeducational,scientific,popularandentertainmentlectures aswellasthepublicationofspeechesinacollectiveworkaresubjecttotheauthor’s authorization.

“(2) Anyart,photographic,architectural,appliedartorindustrialdesigncreationmay freelybeusedasdecorinatelevisionprogramme.Inthiscaseitisnotnecessaryto indicatetheauthor’sname.

“(3) Theuseinatelevisionprogrammeofworksmadeforpurposesofdecoror costumeissubjecttotheauthorizationoftheauthorandtheindicationofhisname.”

“Article37

“(1) Relatedtodailyevents,specificworksmaybeincludedinthepoliticalnews programmeorothertimelyprogrammesofthebroadcastingorganizationtotheextent justifiedbythegivenoccasion.Insuchcasetheindicationoftheauthor’snameshall notberequired.

“(2) Art,photographic,architectural,appliedartandindustrialdesigncreations displayedinpublicexhibitionmaybepresentedbydailiesandperiodicals,aswellas thenewsprogrammesandothertimelyprogrammesofthebroadcastingorganizations.

“(3) Aprogrammeinformingonorpresentinganeventrelatedtoaspecificpointof timeandinclodingminorpartsofspecificworksonlywithinthisframeworkshallbe consideredastimely.”

“Article38

“(1) If the performance is not designed to earn or increase income even in an indirect manner and the participants do not receive remuneration, the works may be performed in the following cases:

- a) by amateur theatre groups if a dramatic work is involved and it is performed on the basis of a text published or a manuscript lawfully used, supposing that this is not to the prejudice of any international agreement;
- b) for purposes of school education or at celebrations held at school;
- c) within the framework of the care of those at social disadvantage and of aged people;
- d) at celebrations held on national holidays;
- e) at religious ceremonies or on religious holidays;
- f) for private use and at occasionally held private social gatherings.

“(2) If a use is suitable for increasing the number of customers (e.g., that of a shop or a place of amusement) or for entertaining the customers of a shop or other types of consumers, it shall be taken to serve the purpose of increasing income. The collection of entrance fees, even if a different name is used for these, shall be taken to mean earning income. Payments exceeding the incurring and justified costs in connection with the performances shall be taken to mean remuneration.

“(3) A dancing party held at school shall not be taken to mean performance for purposes of school education.

“(4) A party held by an economic organization or a legal entity other than an economic organization exclusively for its members, officers and employees shall be taken to be a private event.”

“Article39

“The public libraries may freely lend out copies of a work. This provision shall not apply to software and to a database operated by computer devices.”

“Article40

“The copies reproduced within the scope of free use shall not be distributable without the author’s authorization, except for lending between libraries.”

“Article 41

“(1) Thenon-commercialreproductionanddistributionofaworkshallbeconsidered to bewithinthescopeoffreeusesiftheyareexclusivelydesignedtosatisfytheneeds ofdisabledpersonsandareimplementedaccordingly.

“(2) Incourt,publicadministrationandotherauthorityproceedingsaworkmaybe usedforpurposesof evidence,inamannerandtotheextentconsistentwiththisypeof use.”

3.2 Whatlegalprotection,andwhatlegalremedies,doesthelawprovideagainstthe circumventionofeffectivetechnologicalmeasuresofprotection?

“ProtectionAgainsttheCircumventionofTechnologicalMeasures

“Article 95

“(1) Theconsequencesoftheinfringementofthecopyrightshallapplytoall acts—includingtheproductionanddistributionofdevicesandtheprovisionofservices whichenableorfacilitateanunlawful circumventionofeffectivetechnological measuresdesignedtoprovideprotectionforthecopyrightandwhichhavenoparticular aimornomajoreconomicssignificanceotherthanthemerecircumventionofthe technologicalmeasure.Thisprovisionshallbe applicableonlyifthepersonperforming theactsreferredtoknows,orwiththecareexpectedtoobtaininthegivensituationhas reasonablegroundstoknow,thattheactsunlawfullyenableorfacilitatethe circumventionoftheeffectivetechnologicalmeasuresdesignedtoprovideprotectionfor thecopyright.

“(2) ForpurposesoftheprovisionofParagraph(1),technologicalmeasureshallmean alldevices,products,components,proceduresandmethodswhicharedesignedto preventorhindertheinfringementofthecopyright.Atechnologicalmeasureshallbe consideredeffectiveifasareultofitsexcutiontheworkbecomesaccessibletothe userthroughperformingsuchactions –withtheauthorizationoftheauthor –asrequire theapplicationoftheprocureorthesupplyofthecodenecessarytherefor.

“[...]

“TheConsequencesoftheInfringementoftheRightsRelatedtoCopyright

“Article 99

“TheprovisionsofArticles94to97shallapply *mutatis mutandis* totheinfringementof theprovisionsofChaptersXIandXI/A,aswellastothe protectionofthetechnological measuresandrightsmanagementinformationrelatingtotherightscoveredbythese Chapters.”

3.3 What obligations are in the Law for the protection of “rights management information?”

“The Protection of the Rights Management Information

“Article 96

“(1) The consequences of the infringement of the copyright shall apply to the unauthorized removal or alteration of the rights management data as well as to the unauthorized distribution, importation for distribution, broadcasting or communication to the public in a different manner of works from which the rights management data have been removed or on which such data have been altered without authority, supposing that the person performing any of the acts referred to knows, or with the care expected to obtain in the given situation has reasonable ground to know, that the acts unlawfully enable or facilitate the infringement of the copyright or induce others to commit such infringement.

“(2) Rights management data shall mean all particulars provided by the rightholders which identify the work, the author of the work, the owner of any right in the work, or inform about the terms and conditions of the use of the work, including any numbers or codes that represent such information, when such data are attached to a copy of the work or are made perceptible in connection with the communication of the work to the public.”

“The Consequences of the Infringement of the Rights Related to Copyright

“Article 99

“The provisions of Articles 94 to 97 shall apply *mutatis mutandis* to the infringement of the provisions of Chapter XI and XI/A, as well as to the protection of the technological measures and rights management information relating to the rights covered by these Chapters.”

3.4 Generally, what measures for enforcement of rights are in the Law?

“Civil Law Consequences

“Article 94

“(1) With his rights infringed, the author may assert various civil law claims, depending on the circumstances of the case. He may, in particular, claim:

- a) the declaration by the Court of an infringement of right having occurred
- b) the termination of the infringement of right and the injunction of the infringer to continue such action;
- c) that the infringer should give satisfaction for his action – by declaration or in other appropriate manner – and that in case of need such satisfaction should be given due publicity on the part and at the cost of the infringer;

d) that the infringers should provide particulars about those participating in the production and distribution of the objects and the supply of the services affected by the infringement of rights as well as about the business relations established for the unlawful uses;

e) the restitution of the increase in wealth achieved through the infringement of right;

f) the termination of the infringement and the restoration on the part of the cost of the infringer of the state of things as it existed prior to the infringement of rights as well as the destruction of the device or material exclusively or primarily used for the infringement of right or making it unsuitable therefor.

“(2) Damages shall be paid according to the provisions of civil law responsibility in the case of the infringement of authors’ rights. Damages shall also be paid if the author’s moral rights are infringed.

“(3) In lawsuits instituted on grounds of the infringement of authors’ rights the provisional measures shall be taken as needed if the applicant gives evidence of the work being under copyright protection and of being the author, the successor in title of the author, or the user of the work or the organization performing the collective administration of authors’ rights who/which is entitled to take action against the infringement of right on his/its own behalf.

“(4) The provision of Paragraph (3) shall not be applicable if six months have passed from the beginning of the infringement of the author’s right or sixty days have passed from the date when the infringement of right or the person of the infringer has become known to the applicant.

“(5) The Court shall take decision on the institution of provisional measures with special promptness or within fifteen days at latest from the submission of the application to that end.

“(6) In case one party has provided sufficient evidence in a lawsuit instituted on grounds of the infringement of the authors’ right, at this request the Court may order the other party to present the document or other material proof he is in possession of as well as to permit an inspection.

“(7) In lawsuits instituted on grounds of the infringement of the authors’ right, the Court may make preliminary directions for evidence subject to providing a security.

“[...]”

“The Customs Law Consequences of the Infringement of Authors Rights

“Article 97

“In the case of the infringement of the authors’ right the author may, with reference to the provisions of a special statute, require the customs authorities to take measures for

preventing the dutiable goods affected by their infringement of rights from being put into domestic circulation.”

“The Consequences in Case of a Licensing Contract

“Article 98

“(1) In the case of the infringement of the authors’ right the exclusive licensee (Art. 43 (1)) may call the author to take the necessary measures to stop the infringement. The licensee is entitled to initiate such a legal action in his or her own name, when the author fails to take the measures within 30 days of the notification.

“(2) In the case of a non-exclusive licensee the licensee is entitled to initiate a legal action under subparagraph (1) only on express authorization given in the licensing agreement.”

“The Consequences of the Infringement of the Rights Related to Copyright

“Article 99

“The provisions of Articles 94 to 97 shall apply *mutatis mutandis* to the infringement of the provisions of Chapter XI and XI/A, as well as to the protection of the technological measures and rights management information relating to the rights covered by these Chapters.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

“Article 35

[...]

(6) The temporary reproduction of a work done with the exclusive purpose to permit the realization of the use of the work authorized by the author or permitted pursuant to the provisions of this Act shall be taken to fall within the scope of free use on the condition that the temporary reproduction is an integral part of the technological process aiming to achieve the said use and lacking any economic significance of its own.”

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

INDONESIA

(Law Reviewed: Law of the Republic of Indonesia Number 19 year 2002 Regarding Copyright)

1. WCT provisions

1.1. Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

Not found in the Law reviewed.

1.2. Are computer programs protected in the Law as literary works?

“Article 12

“(1) In this Law, a work that is protected shall be the work in the field of science, arts and literature which includes:

a. books, computer programs, pamphlets, typographical arrangement of published works, and all other written works;

[...]”

1.3. Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 12

“(1) In this Law, a work that is protected shall be the work in the field of science, arts and literature which includes:

[...]

1. translations, interpretations, adaptations, anthologies, data-base and other works as a result of changing of form of mode. ”

1.4. Is there a right of distribution in the Law?

“Article 1

“1. Copyright shall mean an exclusive right for an Author or the recipient of the right to publish or reproduce his Work or to grant permission for said purposes, without decreasing the limits according to the prevailing laws and regulations.

[...]

“5. Publications shall mean the reading, broadcasting, exhibition, sale, distribution or dissemination of a Work, by utilising whatever means including the Internet, or by any manners so that such Work is capable of being read, heard or seen by any other person.

“[...]”

“Article 2

“(1) Copyright shall mean the exclusive right of an Author or a Copyright Holder to publish or reproduce his/her work, which emerges automatically after the creation of the work without prejudice to restrictions pursuant to the prevailing laws and regulations.”

1.5. Is there a right of rental in the Law, and if so, to which works does it apply?

“Article 2

“(1) Copyright shall mean the exclusive right of an Author or a Copyright Holder to publish or reproduce his/her work, which emerges automatically after the creation of the work without prejudice to restrictions pursuant to the prevailing laws and regulations.”

“(2) An Author and/or a Copyright Holder of a cinematographic work and computer programs shall have the right to give permission or to prevent any other person whom without his/her approval rents out the work concerned for commercial purposes.

“[...]”

1.6. Is there a right of communication to the public in the Law?

“Article 1

“1. Copyright shall mean an exclusive right for an Author or the recipient of the right to publish or reproduce his Work or to grant permission for said purposes, without decreasing the limits according to the prevailing laws and regulations.

“[...]”

“5. Publications shall mean the reading, broadcasting, exhibition, sale, distribution or dissemination of a Work, by utilising whatever means including the Internet, or by any manners so that such Work is capable of being read, heard or seen by any other person.

“[...]”

“Article 2

“(1) Copyright shall mean the exclusive right of an Author or a Copyright Holder to publish or reproduce his/her work, which emerges automatically after the creation of the work without prejudice to restrictions pursuant to the prevailing laws and regulations.”

“[...]”

1.7. Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

“Article 1

“1. Copyright shall mean an exclusive right for an Author or the recipient of the right to publish or reproduce his Work to grant permission for said purposes, without decreasing the limits according to the prevailing laws and regulations.

“[...]

“5. Publications shall mean the reading, broadcasting, exhibition, sale, distribution or dissemination of a Work, by utilising whatever means including the Internet, or by any manner so that such Work is capable of being read, heard or seen by any other person.

“[...]”

“Article 2

“(1) Copyright shall mean the exclusive right of an Author or a Copyright Holder to publish or reproduce his/her work, which emerges automatically after the creation of the work without prejudice to restrictions pursuant to the prevailing laws and regulations.”

“(2) An Author and/or a Copyright Holder of a cinematographic work and computer program shall have the right to give permission or to prevent any other person whom without his/her approval rents out the work concerned for commercial purposes.

“[...]”

1.8. Are photographic works given the same duration of protection as other works in the Law?

“Article 29

“(1) *The Copyrighton:*

- a. books, pamphlets, and all other written works;
- b. dramas, musical dramas, dances, choreographic works;
- c. all forms of arts, such as paintings, engravings, sculptures;
- d. batik arts;
- e. songs or music with or without lyrics;
- f. architecture;
- g. sermons, lectures, addresses and other works of utterance;
- h. visual aids for educational and scientific purposes;
- i. maps;
- j. translations, interpretations, adaptations, anthologies shall be valid for the life of the Author and 50 (fifty) years after his death.

“[...]”

“Article 30

“(1) *The Copyrighton:*

- a. computer programs;
- b. cinematographic works;
- c. photographic works;
- d. data-bases; and
- e. works resulting from adaptations shall be valid for 50 (fifty) years as of the first publication.

“(2) The Copyright on works as referred to in paragraphs (1) and (2) of this article, and Article 29 paragraph (1) which are owned or held by a legal body, shall be valid for 50 (fifty) years as off from the first publication.

“[...]”

1.9. What is the effective time-frame for application of the rights in the Law?

Not found in the Law reviewed.

2. WPPT provisions

To date Indonesia has not acceded to the WPPT.

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Part Five: Copyright Restrictions

“Article 14

“There shall be no infringement of copyright for:

- a. publication and/or reproduction of the symbol of the State and the national anthem in accordance with their original nature;
- b. publication and/or reproduction of anything which is published by or on behalf of the Government, except if the copyright is declared to be protected by law or regulation or by a statement on the work itself for the time the work is published; or
- c. repetition, either in whole or in part, of news from a news agency, broadcasting organization, and newspaper or any other resources, provided that the source thereof shall be fully cited.”

“Article 15

“Provided that the sources are fully cited, the following shall not be deemed as Copyright infringement:

- a. the use of a work of another party for the purpose of education, research, scientific thesis, report writing, criticising or reviewing an issue, provided that it does not prejudice the normal interest of the Author;

- b. the excerpt of a work of another party, in whole or in part, for the purposes of advocacy within or outside the court;
- c. the excerpt of a work of another party, in whole or in part, for the purposes of:
 - (i) lectures of which the purpose is solely for education and science; or
 - (ii) free-of-charge exhibitions or performances, provided that they do not prejudice the normal interests of the Author.
- d. reproduction of a scientific, artistic and literary work in Braille for the purposes of the blind, unless such reproduction is of a commercial purpose;
- e. limited reproduction of a work other than a computer program limitedly by using any means whatsoever or by employing a similar process by a public library, scientific or education institution and documentation centre of non-commercial nature, solely for the purpose of conducting their activities;
- f. modification of any architectural works, such as building construction, based on consideration of technical implementation;
- g. making of a back-up copy of a computer program by the owner of the computer solely for his own use.”

“Article 16

“(1) For the interests of education, science, and research and development activities, upon a work in the field of science and literature, the Minister, after hearing the consideration of the Copyright Council may:

- a. obligate the Copyright Holder to himself carry out the translation and/or reproduction of such work in the territory of the Republic of Indonesia within a stipulated period of time;
- b. obligate the Copyright Holder concerned to grant a license to other parties to translate and/or to reproduce such work in the territory of the Republic of Indonesia within a stipulated period of time, where the Copyright Holder concerned does not himself carry out the obligations as referred to in item a;
- c. designate other parties to carry out the translation and/or reproduction of such work, where the Copyright Holder does not carry out the obligations as referred to in item b.

“(2) The obligation to translate as referred to in paragraph (1) shall be carried out after the termination of a period of 3 (three) years as of the publication of the work in the field of science and literature, as long as the work has not been translated into the Indonesian language.

“(3) The obligation to reproduce as referred to in paragraph (1) shall be carried out after the termination of the period of:

a. 3 (three) years as of the publication of books in the field of mathematics and natural sciences and the books have never been reproduced in the territory of the Republic of Indonesia;

b. 5 (five) years as of the publication of books in the field of social sciences and the books have never been reproduced in the territory of the Republic of Indonesia;

c. 7 (seven) years as of the publication of books in the field of arts and literature and the books have never been reproduced in the territory of the Republic of Indonesia;

“(4) The translation or reproduction as referred to in paragraph (1) shall only be used within the territory of the Republic of Indonesia and shall not be exported into the territory of other countries.

“(5) The implementation of the provisions as paragraph (1) letter b and letter c shall be accompanied by the granting of a fee the amount of which shall be stipulated by Presidential Decree.

“(6) Provisions regarding the procedure of filing a request to translate and/or to reproduce as referred to in paragraphs (1), (2), (3), and (4) shall be further regulated in Presidential Decree.”

“Article 17

“The Government, after hearing the considerations from the Copyright Council, shall prohibit the publication of any work which is contrary to government policy in the field of religion, defence and state security, morals and public order.”

“Article 18

“(1) The publication of a work by the Government through a radio, television broadcast and/or other means for the interests of the State may be carried out without having to request permission from the Copyright Holder, provided that the publication does not prejudice the normal interest of the Copyright Holder and a reasonable compensation is given to the Copyright Holder.

“(2) The broadcasting organization which publishes the work referred to in paragraph (1) shall have the authority to preserve the work solely for its own, provided that for subsequent broadcast such broadcasting organizations shall give a reasonable compensation to the Copyright Holder concerned.”

“Section51

“ProvisionsasreferredtoinArticle3,Article4,Article5,Article6,Article7,Article8,Article9,Article10,Article11,Article14itemsbandc,Article15,Article17,Article18,Article24,Article25,Article26,Article27,Article28,Article35,Article36,Article37,Article38,Article39,Article40,Article41,Article42,Article43,Article44,Article45,Article46,Article47,Article48,Article52,Article53,Article54,Article55,Article56,Article57,Article58,Article59,Article60,Article61,Article62,Article63,Article64,Article65,Article66,Article68,Article69,Article70,Article71,Article74,Article75,Article76,Article77shallapply *mutatismutandis* toRelatedRights.”

3.2. Whatlegalprotection,andwhatlegalremedies,doesthelawprovideagainsthethethecircumventionofeffectivetechnologicalmeasuresofprotection?

“Article27

“ExceptwiththepermissionoftheAuthor,thetechnologicalcontrolmeasuresetosafeguardtherightoftheAuthorshallnotbedamaged,destroyedorcausemalfunction.”

3.3. WhatobligationsareintheLawfortheProtectionof“rightsmanagementinformation?”

“Article25

(1) TheelectronicinformationregardingtherightmanagementinformationofanAuthorshallnotbeomittedorchanged.

“(2) Furtherprovisionsasreferredtoinparagraph(1)shallberegulatedinGovernmentRegulation.”

3.4. Generally,whatmeasuresforenforcementofrightsareintheLaw

“ChapterX:SettlementofDisputes

“Article55

“ThesubmissionofCopyrightontheentiretyofaworktoanyotherpartyshallnotabridgetherightoftheAuthororhisheirstobringalawsuitagainstthosewhowithout hisconsent:

- a. deletesthenameoftheAuthorwhichisattachedtothework;
- b. attachesthenameoftheAuthortothework;
- c. changesorreplacesthetitleofthework;or
- d. changesthecontentofawork.”

“Article 56

“(1) The Copyright Holders shall be entitled to bring a lawsuit for damages to the Commercial Court against an infringement on his Copyright and request confiscation of the goods published or the results of reproduction of the work.

“(2) The Copyright Holders shall also be entitled to request to the Commercial Court to issue an order for the delivery of all or parts of income generating from the organization of lectures, scientific meetings, performances or exhibitions of works which resulted from the infringement of Copyright.

“(3) Before issuing a final decision and in order to prevent greater loss to the party whose right has been infringed, the judge may order the infringer to stop any activities of publishing and/or reproducing of works or goods which resulted from the infringement of Copyright.”

“Article 57

“The right of the Copyright Holder as referred to in Article 56 shall not apply to any work which is in the hand of a party who has good intention in obtaining the work solely for his own need and not using it for any commercial purposes and/or any interests related to commercial activities.”

“Article 58

“The Author of a work or his heir may bring a lawsuit for damages against any infringement as referred to in Article 24.”

“Article 59

“The lawsuits referred to in Article 55, Article 56, and Article 58 shall be given a decision within a period of 90 (ninety) days as of it is filed at the relevant Commercial Court.”

“Article 60

“(1) A lawsuit against infringement of Copyright shall be filed and addressed to the Head of the Commercial Court.

“(2) The Clerk of the Court shall register the lawsuit as referred to in paragraph (1) on the date it is filed and produce a written receipt signed by the competent authority and given the same date with the date of filing of the lawsuit, to the plaintiff.

“(3) The Clerk of the Court shall submit the lawsuit to the Head of the Commercial Court at the latest 2 (two) days from the date the lawsuit is filed.

“(4) Within the period of 3 (three) days at the latest from the date the lawsuit is filed, the Commercial Court shall study the lawsuit and determine the date for a hearing.

“(5) The examination hearing of a lawsuit shall be commenced within the period of 60 (sixty) days from the date the lawsuit is filed.”

“Article 61

“(1) The confiscation clerk shall summon the relevant parties at the latest 7 (seven) days from the date the lawsuit is filed.

“(2) A decision on the lawsuit shall be made at the latest 90 (ninety) days from the date the lawsuit is filed and can be extended for 30 (thirty) days at the latest, with the approval of Chief Justice of the Supreme Court.

“(3) The decision on a lawsuit as referred to in paragraph (2), which contains a complete legal reasoning as the basis of the decision, shall be stated in a court session which is open to the public, and when requested, the decision can be directly implemented although a legal effort is being filed against the decision.

“(4) The Clerk of the Commercial Court shall forward the decision to the relevant parties at the latest 14 (fourteen) days as of the date on which the decision is made.”

“Article 62

“(1) Upon the decision of the Commercial Court as referred to in Article 61 paragraph (4) may only be filed a *cassation*.

“(2) The request for a *cassation* as referred to in paragraph (1) shall be made at the latest 14 (fourteen) days after the date on which the decision was made and delivered to the relevant parties, and file the request to the Court that has made a decision on the lawsuit.

“(3) The Clerk of the Court shall register the request for a *cassation* on the date it is filed and issue a written receipt, which is signed by him on the same date with the registration date, to the Applicant of the *cassation*.”

“Article 63

“(1) The Applicant for a *cassation* shall submit the brief for the *cassation* to the Clerk of the Court within a period of 14 (fourteen) days commencing from the date of filing of request for a *cassation* as referred to in Article 62 paragraph (2).

“(2) The Clerk of the Court shall deliver the request for a *cassation* and the brief for the *cassation* as referred to in paragraph (1) to the defendant of the *cassation* at the latest 7 (seven) days after the brief is submitted.

“(3) The defendant of the *cassation* may submit a counter against the *cassation* to the Clerk of the Court at the latest 14 (fourteen) days after the date the defendant received the brief for *cassation* as referred to in paragraph (2), and the Clerk of the Court shall deliver the counter against the *cassation* to the Applicant of the *cassation* at the latest 7 (seven) days after he received the said counter.

“(4) The Clerk of the Court shall deliver the documents of the *cassation* to the Supreme Court at the latest 14 (fourteen) days after the termination of the period as referred to in paragraph (3).”

“Article 64

“(1) The Supreme Court shall study the documents of the *cassation* and determine the date for a hearing at the latest 7 (seven) days after the request for *cassation* was received.

“(2) The examination hearing on the request for *cassation* shall be conducted at the latest 60 (sixty) days after the date on which the Supreme Court received the request.

“(3) A decision on the *cassation* shall be made at the latest 90 (ninety) days after the date on which the Supreme Court received the request.

“(4) The decision on a *cassation* as referred to in paragraph (3) that contains a complete legal reasoning as the basis of the decision shall be stated in a court session that is open to the public.

“(5) The Clerk of the Supreme Court shall deliver the decision of *cassation* to the Clerk of the Commercial Court at the latest 7 (seven) days after the decision was made.

“(6) The confiscation clerk of the Court shall deliver the decision of the *cassation* as referred to in paragraph (5) to the Applicant of the *cassation* and the defendant of the *cassation* at the latest 7 (seven) days after the decision was received.”

“Article 65

“In addition to the settlement of dispute as referred to in Article 55 and Article 56, the parties concerned may settle their dispute by means of arbitration or an alternative dispute resolution.”

“Article 66

“The right to bring lawsuits as referred to in Article 55, Article 56, and Article 65 shall not abridge the right of the State to bring criminal lawsuits on infringement of Copyright.”

“Chapter XI: Provisional Decision by the Court

“Article 67

“Upon a request from the party whom it might have suffered a loss, the Commercial Court may immediately issue a provisional decision that is effective:

- a. to prevent the continuation of infringement on Copyright, particularly to prevent the entry of products allegedly infringing the Copyright or Related Rights into the trade channel, including importation;
- b. to keep the evidence relating to the infringement of Copyright or Related Rights in order to prevent the elimination of evidence;
- c. to request the party whom it might have suffered a loss to provide evidence that the party is truly entitled to the Copyright or Related Rights and that such rights are being infringed.”

“Article 68

“Where a provisional decision by the Court has been issued, the parties concerned shall be notified thereof, including the right to be heard for parties affected by the decision.”

“Article 69

“(1) In the event the judge at the Commercial Court has issued a provisional decision, he shall decide whether to amend, cancel or reaffirm the decision as referred to in Article 67 items a and b within the period of 30 (thirty) days at the latest as of the date of issuance of the relevant provisional decision.

“(2) If within the period of 30 (thirty) days the judge has not implemented the provisions as referred to in paragraph (1), the provisional decision of the court shall not have any legal force.”

“Article 70

“In the event a provisional decision is cancelled, the party whom it might have suffered a loss may file a claim to the party that requested the decision for damages he incurred due to the decision.”

“Chapter XII : Investigation

“Article 71

“(1) In addition to investigating officers at the State Police of the Republic of Indonesia, certain civil servants within the ministry whose scope of duties and

responsibilities include the supervision of intellectual property rights shall be granted special authority as investigators referred to in Act No. 8 of 1981 on Criminal Proceedings, to conduct investigations on criminal offences in the field of Copyright.

“(2) The civil servant investigator referred to in paragraph (1) shall be authorised:

- a. to conduct examination of the truth of reports or information relating to criminal offences in the field of Copyright;
- b. to conduct examination of a person or legal entity suspected of committing criminal offences in the field of Copyright;
- c. to collect information from persons or legal entities in connection with criminal offences in the field of Copyright;
- d. to conduct examination of the books, records and other documents relating to criminal offences in the field of Copyright;
- e. to inspect locations on which evidence, books, records, and other documents to be found;
- f. to confiscate, by working together with the police, materials and goods resulting from infringements which can be used as evidence in the criminal trials in the field of Copyright;
- g. to request expert assistance in the scope of carrying out the duties of investigation of criminal offences in the field of Copyright.

“(3) The civil servant investigator referred to in paragraph (1) shall inform the investigating officers at the State Police of the Republic of Indonesia about the initiation and the result of an investigation, in accordance with Law No. 8 of 1981 on Criminal Proceedings.”

“Chapter XIII: Criminal Provisions

“Article 72

“(1) Any person who deliberately and without right conducts any acts as referred to in Article 2 paragraph (1) or Article 49 paragraphs (1) and (2) shall be sentenced to imprisonment of at least 1 (one) month and/or a fine of at least Rp. 1,000,000. -(one million rupiah) or imprisonment of at most 7 (seven) years and/or a fine of at most Rp. 5,000,000,000. -(five billion rupiah)

“(2) Any person who deliberately broadcasts, exhibits, distributes, or sells to the public work or goods resulting from an infringement of copyright or related rights as referred to in paragraph (1) shall be sentenced to imprisonment of at most 5 (five) years and/or a fine of at most Rp. 500,000,000. -(five hundred million rupiah).

“(3) Any person who deliberately and without reproducible use of a computer program for commercial purposes shall be sentenced to imprisonment of at most 5 (five) years and/or a fine of at most Rp. 500,000,000. -(five hundred million rupiah).

“(4) Any person who deliberately violates the provisions of Article 17 shall be sentenced to imprisonment of at most 5 (five) years and/or a fine of at most Rp. 1,000,000,000. -(one billion rupiah).

“(5) Any person who deliberately violates the provisions of Article 19, Article 20 or Article 49 paragraph (3) shall be sentenced to imprisonment of at most 2 (two) years and/or a fine of at most Rp. 150,000,000. -(one hundred and fifty million rupiah).

“(6) Any person who deliberately and without rights violates the provisions of Article 24 or Article 55 shall be sentenced to imprisonment of at most 2 (two) years and/or a fine of at most Rp. 150,000,000. -(one hundred and fifty million rupiah).

“(7) Any person who deliberately and without rights violates the provisions of Article 25 shall be sentenced to imprisonment of at most 2 (two) years and/or a fine of at most Rp. 150,000,000. -(one hundred and fifty million rupiah).

“(8) Any person who deliberately and without rights violates the provisions of Article 27 shall be sentenced to imprisonment of at most 2 (two) years and/or a fine of at most Rp. 150,000,000. -(one hundred and fifty million rupiah).

“(9) Any person who deliberately violates the provisions of Article 28 shall be sentenced to imprisonment of at most 5 (five) years and/or a fine of at most Rp. 1,500,000,000. -(one billion and five hundred million rupiah).”

“Article 73

“(1) A work or goods resulting from any criminal actions of Copyright or Related Rights, including the tools used to conduct the actions shall be seized for the State to be destroyed;

“(2) The work as referred to in paragraph (1) in the field of art and unique in nature can be considered not to be destroyed.”

“Section 51

“Provisions as referred to in Article 3, Article 4, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 14 items b and c, Article 15, Article 17, Article 18, Article 24, Article 25, Article 26, Article 27, Article 28, Article 35, Article 36, Article 37, Article 38, Article 39, Article 40, Article 41, Article 42, Article 43, Article 44, Article 45, Article 46, Article 47, Article 48, Article 52, Article 53, Article 54, Article 55, Article 56, Article 57, Article 58, Article 59, Article 60, Article 61, Article 62, Article 63, Article 64, Article 65, Article 66, Article 68, Article 69, Article 70, Article 71, Article 74, Article 75, Article 76, Article 77 shall apply *mutatis mutandis* to Related Rights.”

3.5. HowdoesthelawdefinetheliabilityoftheInternetserviceproviders?

NotfoundintheLawreviewed.

3.6 Arethereanyprovisionsinthelawontemporarystorage?

“Article1

“6. ReproductionmeanstoincreasethenumberofaWork,eitherasawhole orits substantialpartsusingeitherthesameordifferentmaterial, includingthe changingoftheformormodeofaworkpermanentlyor temporarily.”

3.7 Arethereanyexplicitprovisionstoensurethattheanti-circumventionprovisionsdonot restricttheoperationoflimitations/exceptionstorightsprovidedinthelaw?

NotfoundintheLawreviewed.

JAMAICA

(Law Reviewed: The Copyright Amendment Act, 1999 (Act 29 of 1999))

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Section 6

“(1) Copyright is a property right which, subject to the provisions of this Section, may subsist in the following categories of work:

- (a) original literary, dramatic, musical or artistic works;
- (b) sound recordings, films, broadcasts or cable programs;
- (c) typographical arrangements of published editions, and copyright may subsist in a work irrespective of its quality or the purpose for which it was created.

“(2) A literary, dramatic or musical work shall not be eligible for copyright protection unless it is recorded in writing or otherwise; and any reference in this Act to the time at which a work is made is a reference to the time at which it is so recorded.

“[...]

“(8) Copyright protection does not extend to an idea, concept, process, principle, procedure, system or discovery or things of a similar nature.”

1.2 Are computer programs protected in the Law as literary works?

“Section 2. “Literary work” means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes:

- (a) a written table or compilation;
- (b) a computer program.”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Section 2

“Literary work” means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes:

- (a) a written table or compilation;
- (b) a computer program,

and for the purpose of paragraph (a) of this definition, “compilation” means a collection of works, data or other material, whether in machine-readable form or any other form, which constitutes an intellectual creation by reason of the selection or arrangement of the works, data or other material comprised in it.”

1.4 Is there a right of distribution in the Law?

“Section 3

“[...]

“(2) References in this Act to the issue to the public of copies of a work are to the act of putting into circulation copies not previously put into circulation in Jamaica or elsewhere, and not to any subsequent distribution, sale, hiring or loan of those copies; or any subsequent importation of those copies into Jamaica, except that in relation to sound recordings, films and computer programs, the act of issuing copies to the public includes any rental of copies to the public.”

“Section 9

“(1) By virtue of and subject to the provisions of Nature of this Act, the owner of the copyright in a work shall have the exclusive right to do or to authorize other persons to do any of the following acts in Jamaica:

- (a) to copy the work;
- (b) to issue copies of the work to the public;
- (c) to perform the work in public or, in the case of a sound recording, film, broadcaster or cable program, to play or show the work in public;
- (d) to broadcast the work or include it in a cable program service; or
- (e) to make an adaptation of the work and, in relation to such adaptation, to do any or all of the foregoing acts.”

“Infringement of Copyright

“Section 31

“(1) The copyright in a work is infringed by any person who, without the license of the copyright owner, does, in relation to that work, any of the acts which the copyright owner has the exclusive right to do pursuant to Section 9.

“(2) Copyright in a work is infringed by a person who, without the license of the copyright owner, imports into Jamaica for any purpose other than for his private and domestic use, a Section which he knows or has reason to believe is, an infringing copy of the work.

“(3) Copyright in a work is infringed by a person who, without the license of the copyright owner:

- (a) possesses in the course of a business;
- (b) sells or lets for hire or offers or exposes for sale or hire;
- (c) exhibits in public or distributes in the course of a business; or
- (d) distributes other than in the course of a business, to such an extent as to affect prejudicially the owner of the copyright, a Section which is, and which he knows or has reason to believe is an infringing copy of the work.

“(4) Copyright in a work is infringed by a person who, without the license of the copyright owner:

- (a) makes;
- (b) imports into Jamaica;
- (c) possesses in the course of a business; or
- (d) sells or lets for hire or offers for sale or hire, a Section specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.”

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

“*Section 2*

“‘Rental’ means any arrangement under which a copy of a work is made available:

- (a) for payment in money or money’s worth; or
- (b) in the course of a business, as part of services or amenities for which payment is made, on terms that it will or may be returned.”

“*Section 3*

“[...]

“(2) References in this Act to the issue to the public of copies of a work are to the act of putting into circulation copies not previously put into circulation in Jamaica or elsewhere, and not to any subsequent distribution, sale, hiring or loan of those copies;

or any subsequent importation of those copies into Jamaica, except that in relation to sound recordings, films and computer programs, the act of issuing copies to the public includes any rental of copies to the public.”

“*Section 9*

“(1) By virtue of and subject to the provisions of Nature of this Act, the owner of the copyright in a work shall have the exclusive right to do or to authorize other persons to do any of the following acts in Jamaica:

- (a) to copy the work;
- (b) to issue copies of the work to the public;
- (c) to perform the work in public or, in the case of a sound recording, film, broadcast or cable program, to play or show the work in public;
- (d) to broadcast the work or include it in a cable program service; or
- (e) to make an adaptation of the work and, in relation to such an adaptation, to do any or all of the foregoing acts.”

“*Section 31*

“(1) The copyright in a work is infringed by any person who, without the license of the copyright owner, does, in relation to that work, any of the acts which the copyright owner has the exclusive right to do pursuant to Section 9.

“(2) Copyright in a work is infringed by a person who, without the license of the copyright owner, imports into Jamaica for any purpose other than for his private and domestic use, a Section which he knows or has reason to believe is, an infringing copy of the work.

“(3) Copyright in a work is infringed by a person who, without the license of the copyright owner:

- (a) possesses in the course of a business;
- (b) sells or lets for hire or offers or exposes for sale or hire;
- (c) exhibits in public or distributes in the course of a business; or
- (d) distributes other than in the course of a business, to such an extent as to affect prejudicially the owner of the copyright, an article which is, and which he knows or has reason to believe is an infringing copy of the work..

“(4) Copyright in a work is infringed by a person who, without the license of the copyright owner:

- (a) makes;
- (b) imports into Jamaica;
- (c) possesses in the course of a business; or
- (d) sells or lets for hire or offers for sale or hire, an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.”

1.6 Is there a right of communication to the public in the Law?

“*Section 9*

“(1) By virtue of and subject to the provisions of Nature of this Act, the owner of the copyright in a work shall have the exclusive right to do or to authorize other persons to do any of the following acts in Jamaica:

- (a) to copy the work;
- (b) to issue copies of the work to the public;
- (c) to perform the work in public or, in the case of a sound recording, film, broadcaster or cable program, to play or show the work in public;
- (d) to broadcast the work or include it in a cable program service; or
- (e) to make an adaptation of the work and, in relation to such adaptation, to do any or all of the foregoing acts.”

“*Section 31*

“[...]

“(5) Copyright in a work is infringed by a person who, without the license of the copyright owner, transmits the work by means of a telecommunication system (other than by broadcasting or inclusion in a cable program service) knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Jamaica or elsewhere.”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

“Section 9

“(1) By virtue of and subject to the provisions of Nature of this Act, the owner of the copyright in a work shall have the exclusive right to do or to authorize other persons to do any of the following acts in Jamaica:

- (a) to copy the work;
- (b) to issue copies of the work to the public;
- (c) to perform the work in public or, in the case of a sound recording, film, broadcaster or cable program, to play or show the work in public;
- (d) to broadcast the work or include it in a cable program service; or
- (e) to make an adaptation of the work and, in relation to such adaptation, to do any or all of the foregoing acts.”

“Section 31

“[...]

“(5) Copyright in a work is infringed by a person who, without the license of the copyright owner, transmits the work by means of a telecommunications system (other than by broadcasting or inclusion in a cable program service) knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Jamaica or elsewhere.”

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Section 2

“‘artistic work’ means:

- (a) a graphic work, photograph, sculpture or collage, whether the work is of artistic quality or not;
- (b) a building or a model of a building, whether the building or model is of artistic quality or not; or
- (c) a work of artistic craftsmanship to which neither paragraph (a) nor paragraph (b) applies;

‘work’ means:

- (a) a literary, dramatic, musical or artistic work;
- (b) a sound recording, film, broadcast or cable program;
- (c) the typographical arrangement of a published edition,

and accordingly ‘protected work’ means a work of any of such categories in which copyright subsists by virtue of this Act.”

“Section 10

“(1) Subject to the provisions of this Section, copyright in any literary, dramatic, musical or artistic work expires at the end of the period of fifty years from the end of the calendar year in which the author dies.”

1.9 What is the effective time -frame for application of the rights in the Law?

“Section 151

“(1) The Copyright Act, 1911, of the United Kingdom, in so far as it is part of the law of Jamaica shall cease to have effect in Jamaica on the appointed day.”

“Section 153

“(1) Where immediately prior to the appointed day copyright subsists in Jamaica in any literary, dramatic, musical or artistic work by virtue of the Copyright Act, 1911 of the United Kingdom, such copyright shall continue to subsist and the person entitled thereto by virtue of that Act shall be the owner thereof, under and subject to this Act, and in particular:

- (a) the duration of such copyright;
- (b) the acts comprised within the exclusive rights attaching to such copyright;
and
- (c) the effect upon the ownership of such copyright of any event or transaction occurring or of any contract or agreement made on or after the appointed day, shall be governed by this Act.

“(2) Where, on the appointed day copyright subsists in Jamaica by virtue of Section 19 (1) of the Copyright Act, 1911 of the United Kingdom, in any record, perforated roll or other contrivance by virtue of which sounds may be mechanically produced, such copyright shall continue:

- (a) to subsist for the remainder of the period for which it would have subsisted if this Act had not been passed; and

(b) in relation to any such record, perforated roll or contrivance, to have the meaning and effect it would have had if this Act had not been passed.

“(4) The right conferred by Section 14 to be identified as the author or, as the case may be, director of a work, and the right conferred by Section 15 to object to derogatory treatment of such work, shall not apply:

(a) in relation to literary, dramatic, musical or artistic work of which the author died before the appointed day; or

(b) in relation to a film made before the appointed day.”

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“*Section 2*

“‘performer’ means any actor, singer, musician, dancer or other person who acts, sings, depicts, delivers, declaims, plays in or otherwise performs, a literary, dramatic, musical or artistic work; and references to the performer in the context of the person having performer’s rights, shall be construed to include references to the person who, pursuant to any provision of this Act, is for the time being entitled to exercise those rights.”

2.1.2 Is phonogram defined in the Law?

“*Section 2*

“‘record’ means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than, as a soundtrack associated with a film, but includes, in relation to a performance, a film incorporating the performance;

[...]

‘sound recording’ means:

(a) recording of sounds from which sounds may be reproduced; or

(b) recording of the whole or any part of a literary, dramatic or musical work from which sounds reproducing the work or part may be produced, regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.”

2.1.3 Is fixation defined in the Law?

Not found in the Law reviewed.

2.1.4 Is “producer of a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Section 3

[...]

“(3) For the purposes of this Act ‘commercial publication’ in relation to a literary, dramatic, musical or artistic work means:

- (a) issuing copies of the work to the public at a time when copies made in advance of their receipt for orders are generally available to the public; or
- (b) making the work available to the public by means of an electronic retrieval system, and related expressions shall be construed accordingly.”

2.1.6 Is “broadcasting” defined in the Law?

“Section 2

“‘a broadcast’ means a transmission by wireless telegraphy of visual images, sounds or other information which:

- (a) having regard to Section 4, is capable of being lawfully received by members of the public; or
- (b) is transmitted for presentation to members of the public;

[...]

to ‘broadcast’ means to transmit by wireless telegraphy visual images or sounds, or both, for reception by the public notwithstanding that:

- (a) subsequent to the initial transmission, but before reception by the public, the images or sounds may be carried on a path provided by a material substance;
- (b) the public receiving or capable of receiving the images or sounds is in a country other than that from which the original transmission took place; or

(c) no member of the public actually received the images or sounds, provided only that members of the public could, if in possession of suitable apparatus, receive them,

and 'broadcasting' and 're-broadcasting' have corresponding meanings."

2.1.7 Is "communication to the public" defined in the Law?

Not found in the Law reviewed.

2.2 Is the concept of "national treatment" contained in the Law?

"Section 144

"(1) Subject to the provisions of this Section, the Minister may by order provide that in respect of any country specified in the order, any provisions of this Act, so specified shall apply:

- (a) in relation to persons who are citizens or habitual residents of that country as they apply to persons who are citizens or habitual residents of Jamaica;
- (b) in relation to bodies incorporated or established under the laws of that country as they apply in relation to bodies incorporated or established under the laws of Jamaica;
- (c) in relation to literary, dramatic, musical or artistic works, sound recordings, films and editions first published in that country as they apply in relation to such works, sound recordings, films and editions first published in Jamaica;
- (d) in relation to broadcasts made from or cable programmes sent from that country as they apply in relation to broadcasts made from or cable programmes sent from Jamaica;
- (e) in relation to performances taking place in that country or given by an individual who is a citizen or habitual resident of that country, as they apply in relation to performances taking place in Jamaica or given by an individual who is a citizen or habitual resident of Jamaica.

"(2) An order made under this Section applying any provision of this Act in relation to any country may apply that provision:

- (a) without exception or modification or subject to such exceptions and modifications as may be specified in the order;
- (b) generally or in relation to such classes of works or other classes of cases as may be specified.

“(3) An order shall not be made under this Section in relation to any country unless:

- (a) the country is a Convention country; or
- (b) a country to which the Minister is satisfied that provision has been or will be made under its law in respect of the class of works or (as the case may be) the performances, to which the order relates, giving adequate protection to the owners of copyright under this Act, as the case may be, to Jamaican performances as defined in Section 145.

“(4) In this Section ‘Convention country’ means a country which is a party to a Convention relating to copyright or performers’ rights, as may be appropriate, to which Jamaica is also a party.”

“Section 145

“(1) If it appears to the Minister that the laws of a country fail to give adequate protection to Jamaican works or rights to which this Section applies or to Jamaican performances, or fail to give adequate protection in the case of one or more classes of such works or performances, (whether the lack of protection relates to the nature of the work or performance or the nationality, citizenship or country of its author or performer or all of those matters) the Minister may, by order, make provision in relation to that country in accordance with subsection (2).

“(2) An order made for the purposes of this Section shall designate the country concerned and may provide either generally or in relation to such classes of cases as are specified in the order, that copyright shall not subsist in works first published, or, as the case may be, that rights in performances shall not subsist in performances first given, after a date specified in the order (which may be a date before the 1st September, 1993) if/ at the time of the first publication of those works or the giving of the performance, as the case may be, the authors of the works or the performers were or are:

- (a) citizens or nationals of that country, not being at that time persons whose habitual residence is in Jamaica or a specified country {excluding the country concerned}; or
- (b) in the case of works, bodies incorporated or established under the law of that country.

“(3) The Minister shall, in making an order under this Section, have regard to the nature and extent of the lack of protection for Jamaican works or Jamaican performances in consequence of which the order is being made.

“(4) This Section applies to literary, dramatic, musical and artistic works, sound recordings and films, and for the purposes of this Section:

‘Jamaican performances’ means:

- (a) performances given by individuals who are citizens or habitual residents of Jamaica; or
- (b) performances that take place in Jamaica;

‘Jamaican works’ means works of which the author was a qualified person at the material time within the meaning of Section 7(3).”

2.3 Do performers have moral rights in the Law?

Not found in the Law reviewed.

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones?

“Section 107

“(1) By virtue of, and subject to the provisions of this Part, rights are conferred on:

- (a) a performer, requiring his consent to the exploitation of his performance; and
- (b) a person having recording rights in relation to a performance, requiring his consent to the making of a recording of that performance.

“(2) The rights conferred by this Part are independent of:

- (a) any copyright or moral rights relating to any work used or performed in the performance; and
- (b) any other right or obligation arising other than under this Part.”

“Section 108

“(1) A performer’s rights are infringed by a person who, without his consent:

- (a) makes, other than for his private and domestic use, a recording of the whole or any substantial part of a qualifying performance; or
- (b) broadcasts live, or includes live in a cable program service, the whole or any substantial part of a qualifying performance.

“(2) In an action for infringement of a performer’s rights brought by virtue of this Section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.”

2.5 Do performers have a right of reproduction in the Law?

“Section 107

“(1) By virtue of, and subject to the provisions of this Part, rights are conferred on:

- (a) a performer, requiring his consent to the exploitation of his performance; and
- (b) a person having recording rights in relation to a performance, requiring his consent to the making of a recording of that performance.

“(2) The rights conferred by this Part are independent of:

- (a) any copyright in or moral rights relating to any work used or performed in the performance; and
- (b) any other right or obligation arising other than under this Part.”

“Section 108

“(1) A performer’s rights are infringed by a person who, without his consent:

- (a) makes, other than for his private and domestic use, a recording of the whole or any substantial part of a qualifying performance; or
- (b) broadcasts live, or includes live in a cable programme service, the whole or any substantial part of a qualifying performance.

“(2) In an action for infringement of a performer’s rights brought by virtue of this Section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.”

“Section 109

“A performer’s rights are infringed by a person who, without his consent:

- (a) shows or plays in public the whole or any substantial part of a qualifying performance; or
- (b) broadcasts or includes in a cable programme service the whole or any substantial part of a qualifying performance, by means of a recording which was made without the performer’s consent and that person knows or has reason to believe that it was so made.”

2.6 Do performers have a right of distribution in the Law?

“Section 111

“(1) A performer’s rights are infringed by a person who, without his consent:

(a) imports into Jamaica other than for his private and domestic use; or

[...]

(h) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes, a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

“(2) Where in an action for infringement of a performer’s rights brought by virtue of this Section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the remedy in damages available against him in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.

“(3) In subsection (2) ‘innocently acquired’ means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.”

2.7 Do performers have a right of rental in the Law?

“Section 111

“(1) A performer’s rights are infringed by a person who, without his consent:

(a) imports into Jamaica other than for his private and domestic use; or

(b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes, a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

“(2) Where in an action for infringement of a performer’s rights brought by virtue of this Section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the remedy in damages available against him in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.

“(3) In subsection (2) ‘innocently acquired’ means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.”

2.8. Do performers have a right of making available in the Law?

Not found in the Law reviewed.

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Section 112

“(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent, makes a recording of the whole or any substantial part of the performance other than for his private and domestic use.

“(2) In an action for infringement of those rights brought by virtue of this Section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.”

“Section 113

“(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent:

- (a) shows or plays in public the whole or any substantial part of the performance; or
- (b) broadcasts or includes in a cable program service the whole or any substantial part of the performance, by means of a recording - which was, and which that person knows or has reason to believe was, made without the appropriate consent.

“(2) The reference in subsection (1) to the ‘appropriate consent’ is to the consent of the person who at the time the consent was given had recording rights in relation to the performance (or, if there was more than one such person, of all of them).”

2.10 Do producers have a right of distribution in the Law?

“Section 114

“(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent:

- (a) imports into Jamaica other than for his private and domestic use; or
- (b) in the course of a business, possesses, sells or lets for hire, offers or exposes or sale or hire, or distributes, a recording of the performance which is, and which that person knows or has reason to believe is, an illicit recording.

“(2) Where in an action for infringement of those rights brought by virtue of this Section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the remedy in damages available against him in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.”

2.11 Do producers have a right to be mentioned in the Law?

“Section 114

“(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent:

(a) imports into Jamaica other than for his private and domestic use; or

(b) in the course of a business, possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes, a recording of the performance which is, and which that person knows or has reason to believe is, an illicit recording.

“(2) Where in an action for infringement of those rights brought by virtue of this Section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the remedy in damages available against him in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.”

2.12 Do producers of phonograms (“producers”) have a right of making available in the Law?

Not found in the Law reviewed.

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

Not found in the Law reviewed.

2.14 Are rights in the Law subject to any formalities?

Not found in the Law reviewed.

2.15 What is the term of protection for:

2.15.1 performers?

“Section 129

“The rights conferred by this Part continue to subsist in relation to a performance until the end of the period of fifty years from the end of the calendar year in which the performance takes place.”

2.15.2 producers of phonograms?

“Section 129

“The rights conferred by this Part continue to subsist in relation to a performance until the end of the period of fifty years from the end of the calendar year in which the performance takes place.”

2.16 What is the effect of the time-frame for application of rights in the Law?

“Section 151

“(1) The Copyright Act, 1911, of the United Kingdom, in so far as it is part of the law of Jamaica shall cease to have effect in Jamaica on the appointed day.”

“Section 153

“(1) Where immediately prior to the appointed day copyright subsists in Jamaica in any literary, dramatic, musical or artistic work by virtue of the Copyright Act, 1911 of the United Kingdom, such copyright shall continue to subsist and the person entitled thereto by virtue of that Act shall be the owner thereof, under and subject to this Act, and in particular:

- (a) the duration of such copyright;
- (b) the acts comprised within the exclusive rights attaching to such copyright; and
- (c) the effect upon the ownership of such copyright of any event or transaction occurring or of any contract or agreement made on or after the appointed day, shall be governed by this Act.

“(2) Where, on the appointed day copyright subsists in Jamaica by virtue of Section 19 (1) of the Copyright Act, 1911 of the United Kingdom, in any record, perforated roll or other contrivance by virtue of which sounds may be mechanically produced, such copyright shall continue:

- (a) to subsist for the remainder of the period for which it would have subsisted if this Act had not been passed; and
- (b) in relation to any such record, perforated roll or contrivance, to have the meaning and effect it would have had if this Act had not been passed.”

3. Common provisions

3.1 What limitations and exceptions are in the Law?

*“Exceptionsto infringement of copyright
“Preliminary*

“Section 51

“For the purposes of this Part ‘sufficient acknowledgement’ means an acknowledgement identifying the work in question by its title or other description and identifying the author, unless:

- (a) in the case of a published work, it is published anonymously or the author has agreed or required that no acknowledgement of his name should be made;
- (b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry.”

“General Exceptions

“Section 52

“Subject to Section 54, fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.”

“Section 53

“(1) Subject to Section 54:

- (a) fair dealing with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; and
- (b) fair dealing with a protected work (other than a photograph) for the purpose of reporting current events, does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

“(2) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable program.”

“Section 54

“For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the court determining the questions shall take account of all factors which appear to it to be relevant, including:

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for, or the commercial value of, the work.”

“Section 55

“Copyright in a work is not infringed:

- (a) by its incidental inclusion in an artistic work, sound recording, film, broadcast or cable program; or
- (b) by the issue to the public of copies of the playing, showing, broadcasting or inclusion in a cable program service of anything whose making was not an infringement of copyright by virtue of paragraph (a),

and for the purposes of this Section, a musical work, words spoken or sung with music, or so much of a sound recording, broadcast or cable program as includes a musical work or such words, shall not be regarded as incidentally included if it is deliberately included.”

“Use of Work for Educational Purposes

“Section 56

“(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying is done by a person giving or receiving instructions and is not by means of a reprographic process.

“(2) Copyright in a sound recording, film, broadcast or cable program is not infringed by its being copied by making a film or film sound track in the course of instruction, or of preparation for instruction, in the making of films or film sound tracks, provided the copying is done by a person giving or receiving instruction.

“(3) Copyright in a work is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to candidates or answering the questions.”

“Anthologies

“Section 57

“(1) The inclusion in a collection intended for use in educational establishments of a short passage from a published literary or dramatic work does not infringe copyright in the work:

- (a) the collection is described in the title and in any advertisements thereof issued by or on behalf of the publisher, as being so intended;
- (b) the work was not itself published for the use of educational establishments;
- (c) the collection consists mainly of material in which no copyright subsists; and
- (d) the inclusion is accompanied by sufficient acknowledgement.

“(2) Subsection (1) does not authorize the inclusion of more than two excerpts from protected works by the same author in collections published by the same publisher over any period of five years.

“(3) In relation to any given passage, the reference in subsection (2) to excerpts from works by the same author:

- (a) shall be taken to include excerpts from works by him in collaboration with another; and
- (b) if the passage in question is from such a work shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.”

“Section 58

“(1) Subject to subsection (2) a recording of a broadcast or cable program or a copy of such a recording may be made by or on behalf of an educational establishment by an educator for the educational purposes of that establishment without thereby infringing the copyright in the broadcast or cable program or in any work included in it.

“(2) Subsection (1) shall not apply to the extent that there is a licensing scheme certified pursuant to Section 102 for the purposes of this Section.”

“Section 59

“(1) Subject to the provisions of this Section, reprographic copies of passages from published literary, dramatic or musical works may be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work or in the typographical arrangement.

“(2) Not more than five percent of any work may be copied by or on behalf of an educational establishment by virtue of this Section in any quarter, that is to say, in any

period 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December.

“(3) Copying is not authorized by this Section if, or to the extent that, licenses are available authorizing the copying in question and the person making the copies knew or ought to have been aware of that fact.

“(4) Where a license is granted to an educational establishment authorizing the reprographic copying of passage from any published literary, dramatic or musical work, for use by the establishment, then, any term of that license which purports to restrict the proportion of work which may be copied (whether on payment or free of charge) to less than that permitted under this Section shall be of no effect.

(1) Where a copy of a work would be an infringing copy if the making thereof were not authorized under Section 56, 58 or 59 and such copy is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing and if that dealing infringes copyright for all subsequent purposes.

(2) In subsection (1) “dealt with” means sold, or let for hire or offered or exposed for sale or hire.”

“Exceptions affecting Libraries and Archives

“Section 61

“(1) In Sections 62 to 65 references to the librarian or archivist include reference to a person acting on his behalf.

“(2) Regulations may provide that a librarian or archivist who is, pursuant to Sections 62 and 65, required to be satisfied as to a matter before making or supplying a copy of a work:

(a) is entitled to rely on a declaration as to that matter, signed by the person requesting the copy, unless he is aware that the declaration is false in any material particular;

(b) in such cases as may be prescribed, shall not make or supply a copy to any person in the absence of a declaration by that person.

“(3) Where a person requesting a copy makes a declaration that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him, that person shall be liable for infringement of copyright as if he had made the copy himself, and the copy supplied shall be treated as an infringing copy.”

“Section 62

“(1) The librarian of a prescribed library or archives supply by may, if the prescribed conditions are complied with:

- (a) make and supply a copy of an article in a periodical; or
- (b) make and supply from a published edition, a copy of part of a literary, dramatic or musical work, not being an article in a periodical, without infringing any copyright subsisting in the text of the article or in the work, as the case may be, or in any illustrations accompanying such article or work, or in the typographical arrangement thereof.

“(2) The conditions prescribed pursuant to subsection (1), shall include the following:

- (a) that copies shall be supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
- (b) in relation to an article, that no person shall be furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical;
- (c) in relation to a work referred to in paragraph (b) of subsection (1), that no person shall be furnished with more than one copy of the same material or of a copy of more than a reasonable proportion of any work; and
- (d) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.”

“Section 63

“(1) The librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply to another prescribed library or archive a copy of:

- (a) an article in a periodical; or
- (b) the whole or part of a published edition of a literary, dramatic or musical work, without infringing any copyright in the text of the article or the work, or in any illustrations accompanying such article or work, or, in the case of a published edition, in the typographical arrangement.

“(2) Paragraph (b) of subsection (1) shall not apply if, at the time the copy is made, the librarian making it knows or could, by reasonable inquiry, ascertain the name and address of a person entitled to authorise the making of the copy.”

“Section 64

“(1) The librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive for the purpose of:

- (a) preserving or replacing the item by placing the copy in such permanent collection in addition to or in place of the item;
- (b) replacing in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged, without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement.

“(2) The prescribed conditions shall include provisions restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question for the purpose.”

“Section 65

“(1) Subject to subsection (2), the librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or in any illustrations accompanying it.

“(2) Subsection (1) shall not apply where:

- (a) the work had been published before the document was deposited in the library or archive; or
- (b) the copyright owner has prohibited copying of the work, and at the time of the making of the copy the librarian ought to have been aware of that fact.

“(3) The prescribed conditions shall include the following:

- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study and will not use them for any other purpose;
- (b) that no person is furnished with any more than one copy of the same material; and
- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

“Exceptions Relating to Public Administration

“Section 66

“(1) Copyright in a work is not infringed by anything done for the purposes of parliamentary or judicial proceedings, or, subject to subsection (3), for the purposes of reporting such proceedings.

“(2) Copyright in a work is not infringed by anything done for the purposes of the proceedings of a statutory inquiry or, subject to subsection (3), for the purposes of reporting any such proceedings held in public.

“(3) The provisions of subsections (1) and (2) relating to the reporting of proceedings shall not be construed as authorizing the copying of a work which is itself a published report of the proceedings.

“(4) Copyright in a work is not infringed by the issue to the public of copies of the report of a statutory inquiry containing the work or material from it.

“(5) In this Section, “statutory inquiry” means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment.”

“Section 67

“Where any protected work or a reproduction of any such work is comprised in any public record (as defined in the Record Office Act) which is, by virtue of that Act under the charge of the Keeper of the Records and is open to public inspection, the copyright in the work is not infringed by the making or supplying to any person of any copy of the work by or under the direction of any officer appointed under the Record Office Act.”

“Section 68

“(1) It is not an infringement of any copyright in a design document or in a model that records or embodies a design for anything (except an artistic work or a typeface) to make a Section to the design or to copy a Section made to the design.

“(2) It is not an infringement of any copyright to issue to the public or to include in a film, broadcast or cable program service anything the making of which was, by virtue of subsection (1), not an infringement of that copyright.

“(3) In this Section:

‘design’ means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article, other than surface decoration; and

‘design document’ means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise.”

“Section 69

“(1) Where an artistic work has been exploited by or for the benefit of a person - with the license of the copyright owner by:

(a) making by an industrial process articles falling to be treated under this Act as copies of the work exploited; and

(b) marketing such articles in Jamaica or elsewhere, then, after the end of the period of twenty-five years from the end of the calendar year in which such articles are first marketed, a person may, without infringing copyright in the work, copy the work by making articles of any description or by doing anything for the purpose of making articles of any description, or by doing anything in relation to articles so made.

“(2) Where only part of an artistic work is exploited in the manner described in subsection (1), then, the provisions of that subsection apply only in relation to that part.

“(3) The Minister may by order make provision:

(a) as to the circumstances in which an article or any description of an article is to be regarded for the purposes of this Section as made by an industrial process;

(b) excluding from the operation of this Section such articles of a primarily literary or artistic character as he thinks fit.

“(4) In this Section:

(a) references to Sections do not include films; and

(b) references to the marketing of an article are references to its being sold or let for hire or offered or exposed for sale or hire.”

“Exception Relating to Works in Electronic Form

“Transfer

“Section 70

“(1) Where a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work or to adapt it or to make copies of an adaptation in connection with his use of it, then, in the absence of any express terms:

(a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer or prohibiting the assignment of any license or terminating any license on a transfer; or

(b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do, anything which the purchaser was allowed to do may also be done by a transferee without infringement of copyright.”

“(2) Any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall, after the transfer, be treated as an infringing copy for all purposes.

“(3) Subsections (1) and (2) apply where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

“(4) This Section applies also on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.”

“Miscellaneous Exceptions Relating to Literary, Dramatic, Musical and Artistic Works

“Section 71

“(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, - or in pursuance of an arrangement made at a time when:

(a) it is not possible by reasonable inquiry to ascertain the identity of the author; and

(b) it is reasonable to assume:

(i) that the copyright has expired; or

(ii) that the author died fifty years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

“(2) Subsection (1)(b)(ii) does not apply in relation to work in which copyright originally vested in an international organization by virtue of Section 146 and in respect of which an order under that Section specifies a copyright period longer than fifty years.

“(3) In relation to work of joint authorship:

(a) the reference in subsection (1) to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors; and

(b) the reference in subsection (1)(b)(ii) to the author having died shall be construed as a reference to all the authors having died.”

“Section 72

“(1) Where a record of spoken words is made, in writing or otherwise, for the purpose of:

(a) reporting current events; or

(b) broadcasting or including in a cable program’s service the whole or part of the work, it is not an infringement of any copyright in the work as a literary work to use the record or material taken from it (or to copy the record or any such material and use the copy) for that purpose, providing the conditions specified in subsection (2) are met.

“(2) The conditions referred to in subsection (1) are that:

(a) the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast or cable program;

(b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;

(c) the use made of the record or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and

(d) the use is by or with the authority of a person who is lawfully in possession of the record.”

“Section 73

“(1) The reading or recitation in public of any reasonable extract from a published literary or dramatic work is not an infringement of copyright in the work, if accompanied by a sufficient acknowledgement.

“(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable program service, of a reading or recitation which, by virtue of subsection (1), does not infringe copyright in the work.”

“Section 74

“(1) This Section applies to:

- (a) buildings;
- (b) sculptures, models of buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.

“(2) The copyright in such a work is not infringed by:

- (a) making a graphic work representing it;
- (b) making a photograph or film of it; or
- (c) broadcasting or including in a cable program service a visual image of it.

“(3) The copyright of such a work is not infringed by the issue to the public of copies, or the broadcasting or inclusion in a cable program service, of anything whose making was, by virtue of this Section, not an infringement of copyright.”

“Section 75

“Anything done for the purposes of reconstructing a building does not infringe any copyright in the building or in any drawings or plans in accordance with which the building was constructed by or with the license of the copyright owner.”

“Section 76

Where the author of an artistic work is not the copyright owner, he does not infringe the copyright in the work by copying it in making another artistic work, provided he does not repeat or imitate the main design of the earlier work.”

“Miscellaneous Exceptions Relating to Sound Recordings, Films and Computer Programs

“Section 77

“Where sound recordings of a musical work (and accompanying words, if any) have, with the license or consent of the owner of the copyright in the work, been previously made in or imported into Jamaica for the purposes of retail sale, then, any person may, after the expiry of the period of four months immediately following upon the date of the first authorized manufacture in, or importation into, Jamaica of such recordings, and without first obtaining the consent or license of the owner of the copyright in the work, make or authorize the making of sound recordings of it if such person:

- (a) intends to sell the recordings by retail, or to supply them for the purpose of being sold by retail by another person, or intends to use them for making other sound recordings which are to be sold or supplied;
- (b) pays royalties calculated at the prescribed rate; and

(c) complies with such conditions relating to notice, method and time of payment, administration of royalties paid and other matters, as may be prescribed, and any person whom makes or authorizes the making of sound recordings pursuant to this subsection shall not make or authorize the making of any alterations in, or omissions from, the work unless sound recordings of that work containing similar alterations or omissions have been previously made by or with the licensor or consent of the owner of the copyright or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the sound recording in question.”

“Section 78

“(1) The Minister may by order, subject to negative resolution, provide that in such cases as may be specified in the order, the rental to the public of copies of sound recordings, films or computer programs shall be treated as licensed by the copyright owners subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.

“(2) An order under subsection (1) shall not apply if, or to the extent that, there is a licensing scheme certified under Section 102 for the purposes of this Section providing for the grant of licenses.

“(3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies rented, the person renting or the circumstances of the rental.

“(4) Copyright in a computer program is not infringed by the rental of copies to the public after the end of the period of fifty years from the end of the calendar year in which copies of it were first issued to the public in electronic form.

“(5) Nothing in this Section affects any liability under Section 31 in respect of the rental of infringing copies.”

“Section 79

“It is not an infringement of the copyright in a sound recording to play it as part of the activities of or for the benefit of, a club, society or other organization if:

(a) the organization is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and

(b) the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organization.

“Miscellaneous Exceptions Respecting Broadcasts and Cable Programs

“Section 80

“(1) This Section applies whereby virtue of a license or assignment of copyright a person is authorized to broadcast from a place in Jamaica or a specified country or to include in a cable program services sent from Jamaica or a specified country:

- (a) a literary, dramatic or musical work, or an adaptation of such a work;
- (b) an artistic work; or (c) a sound recording or film.

“(2) The person referred to in subsection (1) shall, by virtue of this Section, be treated as licensed by the owner of the copyright in the work to do or authorize any of the following for the purposes of the broadcast or cable program:

- (a) in the case of a literary, dramatic or musical work or an adaptation of such a work, to make a sound recording or film of the work or an adaptation;
- (b) in the case of the artistic work, to take a photograph or make a film of the work;
- (c) in the case of a sound recording or film, to make a copy of

“(3) A license under subsection (2) is subject to the following conditions:

- (a) the recording, film, photograph or copy in question shall not be used for any other purpose; and
- (b) such recording, film, photograph or copy shall be destroyed within twenty-eight days of being first used for broadcasting the work or, as the case may be, including it in a cable program service.

“(4) A recording, film, photograph or copy made in accordance with this Section shall be treated as an infringing copy:

- (a) for the purposes of any use in breach of the condition mentioned in subsection (3)(a); and
- (b) for all purposes after that condition or the condition mentioned in subsection (3)(b) is breached.”

“Section 81

“(1) Copyright is not infringed by the making or use by a prescribed broadcasting organization, for the purpose of maintaining supervision and control over programs and advertisements broadcast by that organization, of control recordings of those programs and advertisements.

“(2) Copyright is not infringed by the making or use by the Broadcasting Commission of recordings of programs in connection with and for the purpose of carrying out its functions under the Broadcasting and Radio Rediffusion Act.”

“Section 82

“(1) A recording of a broadcast or cable program of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or cable program or in any work included in it.

“(2) In subsection (1) ‘designated’ means designated by the Minister, who shall not designate a body unless she is satisfied that it is not established or conducted for profit. Where a literary, dramatic or musical work or film is broadcast with the license of the copyright owner from a place in Jamaica or a specified country, any person may, without obtaining the license of the copyright owner, incorporate the work (by means of the reception of the broadcast) in a cable program service provided that:

- (a) the transmission by the cable program service takes place simultaneously with the reception of the broadcast; and
- (b) the program in which the literary, dramatic or musical work or film is incorporated is transmitted without alteration of any kind; and
- (c) the copyright owners shall be entitled to receive service, equitable remuneration in respect of the service, equitable remuneration in respect of the transmission, to be fixed in default of agreement by the Tribunal,

and for the purposes of this subsection, an alteration to a program includes the addition thereto of new material not contained in the program as broadcast, or the omission from the transmission of any material contained in the program as broadcast; and the term ‘material’ includes a commercial advertisement.”

“Section 84

“The making for private and domestic use of a recording of a broadcast or cable program solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or cable program or in any work included in it.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Section 136A

“(1) A person who:

- (a) makes or imports for commercial purposes;

- (b) sells or lets for hire;
- (c) offers or exposes for sale or hire; or
- (d) advertises for sale or hire,

any unauthorized decoder shall be guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

“(2) It is a defence to any prosecution for an offence under this Section for the defendant to prove that he did not know, and had no reasonable ground for believing, that the decoder was an unauthorized decoder.”

“Section 136B

“(1) A person who:

- (a) makes charges for the reception of programs, included in a broadcasting or cable program service provided from a place in Jamaica;
- (b) sends encrypted transmissions of any transmissions from any other description from a place in Jamaica; or
- (c) has rights in the contents of any program referred to in paragraph (a) or any transmission referred to in paragraph (b), has the rights and remedies specified in subsection (2).

“(2) The rights and remedies mentioned in subsection (1) are:

- (a) the same rights and remedies as are exercisable under Section 32(1) and (2) by a copyright owner, in relation to an infringement of copyright; and
- (b) are exercisable by a person referred to in subsection (1) against a person who:
 - (i) makes or imports for commercial purposes or sells or lets for hire, offers or exposes for sale or hire or advertises for sale or hire, any unauthorized decoder; or
 - (ii) without lawful authority, receives or distributes programs from an encrypted transmission for the purpose of distributing the programs to other persons under commercial arrangements with them.

“(3) Subsection (3) of Section 32 shall apply with necessary modifications in relation to proceedings for infringement of the rights conferred by this Section, and accordingly the reference in that subsection to the defendant not knowing or having reason to believe that copyright subsisted in the work to which the action relates shall be

construed as a reference to his not knowing or having reason to believe that this act infringes the rights conferred by this Section.

“(4) The person referred to in subsection (1) also has, in relation to any unauthorized decoder, the same rights as are exercisable by a copyright owner in relation to any infringing copy, under Section 33 (delivery up of certain Sections).

“(5) Section 137 applies with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).

“(6) This Section shall not have effect in relation to any act done before the date of commencement of the Copyright (Amendment) Act, 1998.”

“Section 136C

“For the purposes of Sections 136A and 136B:

‘apparatus’ includes any device, component or electronic data;

‘decoder’ means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;

‘transmission’ means any program included in a broadcasting or cable program service which is provided from a place in Jamaica; and

‘unauthorized’ in relation to a decoder, means a decoder which will enable encrypted transmissions to be viewed in the decoded form without:

- (a) payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for viewing those transmissions, or viewing any service of which they form part; or
- (b) the authority of a person referred to in Section 136E.”

“Section 46

“(1) Any person who at a time when copyright in a work subsists by virtue of this Act:

- (a) makes for sale or hire; or,
- (b) in the course of a business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes; or
- (c) imports into Jamaica for purposes other than his private and domestic use; or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

any article which he knows or has reason to believe is an infringing copy of that work, commits an offence.

“(2) Any person who, at the time when copyright subsists in a work by virtue of this Act, makes or has in his possession an article specifically designed or adapted for making copies of that work, knowing that it is to be used for making infringing copies for sale or hire or for use in the course of business, commits an offence.”

3.3 What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4 Generally, what measures for enforcement of rights are in the Law?

“Infringement of rights

“General Provisions

“Section 29

In this Part ‘action’ includes a counterclaim and Meaning of reference to the plaintiff and to the defendant in an action shall be construed accordingly.”

“Section 30

This Part shall have effect subject to such provisions of this Act as:

(a) authorize the doing of specified acts in relation to a protected work; or

(b) provide for the licensing of a protected work.”

“Infringement of Copyright

“Section 31

“(1) The copyright in a work is infringed by any person who, without the license of the copyright owner, does, in relation to that work, any of the acts which the copyright owner has the exclusive right to do pursuant to Section 9.

“(2) Copyright in a work is infringed by a person who, without the license of the copyright owner, imports into Jamaica for any purpose other than for his private and domestic use, an article which he knows or has reason to believe is, an infringing copy of the work.

“(3) Copyright in a work is infringed by a person who, without the license of the copyright owner:

- (a) possesses in the course of a business;
- (b) sells or lets for hire or offers or exposes for sale or hire;
- (c) exhibits in public or distributes in the course of a business; or
- (d) distributes otherwise than in the course of a business, to such an extent as to affect prejudicially the owner of the copyright, an article which is, and which he knows or has reason to believe is an infringing copy of the work..

“(4) Copyright in a work is infringed by a person who, without the license of the copyright owner:

- (a) makes;
- (b) imports into Jamaica;
- (c) possesses in the course of a business; or
- (d) sells or lets for hire or offers for sale or hire,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.

“(5) Copyright in a work is infringed by a person who, without the license of the copyright owner, transmits the work by means of a telecommunication system (other than by broadcasting or inclusion in a cable program service) knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Jamaica or elsewhere.

“(6) Where the copyright in a literary, dramatic or musical work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless when he gave permission he believed on reasonable grounds that the performance would not infringe copyright.

“(7) Where copyright in a work is infringed by a public performance of the work or by the playing or showing of the work in public by means of apparatus for playing sound recordings or showing films or receiving visual images or sounds conveyed by electronic means, the persons specified in subsection (8), are also liable for the infringement.

“(8) The persons referred to in subsection (7) are:

(a) a person who supplied the apparatus or any substantial part of it, if when he supplied the apparatus or part:

(i) he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright; or

(ii) in the case of apparatus whose normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright;

(b) an occupier of premises who gave permission for the apparatus to be brought to the premises, if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright; and

(c) a person who supplied a copy of a sound recording or film used to infringe copyright, if when he supplied it he knew or had reason to believe that what he supplied or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.”

“Remedies of Copyright Owner

“Section 32

“(1) An infringement of copyright shall be actionable at the suit of the copyright owner; and, subject to the provisions of this Section, in any action for such an infringement all such relief by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available in respect of the infringement of other proprietary rights.

“(2) Where in an action under this Section an infringement of copyright is proved or admitted to the court, having regard to any benefit accruing to the defendant by reason of the infringement, to the flagrancy of the infringement and to all other material considerations, shall have power to award such additional damages as the court may consider appropriate in the circumstances.

“(3) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know and had no reason to believe that copyright subsisted in the work to which the action relates, then, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.”

“Section 33

“(1) Subject to the provisions of this Section and Section 35(6), where a person:

(a) in the course of his business has an infringing copy of a work in his possession, custody or control; or

(b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work, knowing or having reason to believe that it has been or is being used to make infringing copies, the copyright owner may apply to the court for an order that the infringing copy or Section be delivered up to him or to such other person as the court may direct.

“(2) An application under subsection (1) shall not be made after the end of the period specified in Section 138(1); and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under Section 137 for the disposal of the infringing copy or Section, as the case may be.

“(3) A person to whom an infringing copy or other Section is delivered up pursuant to an order made under this Section shall, if an order under Section 137 is not made, retain it pending the making of an order or the decision not to make an order, under that Section.”

“Remedies of Exclusive Licensee

“Section 34

“An exclusive licensee has, except against the copy-right owner, the same rights and remedies in respect of matters occurring after the grant of the license as if the license had been an assignment.”

“Section 35

“(1) The rights and remedies of an exclusive licensee are concurrent with those of the copyright owner and rights conferred in the relevant provisions of this Act to the copyright owners shall be construed accordingly.

“(2) In an action brought by an exclusive licensee by virtue of this Section, a defendant may avail himself of any defense which would have been available to him if the action had been brought by the copyright owner.

“(3) Where an action for infringement of copyright is brought by the copyright owner or by an exclusive licensee, and the action relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the copyright owner or the exclusive licensee, as the case may be, shall not be entitled, except with the leave of the Court, to proceed with the action, unless the other party is either joined as a plaintiff in the action or added as a defendant; but this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

“(4) A copyright owner or exclusive licensee who is a defendant in pursuance of subsection (2) is not liable for any costs in the action unless she takes part in the proceedings.

“(5) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action, then, whether or not the copyright owner and the exclusive licensee are both parties to the action, the court:

(a) shall, in assessing damages, take into account the terms of the license and any pecuniary remedy already awarded or available to either of them in respect of the infringement;

(b) shall not direct an account of profits if an award of damages has been made or an account of profits has been directed in favor of the other of them in respect of the infringement; and

(c) shall, if an account of profits is directed, apportion the profits between them as the court considers just, subject to any agreement between them.

“(6) The copyright owner shall not refuse to grant an exclusive licensee having concurrent rights before applying under Section 33 for an order for the delivery up of infringing copies of a work, and the court may, on the application of the licensee, having regard to the terms of the license, make such an order under Section 33 as it thinks fit.”

“Infringement of Moral Rights and Related Rights

“Section 36

“(1) Subject to subsection (2), the right conferred by Section 14 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that Section occurs in relation to that work or film.

“(2) The following acts shall not constitute an infringement of the right conferred by Section 14 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work:

(a) fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable program;

(b) the incidental inclusion of the work in an artistic work, sound recording, film, broadcast or cable program;

(c) the use of the work for examination purposes;

(d) acts done for the purposes of parliamentary or judicial proceedings or proceedings of a statutory inquiry;

(e) the use of design documents and models;

- (f) the use of a design derived from artistic work;
- (g) acts permitted in relation to an anonymous or pseudonymous work on the assumption that copyright in the work has expired or that the author is dead.”

“Section 37

“(1) The right conferred on an author and a director by Section 15 to object to derogatory treatment of his work is infringed where the acts described in subsections (2) to object 10(5) are done in relation to that work; and for the purposes of this Part, ‘derogatory treatment’ has the same meaning as that specified in Section 15(4).

“(2) In the case of a literary, dramatic or musical work, the right is infringed by a person who:

- (a) publishes commercially, performs in public, broadcasts or includes in a cable programme service, a derogatory treatment of the work; or
- (b) issues to the public copies of a film or sound recording for including a derogatory treatment of the work.

“(3) In the case of an artistic work, the right is infringed by a person who:

- (a) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work;
- (b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film; or
- (c) in the case of a work of architecture in the form of a model for a building or in the case of a sculpture or work of artistic craftsmanship, issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.

“(4) Subsection (3) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment, he has the right to require the identification to be removed.

“(5) In the case of a film, the right is infringed by a person who:

- (a) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film; or
- (b) issues to the public copies of a derogatory treatment of the film or who, along with the film, plays in public, broadcasts or includes in a cable programme service, or issues to the public copies of, a derogatory treatment of the film sound-track.”

“Section 38

“(1) The right conferred by Section 15 is also infringed by a person who:

- (a) possesses in the course of a business; or
- (b) sells or lets for hire or offers or exposes for sale or hire; or
- (c) in the course of a business, exhibits in public or distributes
- (d) distributes otherwise than in the course of a business, so as to affect prejudicially the honor or reputation of the author or director, an article which is, and which he knows or has reason to believe is an infringing article.

“(2) An ‘infringing article’ means a work or a copy of a work which:

- (a) has been subjected to derogatory treatment as defined in Section 15; and
- (b) has been or is likely to be the subject of any of the acts mentioned in Sections 37 and 38 in circumstances infringing that right.”

“Remedies for Infringement of Moral Rights and Related Rights

“Section 43

“(1) The infringement of a right conferred under Section 14, 15, 16 or 17 is actionable as a breach of statutory duty owed to the person entitled to the right.

“(2) In an action for infringement of the right conferred by Section 15, the court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made on such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

“(3) Where in any action an infringement of a right referred to in subsection (1) is proved or admitted, the court may order the defendant to publish such correction in such terms and in such manner as the court may direct.”

“Offences

“Section 46

“(1) Any person who at a time when copyright in a work subsists by virtue of this Act:

- (a) makes for sale or hire; or,
- (b) in the course of a business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes; or

- (c) imports into Jamaica for purposes other than his private and domestic use; or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, any Section which he knows or has reason to believe is an infringing copy of that work, commits an offence.

“(2) Any person who, at the time when copyright subsists in a work by virtue of this Act, makes or has in his possession an article specifically designed or adapted for making copies of that work, knowing that it is to be used for making infringing copies for sale or hire or for use in the course of business, commits an offence.

“(3) Any person who causes:

- (a) a literary, dramatic or musical work not to be performed in public; or
- (b) a sound recording or film to be played, or as the case may be, shown in public, (otherwise than by reception of a broadcast or cable program) knowing or having reason to believe that copyright subsists in the work and that the performance, playing or showing, as the case may be, constitutes an infringement of the copyright, commits an offence.

“(4) Any person who is guilty of an offence under subsection (1) shall be liable:

- (a) on summary conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment;
- (b) on conviction before a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

Not found in the Law reviewed.

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

JAPAN

Laws Reviewed: Copyright Law (Law No. 48 of May 6, 1970, as lastly amended by Law No. 72 of June 19, 2002); Unfair Competition Prevention Law (Law No. 47 of May 19, 1993); Civil Law (Law No. 89 of April 27, 1896; Law No. 9 of June 21, 1898); Customs Tariff Law (Law No. 54 of April 15, 1900); Law on Restrictions on the Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identity Information of the Sender (Law No. 137 of November 30, 2001)⁹

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Article 2: Definitions

“(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

- (i) ‘work’ means a production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain;

[...]”

1.2 Are computer programs protected in the Law as literary works?

“Article 10: Classification of works

“(1) As used in this Law, ‘works’ shall include, in particular, the following:

[...]

- (ix) program works.

“[...]

“(3) The protection granted by this Law to works mentioned in paragraph (1), item (ix) shall not extend to any programming language, rule or algorithm used for making such works. In this case, the following terms shall have the meaning hereby assigned to them respectively:

- (i) ‘programming language’ means letters and other symbols as well as their systems for use as means of expressing a program;

⁹ Unless otherwise stated, the provisions in the answers are quoted from the Copyright Law.

- (ii) ‘rule’ means a special rule on how to use in a particular program a programming language mentioned in the preceding item;
- (iii) ‘algorithm’ means methods of combining, in a program, instructions given to a computer.”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their content constitute intellectual creations, protected in the Law?

“Article 2: Definitions

“(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

“[...]

(xter) ‘databases’ means an aggregate of information such as articles, numericals or diagrams, which is systematically constructed so that such information can be searched for with the aid of a computer;

“[...]

“Article 12: Compilations

“(1) Compilations (not falling within the term ‘databases’; the same shall apply hereinafter) which, by reason of the selection or arrangement of their contents, constitute intellectual creations shall be protected as independent works.

“[...]

“Article 12bis: Database works

“(1) Databases which, by reason of the selection or systematic construction of information contained therein, constitute intellectual creations shall be protected as independent works.

“[...]

1.4 Is there a right of distribution in the Law?

“Article 2: Definitions

“(1) In this Law, the following terms shall all have the meaning hereby assigned to them respectively:

[...]

(xix) “distribution” means the transfer of ownership and lending of copies of a work to the public, whether with or without payment, and in the case of a cinematographic work or a work reproduced therein, it includes the transfer of ownership and lending of copies of such work for the purpose of making a cinematographic work available to the public”

“Article 26: Right of distribution

“(1) The author of a cinematographic work shall have the exclusive right to distribute copies of his work.

“(2) The author of a work reproduced in a cinematographic work shall have the exclusive right to distribute copies of his work.”

“Article 26bis: Right of transfer of ownership

“(1) The author shall have the exclusive right to offer his work (except a cinematographic work; the same shall apply hereinafter in this Article) to the public by transfer of ownership of the original or copies of the work (excluding copies of a cinematographic work in the case of a work reproduced in the cinematographic work; the same shall apply hereinafter in this Article).

“(2) The provision of the preceding paragraph shall not apply in the case of the transfer of ownership of such original or copies of a work as falling within any of the following items:

(i) the original or copies of a work the ownership of which has been transferred to the public by a person who has the right mentioned in the preceding paragraph or with the authorization of such person;

(ii) copies of a work the ownership of which has been transferred to the public under the authority of a compulsory license under the provisions of Article 67, paragraph (1) or Article 69 or with a license under the provisions of Article 5, paragraph (1) of the Law concerning the Exceptional Provisions to the Copyright Law required in consequence of the Enforcement of the Universal Copyright Convention (Law No. 86, of 1956);

(iii) the original or copies of a work the ownership of which has been transferred to a small number of specific persons by a person who has the right mentioned in the preceding paragraph or with the authorization of such person;

(iv) the original or copies of a work the ownership of which has been transferred, outside the jurisdiction of this Law, without prejudice to the right equivalent to that mentioned in the preceding paragraph or by a person who has the right equivalent to that mentioned in that paragraph or with the authorization of such person.”

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

“Article 26ter: Right of lending

“The author shall have the exclusive right to offer his work (except a cinematographic work) to the public by lending copies of the work (excluding copies of a cinematographic work in the case of a work reproduced in the cinematographic work).”

1.6 Is there a right of communication to the public in the Law?

“Article 2: Definitions

“(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

[...]

(vii *bis*) ‘public transmission’ means the transmission of radiocommunication or wire -telecommunication intended for direct reception by the public, excluding the transmission (other than that of program works) by wire -telecommunication installation so near a part of which is located on the same premises where the other part is located or, if the premises are occupied by two or more persons, both parts of which are located within the area therein occupied by one person;

[...]

“(ix *quater*) ‘interactive transmission’ means the public transmission made automatically in response to a request from the public, excluding the public transmission falling within the term ‘broadcasting’ or ‘wire -diffusion’;

“(ix *quinqüies*) ‘making transmittable’ means the putting in such a state that the interactive transmission can be made by either of the following acts:

(a) to record information on public transmission memory of an interactive transmission server already connected with telecommunication networks for the use by the public (‘interactive transmission server’ means a device which, when connected with telecommunication networks for the use by the public, has a function of making the interactive transmission of information which is either recorded on such a part of its memory as used for the interactive transmission (hereinafter in this item referred to as ‘public transmission memory’) or inputted to such a device; the same shall apply hereinafter), to add a memory recording information as a public transmission memory of such an interactive transmission server, to convert such a memory recording information into a public transmission memory of such an interactive transmission server, or to input information to such an interactive transmission server;

(b) to connect with telecommunication networks for the use by the public an interactive transmission server which records information on its public

transmission memory or which inputs information to itself. In this case, where a connection is made through a series of facts such as wiring, starting of an interactive transmission server or putting into operation of programs for transmission or reception, the last occurring one of these acts shall be considered to constitute the connection.

“[...]”

“Article 23: Rights of public transmission, etc.”

“(1) The author shall have the exclusive right to make the public transmission of his work (including the making transmittable of his work in the case of the interactive transmission).

“(2) The author shall have the exclusive right to communicate publicly, by means of a receiving apparatus, his work of which the public transmission has been made.”

1.7. Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

“Article 2: Definitions”

“(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

[...]

(ix) inquires) ‘making transmittable’ means the putting in such a state that the interactive transmission can be made by either of the following acts:

(a) to record information on public transmission memory of an interactive transmission server already connected with telecommunication networks for the use by the public (‘interactive transmission server’ means a device which, when connected with telecommunication networks for the use by the public, has a function of making the interactive transmission of information which is either recorded on such a part of its memory as used for the interactive transmission (hereinafter in this item referred to as ‘public transmission memory’) or inputted to such device; the same shall apply hereinafter), to add a memory recording information as a public transmission memory of such an interactive transmission server, to convert such a memory recording information into a public transmission memory of such an interactive transmission server, or to input information to such an interactive transmission server;

(b) to connect with telecommunication networks for the use by the public an interactive transmission server which records information on its public transmission memory or which inputs information to itself. In this case, where a connection is made through a series of facts such as wiring, starting

of an interactive transmission server or putting into operation of programs for transmission or reception, the last occurring one of these acts shall be considered to constitute the connection.

“[...]”

“Article 23: Rights of public transmission, etc.”

“(1) The author shall have the exclusive right to make the public transmission of his work (including the making transmittable of his work in the case of the interactive transmission).

“(2) The author shall have the exclusive right to communicate publicly, by means of a receiving apparatus, his work of which the public transmission has been made.”

1.8. Are photographic works given the same duration of protection as other works in the Law?

“Article 10: Classification of works”

“(1) As used in this Law, ‘works’ shall include, in particular, the following:

[...]

(viii) photographic works;

[...]”

“Article 51: Term of Protection - In general”

“(1) The duration of copyright shall begin with the creation of the work.

“(2) Copyright shall continue to subsist until the end of a period of fifty years following the death of the author (or following the death of the last surviving co-author in the case of a joint work; the same shall apply in paragraph (1) of the next Article), unless otherwise provided in this Section.”

-author

1.9. What is the effective time -frame for application of the rights in the Law?

“Supplementary Provisions (Law No. 56, of 2000)

“Date of enforcement

“1. This Law shall come into force on January 1, 2001. However, the amended provisions of Article 58 of the Copyright Law in Article 1 and the provisions of Article 2 shall come into force as from the day on which the WIPO Copyright Treaty becomes effective with respect to Japan.

“[...]

2. WPPT provisions

2.1. Definitions:

2.1.1. Is “performer” or “performers” defined in the Law?

“Article 2: Definitions

“(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

[...]

(iii) ‘performance’ means the acting on stage, dancing, musical playing, singing, delivering, declaiming or performing in other ways of a work, and includes similar acts not involving the performance of a work which have the nature of public entertainment;

(iv) ‘performers’ means actors, dancers, musicians, singers and other persons who give a performance as well as those who conduct or direct a performance

[...]”

2.1.2. Is “phonogram” defined in the Law?

“Article 2: Definitions

“(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

[...]

(v) ‘phonograms’ means fixations of sounds on phonographic discs, recording tapes and other material forms, excluding those intended for use exclusively with images;

“[...]”

2.1.3. Is “fixation” defined in the Law?

“Article 2: Definitions

“(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

[...]

(xiii) ‘sound recording’ means the fixation of sounds on some material forms and the multiplication of such fixation;

(xiv) ‘visual recording’ means the fixation of a sequence of images on some material forms and the multiplication of such fixation;

[...]”

2.1.4. Is “producer of phonogram” defined in the Law?

“Article 2: Definitions

“(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

[...]

(vi) ‘producers of phonograms’ means those who first fix the sounds contained in phonograms;

[...]”

2.1.5. Is “publication of a fixed performance or a phonogram” defined in the Law?

“Article 4bis: Publication of phonograms

“A phonogram shall be deemed to have been published when, according to its nature, copies are made and distributed in sufficient number to meet the demand of the public by the owner of the right provided in Article 96, or a person who obtains a license from him (meaning a license set out under Article 63, paragraph (1) applicable *mutatis mutandis* under Article 103; the same shall apply in Chapter IV, Sections 2 and 3) (only when it does not harm the right of the owner of a right provided in Article 97bis, paragraph (1) or Article 97ter, paragraph (1)).”

2.1.6 Is “broadcasting” defined in the Law?

“Article 2: Definitions

“(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

[...]

(viii) ‘broadcasting’ means the public transmission of radiocommunication intended for simultaneous reception by the public of the transmission having the same contents;

[...]”

2.1.7 Is “communication to the public” defined in the Law?

“Article 2: Definitions

“(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

[...]

(vii bis) ‘public transmission’ means the transmission of radiocommunication or wire -telecommunication intended for direct reception by the public, excluding the transmission (other than that of program works) by wire -telecommunication installations one part of which is located on the same premises where the other part is located or, if the premises are occupied by two or more persons, both parts of which are located within the area therein occupied by one person;

[...]”

2.2. Is the concept of “national treatment” contained in the Law?

“Article 7: Performances

“The following shall be granted protection under this Law:

(i) performances which take place in this country;

(ii) performances fixed in the phonograms mentioned in item (i) or (ii) of the next Article;

(iii) performances transmitted through the broadcasts mentioned in Article 9, item (i) or (ii), excluding those incorporated in sound or visual recordings before the transmission with the authorization of the performers concerned;

- (iv) performances transmitted through the wired diffusions mentioned in each item of Article 9bis, excluding those incorporated in sound or visual recordings before the transmission with the authorization of the performers concerned;
- (v) any of the following performances not falling within those mentioned in the preceding four items:
- (a) performances which take place in a Contracting State of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter referred to as 'the Convention for the Protection of Performers, etc.');
 - (b) performances fixed in the phonograms mentioned in item (iii) of the next Article;
 - (c) performances transmitted through the broadcasts mentioned in Article 9, item (iii), excluding those incorporated in sound or visual recordings before the transmission with the authorization of the performers concerned.
- (vi) any of the following performances not falling within those mentioned in the preceding five items:
- (a) performances which take place in a Contracting Party to the WIPO Performances and Phonograms Treaty (hereinafter referred to as 'the WPPT');
 - (b) performances fixed in the phonograms mentioned in item (iv) of the next Article.
- (vii) any of the following performances not falling within those mentioned in the preceding six items:
- (a) performances which take place in a member of the World Trade Organization;
 - (b) performances fixed in the phonograms mentioned in item (v) of the next Article;
 - (c) performances transmitted through the broadcasts mentioned in Article 9, item (iv), excluding those incorporated in sound or visual recordings before the transmission with the authorization of the performers concerned."

"Article 8: Phonograms

"The following shall be granted protection under this Law:

- (i) phonograms the producers of which are Japanese nationals;

- (ii) phonograms composed of the sounds which were first fixed in this country;
- (iii) any of the following phonograms not falling within those mentioned in the preceding two items:
 - (a) phonograms the producers of which are nationals of any of the Contracting States of the Convention for the Protection of Performers, etc. ('nationals' includes legal persons established under the law of such State and those who have their principal offices in such State; the same shall apply hereinafter.);
 - (b) phonograms composed of the sounds which were first fixed in any of the Contracting States of the Convention for the Protection of Performers, etc.
- (iv) any of the following phonograms not falling within those mentioned in the preceding three items:
 - (a) phonograms the producers of which are nationals of any of the Contracting Party to the WPPT ('nationals' includes legal persons established under the law of such State and those who have their principal offices in such State; the same shall apply hereinafter);
 - (b) phonograms composed of the sounds which were first fixed in any of the Contracting Party to the WPPT.
- (v) any of the following phonograms not falling within those mentioned in the preceding items:
 - (a) phonograms the producers of which are nationals of any of the members of the World Trade Organization ('nationals' includes legal persons established under the law of such member and those who have their principal offices in such member; the same shall apply hereinafter.);
 - (b) phonograms composed of the sounds which were first fixed in any of the members of the World Trade Organization.
- (vi) phonograms not falling within those mentioned in the preceding four items, to which Japan has the obligation to grant protection under the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (in Article 121 bis, item (ii), referred to as 'the Phonograms Convention')."

2.3. Do performers have moral rights in the Law?

"Article 90 bis: Right to indicate the performer's name"

"(1) The performers shall have the right to determine whether his real name or any other name used in lieu of his real name should be indicated or not as the name of the performer when his performance is provided to or made available to the public.

“(2) In the absence of declaration of the performer’s contrary intention, a person using his performance may indicate the name of the performer in the same manner as that already adopted by the performer.

“(3) When there is no likelihood of injuring the performer’s interest in claiming himself as the performer in view of the purpose and manner of using his performance, indication of the performer’s name may be omitted so long as it conforms to fair practice.

“(4) Paragraph (1) shall be inapplicable to an instance falling under either one of the following items:

(i) When the head of an administrative agency, an independent administrative corporation or the agency of a local public entity provides or makes available to the public a performance under the Act for Public Disclosure of Information Possessed by Administrative Agencies, the Act for Public Disclosure of Information Possessed by Independent Administrative Corporations or a Public Disclosure of Information Ordinance, the performer’s name is to be indicated in the manner as it has already been indicated for such performance;

(ii) When the head of an administrative agency, an independent administrative corporation or the agency of a local public entity, provides or makes available to the public a performance under Article 6, paragraph (2) of the Act for Public Disclosure of Information Possessed by Administrative Agencies, Article 6, paragraph (2) of the Act for Public Disclosure of Information Possessed by Independent Administrative Corporations, or the provisions of a Public Disclosure of Information Ordinance equivalent to Article 6, paragraph (2) of the Act for Public Disclosure of Information Possessed by Administrative Agencies, if an indication of the performer’s name can be omitted.”

“Article 90ter: Right to preserve integrity

“(1) The performer shall have the right to preserve the integrity of his performance against any distortion, mutilation or other modification of his performance which is harmful to his honor or reputation.

“(2) The provision of the preceding paragraph shall be inapplicable to any modification which is necessary in view of the nature of the performance and the purpose and manner of its utilization, or any modification which conforms to fair practice.”

2.4. Do performers have economic rights in their unfixated performances, and if so, which ones?

“Article 91: Right of making sound or visual recordings

“(1) Performers shall have the exclusive right to make sound or visual recordings of their performances.

“[...]”

“Article 92: Right of broadcasting and wired diffusion”

“(1) Performers shall have the exclusive right to broadcast and to diffuse by wire their performances.

“[...]”

“Article 92bis: Right of making transmittable”

“(1) Performers shall have the exclusive right to make their performances transmittable.

“[...]”

“Article 93: Fixation for broadcasting purposes”

“(1) Broadcasting organizations which have obtained the authorization to broadcast performances from the owner of the right of broadcasting mentioned in Article 92, paragraph (1), may make sound or visual recordings of such performances for broadcasting purposes, provided that the contract has no stipulation to the contrary or that the sound or visual recordings are not intended for the purpose of use in broadcasting programs different from those authorized.

“(2) The following shall be considered to constitute the making of sound or visual recordings mentioned in Article 91, paragraph (1):

(i) the use and the offering of sound or visual recordings made in accordance with the provision of the preceding paragraph for a purpose other than that of broadcasting or for the purpose mentioned in the proviso to the same paragraph;

(ii) the further offering, by broadcasting organizations which have been offered such recordings, of sound or visual recordings made in accordance with the provision of the preceding paragraph, to other broadcasting organizations for their broadcasting.”

2.5. Do performers have a right of reproduction in the Law?

“Article 91: Right of making sound or visual recordings”

“(1) Performers shall have the exclusive right to make sound or visual recordings of their performances.

“(2) The provision of the preceding paragraph shall not apply to performances which have been incorporated in cinematographic works with the authorization of the owner of the right mentioned in the same paragraph, except in the case where such performances

are to be incorporated in sound recordings (other than those intended for use exclusively with images).”

2.6. Do performers have a right of distribution in the Law?

“Article 95bis: Right of transfer of ownership

“(1) Performers shall have the exclusive right to offer their performances to the public by transfer of ownership of sound or visual recordings of their performances.

“(2) The provision of the preceding paragraph shall not apply to the following:

- (i) performances incorporated in visual recordings with the authorization of a person who has the right mentioned in Article 91, paragraph (1);
- (ii) performances mentioned in Article 91, paragraph (2) and incorporated in recordings other than those mentioned in that paragraph.

“(3) The provision of paragraph (1) shall not apply in the case of transfer of ownership of sound or visual recordings of performances (except those mentioned in items (i) and (ii) of the preceding paragraph; the same shall apply hereinafter in this Article) which falls within any of the following items:

- (i) sound or visual recordings of performances the ownership of which has been transferred to the public by a person who has the right mentioned in paragraph (1) or with the authorization of such person;
- (ii) sound or visual recordings of performances the ownership of which has been transferred to a small number of specific persons by a person who has the right mentioned in paragraph (1) or with the authorization of such person;
- (iii) sound or visual recordings of performances the ownership of which has been transferred, outside the jurisdiction of this Law, without prejudice to the right equivalent to that mentioned in paragraph (1), or by a person who has the right equivalent to that mentioned in that paragraph or with the authorization of such person.”

2.7. Do performers have a right of rental in the Law?

“Article 95ter: Right of lending, etc.

“(1) Performers shall have the exclusive right to offer their performances to the public by lending commercial phonograms incorporating their performances.

“(2) The provision of the preceding paragraph shall not apply to the lending of commercial phonograms going beyond a period as provided by Cabinet Order within the limits of one to twelve months from the first sale of such phonograms (including commercial phonograms containing the same phonograms as those incorporated in such

commercial phonograms; hereinafter referred to as 'commercial phonograms going beyond the period').

“(3) When those who engage in business of lending commercial phonograms to the public (hereinafter referred to as 'commercial phonogram lenders') have offered performances to the public by lending commercial phonograms going beyond the period, they shall pay a reasonable amount of remuneration to the performers whose performances (in which neighboring rights subsist) are incorporated in such phonograms.

“(4) The provisions of Article 95, paragraphs (5) to (14) shall apply *mutatis mutandis* to the right to remuneration mentioned in the preceding paragraph. In this case, 'broadcasting organizations, etc.' in paragraph (10) of the same Article and 'broadcasting organizations, etc. mentioned in Article 95, paragraph (1)' in paragraph (12) of the same Article shall read 'commercial phonogram lenders mentioned in Article 95, paragraph (3).'

“(5) The right to royalty with respect to the authorization given by owners of the right mentioned in paragraph (1) may be exercised through the intermediary of the association, mentioned in Article 95, paragraph (5) which shall apply *mutatis mutandis* in the preceding paragraph.

“(6) The provisions of Article 95, paragraphs (7) to (14) shall apply *mutatis mutandis* in the preceding paragraph. In this case, the provision of the second sentence of paragraph (4) of this Article shall apply *mutatis mutandis*.”

2.8. Do performers have a right of making available of fixed performances in the Law?

“Article 92bis: Right of making *transmittable*

“(1) Performers shall have the exclusive right to make their performances transmittable.

“(2) The provision of the preceding paragraph shall not apply to the following:

- (i) performances incorporated in visual recordings with the authorization of the owner of the right mentioned in Article 91, paragraph (1);
- (ii) performances mentioned in Article 91, paragraph (2) and incorporated in recordings other than those mentioned in that paragraph.”

2.9. Do producers of phonograms ("producers") have a right of reproduction in the Law?

“Article 96: Right of reproduction

“Producers of phonograms shall have the exclusive right to reproduce their phonograms.”

2.10. Do producers have a right of distribution in the Law?

“Article 97bis: Right of transfer of ownership

“(1) Producers of phonograms shall have the exclusive right to offer their phonograms to the public by transfer of ownership of copies of their phonograms.

“(2) The provision of the preceding paragraph shall not apply in the case of transfer of ownership of copies of phonograms which fall within any of the following items:

(i) copies of phonograms the ownership of which has been transferred to the public by a person who has the right mentioned in the preceding paragraph or with the authorization of such person;

(ii) copies of phonograms the ownership of which has been transferred to a small number of specific persons by a person who has the right mentioned in the preceding paragraph or with the authorization of such person;

(iii) copies of phonograms the ownership of which has been transferred, outside the jurisdiction of this Law, without prejudice to the right equivalent to that mentioned in the preceding paragraph, or by a person who has the right equivalent to that mentioned in that paragraph or with the authorization of such person.”

2.11. Do producers have a right of rental in the Law?

“Article 97ter: Right of lending, etc .

“(1) Producers of phonograms shall have the exclusive right to offer their phonograms to the public by lending commercial phonograms in which their phonograms are reproduced.

“(2) The provision of the preceding paragraph shall not apply to the lending of commercial phonograms going beyond the period.

“(3) When commercial phonogram lenders have offered phonograms to the public by lending commercial phonograms going beyond the period, they shall pay a reasonable amount of remuneration to the producers whose phonograms (in which neighboring rights subsist) have been so offered to the public.

“(4) The provision of Article 97, paragraph (3) shall apply *mutatis mutandis* to the exercise of the right to remuneration mentioned in the preceding paragraph.

“(5) The provisions of Article 95, paragraphs (6) to (14) shall apply *mutatis mutandis* to the remuneration mentioned in paragraph (3) of this Article and to associations mentioned in Article 97, paragraph (3) which shall apply *mutatis mutandis* in the preceding paragraph. In this case, the provision of the first sentence of Article 95ter, paragraph (4) shall apply *mutatis mutandis*.

“(6) The right to royalty with respect to the authorization given by owners of the right mentioned in paragraph (1) of this Article may be exercised through the intermediary of

the association mentioned in Article 97, paragraph (3) which shall apply *mutatis mutandis* in paragraph (4) of this Article.

“(7) The provision of paragraph (5) of this Article shall apply *mutatis mutandis* in the preceding paragraph. In this case, ‘Article 95, paragraph (6)’ in paragraph (5) shall read ‘Article 95, paragraph (7)’.”

2.12. Do producers have a right of making available of phonograms in the Law?

“*Article 96bis: Right of making transmittable*

“Producers of phonograms shall have the exclusive right to make their phonograms transmittable.”

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“*Article 95: Secondary use of commercial phonograms*

“(1) When broadcasting organizations and wired diffusion organizations (hereinafter in this Article and Article 97, paragraph (1) referred to as ‘broadcasting organizations, etc’.) have broadcast or diffused by wire commercial phonograms incorporating performances with the authorization of the owner of the right mentioned in Article 91, paragraph (1) (except broadcast or wired diffusion made upon receiving such broadcasts or wired diffusions), they shall pay secondary use fees to the performers whose performances (which are mentioned in Article 7, items (i) to (vi) and in which neighboring rights subsist; the same shall apply from the next paragraph to paragraph (4)) have been so broadcast or diffused by wire.

“(2) The provisions of the preceding paragraph shall apply to performers whose performances are fixed in phonograms the producers of which are national of any of the Contracting States of the Convention for the Protection of Performers, etc. other than those which have made a declaration under the provisions of Article 16(1)(a)(i) of that Convention stating that it will not apply the provisions of Article 12 of that Convention.

“(3) If the term of the protection provided for in the provisions of Article 12 of the Convention for the Protection of Performers, etc. which is granted by a Contracting State of that Convention with respect to phonograms mentioned in Article 8, item (i) is shorter than that for which performers are granted the protection under the provisions of paragraph (1), the term for which performers, whose performances are fixed in phonograms the producers of which are national of that State, are granted the protection under the provisions of that paragraph shall be that of the protection provided for in the provisions of Article 12 of that Convention which is granted by that State with respect to phonograms mentioned in Article 8, item (i).

“(4) The provisions of paragraph (1) shall apply, within the limits of reservations made, to performers whose performances are fixed in phonograms the producers of which are national of a country which is a Contracting Party to the WPPT (but not a

Contracting State of the Convention for the Protection of Performers, etc.) and which has made reservations under the provisions of Article 15(3) of the WPPT.

“(5) Where there is an association (including a federation of associations) which is composed of a considerable number of professional performers practicing in this country and which is so designated, with its consent, by the Commissioner of the Agency for Cultural Affairs, the right to secondary use fees mentioned in the paragraph (1) shall be exercised exclusively through the intermediary of such association.

“(6) The Commissioner of the Agency for Cultural Affairs may designate only such an association as satisfies the following conditions: (i) that it is not established for profit-making; (ii) that its members may freely join and withdraw; (iii) that its members are granted an equal right to vote and to be elected; (iv) that it has sufficient ability to practice properly by itself the business of exercising the right on behalf of the owners of the right to secondary use fees mentioned in paragraph (1) (hereinafter in this Article referred to as ‘the owners of the right’).

“(7) Such an association may not refuse the request of the owners of the right for the exercise of the right on their behalf.

“(8) Upon receipt of the request mentioned in the preceding paragraph, such associations shall have authority to deal, on behalf of the owners of the right and in its own name, with juridical and non-juridical matters in regard to the right.

“(9) As provided by Cabinet Order, the Commissioner of the Agency for Cultural Affairs may ask such an association to report on their business concerning secondary use fees mentioned in paragraph (1) or to submit account books, documents and other data, or make necessary recommendations for improving in a manner of practicing business.

“(10) The amount of secondary use fees which such an association may demand on behalf of the owners of the right in accordance with the provision of paragraph (4) shall be fixed each year by mutual agreement between such an association and broadcasting organizations, etc. or their federation.

“(11) If the agreement mentioned in the preceding paragraph is not reached, the parties concerned may, as provided by Cabinet Order, request the Commissioner of the Agency for Cultural Affairs to issue a ruling fixing an amount of secondary use fees.

“(12) The provisions of Article 70, paragraphs (3), (6) and (7) as well as Articles 71 to 74 shall apply *mutatis mutandis* to the ruling and secondary use fees mentioned in the preceding paragraph. In this case, ‘the copyright owner’ in Article 70, paragraph (3) shall read ‘the parties concerned’, ‘the user of the work’ in Article 72, paragraph (2) shall read ‘broadcasting organizations, etc. mentioned in Article 95, paragraph (1)’, ‘the copyright owner’ in the same paragraph shall read ‘the association mentioned in paragraph (5) of the same Article’, and ‘the copyright owner’ in Article 74 shall read ‘the association mentioned in Article 95, paragraph (5)’.

“(13) The provisions of the Law Relating to Prohibition of Private Monopoly and Methods of Preserving Fair Trade (Law No. 54, of 1947) shall not apply to mutual agreement mentioned in paragraph (10) and to acts made under it, provided that the

trading method is fair and without unreasonable prejudice to the interests of concerned entrepreneurs.

“(14) Other than those provided for in paragraphs (5) to (13), necessary matters in connection with the payment of secondary use fees mentioned in paragraph (1) and the association mentioned in paragraph (5) shall be provided by Cabinet Order.”

“Article 97: Secondary use of commercial phonograms

“(1) When broadcasting organizations, etc. have broadcast or diffused by wire commercial phonograms (except broadcast or wire diffusion made upon receiving such broadcasts or wire diffusions), they shall pay secondary use fees to the producers whose phonograms (which are mentioned in Article 8, items (i) to (iv) and in which neighboring rights subsist) have been so broadcast or diffused by wire.

“(2) The provisions of Article 95, paragraphs (2) and (4) shall apply mutatis mutandis to the producers of phonograms mentioned in the preceding paragraph, and the provisions of paragraph (3) of the same Article shall apply mutatis mutandis to the term of the protection provided for in the preceding paragraph. In this case, “performers whose performances are fixed in phonograms the producers of which are nationals” in paragraphs (2) to (4) of the same Article shall read ‘producers of phonograms who are nationals’, and ‘that for which performers are granted the protection’ in paragraph (3) shall read ‘that for which producers of phonograms are granted the protection’.

“(3) Where there is an association (including a federation of associations) which is composed of a considerable number of producers of phonograms practicing in this country and which is so designated, with its consent, by the Commissioner of the Agency for Cultural Affairs, the right to secondary use fees mentioned in paragraph (1) shall be exercised exclusively through the intermediary of such association.

“(4) The provisions of Article 95, paragraphs (6) to (14) shall apply mutatis mutandis to secondary use fees mentioned in paragraph (1) and to the association mentioned in the preceding paragraph.”

2.14. Are there rights in the Law subject to any formalities?

“Article 89: Neighboring rights

“[...]

“(5) The enjoyment of the rights referred to in any of the preceding paragraphs shall not be subject to any formality.

“[...]

2.15. What is the term of protection for:

2.15.1. performers?

“Article 101: Term of protection for performances, phonograms, broadcasts and wire diffusions

“(1) The duration of neighboring rights shall begin with the following date:

(i) when the performance took place, for performances;

[...]

“(2) The duration of neighboring rights shall expire at the end of a period of fifty years from the year following the date:

(i) when the performance took place, for performances;

[...]”

2.15.2. producers of phonograms?

“Article 101: Term of protection for performances, phonograms, broadcasts and wire diffusions

“(1) The duration of neighboring rights shall begin with the following date:

(ii) when the first fixation of sounds was made, for phonograms

[...]

“(2) The duration of neighboring rights shall expire at the end of a period of fifty years from the year following the date:

(ii) when the publishing was made or when the first fixation of sounds was made if the publishing has not been made within a period of fifty years following the first fixation of sounds;

[...]”

2.16. What is the effective time frame for application of rights in the Law?

“Supplementary Provisions (Law No. 72, of 2002)

“Date of enforcement

“1. The provisions of this Law shall come into force as from the day mentioned in any of the following items, as follows: (i) the amended provisions of Articles 7, 8, 95, 95ter, 97 and 97 ter as well as the provisions of paragraphs 2 to 4, 6, 7 and 9 of the

Supplementary Provisions: the day on which the WIPO Performances and Phonograms Treaty (hereinafter referred to as “the WPPT”) becomes effective with respect to Japan; (ii) the amended provisions of the Table of Contents (only parts of the provision renumbering Article 100 *quater* as Article 100 *quinquies*) and of Article 89, paragraph (4), the provision inserting the new Article 99 *bis* next to Article 99, the provisions renumbering Article 100 *quater* as Article 100 *quinquies* and inserting the new Article 100 *quater* next to Article 100 *ter* and the amended provisions of Article 103: January 1, 2003; (iii) the provisions other than those mentioned in the preceding two paragraphs: the day on which the WPPT becomes effective with respect to Japan or January 1, 2003 whichever is earlier.”

“Application of the provisions relating to neighboring rights

“2. The provisions of paragraph 3 of the Supplementary Provisions of the Law for Partial Amendments to the Copyright Law (Law No. 64, of 1986), paragraph 2 of the Supplementary Provisions of the Law for Partial Amendments to the Copyright Law (Law No. 43, of 1989; hereinafter referred to as “the Amendments Law of 1989”) and paragraph 2 of the Supplementary Provisions of the Law for Partial Amendments to the Copyright Law (Law No. 63, of 1991; hereinafter referred to as “the Amendments Law of 1991”) shall not apply, in case of the application of the provisions relating to neighboring rights (including the provisions of Article 95 and Article 95 *ter*, paragraphs (3) and (4)) of the amended Copyright Law (hereinafter referred to as “the New Law”) to the performances mentioned in Article 7, item (iv) of the new Law (excluding those falling within the performances mentioned in Article 7, items (i) to (iii)) which fall within the following performances, or to the performances mentioned in Article 7, item (v) of the new Law which fall within the following performances:

- (i) performances which took place in a Contracting Party to the WPPT;
- (ii) performances fixed in the following phonograms:
 - (a) phonograms the producers of which are nationals of any of the Contracting Parties to the WPPT (“nationals” includes legal persons established under the law of such Contracting Party and those who have their principal offices in such Contracting Party; the same shall apply hereinafter);
 - (b) phonograms composed of the sounds which were first fixed in any of the Contracting Parties to the WPPT.

“3. The provisions of paragraph 4 of the Supplementary Provisions of the Amendments Law of 1989 shall not apply, in case of the application of the provisions relating to neighboring rights of the new Law (including the provisions of Article 95 and Article 95 *ter*, paragraphs (3) and (4)) to foreign performers whose performances are mentioned in the preceding paragraph, items (i) and (ii) and who did not have habitual residence in this country at the time when their performances took place.

“4. The provisions of paragraph 2 of the Supplementary Provisions of the Law for Partial Amendments to the Copyright Law (Law No. 49, of 1978), paragraphs 2 and 3 of the Supplementary Provisions of the Amendments Law of 1989, and paragraph 3 of the

Supplementary Provisions of the Amendments Law of 1991 shall not apply, in case of the application of the provisions relating to neighboring rights of the new Law (including the provisions of Article 97 and Article 97 *ter*, paragraphs (3) to (5)) to the following phonograms:

- (i) phonograms, mentioned in Article 8, item (ii) of the new Law, which fall within the following phonograms:
 - (a) phonogram the producers of which are nationals of any of the Contracting Parties to the WPPT;
 - (b) phonograms composed of the sounds which were first fixed in any of the Contracting Parties to the WPPT;
- (ii) phonograms, mentioned in Article 8, item (iv) of the new Law, to which Japan has the obligation to grant protection under the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.

“Transitory measures: moral rights of performers”

“5. The provisions of Article 90 *bis*, paragraph (1) and Article 90 *ter*, paragraph (1) of the new Law shall not apply to performances fixed in sound or visual recordings which have been made with the authorization of the performer concerned before the enforcement of this Law, except in the case where, after the enforcement of this Law, the name of the performer concerned indicated at this performance is deleted or altered, or the name of the performer concerned is newly indicated at this performance, or his performances are altered.

“Transitory measures: secondary use of commercial phonograms”

“6. Notwithstanding the provisions of Article 95, paragraph (2) of the new Law, the provisions of paragraph (4) of that Article shall apply, in case of the application of the provisions of paragraph (1) of that Article to performers whose performances have been fixed in phonogram the producers of which are nationals of a country which is a Contracting State of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter in this and next paragraphs referred to as “the Convention for the Protection of Performers, etc.”) and which is a Contracting Party to the WPPT and whose performances have been so fixed before the day on which the Convention for the Protection of Performers, etc. became effective with respect to Japan.

“7. Notwithstanding the provisions of Article 95, paragraph (2) of the new Law which shall apply *mutatis mutandis* in the provisions of Article 97, paragraph (2) of the new Law, the provisions of Article 95, paragraph (4) of the new Law which shall apply *mutatis mutandis* in the provisions of Article 97, paragraph (2) of the new Law shall apply, in case of the application of the provisions of Article 97, paragraph (1) of the new Law to producers of phonograms who are nationals of a country which is a Contracting State of the Convention for the Protection of Performers, etc. and which is a Contracting Party to the WPPT and whose phonogram have been composed of the sounds first

fixed before the day on which the Convention for the Protection of Performers, etc. became effective with respect to Japan.

“Transitory measures: term of protection for phonograms

“8. The provisions of Article 101, paragraph (2), item (ii) shall apply to phonograms in which neighboring rights under the Copyright Law before amendments subsist at the time of coming into force of this Law, and the provisions relating to the term of protection for phonograms of the Copyright Law before amendments shall still apply to phonograms in which neighboring rights under the Copyright Law before amendment have expired at the time of coming into force of this Law.

“Partial amendment to the Law on Management Business of Copyright and Neighboring Rights

“9. The Law on Management Business of Copyright and Neighboring Rights (Law No. 131, of 2000) shall be partially amended as follows: In Article 25, item (i), the words “Article 95, paragraph (4)” shall be replaced by the words “Article 95, paragraph (5).”

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Article 30: Reproduction for private use

“(1) It shall be permissible for a user to reproduce by himself a work forming the subject matter of copyright (hereinafter in this Subsection referred to as a ‘work’) for the purpose of his personal use, family use or others similar uses within a limited circle (hereinafter referred to as ‘private use’), except in the case:

- (i) where such reproduction is made by means of automatic reproducing machines placed for the use by the public;
- (ii) where such reproduction is made by a person who knows that such reproduction becomes possible by the circumvention of technological protection measures or it ceases to cause obstruction, by such circumvention, to the result of acts deterred by such measures; (‘removal’ or ‘alteration’ does not include such removal or alteration as is conditional upon technology involved in the conversion of recording or transmission systems).

“(2) Any person who, for the purpose of private use, makes sound or visual recording on such a digital recording medium as specified by Cabinet Order by means of such a digital recording machine as specified by Cabinet Order (excluding (a) machines having special efficiency generally not for private use but for business use, such as that for broadcasting, and (b) machines having sound or visual recording functions incidental to the primary functions, such as telephones with sound recording function) shall pay a reasonable amount of compensation to the copyright owners concerned.”

“Article 31: Reproduction in libraries, etc.

“It shall be permissible to reproduce a work included in library materials (‘library materials’ in this Article means books, documents and other materials held in the collection of libraries, etc.) within the scope of the non-profit-making activities of libraries, etc. (‘libraries, etc.’ in this Article means libraries and other establishments, designated by Cabinet Order, having the purpose, among others, to offer library materials for the use by the public) in the following cases:

- (i) where, at the request of a user and for the purpose of his own investigation or research, he is furnished with a single copy of a part of a work already made public or of all of an individual work included in a periodical already published for a considerable period of time;
- (ii) where the reproduction is necessary for the purpose of preserving library materials;
- (iii) where other libraries, etc. are furnished with a copy of library materials which are rarely available through normal trade channels because the materials are out of print or for other similar reasons.”

“Article 32: Quotations

“(1) It shall be permissible to make quotations from a work already made public, provided that their making is compatible with fair practice and their extent does not exceed that justified by purposes such as news reporting, criticism or research.

“(2) It shall also be permissible for the press or other periodicals to reproduce informatory, investigatory or statistical data, reports and other works of similar character which have been prepared by organs of the State or local public entities or independent administrative organs for the purpose of public information and which have been made public under their authorship, provided that their reproduction thereof is not expressly prohibited.”

“Article 33: Reproduction in school textbooks, etc.

“(1) It shall be permissible to reproduce in school textbooks (‘school textbooks’ means textbooks authorized by the Minister of Education and Science or those compiled under the authorship of the Ministry of Education and Science to be used for the education of children or pupils in primary schools, junior or senior high schools or other similar schools) works already made public, to the extent deemed necessary for the purpose of school education.

“(2) A person whom makes such reproductions shall inform the author thereof and pay to the copyright owner compensation, the amount of which is fixed each year by the Commissioner of the Agency for Cultural Affairs, by taking into account the purpose of the provision of the preceding paragraph, the nature and the purpose of the work, the ordinary rate of royalty, and other conditions.

“(3) The Commissioner of the Agency for Cultural Affairs shall announce in the Official Gazette the amount of compensation fixed in accordance with the provision of the preceding paragraph.

“(4) The provisions of the preceding three paragraphs shall apply *mutatis mutandis* with respect to the reproduction of works in textbooks intended for senior high school correspondence courses and guidance books of school textbooks mentioned in paragraph (1) intended for teachers (these guidance books shall be limited to those published by the same publisher of the textbooks).”

“Article 34: Broadcasting, etc. in schooleducation programs

“(1) It shall be permissible to broadcast or diffuse by wire a work already made public, in broadcasting programs or wired diffusion programs which conform to the curriculum standards provided for in regulations on schooleducation, and to reproduce in teaching materials for these programs, to the extent deemed necessary for the purpose of schooleducation.

“(2) A person who makes such exploitation of a work shall inform the author thereof and pay to the copyright owner a reasonable amount of compensation.”

“Article 35: Reproduction in schools and other educational institutions

“A person who is in charge of teaching in a school or other educational institutions established not for profit-making may reproduce a work already made public if and to the extent deemed necessary for the purpose of use in the course of teaching, provided that such reproduction does not unreasonably prejudice the interests of the copyright owner in the light of the nature and the purpose of the work as well as the number of copies and the form of reproduction.”

“Article 36: Reproduction in examination questions

“(1) It shall be permissible to reproduce a work already made public in questions of an entrance examination or other examinations of knowledge or skill, or such examination for a license, to the extent deemed necessary for that purpose.

“(2) A person who makes such reproduction for profit-making purposes shall pay to the copyright owner compensation the amount of which corresponds to an ordinary rate of royalty.”

“Article 37: Reproduction in braille, etc.

“(1) It shall be permissible to reproduce in braille a work already made public .

“(2) It shall be permissible to record on a memory, or to make the public transmission (excluding the broadcasting or wired diffusion and including the making transmittable in

the case of the interactive transmission) of a work already made public, by means of a braille processing system using a computer.

“(3) For braille libraries and other establishments for the promotion of the welfare of the visually handicapped, designated by Cabinet Order, it shall be permissible to make sound recordings of a work already made public, exclusively for the purpose of lending such recordings for the use by the visually handicapped.”

“Article 37 bis: Interactive transmission for the aurally handicapped

“A person, designated by Cabinet Order, who does activities for the promotion of the welfare of the aurally handicapped, may make an interactive transmission (including the making transmittable by means of inputting information to an interactive transmission server already connected with telecommunication network for the use by the public) of a work broadcast or diffused by wire, by converting oral words of that work into written words, exclusively for the purpose of the use by the aurally handicapped.”

“Article 38: Performance, etc. not for profit -making

“(1) It shall be permissible to publicly perform, present and recite a work already made public, for non-profit-making purposes and without charging any fees (‘fees’ includes any kind of charge to be imposed on the offering and the making available of a work to the public) to audience or spectators; provided, however, that the performers or reciters concerned are not paid any remuneration for such performance, presentation or recitation.

“(2) It shall be permissible to diffuse by wire a work already broadcast, for non-profit-making purposes and without charging any fee to audience or spectators.

“(3) It shall be permissible to communicate publicly, by means of a receiving apparatus, a work already broadcast or diffused by wire, for non-profit-making purposes and without charging any fee to audience or spectators. The same shall apply to such public communication made by means of a receiving apparatus of a kind commonly used in private homes.

“(4) It shall be permissible to offer to the public a work (except a cinematographic work) already made public, by lending copies of the work (excluding copies of a cinematographic work in the case of a work reproduced in the cinematographic work) for non-profit-making purposes and without charging any fee to borrowers of such copies.

“(5) For audio-visual education establishments and other establishments not for profit-making, designated by Cabinet Order, having the purposes, among others, to offer cinematographic films and other audio-visual materials for the use by the public, it shall be permissible to distribute a cinematographic work already made public, by lending copies of the work, without charging any fee to borrowers of such copies. In this case, a person whomakes such distributions shall pay a reasonable amount of compensation to the owner of the right of distribution with respect to such cinematographic work or a work reproduced in that cinematographic work.”

“Article 39: Reproduction, etc. of articles on current topics

“(1) It shall be permissible to reproduce in the press, broadcast and diffuse by wire articles published in newspapers or periodicals on current political, economic or social topics, not having a scientific character, provided that such reproduction, broadcasting or wired diffusion thereof is not expressly prohibited.

“(2) It shall also be permissible to communicate publicly, by means of a receiving apparatus, articles thus broadcast or diffused by wire.”

“Article 40: Exploitation of political speeches, etc.

“(1) It shall be permissible to exploit, by any means, political speeches delivered in public and speeches delivered in the course of judicial proceedings (including those corresponding to judicial proceedings such as determinations by administrative agencies; the same shall apply in Article 42), except such exploitation as involves a collection of the works of the same author.

“(2) It shall be permissible to reproduce in the press, broadcast and diffuse by wire speeches not falling within the preceding paragraph, which are delivered in public by organs of the State or local public entities or independent administrative organs, to the extent justified by the informatory purpose.

“(3) It shall also be permissible to communicate publicly, by means of a receiving apparatus, speeches thus broadcast or diffused by wire.”

“Article 41: Reporting of current events

“For the purpose of reporting current events by means of photography, cinematography, broadcasting or otherwise, it shall be permissible to reproduce and exploit a work involved in the event or a work seen or heard in the course of the event, to the extent justified by the informatory purpose.”

“Article 42: Reproduction for judicial proceedings, etc.

“It shall be permissible to reproduce a work if and to the extent deemed necessary for the purpose of judicial proceedings and of internal use by legislative or administrative organs, provided that such reproduction does not unreasonably prejudice the interests of the copyright owner in the light of the nature and the purpose of the work as well as the number of copies and the form of reproduction.”

“Article 42bis: Exploitation for Disclosure by the Information Disclosure Law, etc.

“For the purpose of offering to or making available to the public a work in accordance with the provisions of the Information Disclosure Law or the Information Disclosure Regulations, the head of a government organization or an organ of a local public entity may exploit the work if and to the extent deemed necessary for the purpose

of the disclosure by means mentioned in Article 14 (1) of the Information Disclosure Law or by means provided for in the Information Disclosure Regulations (excluding means other than those mentioned in Article 14 (1) of the Information Disclosure Law).”

“Article 43: Exploitation by means of translation, adaptation, etc.

“The exploitation of works permitted under the provisions mentioned below shall include that made by the following means:

- (i) Article 30(1) or Articles 33 to 35: translation, musical arrangement, transformation, and adaptation;
- (ii) Article 31, item (i), Article 32, 36 or 37, Article 39(1), Article 40(2), or Article 41 or 42: translation.
- (iii) Article 37bis: adaptation (only in summary form).”

“Article 44: Ephemeral recordings by broadcasting organizations, etc.

“(1) Broadcasting organizations may make ephemeral sound or visual recordings of a work which they are in a position to broadcast, without prejudice to the right of the author to make a public transmission, for the purpose of their own broadcasts and by the means of their own facilities or facilities of other broadcasting organizations which are in a position to broadcast the same work.

“(2) Wired diffusion organizations may make ephemeral sound or visual recordings of a work which they are in a position to diffuse by wire, without prejudice to the right of the author to make a public transmission, for the purpose of their own wired diffusions (except those made upon receiving broadcasts) and by the means of their own facilities.

“(3) It shall not be permissible to preserve such ephemeral recordings made in accordance with the provisions of the preceding two paragraphs for a period exceeding six months after their making or, if the recordings are broadcast or diffused by wire within this period, for a period exceeding six months after that broadcasting or wire diffusion; provided, however, that such preservation is permitted if the preservation in official archives is authorized by Cabinet Order.”

“Article 45: Exhibition of an artistic work, etc. by the owner of the original thereof

“(1) The original of an artistic work or photographic work may be publicly exhibited by its owner or with his authorization.

“(2) The provision of the preceding paragraph shall not apply with respect to the permanent location of the original of an artistic work in open places accessible to the public, such as streets and parks, or at places easily seen by the public, such as the outer walls of buildings.”

“Article 46: Exploitation of an artistic work located in open places

“It shall be permissible to exploit artistic works permanently located in such open places as mentioned in paragraph (2) of the preceding Article and architectural works by any means not falling within any of the following items:

- (i) multiplication of a sculpture and offering it to the public by transfer of ownership of its copies;
- (ii) imitative reproduction of an architectural work and offering it to the public by transfer of ownership of its copies;
- (iii) reproduction of a work for the purpose of locating it permanently in such open places as mentioned in paragraph (2) of the preceding Article;
- (iv) reproduction of an artistic work exclusively for the purpose of selling its copies and sale of such copies.”

“Article 47: Reproduction required for an exhibition of artistic works, etc.

“A person who, without prejudice to the right of exhibition of the author, exhibits publicly the originals of artistic works or photographic works may reproduce such works in pamphlets for the purpose of explaining or introducing them to spectators.

“Article 47bis: Reproduction, etc. by the owner of a copy of a program work

“(1) The owner of a copy of a program work may make copies or adaptations (including the making of copies of a derivative work created by means of adaptation) of that work in and to the extent deemed necessary for the purpose of exploiting that work on a computer by himself, provided that the use made of such copies in connection with such exploitation is not an act considered to constitute an infringement under the provision of Article 113(2).

“(2) If the owner of copies mentioned in the preceding paragraph has ceased to have the ownership of any of the copies mentioned in that paragraph (including copies made in accordance with the provision of that paragraph) for reasons other than those of destruction, he may not thereafter preserve other copies in the absence of any declaration of the intention of the copyright owner to the contrary.”

“Article 47ter: Transfer of ownership of copies made in accordance with the provisions of limitation on reproduction right

“Works permitted to be reproduced in accordance with the provisions of Article 31, item (i), Article 32, Article 33(1) (including the case where its application *mutatis mutandis* is provided for under the provision of Article 33(4)), Article 34(1), Article 35, Article 36(1), Article 37(1) or (2), Article 39(1), Article 40(1) or (2), Article 41, 42, 42bis, 46 or 47 shall also be permitted to be offered to the public by transfer of ownership of copies made in accordance with these provisions, excluding

copies of cinematographic works in cases of the provisions of Article 31, item (i), Article 35, Article 36(1) or Article 42 (including copies of cinematographic works in cases of works reproduced in cinematographic works; the same shall apply hereinafter in this Article), except in the case where the ownership of copies of works made in accordance with the provisions of Article 31 item (i) or Article 35, 41, 42 or 42 *bis* is transferred to the public for purposes other than those mentioned in Article 31, item (i) or Article 35, 41, 42 or 42 *bis* (excluding copies of cinematographic works in cases of the provisions of Article 31, item (i) or Article 35 or 42).”

“Article 48: Indication of sources

“(1) In any of the following cases, the source must be clearly indicated in the manner and to the extent deemed reasonable by the form of the reproduction or exploitation:

- (i) where reproduction is made of works in accordance with the provision of Article 32, Article 33(1) (including the case where its application *mutatis mutandis* is provided for under the provision of paragraph (4) of the same Article), Article 37(1) or (3), or Article 42 or 47;
- (ii) where exploitation is made of works in accordance with the provision of Article 34(1), Article 37 *bis*, Article 39(1), or Article 40 (1) or (2);
- (iii) where exploitation, other than reproduction, is made of works in accordance with the provision of Article 32, or where exploitation is made of works in accordance with the provisions of Article 35, Article 36(1), Article 38(1), or Article 41 or 46, provided that standard practices so requires.

“(2) When indicating the source under the preceding paragraph, mention must be made of the name of the author if it appears on a work, except in the case where such indication identifies the author or the work is anonymous.

“(3) Where exploitation is made of works by translating, arranging musically, transforming or adapting them in accordance with the provision of Article 43, mention must also be made of the source as provided for in the provisions of the preceding two paragraphs.”

“Article 49: Uses, etc. of copies for other purposes

“(1) The following acts shall be considered to constitute the reproduction as mentioned in Article 21:

- (i) the distribution of copies of works made in accordance with the provisions of Article 30(1), Article 31, item (i), Article 35, Article 37 (3), or Articles 41 to 42 *bis*, or Article 44(1) or (2), or the making available to the public of works by the use of these copies, for purposes other than those mentioned in these provisions;

- (ii) the preservation by broadcasting organizations or wired diffusion organizations, of ephemeral recordings in violation of the provision of Article 44 (3);
- (iii) the distribution of copies of works (excluding copies falling within those mentioned in item (ii) of the next paragraph) made in accordance with the provision of Article 47 *bis* (1), or the making available to the public of works by the use of these copies;
- (iv) the preservation of copies mentioned in Article 47 *bis* (2) in violation of that paragraph (excluding copies falling within those mentioned in item (ii) of the next paragraph).

“(2) The following acts shall be considered to constitute the translation, musical arrangement, transformation or adaptation as mentioned in Article 27 with respect to pre-existing works of derivative works concerned:

- (i) the distribution of copies of derivative works made in accordance with the provisions of Article 43 (1) or (2), or the making available to the public of derivative works by the use of these copies, for purposes other than those mentioned in Article 30 (1), Article 31, item (i), Article 35, Article 37 (3), or Article 41 or 42;
- (ii) the distribution of copies of derivative works made in accordance with the provision of Article 47 *bis* (1) or the making available to the public of derivative works by the use of these copies;
- (iii) the preservation of copies mentioned in the preceding item in violation of the provision of Article 47 *bis* (2).”

“Article 50: Relationship with moral rights

“No provision of this Subsection may be interpreted as affecting the protection of the moral rights of the author.”

“Article 102: Limitation on neighboring rights

“(1) The provisions of Article 30, paragraph (1), Articles 31, 32, 35 and 36, Article 37, paragraph (3), Article 38, paragraphs (2) and (4) and Articles 41, 42, 42 *bis* and 44 (except paragraph (2)) shall apply mutatis mutandis to the exploitation of performances, phonograms, broadcasts or wired diffusions which are the subject matter of neighboring rights, the provision of Article 30, paragraph (2) and Article 47 *ter* shall apply mutatis mutandis to the exploitation of performances or phonograms which are the subject matter of neighboring rights, and the provision of Article 44, paragraph (2) shall apply mutatis mutandis to the exploitation of performances, phonograms or wired diffusions which are the subject matter of neighboring rights. In this case, ‘Article 23, paragraph (1)’ in Article 44, paragraph (1) shall read ‘Article 92, paragraph (1), Article 99, paragraph (1) or Article 100 *ter*’, and ‘Article 23, paragraph (1)’ in Article 44, paragraph (2) shall read ‘Article 92, paragraph (1) or Article 100 *ter*’.

“(2) Where reproduction is made of performances, phonograms, sounds or images of broadcasts or wired diffusions (hereinafter referred to as ‘performances, etc.’) in accordance with the provisions of Article 32, Article 37, paragraph (3) or Article 42 which apply mutatis mutandis in the preceding paragraph, the source must be clearly indicated in the manner and to the extent deemed reasonable by the character of the reproduction, provided that standard practices so require .

“(3) Where it is permissible to broadcast or diffuse by wire works under the provision of Article 39, paragraph (1) or Article 40, paragraph (1) or (2), it shall also be permissible to diffuse by wire the broadcasts or wired diffusions of such works and to communicate them to the public by means of a special instrument for enlarging images.

“(4) The following shall be considered to constitute the making of sound or visual recordings or their reproduction as mentioned in Article 91, paragraph (1), Article 96, Article 98 or Article 100 bis:

(i) the distribution of copies of performances, etc. made in accordance with the provisions of Article 30, paragraph (1), Article 31, item (i), Article 35, Article 37, paragraph (3), Article 41, 42 or 42 bis, or Article 44, paragraph (1) or (2) which apply mutatis mutandis in paragraph (1) of this Article, and the making available to the public of performances, of sounds of phonograms, or of sounds or images of broadcasts or wired diffusions by the use of these copies, for purposes other than those mentioned in these provisions;

(ii) the preservation by broadcasting organizations or wired diffusion organizations of sound or visual recordings in violation of the provisions of Article 44, paragraph (3) which apply mutatis mutandis in paragraph (1) of this Article.

“Article 102 bis: Relationship with a performer’s moral rights

“The provision of Article 102 (other than paragraph (3)) concerning limitation of neighboring rights shall not be interpreted to affect a performer’s moral rights.”

3.2. What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Article 2: Definitions

“(1) As used in this Law, the term ‘unfair competition’ shall mean any of the following acts:

[...]

(xx) ‘technological protection measures’ means measures to prevent or deter such acts as constitute infringements on moral rights or copyright mentioned in Article 17, paragraph (1) or moral rights of performers mentioned in Article 89, paragraph (1) or neighboring rights mentioned in Article 89, paragraph (6)

(hereinafter in this item referred to as ‘copyright, etc.’) (‘deter’ means to deter such acts as constitute infringements on copyright, etc. by causing considerable obstruction to the results of such acts; the same shall apply in Article 30, paragraph (1), item (ii)) by electronic or magnetic means or by other means not perceivable by human perception (in the next item referred to as ‘electro-magnetic means’), excluding such measures as used not at the will of the owner of copyright, etc., which adopt systems of recording in a memory or transmitting such signals as having specific effects on machines used for the exploitation of works, performances, phonograms, broadcasts or wired diffusions (in the next item referred to as ‘works, etc.’) (‘exploitation’ includes acts which would constitute infringements on moral rights if done without the consent of the author or the performer), together with works, performances, phonograms, or sounds or images of broadcasts or wired diffusions.

[...]

“Article 120bis

“The following shall be punishable by imprisonment for a term not exceeding one year or a fine not exceeding one million Yen:

- (i) any person who transfers to the public the ownership of, or lends to the public, manufactures, imports or possesses for transfer of ownership or lending to the public, or offers for the use by the public, a device having a principal function for the circumvention of technological protection measures (such a device includes such a set of parts of a device as can be easily assembled) or copies of a program having a principal function for circumvention of technological protection measures, or transmits publicly or makes transmittable such program;
- (ii) any person who, as a business, circumvents technological protection measures in response to a request from the public;

[...]

“Unfair Competition Prevention Law:

“Article 2: Definitions

“(1) As used in this Law, the term ‘unfair competition’ shall mean any of the following acts:

[...]

- (x) The act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing devices and/or programs having solely a function to circumvent technological measures used commercially to control usage and to prevent illegal reproduction (excluding such measures applied for a person other than those who are authorized to view images, listening sounds, or running programs or recording images, sounds or programs not to view images, listening to sounds, or run programs or record images, sounds or programs.).

(xi) The act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing devices and/or programs, having the sole function of circumventing commercially-used technological measures, which allow a specific person to use or copy the contents to those devices and/or programs, with the exception of such specific person.

“[...]”

“(5) As used in this law, the term ‘technological protective measures’ shall mean such measures that restrict viewing images, listening to sounds or running programs, or recording images, sounds or programs by electromagnetic methods (i.e. electric methods, magnetic methods, and the like which are not perceivable by a person) by the methods stated below:

a) the method in which a signal, which is recorded in recording media or is transmitted together with images, sounds, or programs, makes it impossible to view images, listen to sounds, or run programs by a machine used for viewing images, listening to sounds, or running programs or recording images, sounds or programs, reacting to the aforementioned signal.

b) The method in which encrypted images, sounds or programs are recorded in recording media or are transmitted in a way that only an authorized machine can re-transform these encrypted images, sounds, or programs.”

“Article 3: Right to Request an Injunction

“(1) A person whose business interests are infringed or are likely to be infringed by unfair competition, is entitled to request an injunction preventing or suspending such infringement against the person who is infringing such business interests or is likely to do so.

“(2) A person whose business interests are infringed or are likely to be infringed by unfair competition, is entitled, at the time of the request referred to in the above paragraph, to request the destruction of the objects which constitute the act of infringement (including objects created by the act of infringement) or any other acts necessary to prevent or suspend the infringement.”

“Article 4: Claim for Damages

“A person who intentionally or negligently infringes on the business interests of another person through unfair competition shall be liable to compensate for damages which result therefrom;

[...]”

“Article 13: Penal Provisions

“Any person who falls under any of the following items shall be liable for an imprisonment for a period not exceeding three years or for a fine not exceeding 3,000,000 yen:

- (i) a person who commits, for a non-fair purpose, any act of unfair competition described in Article 2(1)(i) or (x)

[...]

3.3. What obligations are in the Law for the protection of “rights management information?”

“Article 2: Definitions

“(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

[...]

(xxi) ‘rights management information’ means information concerning moral rights or copyright mentioned in Article 17, paragraph (1) or rights mentioned in Article 89, paragraphs (1) to (4) (hereinafter in this item referred to as ‘copyright, etc.’) which falls within any of the following (a), (b) and (c) and which is recorded in a memory or transmitted by electromagnetic means together with works, performances, phonograms, or sounds or images of broadcasts or wire diffusions, excluding such information as not used for knowing how works, etc. are exploited, for conducting business relating to the authorization to exploit works, etc. and for other management of copyright, etc. by computer:

- (a) information which specifies works, etc., owners of copyright, etc. and other matters specified by Cabinet Order;
- (b) information relating to manners and conditions of the exploitation in case where the exploitation of works, etc. is authorized;
- (c) information which enables to specify matters mentioned in (a) or (b) above in comparison with other information.

“[...]

“Article 113: Acts considered to be infringements

“[...]

“(3) The following acts shall be considered to constitute infringements on moral rights, copyright or neighboring rights relating to rights management information concerned:

- (i) the intentional addition of false information as rights management information;
- (ii) the intentional removal or alteration of rights management information excluding the case where such act is conditional upon technology involved in the conversion of recording or transmission systems or other cases where it is deemed unavoidable in the light of the purpose and the manner of exploiting works or performances, etc.;
- (iii) the distribution, importation for distribution or possession for distribution of copies of works or performances, etc. by a person who knows that any act mentioned in the preceding two items has been done concerning such works or performances, etc. or the public transmission or making transmittable of such works or performances, etc. by such person.

“[...]

“Article 120bis

“The following shall be punishable by imprisonment for a term not exceeding one year or a fine not exceeding one million Yen:

[...]

- (iii) any person who, for profit-making purposes, does an act considered to constitute an infringement on moral rights, copyright or neighboring rights under the provisions of Article 113, paragraph (3).”

3.4. Generally, what measures for enforcement of rights are in the Law?

“Article 112: Right of demanding cessation

“(1) Against those who infringe or are likely to infringe moral rights, copyright, right of publication or neighboring rights, the authors, the performers as well as the owners of these rights may make a demand for cessation or prevention of such infringements.

“(2) In making such demand, the authors, the owners of copyright, the owners of right of publication, the performers or the owners of neighboring rights may demand to take measures necessary to effect such cessation or prevention of infringement, such as the abandonment of objects the making of which constituted an infringement, objects made by an infringement or implements and tools used solely for an infringement.”

“Article 113: Acts considered to be infringements

“(1) The following acts shall be considered to constitute infringements on moral rights, copyright, right of publication or neighboring rights:

(i) the importation into this country, for distribution, of objects made by an act which would constitute an infringement on moral rights, copyright, right of publication or neighboring rights if they were made in this country at the time of such importation;

(ii) the distribution or the possession for distribution of objects made by an act infringing moral rights, copyright, right of publication or neighboring rights (including those imported as mentioned in the preceding item) by a person who is aware of such infringement.

“(2) An act of using on a computer, in the conduct of business, copies made by an act infringing copyright in a program work (including copies made by the owner of such copies in accordance with the provision of Article 47 bis, paragraph (1) as well as copies of a program work imported as mentioned in item (i) of the preceding paragraph and copies made by the owner of such imported copies in accordance with the provision of Article 47 bis, paragraph (1)) shall be considered to constitute an infringement on that copyright, so long as a person using such copies is aware of such infringement at the time when he has acquired an authority to use these copies.

“(3) The following acts shall be considered to constitute infringements on moral rights, copyright or neighboring rights relating to rights management information concerned:

(i) the intentional addition of false information as rights management information;

(ii) the intentional removal or alteration of rights management information excluding the case where such act is conditional upon technology involved in the conversion of recording or transmission systems or other cases where it is deemed unavoidable in the light of the purpose and the manner of exploiting works or performances, etc.;

(iii) the distribution, importation for distribution or possession for distribution of copies of works or performances, etc. by a person who knows that any act mentioned in the preceding two items has been done concerning such works or performances, etc. or the public transmission or making transmittable of such works or performances, etc. by such person.

“(4) For the application of the provisions of the preceding paragraph, the right to secondary use fees mentioned in Article 95, paragraph (1) and Article 97, paragraph (1) and the right to remuneration mentioned in Article 95 ter, paragraph (3) and Article 97 ter, paragraph (3) shall be considered as neighboring rights. In this case, ‘the owners of neighboring rights’ in the preceding Articles shall read ‘the owners of neighboring rights (including the owners of the rights considered as neighboring rights in accordance with the provisions of paragraph (4) of the next Article)’, and ‘neighboring rights’ in paragraph (1) of the preceding Articles shall read ‘neighboring rights (including the rights

considered as neighboring rights in accordance with the provisions of paragraph (4) of the next Article)'. ”

“(5) An act of exploitation of a work prejudicial to the honor or reputation of the author shall be considered to constitute an infringement on his moral rights.”

“Article 113bis: Exceptional provision to the right of transfer of ownership in relation to a bona fide third party

“When the ownership of the original or copies of works (excluding copies of cinematographic works (including copies of cinematographic works in cases of works reproduced in cinematographic works); the same shall apply hereinafter in this Article), sound or visual recordings of performances or copies of phonograms has been transferred to a person who does not know or has no negligence in not knowing that such original or copies of works, sound or visual recordings of performances or copies of phonograms do not fall within any of the items of Article 26bis, paragraph (2), Article 95bis, paragraph (3) or Article 97bis, paragraph (2), respectively, an act by such person to transfer to the public the ownership of such original or copies of works, sound or visual recordings of performances or copies of phonograms shall be considered not to constitute an infringement on the rights mentioned in Article 26bis, paragraph (1), Article 95bis, paragraph (1) or Article 97bis, paragraph (1):”

- (i) the original or copies of a work the ownership of which has been transferred to the public by a person who has the right mentioned in the preceding paragraph or with the authorization of such person;
- (ii) copies of a work the ownership of which has been transferred to the public under the authority of a compulsory license under the provisions of Article 67, paragraph (1) or Article 69 or with a license under the provision of Article 5, paragraph (1) of the Law concerning the Exceptional Provision to the Copyright Law required in consequence of the Enforcement of the Universal Copyright Convention (Law No. 86, of 1956);
- (iii) the original or copies of a work the ownership of which has been transferred to a small number of specific persons by a person who has the right mentioned in the preceding paragraph or with the authorization of such person;
- (iv) the original or copies of a work the ownership of which has been transferred, outside the jurisdiction of this Law, without prejudice to the right equivalent to that mentioned in the preceding paragraph or by a person who has the right equivalent to that mentioned in that paragraph or with the authorization of such person.”

“Article 114: Presumption of the amount of damages

“(1) In the case where an owner of copyright, right of publication or neighboring rights claims compensation for damages from a person who has infringed intentionally or negligently any of these rights, the profits, if any, obtained by the infringer from that infringement shall be presumed to be the amount of damages suffered by such owner.

“(2) The owners of copyright and neighboring rights may claim compensation for damages from a person who has infringed intentionally or negligently their copyright or neighboring rights, the amount of damages suffered being that corresponding to the amount of money which would be received by them through the exercise of these rights.

“(3) The provision of the preceding paragraph shall not prejudice any claim to compensation for damages in excess of the amount mentioned therein. In such case, the court may consider the absence of any bad faith or gross negligence on the part of the infringer in fixing the amount of damages.”

“Article 114bis: Submission of documents, etc.

“(1) In a lawsuit relating to infringements on copyright, right of publication or neighboring rights, the court may, at the request of the parties concerned, order them to submit documents necessary for the proof of facts of infringements concerned for the account of damages caused by acts of infringements concerned, except in the case where a possessor of such documents refuses, with reasonable justification, to submit them.

“(2) The court may make a possessor of the documents make available such documents when it deems necessary for judging whether there is such reasonable justification as mentioned in the proviso to the preceding paragraph. In this case, any person may not ask for the disclosure of such documents so made available.

“(3) The provisions of the preceding two paragraphs shall apply *mutatis mutandis* to the making available of such objects of inspection as necessary for the proof of facts of infringements concerned in a lawsuit relating to infringements on copyright, right of publication or neighboring rights.”

“Article 114ter: Duty of the parties concerned to explain to an appraiser

“When the court, in a lawsuit relating to infringements on copyright, right of publication or neighboring rights, has ordered, at the request of the parties concerned, an appraisal as to matters necessary for the account of damages caused by acts of infringements concerned, the parties concerned shall have to explain to an appraiser as to matters necessary for such appraisal.”

“Article 114quarter: Award of a reasonable amount of damages

“In the case where it is found that there has been damages caused in a lawsuit relating to infringements on copyright, right of publication or neighboring rights, if it is extremely difficult from the nature of facts concerned, to prove facts necessary for the proof of the amount of damages, the court may award a reasonable amount of damages based upon all the gist of oral proceedings and the results of the taking of evidence.”

“Article 115: Measures for recovery of honor, etc.

“The author or the performer may demand the person who has infringed his moral rights intentionally or negligently to take measures necessary to identify him as the author or the performer, to correct distortions, mutilations, or modifications or to recover his honor or reputation either in place of indemnification of damages or together with indemnification of damages.”

“Article 116: Measures to protect the moral interests after the death of the author or the performer

“(1) After the death of the author or the performer, his bereaved family (‘bereaved family’ means surviving spouse, children, parents, grandchildren, grandparents, brothers or sisters of the dead author or performer; the same shall apply hereinafter in this Article) may make a demand mentioned in Article 112 of a person who violates or is likely to violate the provision of Article 60 or Article 101 *ter* with respect to the author or the performer concerned, or a demand mentioned in the preceding Article of a person who has infringed moral rights intentionally or negligently or who has violated the provision of Article 60 or Article 101 *ter*.

“(2) Unless otherwise determined by the will of the author or the performer, a demand by the bereaved family mentioned in the preceding paragraph may be made in the order of the enumeration of the bereaved family in that paragraph.

“(3) The author or the performer may appoint by will a person who acts for the bereaved family. In this case, the appointed person may not make a demand after the expiration of a period of fifty years from the year following the date of the death of the author or the performer or, if any bereaved family still survive at the time of such expiration, after the death of all the bereaved family.”

“Article 117: Infringement with respect to a joint work, etc

“(1) Each co-author or, or each co-owner of the copyright in a joint work shall be entitled to make, without the consent of the other co-author or co-owners of the copyright, a demand mentioned in Article 112 or a demand for compensation for damage to his share or a demand for the surrender of unjust enrichment corresponding to his share.

“(2) The provision of the preceding paragraph shall apply *mutatis mutandis* to an infringement on copyright or neighboring rights in co-ownership.”

“Article 118: Safeguard of rights in anonymous or pseudonymous works

“(1) The publisher of an anonymous or pseudonymous work shall be entitled to make, in his own name and in favor of the author or the copyright owner of the work, a demand mentioned in Article 112, or Article 115 or Article 116, paragraph (1) or a demand for compensation or the surrender of unjust enrichment, provided that the

pseudonym is not generally known and that the true name of the author is not registered under the provision of Article 75, paragraph (1).

“(2) A person whose true name or generally known pseudonym is indicated as the name of the publisher in the customary manner on copies of an anonymous or pseudonymous work shall be presumed to be the publisher of that work.”

“Article 119

“The following shall be punishable by imprisonment for a term not exceeding three years or a fine not exceeding three million Yen:

- (i) any person who infringes moral rights, copyright, right of publication or neighboring rights (excluding those who reproduce by themselves works or performances, etc. for the purpose of private use as mentioned in Article 30, paragraph (1) (including the case where retransmission *mutatis mutandis* is provided for under the provision of Article 102, paragraph (1)) or who does an act considered to constitute infringement on moral rights, copyright or neighboring rights (including the rights considered as neighboring rights in accordance with the provisions of Article 113, paragraph (4); the same shall apply in Article 120bis, item (iii)) under Article 113, paragraph (3);
- (ii) any person who, for profit-making purposes, causes others to use automatic reproducing machines mentioned in Article 30, paragraph (1), item (i) for such reproduction of works or performances, etc. as constitutes an infringement on copyright, right of publication or neighboring rights.”

“Article 120

“Any person who violates the provision of Article 60 or Article 101 *ters* shall be punishable by a fine not exceeding three million Yen.”

“Article 120bis

“The following shall be punishable by imprisonment for a term not exceeding one year or a fine not exceeding one million Yen:

- (i) any person who transfers to the public the ownership of, or lends to the public, manufactures, imports or possesses for transfer of ownership or lending to the public, or offers for the use by the public, a device having a principal function for the circumvention of technological protection measures (such a device includes such a set of parts of a device as can be easily assembled) or copies of a program having a principal function for circumvention of technological protection measures, or transmits publicly or makes transmittable such program;
- (ii) any person who, as a business, circumvents technological protection measures in response to a request from the public;

(iii) any person who, for profit making purposes, does an act considered to constitute an infringement on moral rights, copyright or neighboring rights under the provisions of Article 113, paragraph (3).”

“Article 121

“Any person who distributes copies of works on which the true name or generally known pseudonym of an author is indicated as the name of the author (including copies of derivative works on which the true name or generally known pseudonym of a non-author of the original work is indicated as the name of the original author) shall be punishable by imprisonment for a term not exceeding one year or a fine not exceeding one million Yen.”

“Article 121bis

“Any person who makes, distributes or possesses for distribution copies of commercial phonograms reproduced from any of the following commercial phonograms (including copies of such commercial phonograms and those made through one or more intervening copies) shall be punishable by imprisonment for a term not exceeding one year or a fine not exceeding one million Yen, provided that such making, distribution or possession of copies is made within a period of fifty years from the year following the date of the first fixation of sound on matrices of phonograms:

- (i) commercial phonograms which have been manufactured, by those engaging in the business of manufacturing commercial phonograms in this country, from matrices of phonograms (except those phonograms falling within any of the items of Article 8) offered by producers of phonograms;
- (ii) commercial phonograms which have been manufactured, by those engaging in the business of manufacturing commercial phonograms outside the jurisdiction of this Law, from matrices of phonograms (except those phonograms falling within any of the items of Article 8) offered by producers of phonograms who are nationals of any of the Contracting States of the Convention for the Protection of Performers, etc., the members of the World Trade Organization or the Contracting States of the Phonograms Convention (‘nationals’ includes legal persons established under the law of such State or member and those who have their principal offices in such State or member).”

“Article 122

“Any person who violates the provisions of Article 48 or Article 102, paragraph (2) shall be punishable by a fine not exceeding three hundred thousand Yen.”

“Article 123

“(1) In the case of offences under Article 119, Article 120bis, item (ii) and Article 121bis, the prosecutions shall take place only upon the complaint of the injured person.

“(2) A publisher of an anonymous or pseudonymous work may lodge a complaint with respect to such work published by him, except in the cases where the proviso to Article 118, paragraph (1) is applicable and where the complaint is contrary to the express will of the author.”

“Article 124

“(1) Where a representative of a legal person (including an administrator of a juridical association or foundation) or an agent, an employee or any other worker of a legal person or a person violates the provisions mentioned in any of the following items in connection with the business of such legal person or such person, a fine under any of these items shall be imposed upon such legal person, and a fine under any of the Articles mentioned in item (ii) shall be imposed upon such person, in addition to the punishment of the offender:

(i) Article 119, item (i) (except part of the provisions relating to moral rights of the author or the performer): a fine not exceeding a hundred million yen;

(ii) Article 119, item (i) (only part of the provisions relating to moral rights of the author or the performer) or (ii), or Article 120 to 122: a fine under any of these Articles.

“(2) In the case where the provision of the preceding paragraph applies to a juridical association or foundation, its representative or administrator shall represent such association or foundation with regard to proceedings, and the provisions of the Code of Criminal Procedure which are applicable when a legal person is the accused or the suspect shall apply *mutatis mutandis*.

“(3) In the case of paragraph (1), a complaint lodged against an offender or the withdrawal of such complaints shall be effective also with respect to the legal person or the person concerned, and a complaint lodged against a legal person or a person or the withdrawal of such complaints shall be effective also with respect to the offender concerned.”

3.5. How does the law define the liability of the Internet service providers?

“The Law on Restrictions on the Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identity Information of the Sender (Law No. 137 of 30 November 2001) (Provisional Translation

“Article 1: Summary

“This Law prescribes restrictions on the liability for damages of specified telecommunications service providers and the right to demand disclosure of identity information of the sender in a case where a right is infringed due to the distribution of information by means of specified telecommunications.”

“Article 2: Definitions

“In this Law, with respect to the meaning of the terms given in the following items, the definition set forth in each item shall apply:

- i) ‘Specified telecommunications’ mean the transmission (except the transmission of telecommunications (this means telecommunications provided for in Article 2, item 1 of the Telecommunications Business Law (Law No. 86 of 1984); hereinafter in this item the same shall apply) intended to be directly received by the public) of telecommunications intended to be received by unspecified persons;
- ii) ‘Specified telecommunications facilities’ mean telecommunications facilities (this means telecommunications facilities provided for in Article 2, item 2 of the Telecommunications Business Law) provided for specified telecommunications;
- iii) ‘Specified telecommunications service provider’ mean a person who intermediates the communications of others through the use of specified telecommunications facilities or any other acts of providing specified telecommunications facilities for the use of communications of others;
- iv) ‘Sender’ mean a person who records information in the storage medium of specified telecommunications facilities (limited to specified telecommunications facilities from which information recorded in said recording medium is transmitted to unspecified persons) used by a specified telecommunications service provider or entered in information into the transmission equipment (limited to transmission equipment from which information entered into said transmission equipment is transmitted to unspecified persons) of said specified telecommunications facilities”

“Article 3: Restriction on Liability for Damages

“(1) If the right of a third party is infringed due to the distribution of information by means of specified telecommunications, a specified telecommunications service provider who uses specified telecommunications facilities supplied for the specified telecommunications concerned (hereinafter referred to in this article as the ‘service provider concerned’) shall not be liable for damages regarding the harm caused by the distribution unless it is technically possible to take measures to prevent the transmission of the information that infringed a right to unspecified persons and at the same time either of the following items applies; provided, however, that the foregoing shall not apply if the service provider concerned is the sender of the information that infringed a right:

- i) the service provider concerned knew that the right of another person would be infringed due to the distribution of information by means of the specified telecommunications concerned; or
- ii) in a case where the service provider concerned knew of the distribution of information by means of the specified telecommunications concerned, there is

good ground sufficient to find that the service provider concerned could have known that the right of another person would be infringed due to the distribution of information by means of the specified telecommunications concerned.

“(2) In a case where a specified telecommunications service provider takes measures to prevent the transmission of the information by means of specified telecommunications, the specified telecommunications service providers shall not be liable for damages of the sender of the information whose transmission was prevented by said measures, if any of the following items applies and if the measures concerned were taken to the degree necessary to prevent the transmission of the information concerned to unspecified persons:

- i) there was good ground sufficient for the specified telecommunications service provider concerned to believe that the right of another person would be wrongfully infringed due to the distribution of information by means of the specified telecommunications concerned; or
- ii) if, in a case where the specified telecommunications service provider concerned has received a notice from a person who claims that his or her right was infringed due to the distribution of information by means of the specified telecommunications, indicating the information claimed to infringe the right concerned (hereinafter referred to as ‘infringing information’), the right claimed to be infringed and the basis for the claim of infringement (hereinafter in this item referred to as ‘infringing information, etc.’) and requests that the provider take measures to prevent the transmission of the infringing information (hereinafter referred to as ‘transmission prevention measures’), the specified telecommunications service provider concerned indicates the infringing information, etc. to the sender of the infringing information concerned and asks for the sender’s consent to take transmission prevention measures, the provider does not receive from the sender concerned a notice to the effect that the sender denies consent to said transmission prevention measures within seven days of the sender’s receipt of the inquiry concerned.”

“Article 4. The Right to Demand for Disclosure of Identity Information of the Sender, etc.

“(1) A person who claims that his or her right was infringed due to the distribution of information by means of the specified telecommunications may, only if any of the following items applies, demand that a specified telecommunications service provider whose specified telecommunications facilities supplied for the specified telecommunications concerned (hereinafter referred to as the “service provider concerned”) in this article disclose identity information of the sender (name, address and other information that would identify the sender of infringing information and that is stipulated by Ordinance of the Ministry of Public Management, Home Affairs, Posts and Telecommunications; hereinafter the same shall apply) that the service provider concerned possesses relating to the sender involved in the infringement of a right:

- i) it is clear that the right of the person demanding disclosure has been infringed due to the distribution of the infringing information; or

ii) the identity information of the sender concerned is necessary for the person demanding disclosure to exercise his or her right to claim damages or there is other good cause to receive the disclosure of identity information of the sender.

“(2) Upon receipt of the demand for disclosure provided for in the preceding paragraph, the service provider concerned shall hear the opinion of the sender whether identity information of the sender concerned should be disclosed except where the provider is unable to contact the sender of the infringing information involved in the demand for disclosure or there are other special circumstances.

“(3) A person who receives disclosure pursuant to the provisions of paragraph 1 shall not use the identity information of the sender concerned unreasonably or wrongfully commit any act that injures the reputation or the peaceable life of the sender concerned.

“(4) Except in a case of intention or gross negligence, the service provider concerned shall not be liable for harm due to the provider’s failure to respond to the demand for disclosure provided for in paragraph 1; provided, however, that the foregoing shall not apply in a case where the service provider concerned is the sender of the infringing information involved in the demand for disclosure.”

“Supplemental Provisions

“This Law shall come into force as from the date stipulated in the applicable cabinet ordinance within six months from the date of promulgation.”

3.6 Are there any provisions in the Law on temporary storage?

Article 21: Right of reproduction

“The author shall have the exclusive right to reproduce his work.”

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions or rights provided in the Law?

“Article 30: Reproduction for private use

“(1) It shall be permissible for a user to reproduce by himself a work forming the subject matter of copyright (hereinafter in this Subsection referred to as a ‘work’) for the purpose of his personal use, family use or other similar uses within a limited circle (hereinafter referred to as ‘private use’), except in the case:

[...]

(ii) where such reproduction is made by a person who knows that such reproduction becomes possible by the circumvention of technological protection measures or it ceases to cause obstruction, by such circumvention, to the results of acts deterred by such measures; (‘removal’ or ‘alteration’ does not include such

removal or alteration is conditional upon technology involved in the conversion of recording or transmission systems).

“[...]”

“*Unfair Competition Prevention Law*:

“*Article 12: Exemptions*

“(1) The provisions of Articles 3 to 8, 13 (excluding those portions concerning items 3 thereof) and 14 do not apply to the following acts of unfair competition:

[...]

(vii) With regard to unfair competition as described in Article 2(1)(x) and the act of assigning, delivering, displaying for the purpose of assignment or delivery, exporting or importing devices or programs as described in Article 2(1)(x) and (xi), for the purpose of testing and/or research of technological preventive measures. (xi):

“[...]”

KYRGYZSTAN

(Law Reviewed: Law of the Kyrgyz Republic on Copyright and Neighboring Rights of January 14, 1998, as amended by the Laws of November 6, 1999, and of June 20, 2001)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Article 6. Works Protected by Copyright (subject matter of copyright).

[...]

“4. Ideas, methods, processes, systems, means, concepts, principles, discoveries and facts may not be protected by copyright.

[...]”

1.2 Are computer programs protected in the Law as literary works?

“Article 4. Basic Concepts

“For the purposes of this Law the following terms shall have the meanings specified:

[...]

‘computer program’ means a complex of instructions or rules expressed in words, numbers, codes, symbols, signs or any other form designated for the operation of computers and other computer devices to achieve a certain purpose or result.

[...]”

“Article 7. Types of Objects of Copyright. Part of Work, Derivative and Composite Works

“1. The following shall be referred to the objects of copyright:

[...]

computer software for all types of computers including applied programs and operating systems.

[...]”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law the following terms shall have the meanings specified:

[...]

‘database’ means an objective form for the representation and organization of a body of data (relating to articles, accounts and etc.), so systematized so as to be susceptible of retrieval and processing with a computer;

[...]”

“Article 7. Types of Objects of Copyright. Parts of Work, Derivative and Composite Works

[...]

“2. [...]

“The composite work shall include compilations (encyclopedias, anthologies) and other composite works that according to their selection and arrangement present the result of creative labor.

“3. The derived and composite works shall be protected by copyright irrespective of whether or not the works, on which they are based or on which they include, are objects of copyright.”

1.4 Is there a right of distribution in the Law?

“Article 16. Economic Rights

“1. The author shall enjoy the exclusive right to use his work in any form and by any means.

“2. The exclusive rights of the author to exploit shall be construed to mean the right to perform or authorize the following actions:

[...]

Distribution of copies of the work by any means, including sale, rental and etc., (right of distribution)

[...]

“3. Where copies of a lawfully legitimately published work have been put into circulation by means of sale, their subsequent distributions shall not require authorization

by the author and shall not give rise to the payment of remuneration to the author without consent of the author and payment of author's remuneration.

"[...]"

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

"Article 4. Basic Concepts"

"For the purposes of this Law the following terms shall have the meanings specified:

[...]

'rental' means making a copy of a work or phonogram temporarily available for direct or indirect commercial profit.

"[...]"

"Article 16. Economic Rights"

"1. The author shall enjoy the exclusive right to use his work in any form and by any means.

"2. The exclusive right of the author to exploit his work shall be construed to mean the right to perform or authorize the following actions:

[...]

Distribution of copies of the work by any means, including sale, rental and etc., (right of distribution);

[...]

"3. Where copies of a lawfully legitimately published work have been put into circulation by means of sale, their subsequent distributions shall not require authorization by the author and shall not give rise to the payment of remuneration to the author without consent of the author and payment of author's remuneration.

"The right to distribute copies of a work by means of rental of an audio-visual work, computer software, database, work fixed in a phonogram, and musical notation shall belong to the author regardless of the property right to such copies.

"[...]"

1.6 Is there a right of communication to the public in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law the following terms shall have the meanings specified:

[...]

‘communicate’ means to show, perform, broadcast or engage in any other act (except for distribution of copies of the work or phonogram), whereby works, phonograms, performances, or programs of broadcasting or cable distribution organizations are made audible or visible whether or not they are actually perceived by the public;

‘communicate to the public by cable’ means to communicate works, phonograms, performances, or programs of broadcasting or cable distribution organization to the public by cable, wire, optic fiber or comparable means;

[...]”

“Article 16. Economic Rights

“1. The author shall enjoy the exclusive right to use his work in any form and by any means.

“2. The exclusive rights of the author to exploit shall be construed to mean the right to perform or authorize the following actions:

[...]

Communication of the work to the public by broadcasting and/or rebroadcasting (right of broadcasting);

Communication of the work to the public by cable, wire or comparable means (right of communication to the public by cable).

“[...]”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

Not found in the Law reviewed.

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Article 7. Types of Objects of Copyright. Part of Work, Derivative and Composite Works

“1. The following shall be referred to the objects of copyright:

[...]

photographic works and works obtained by way analogous to photography;

“[...]”

“Article 27. Term of Copyright

“1. The copyright shall be valid during the lifetime of the author and for fifty years after his death, beginning from the first of January of the year following the year of the author’s death.

“2. The copyright to a work created in joint authorship shall be effective during the whole life of co-authors and fifty years after the death of the last co-author who outlived other co-authors.

“3. The copyright to a work issued for the first time under pseudonym or anonymously shall have effect during fifty years beginning from the first of January of the year following the year the work was published. If a pseudonym or an anonymous name is disclosed during the established term, the terms indicated in paragraph 1 of this Article shall be applied.

“4. The copyright shall belong to the author’s heirs and inherited during the terms indicated in paragraph 1 of this Article. During the same terms the copyright shall belong to successors who obtained this right due to the agreement with the author, his heirs and future legal successors.

“5. The copyright in a posthumous work shall have effect for fifty years after the publication of the work, beginning from January 1 after the year following the year of its publication.

“6. The authorship, name of the author and inviolability of the work shall be protected permanently.”

1.9 What is the effective time -frame for application of the rights in the Law?

“Article 51. Enactment of the Present Law

“[...]

“4. The Law shall extend to the works and objects of neighboring rights that have not been earlier protected by copyright, for the period remaining before expiration of 50 years from the date of their legitimate publication or before expiration of 50 years as of the date of their creation if not promulgated.

“[...]

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law the following terms shall have the meanings specified:

[...]

‘performer’ means the actor, singer, musician, dancer or any other person who performs songs, plays on a musical instrument or in any other way a literary or artistic work (including a variety turn, circus act or puppet show), as well as the producer or director of a play and the orchestra conductor;

[...]”

2.1.2 Is “phonogram” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law the following terms shall have the meanings specified:

[...]

‘phonogram’ means any exclusive sound recording of performances or other sounds, which may be perceived or reproduced on any other material medium;

[...]”

2.1.3 Is “fixation” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law the following terms shall have the meanings specified:

[...]

‘recording’ means the fixing, with technical aids, of sounds and/or images in any material form that permits them to be repeatedly perceived, reproduced or communicated;

[...]”

2.1.4 Is “producer of phonogram” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law the following terms shall have the meanings specified:

[...]

‘producer of phonogram’ means a natural person or a legal entity that has assumed the initiative and responsibility for the first sound recording of performance or other sounds, where such a person must produce it physically or order it and pay for the production; unless proved otherwise, the natural person or legal entity whose name is indicated on a phonogram and (or) its case in the usual manner shall be recognized a producer of phonogram;

[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law the following terms shall have the meanings specified:

[...]

‘publication’ means the putting into circulation of copies of the work or phonogram with the consent of the author of such work or phonogram producer and in sufficient quantity to meet the reasonable needs of the public. Publication is also understood as providing access to a work, phonogram, via electronic information systems;

[...]”

2.1.6 Is “broadcasting” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law the following terms shall have the meanings specified:

[...]

‘broadcasting’ means the communication to the public of works, phonograms, performances or programs of broadcasting or cable distribution organizations (including broadcasts of the presentation and/or performance) by means of transmission by radio or television (with the exception of cable television); where works, phonograms, performances or programs of broadcasting or cable distribution organizations are relayed by satellite, broadcasting means the act whereby the satellite receives signals from the ground station and retransmits those signals in such a way that works, phonograms, performances, and programs of broadcasting or cable distribution organizations may be communicated to the public, independently of their actual reception of the said public;

[...]”

2.1.7 Is “communication to the public” defined in the Law?

“Article 4. Basic Concepts

“For the purposes of this Law the following terms shall have the meanings specified:

[...]

‘public demonstration, public performance or communication to the public’ means any presentation, performance or communication of works, phonograms, performances, and other production or broadcasts of broadcasting, and cable distribution organizations either directly or with technical aids, in a public place or a place in which a large number of persons not belonging to the usual family circle are present irrespective of whether the works, phonograms, performances, other productions or broadcasts by broadcasting or cable distribution organizations are perceived at the place of the communication or in another place at the same time as the communication;

[...]

‘communicate’ means to show, perform, broadcast or engage in any other act (except for distribution of copies of the work or phonogram), whereby works, phonograms, performances, or programs of broadcasting or cable distribution organizations are made audible or visible whether or not they are actually perceived by the public;

[...]”

2.2 Istheconceptof“nationaltreatment”containedintheLaw?

“Article34.ScopeofNeighboringRights

“[...]

“4) Therightsofforeignperformers,producersofphonograms,radio,televisionand cabledistributionorganizationsshallberecognizedintheterritoryoftheKyrgyz Republicaccordingtotheinternational agreementsoftheKyrgyzRepublic.”

2.3 DopersformershavemoralrightsintheLaw?

“Article37.RightsofthePerformer

“1. WiththeexceptionofcasesprovidedbythisLaw,theperformersshallenjoythe followingpersonalnon -economicandeconomicrightstohis/herperformanceor staging:

- therighttobenamed;
- therighttotheprotectionoftheperformanceorstagingagainstanystany distortionorotherderogatoryactliabletoprejudicehishonoranddignity;and therighttoexploittheper formanceorstaginginanyform,includingtherightto bepaidremunerationforeachsuchformofuseoftheperformanceorstaging.

“[...]

2.4 Dopersformershaveeconomicrightsintheirunfixedperformances,andifso,which ones?

“Article37.Rig htsofthePerformer

“1. WiththeexceptionofcasesprovidedbythisLaw,theperformersshallenjoythe followingpersonalnon -economicandeconomicrightstohis/herperformanceor staging:

[...]

[...]andtherighttoexploittheperformanceorstagi nginanyform,includingthe righttobepaidremunerationforeachsuchformofuseoftheperformanceor staging.

[...]

“2. The exclusive right to exploit the performance or stagings shall mean the right to perform, authorize or prohibit the following acts:

- 1) broadcasting or cable communication of the performance or staging to the public insofar as the performance or staging used for such a program has not been broadcast previously or is not effected on the basis of a recording;
- 2) recording of a previously unrecorded performance or staging;

“[...]”

2.5 Do performers have a right of reproduction in the Law?

“Article 37. Rights of the Performer

“1. With the exception of cases provided by this Law, the performers shall enjoy the following personal non-economic and economic rights to his/her performance or staging:

[...]

[...] and the right to exploit the performance or staging in any form, including the right to be paid remuneration for each such form of use of the performance or staging.

“2. The exclusive right to exploit the performance or stagings shall mean the right to perform, authorize or prohibit the following acts:

[...]

- 3) reproduction of the recording of a performance;

[...]”

2.6 Do performers have a right of distribution in the Law?

Not found in the Law reviewed.

2.7 Do performers have a right of rental in the Law?

“Article 37. Rights of the Performer

“1. With the exception of cases provided by this Law, the performers shall enjoy the following personal non-economic and economic rights to his/her performance or staging:

[...]

[...]andtherighttoexploittheperformanceorstaginginanyform,includingtherighttobepaidremunerationforeachsuchformofuseoftheperformanceorstaging.

“2. Theexclusive rightstoexploittheperformanceorstagingshallmeantherightto perform,authorizeorprohibitthefollowingacts:

[...]

5) rentalofaphonogrampublishedforcommercialpurposes,onwhicha performancehasbeenrecordedwiththeparticipationoftheperformer. Theright shallbetransferredtotheproducerofaphonogramontheconclusionofa contractforthecordingoftheperformanceorstagingonaphonogram;inthis casetheperformershallneverthelessretaintherighttoremunerationforrentalof copiesofaphonogram(point2,Article39ofthisLaw).

[...]”

2.8 Dop performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9 Doproducers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 38. Rights of the Phonogram Producer

“1. Except as provided by this Law, the producer of a phonogram shall enjoy the exclusive right to exploit the phonogram in any form, including the right to remuneration for each form of use of this phonogram.

“The exclusive right to use the phonogram shall mean the right to perform or authorize the following act:

“1) reproduction of the phonogram;

“[...]”

2.10 Doproducers have a right of distribution in the Law?

“Article 38. Rights of the Phonogram Producer

“1. Except as provided by this Law, the producer of a phonogram shall enjoy the exclusive right to exploit the phonogram in any form, including the right to remuneration for each form of use of this phonogram.

“The exclusive right to use the phonogram shall mean the right to perform or authorize the following act:

[...]

“3) distribution of copies of the phonogram, for instance by sale, rental, etc.;

“[...]”

2.11 Do producers have a right of rental in the Law?

“Article 38. Rights of the Phonogram Producer

“1. Except as provided by this Law, the producer of a phonogram shall enjoy the exclusive right to exploit the phonogram in any form, including the right to remuneration for each form of use of this phonogram.

“The exclusive right to use the phonogram shall mean the right to perform or authorize the following act:

[...]

3) distribution of copies of the phonogram, for instance by sale, rental, etc.;

“[...]”

2.12 Do producers have a right of making available of phonograms in the Law?

Not found in the Law reviewed.

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 39. Use of a Phonogram Published for Commercial Purposes without the Consent of the Producer of Phonogram and the Performer

“1. As an exception to the provisions of Articles 37 and 38 of this Law, the following acts shall be authorized without consent of the producer of a phonogram published for commercial purposes and the performer, whose performance is recorded on such a phonogram, but against payment of remuneration:

- 1) public performance of the phonogram;
- 2) broadcasting of the phonogram; and
- 3) communication of the phonogram to the public by cable.

“2. Remuneration provided by paragraph 1 of this Article shall be collected, distributed and paid out by an organization for the collective administration of the rights of producers of phonograms and performers (Article 44 of this Law) pursuant to the agreement concluded between these organizations. Except where otherwise provided in the said agreement, the remunerations shall be split equally between the producer of a phonogram and the performer.

“[...]”

2.14 Are rights in the Law subject to any formalities?

“Article 36. Subjects of Neighboring Rights

“1. The subjects of neighboring rights shall include performers, phonogram producers, and broadcasting and cable distribution organizations.

“[...]”

“4. The origin and exercise of neighboring rights shall not be subject to compliance with any formality. The producer of a phonogram and performer, in order to publicize their rights, have the right to make use of a reserved rights notice which is affixed to each copy and/or one every inlay card of such a phonogram and should consist of three components:

- a circled Latin letter P 
- the name of the owner of the exclusive rights; and
- the year of first publication of the phonogram.

“5. The performer, producer of a phonogram, broadcasting and cable distribution organizations have the right to register their performance, staging, phonogram and broadcast at any time during the effective term of neighboring rights protection in the state registers. A person registering the object of neighboring rights shall be granted a certificate in the established form. Kyrgyz patents shall carry out registration. da

“Fees in the amount spent on registrations shall be charged for the registration of the objects of neighboring rights. (as amended by Law #120 from November 6, 1999).”

2.15 What is the term of protection for:

2.15.1 performers?

“Article 43. Term of Neighboring Rights

“1. The rights of the performer provided in this Title shall remain effective for 50 years following the first performance.

“The performer’s rights to be named and to have the performance protected against any distortion or any other derogatory act, laid down in Article 37 of this Law shall be protected without limitation in time.

“[...]

2.15.2 producers of phonograms?

“Article 43. Term of Neighboring Rights

“[...]

“2. The rights provided by this Title to the phonogram producers shall remain in effect for 50 years following the first publication of the phonogram or during 50 years following the first recording if the phonogram has not been published in the course of that period.

“[...]

2.16 What is the effective time-frame for application of rights in the Law?

“Article 51. Enactment of the Present Law

“[...]

“2. The present Law shall extend to the relations on creation as well as use of copyright and neighboring rights objects arisen after its implementation.

“[...]

“4. The Law shall extend to the works and objects of neighboring rights that have not been earlier protected by copyright, for the period remaining before expiration of 50 years from the date of its legitimate publication or before expiration of 50 years as of the date of its creation if not promulgated.

“[...]

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 16. Economic Rights

“[...]

“5. The rights of authors specified in paragraph 2 of this Article shall be subject to limitations specified in Articles 18 to 26 of this Law which shall apply insofar as the uses in question do not unjustifiably prejudice the normal exploitation of the work and do not without valid reason violate the legitimate interests of the author.”

“Article 18. Reproduction of Works for Personal Purposes without the Author’s Consent and Payment of Author’s Remuneration

“1. The reproduction of a lawfully disclosed work for exclusively personal purposes shall be authorized without need for author’s consent or payment of remuneration except in the cases provided for in Article 26 of this Law.

“2. The provisions of the first paragraph of this Article shall not apply in relation to:

Reproduction of architectural works in the form of comparable buildings and structures;

Reproduction of databases or substantial parts thereof;

Reproduction of computer programs with the exception of cases provided for in Article 25 of this Law;

Reproduction of books (in full) and musical scores.”

“Article 19. Use of a Work without Consent of the Author and Payment of Author’s Remuneration

“1. The following shall be authorized without the author’s consent and without payment of author’s remuneration but with obligatory indication of the author’s name whose work is used and the source of the borrowing:

1) The quotation from lawfully disclosed works in the original and translation for scientific, research, polemic, critical and information purposes to the extent justified by the purpose of such quotation, including reproduction of excerpts from newspaper and magazine articles in the form of press reviews;

2) The use of lawfully disclosed works and excerpts therefrom as illustrations in publications, radio and TV broadcasts and educational audio and video recording to the extent justified by the intended purpose;

- 3) Thereproductioninnewspapers,thebroadcastingorcommunicationto generalpublicbycableoflegitimatelypublishedarticlesinn ewspapersor magazinesoncurrenteconomic,politics,socialandreligioustopicsorof broadcastworksofthesamenatureincaseswheresuchreproduction,broadcast orcommunicationbycablehavenotbeenexpresslyprohibitedbytheauthor;
- 4) Thereproductioninnewspapers,thebroadcastingorcommunicationtothe publicbycableofpoliticalspeeches,addresses,lecturesandotherworksofthe samenaturegiveninpublictotheextentjustifiedbyaninformationalpurpose.In suchcasestheauthorshallretaintherighttopublicationofsuchworks in collections;
- 5) Thereproductionorcommunicationofthecurrenteventstothe publicin reviewsby meansofphotography,broadcastingorpubliccablecommunicationof worksthatareseenorheardinthecourseofsucheventstotheextentjustifiedby theinformationalpurpose.Insuchcasestheauthorshallretaintherightto publicationofsuchworksincollections;
- 6) Thereproductionoflawfullypublishedworkswithoutgainfulintentby usingthe Braillesystemorotherspecialmeansfortheblind,exceptforworks specificallycreatedforsuchmeansofreproduction.

“2. Exportofcopyofaworkbynaturalpersonwithoutconsentoftheauthororother ownersofcopyrightandwithoutpaymentofremunerationshallbeallowedonlyfor personalpurposes,withtheexceptionoftheworks,exportofwhichdamages the nationalinterestoftherepublic,thelistofwhichisdeterminedintheestablished order.”

“Article20.UseofWorksbyReprographicReproduction”

“Thefollowingmaybereproducedinasinglecopywithoutgainfulintentandwithout theauthor’sconsentandpaymentofremuneration,butwithobligatoryindicationofthe author’snamewhoseworksareusedandthesourceoftheborrowing:

- 1) Ofalawfullypublishedworksinssofarasthereproductionoftheworkby librariesandarchiveserviceanditspurposeistorestoreorreplacelostor damagedcopiesandprovidetheworktootherlibrariesthatonsomereasonsdo nothavelostworksfromtheircollections;
- 2) Isolatedarticlesandsuccinctworkslawfullypublishedincollections, newspapersorotherperiodicalpublications,andshortextractsfromlegitimately publishedwrittenworks(withorwithoutillustrations)bylibrariesandarchivesas requestedbyindividualsforeducationalandresearchpurposes;and
- 3) Isolatedarticlesandsuccinctworkslawfullypublishedincollections, newspapersandotherperiodicalpublicationsorofshortextractsfromlegitimately publishedwritten works(withorwithoutillustrations)byeducationalinstitutions tobeusedinclasses.”

“Article 21. Free Use of Works Permanently Located in a Public Place

“The works of architecture, photography or fine arts permanently located in a place open to general public may be reproduced, broadcast, or communicated to the public by cable without the author’s consent and payment of author’s remuneration, with the exception of cases where the presentation of the work constitutes the main feature of the said production, broadcast or communication to the public by cable or if it is used for commercial purposes.”

“Article 22. Free Public Performance

“Musical works may be performed publicly without the author’s consent and payment of the author’s remuneration during official and religious ceremonies, as well as funerals, to such extent as may be justified by the nature of the said ceremonies.”

“Article 23. Free Reproduction for Judicial and Administrative Purposes

“Works may be reproduced without the author’s consent and payment of author’s remuneration for the purposes of judicial or administrative proceedings to the extent justified by this purpose.”

“Article 24. Free Ephemeral Recording by a Broadcasting Organization

“Radio or television broadcasting organization may, without consent of the author and payment of any additional remuneration, make an ephemeral recording of a work for which such an organization has obtained the right to broadcast provided that such recording is made by a broadcasting organization with its own equipment and for its own broadcasts. The broadcasting organization is obligated to destroy such recording within six months after it was made unless a longer term has been agreed upon with the author of the recorded work. Such recording may be preserved in official archives without the author’s consent if it is of purely documentary nature.”

“Article 25. Free Reproduction of Computer Software and Databases. Decompilation of Computer Programs

“1. A person lawfully in possession of a copy of a computer program or database shall have the right, without obtaining permission of the author or other owner of the exclusive right, to use such work and without paying any additional remuneration:

- 1) make alterations to the computer software or database exclusively where the purpose thereof is solely to ensure their operation on the user’s material, and perform any act in relation to the operation of the computer program or database according to its intended purpose, including any inputting or storing in computer memory (that of an individual or that of one of computers in a network), as well as correction of obvious errors, unless otherwise provided by the contract concluded with the author; and

2) make a copy of the computer program or database provided that this copy is solely for archiving or for replacement of a lawfully acquired copy in the event that the original of the software or database having been lost, destroyed or rendered useless. In these events the copy of computer program or database may not be used for purposes other than stipulated in subparagraph (1) of this paragraph and must be destroyed should the possession of the copy of this computer program or database cease to be lawful.

“2. Any person lawfully in possession of a copy of a computer program may without permission of the author or any other holder of the exclusive rights and without payment of additional remuneration, reproduce or convert the object code into a source code (decompile the computer program) or entrust to other persons to provide these actions if it is necessary to achieve the ability of a computer program independently developed by this person to interact with other programs which may interact with program being decompiled provided that the following conditions are observed:

- 1) the person concerned must not previously have had access to other sources capable of providing them with the information necessary to insure the interactive capability;
- 2) the acts mentioned must only be performed in relation to the parts of the computer program the decompilation of which is essential to the achievement of the interactive capability;
- 3) the information obtained in the result of decompilation may only be used to achieve the interactive capability of independently created computer software with other programs and may not be passed on to third parties except where necessary to insure the interactive capability of the independently created computer program and it may not be used for the development of a computer program of a type essentially comparable to the decompiled computer software or performance of any other action prejudicial to copyright.

“3. Application of the provisions of this Article must not cause unjustifiable affect the normal use of a computer software or database and infringe upon the legitimate interests of the author or any other holder of the exclusive rights to such computer program or database.”

“Article 26. Reproduction of the Work for Personal Purposes without Author’s Consent but Subject to Payment of Author’s Remuneration

“1. Notwithstanding the provisions of Articles 16, 37 and 38 of this Law, the reproduction of an audiovisual work or sound recording of a work for exclusively personal purposes shall be permissible without consent of the author of a work, performer and phonogram producers, but subject to payment of remuneration to them.

“2. The remuneration for the reproduction referred to in paragraph 1 of this Article shall be paid by the manufacturer or importers of the equipment (audio and video recorders and other equipment) and recording material (sound and/or video recording and cassettes, optical disks, compact discs and other material media) used for such reproduction.

“This remuneration shall be collected and distributed by one of the organizations for collective administration of the economic rights of the authors, phonogram producers and performers under an agreement concluded with the said organization (Article 45 of this Law). Unless otherwise provided by this agreement, remuneration shall be distributed as follows: forty per cent shall go to the authors, thirty per cent shall go to the performers, and thirty per cent to the phonogram producers.

“The amount of remuneration and the manner of its payments shall be determined by an agreement between the aforementioned manufacturers and importers on the one hand, and the organizations managing economic rights of authors, phonogram producers and performers on a collective basis on the other hand, but if the parties fail to reach such an agreement, by Kyrgyz patent.

“3. No remuneration shall be paid for the recording equipment and material referred to in paragraph 2 of this Article which are subject to export, or constitute professional equipment not intended for use for home recording.”

“Article 42. Limits of the Rights of the Performer, the Phonogram Producer, the Broadcasting or Cable Distribution Organization

“1. Notwithstanding the provisions of Articles 37 to 41 of this Law it shall be permissible without consent from the performer, the phonogram producer and the broadcasting or cable distribution organization, and without payment of remuneration, to make use of the performance or the broadcast or cable program or the recording thereof, and to reproduce phonograms:

- 1) for the inclusion in a report on current events or short excerpts from the performance, the phonogram, the broadcast or cable program;
- 2) for the sole purposes of teaching or scientific research;
- 3) as a means of quoting in the form of short excerpts from such performance, the phonogram or the broadcast or cable program provided that such quotation is done for information purposes. In this case any use of copies of a phonogram published for commercial purposes by broadcasting or cable distribution organizations shall be allowed for broadcasting or cable distribution only in compliance with the provisions of Article 39 of this Law; and
- 4) in the other cases set forth by the provisions of Articles 18 and 25 of this Law for the limitation of economic rights of the author of works of literature, science and arts.

“2. As an exception to provisions of Article 37 to 41 of this Law, the program may be used for broadcasting and cable distribution organization and its recording and a phonogram may be reproduced for personal purposes without consent of the performer, producer of a phonogram, and broadcasting or cable program. Reproduction of the phonogram shall be permissible against payment of remuneration under Article 26 of this Law.

“3. The provisions of Article 37, 38, 40 and 41 of this Law concerning the authorization of the performer, producer of a phonogram or radio broadcasting and cable TV organization to make a short-term use of recordings of a performance, program, reproduces such recordings and reproduce a phonogram published for commercial purposes if such a short-term use of the ephemeral recording or the reproduction is made by broadcasting or cable distribution organization on its own equipment and for the purposes of its own broadcasts shall not be applied based upon the condition that:

- 1) the broadcasting organization has obtained prior authorization to broadcast the performance or the program of which an ephemeral recording is made or performed under the provisions of this paragraph; and
- 2) the ephemeral recording is destroyed within the period laid down for ephemeral recordings of works of literature, science and the arts made for the short-term use by the broadcasting organization pursuant to the provisions of Article 24 of this Law, with the exception of a single copy which may be preserved in official archives if it is of purely documentary character.

“4. The limitations stipulated in this Article shall not prejudice either normal exploitation of the phonogram, the performance, or the program broadcast or cable transmission and recordings thereof, as well as the normal exploitation of works of literature, science and the arts incorporated therein, and it shall likewise prejudice the legitimate interests of the performer, producer of the phonogram, the broadcasting or cable distribution organization and the author of the works in question.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

Not found in the Law reviewed.

3.3 What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4 Generally, what measures for enforcement of rights are in the Law?

“Article 48. Violation of Copyright and Neighboring Rights

“Violation of the copyright and neighboring rights provided by this Law shall make the offender liable to civil, criminal and administrative sanctions pursuant to legislation of the Kyrgyz Republic.”

“Article 49. Civil - Legal and Other Measures for Protection of Copyright and Neighboring Rights

“1. Protection of copyright and neighboring rights is carried out by the court by way of:

- 1) recognition of the said rights;
- 2) restoration of the situation obtaining prior to the infringement of the right;
- 3) cessation of facts that infringe or create a threat of infringement;
- 4) payment of damages;
- 5) the surrender, in place of the payment of damages, of revenue derived by the infringer from the infringement;
- 6) payment, in place of damages or the surrender of revenue, of an indemnity in an amount between 20 and 50 000 times the minimum salary set by the legislation of the Kyrgyz Republic, at the discretion of the court;
- 7) the adoption of such other measures provided for in legislative texts and related to protection of their rights.

“The choice between the measures referred to in subparagraphs 4, 5 and 6 of this paragraph shall be made by the owner of the copyright and neighboring rights.

“2. For the defense of his/her exclusive rights the owner of copyright or neighboring rights may, according to the established procedure, bring action before a court, arbitration court, private arbitration, investigation body or bodies of preliminary investigation according to the competence thereof.

“3. The counterfeit copies of the works or phonograms shall be subject to mandatory confiscation on the decision of the court or a single judge as well as the decision of the arbitration court. The confiscated counterfeit copies of the work or phonograms shall be destroyed, except for the cases when such copies are transferred to the owner of the copyright or neighboring rights, by his request. The court or a single judge as well as the arbitration court may order the confiscation of the materials and the equipment used for manufacture and reproduction of counterfeit copies of the works or phonograms.

“4. By the demand of the author or owner of neighboring rights, the person guilty of willful destruction or negligent destruction of the original of a work of fine art, manuscript or final variant of the audio-visual work (negative, original record), shall be obliged to pay material and moral damage, pursuant to requirements of paragraph 1 of this Article.”

“Article 50. Injunctions in the Case of Violation of Copyright and Neighboring Rights

“1. The court or a single judge, as well as an arbitration court, may rule to prohibit the defendant or the person alleged to be an infringer of copyright or neighboring rights provided sufficient evidence is available, to perform certain acts (production, reproduction, sale, rental, import or other use provided by this Law, as well as transportation, storage or possession with the purpose of releasing into civil turnover copies of the works or phonograms assumed to be counterfeit).

“2. The court or a single judge, as well as the arbitration court, may issue an injunction to seize and confiscate all copies of the works or phonograms allegedly counterfeit, as well as materials and equipment intended for their manufacture and reproduction.

“In the presence of sufficient information on violation of copyright or neighboring rights the investigation body, investigator, court or a single judge are obligated to take measures in the form of the location and descriptive seizure of allegedly counterfeit copies of works or phonograms and also of the materials and equipment intended for manufacture and reproduction thereof, as well as documents providing evidence of violation of the provisions of this Law, and where appropriate in the form of actual seizure and delivery to a custodian.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

Not found in the Law reviewed.

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

LATVIA

(Law Reviewed: Copyright Law of April 6, 2000)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Article 4. Protected Works

“The subject matter of copyright, regardless of the manner or form of expression, shall comprise the following works of authors.”

“Article 6. Non -Protected Works

“The following shall not be protected by copyright:

[...]

5. ideas, methods, processes and mathematical concepts.”

1.2 Are computer programs protected in the Law as literary works?

“Article 4. Protected Works

“The subject matter of copyright, regardless of the manner or form of expression, shall comprise the following works of authors:

1. literary works (books, brochures, speeches, computer programs, lectures, addresses, reports, sermons and other works of a similar nature).

[...]”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 5. Protected Derivative Works

“(1) Without prejudice to the rights of authors in the original work, the following derivative works shall also be protected:

[...]”

2. collections of works (encyclopaedias, anthologies, atlases and similar collections of works', as well as databases and other compiled works which, in terms of selection of materials or arrangement, are the result of creative activity."

"[...]"

1.4 Is there a right of distribution in the Law?

"Article 15. Economic rights of Authors

"An author, except for the author of a computer program or a database, shall have the following exclusive rights with respect to the use of his work:

[...]

3. the right to distribute the work.

"[...]"

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

"Article 15. Economic rights of Authors

"An author, except for the author of a computer program or a database, shall have the following exclusive rights with respect to the use of his work:

[...]

4. the right to rent or to publicly lend originals or copies of the work, except for three-dimensional architectural works and works of applied art.

"[...]"

1.6 Is there a right of communication to the public in the Law?

"Article 15. Economic rights of Authors

"An author, except for the author of a computer program or a database, shall have the following exclusive rights with respect to the use of his work:

1. the right to communicate the work to the public.

"[...]"

1.7 Is aright of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

“Article 15. Economic rights of Authors

“An author, except for the author of a computer program or a database, shall have the following exclusive rights with respect to the use of his work:

[...]

“8. the right to make the work available to the public by wire or by other means, in an individually selected location and at an individually selected time.”

1.8 Are photographic works given the same duration of protection as other works in the law?

“Article 36. General Provisions Regarding the Term of Copyright

“(1) Copyright shall subsist for the entire lifetime of the author and for 70 years after the death of an author, except for the cases mentioned in Article 37 of this Law.

“[...]”

1.9 What is the effective time-frame for application of the rights in the Law?

“Transitional Provisions

“[...]

“2. The terms of protection of copyright and related rights provided for in this Law shall apply to all the works and subject matter of rights which were subject to protection on the day of the coming into force of this Law.

“3. The provision in Article 35 of this Law regarding remuneration of authors for reprographic reproductions shall come into force on January 1, 2001.

“4. The provision in Article 19(2) of this Law regarding the payment of remuneration to authors in respect of libraries which are financed from the State budget or from the budgets of Local Governments shall come into force from January 1, 2003.

“5. The rights of protection of a database provided for in Article 57 of this Law shall apply also to such databases the creation of which was completed not earlier than 15 years before the coming into force of this Law and which are, on the day of the coming into force of the Law, in compliance with the provisions of Article 5(2) of this Law. Protection of a database shall not restrict previously acquired rights and shall not affect contracts which have been entered into before the coming into force of this Law.”

2. WPPT provisions

2.1. Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 48. Rights of Performers

“(1) A performer is an actor, singer, musician, dancer or other person who acts in a role, sings, reads, plays or in any other manner performs a literary or artistic work or work of folklore, or gives a stage, circus, marionette or other type of performance.

“[...]”

2.1.2 Is “phonogram” defined in the Law?

“Article 1. Terms Used in this Law

“1. The following terms are used in this Law:

[...]

7. ‘phonogram’ – fixation of the sounds of a performance, or other sounds or representations of sounds;

“[...]”

2.1.3 Is “fixation” defined in the Law?

“Article 1. Terms Used in this Law

“1. The following terms are used in this Law:

[...]

4. ‘fixation’ – the embodiment of sound or images into a material form which provides a possibility to communicate it to the public, perceive or reproduce it by means of a relevant device;

“[...]”

2.1.4 Is “producer of a phonogram” defined in the Law?

“Article 1. Terms Used in this Law

“1. The following terms are used in this Law:

[...]

8. ‘phonogram producer’ – a natural or legal person who performs the first fixation of the sounds of a performance, other sounds or representation of sounds, and is responsible for its completion;

[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.6 Is “broadcasting” defined in the Law?

“Article 1. Terms Used in this Law

“1. The following terms are used in this Law:

[...]

14. ‘broadcasting’ – the initial distribution of programs for public reception by means of ground transmitters, cable networks, or satellites in an open or encoded form. Broadcasting shall also include communication to the public through use of a satellite;

[...]”

2.1.7 Is “communication to the public” defined in the Law?

“Article 1. Terms Used in this Law

“1. The following terms are used in this Law:

[...]

11. “communication to the public” – any action by means of which, either directly or through a relevant technical device, a work, performance, phonogram or broadcast is made available to the public;

[...]”

2.2 Istheconceptof“nationaltreatment”containedintheLaw?

“Article56.ScopeofRelatedRights

“(1) Therightsofperformersshallberecognizedifoneofthefollowingconditionsismet:

1. the performer is a citizen of Latvia or a person entitled to a Latvian non-citizen passport or a person whose permanent residence (domicile) is in Latvia;
2. the performance occurred in Latvia;
3. the performance is fixed on a phonogram which is protected in accordance with the provisions of paragraph (2) of this Article; or
4. a performance that is not fixed in a phonogram has been included in a broadcast or a broadcast in an organization which is protected in accordance with the provisions of paragraph (4) of this Article.

“(2) Therightsofphonogramproducersshallberecognizedifoneofthefollowingconditionsismet:

1. the producer of a phonogram is a citizen of Latvia or a person entitled to a Latvian non-citizen passport or a person whose permanent residence (domicile) is in Latvia;
2. the first sound fixation was made in Latvia; or
3. the disclosure of the phonogram has occurred in Latvia.”

2.3 Dopperformershavemoralrights intheLaw?

“Article48.RightsofPerformers

“[...]

“(2) A performer, irrespective of his economic rights regarding his performance and the performance fixed in a phonogram or an audiovisual work, shall have the right to require that he be identified as a performer, except in cases where such right is not granted in connection with the type of use of the performance, as well as the right to oppose any distortion, modification or other transformation of his performance.

“[...]

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones?

“Article 48. Rights of Performers

“[...]

“(3) With respect to their performance, performers shall have exclusive rights to permit or prohibit:

[...]

2. fixation of a performance that has not been previously fixed.

“[...]”

2.5 Do performers have a right of reproduction in the Law?

“Article 48. Rights of Performers

“[...]

“(3) With respect to their performance, performers shall have exclusive rights to permit or prohibit:

[...]

3. direct or indirect reproduction of the fixation of a performance.

“[...]”

2.6 Do performers have a right of distribution in the Law?

“Article 48. Rights of Performers

“[...]

“(3) With respect to their performance, performers shall have exclusive rights to permit or prohibit:

[...]

5. distribution of the fixation of a performance, that is, selling or otherwise making available to the public the fixation of a performance or its copies.

“[...]”

2.7 Do performers have a right of rental in the Law?

“Article 48. Rights of Performers

“[...]

“(3) With respect to their performance, performers shall have exclusive rights to permit or prohibit:

[...]

6. rental or public lending of the fixation of a performance.

“[...]

2.8 Do performers have a right of making available of fixed performances in the Law?

“Article 48. Rights of Performers

“[...]

“(3) With respect to their performance, performers shall have exclusive rights to permit or prohibit:

[...]

7. making available to the public of the fixation of a performance, by wire or otherwise, in an individually selected location and at an individually selected time.

“[...]

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 51. Rights of Phonogram Producers

“(1) Except in the cases specified by this Law, phonogram producers shall have exclusive rights to permit or prohibit the direct or indirect reproduction and distribution for commercial purposes of their phonograms or copies.

“[...]

2.10 Do producers have a right of distribution in the Law?

“Article 51. Rights of Phonogram Producers

“(1) Except in the cases specified by this Law, phonogram producers shall have exclusive right to permit or prohibit the direct or indirect reproduction and distribution for commercial purposes of their phonograms or copies.

“[...]

2.11 Do producers have a right of rental in the Law?

“Article 51. Rights of Phonogram Producers

“[...]

“(3) Except in the cases specified by this Law, phonogram producers shall have exclusive right to permit or prohibit the direct or indirect reproduction and distribution for commercial purposes of their phonograms or copies thereof, as well as making phonograms available to the public by wire or otherwise in an individually selected location and at an individually selected time. The right to distribution includes the rental and public lending rights for phonograms and their copies.”

2.12. Do producers have a right of making available of phonograms in the Law?

“Article 51. Rights of Phonogram Producers

“[...]

“(3) Except in the cases specified by this Law, phonogram producers shall have exclusive right to permit or prohibit the direct or indirect reproduction and distribution for commercial purposes of their phonograms or copies thereof, as well as making phonograms available to the public by wire or otherwise in an individually selected location and at an individually selected time. The right to distribution includes the rental and public lending rights for phonograms and their copies.”

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 52. Use of Published Phonograms for Commercial Purposes

“(1) Performers and phonogram producers shall have the right to receive fair remuneration for the use of published phonograms for commercial purposes. These shall include broadcasting, retransmission by cable, playing of phonograms in public places, as well as the communication to the public of broadcasts consisting of published phonograms for commercial purposes.

“[...]”

2.14 Are rights in the Law subject to any formalities?

“Article 47. Holders and Subject Matter of Related Rights

“[...]

“(7) No formalities shall be necessary to assert related rights.”

2.15.1 What is the term of protection for performers?

Article 55. Term of Related Rights

“(1) The rights of performers shall subsist for 50 years as from the first performance. If during this time a fixation of the performance is lawfully published or communicated to the public, the period of protection shall be 50 years from the day of such publication or communication to the public, regardless of which action was the first. The moral rights of performers shall subsist as long as the economic rights have effect.

“[...]”

2.15.2 What is the term of protection for producers of phonograms?

Article 55. Term of Related Rights

“(2) The rights of phonogram producers and film producers shall subsist for 50 years as from the making of the fixation. If during this time a phonogram or film has been lawfully published or communicated to the public the period of protection shall be 50 years from the day of such publication or communication to the public, regardless of which action was the first.

“[...]”

2.16 What is the effective time -frame for application of rights in the Law?

“Transitional Provisions

“[...]

“2. The terms of protection of copyright and related rights provided for in this Law shall apply to all the works and subject matter of rights which were subject to protection on the day of the coming into force of this Law.

“[...]

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 18(1). Principles of Restrictions on the Economic Rights of Authors

“(1) The use of a work of an author without permission and without remuneration may not be contrary to the provisions for normal use of the work of an author and may not unjustifiably limit the lawful interests of the author or cause a loss to the author.

“[...]

“Article 19. Use of a Work of an Author without the Consent of the Author and without Remuneration

“(1) Copyright shall not be considered infringed if, without the consent of the author and without remuneration pursuant to the procedure specified by this Law:

1. a work is used for informational purposes;
2. a work is used for educational and research purposes;
3. a work is reproduced in order that the visually impaired or the hearing impaired may use it;
4. a work is reproduced to meet the needs of libraries and archives;
5. a work is reproduced for the purposes of judicial proceedings;
6. a use is made of a work that is publicly accessible or on display;
7. a musical work is used during official or religious ceremonies, as well as in teaching institutions as part of a face-to-face teaching process;
8. a work is used ephemeral by broadcasting organizations;

9. a work is reproduced for technical use by a broadcasting organization ;
10. computer programs are used for reproduction, compilation and other transformations pursuant to Article 29 of this Law; or
11. to ensure the interoperability of a computer program; and
12. the alienation of a work to another person occurs repeatedly, except in the cases provided for in Article 17(1) of this Law.

“(2) Copyright shall not be considered infringed if the work of an author is used, without the permission of the author, but with just remuneration to him, for public lending.”

“Article 20 (Use of a Work for Informational Purposes)”

“(1) Subject to the requirement that the title of the work to be used and the name of the author are shown and that the provisions of Articles 14 and 18 of this Law are observed, it shall be permitted:

1. to reproduce works communicated to the public in the form of quotations for scientific, research, polemical, critical and informational purposes to the extent justified by the purpose of the quotation;
2. to publish in newspapers, to broadcast or otherwise make known publicly political speeches, addresses, announcements and other analogous works, to the extent justified by the informational purpose; and
3. to fix, communicate to the public and publish current events by photographic works; for a broadcasting organization - to broadcast works which have been seen or heard in the course of current events, to the extent justified by the informational purpose.

“(2) The provisions of this Article shall not apply to computer programs.”

“Article 21 . Use of a Work for Educational and Research Purposes”

“(1) Subject to the requirement that the title and name of the author of the work be shown and that the provisions of Article 18 of this Law are observed, it shall be permitted to use communicated or published works or fragments of them in textbooks which are in conformity with educational standards, in radio and television broadcasts, in audiovisual works, in visual aids and the like, which are specially created and used in the face-to-face teaching and research process in educational and research institutions for non-commercial purposes to the extent justified by the purpose of their activity.

“(2) The provisions of this Article shall not apply to computer programs.”

“Article 22. The Right of Reproduction of a Work for the Visually Impaired and Hearing Impaired

“Pursuant to the provision of Article 18(2) of this Law, organizations for the visually impaired and hearing impaired, as well as libraries which provide services to the visually impaired and hearing impaired, shall be permitted to reproduce works, without remuneration, in a form perceivable by such impaired persons.”

“Article 23. Reproduction of Works for the Needs of Libraries and Archives

“(1) Subject to the provisions of Article 18 of this Law, each library or archive shall be permitted to make one copy of a work by means of reprographic reproduction for non-commercial purposes if such copy is made to preserve a particularly valuable work or to replace for a particular library’s or another library’s or archive’s permanent collection a copy which has been lost, damaged or become unusable and, moreover, it is not possible to obtain such a copy in some other acceptable manner, and the reproduction is repeated in separate and mutually unrelated cases.

“(2) The provisions of this Article shall not apply to computer programs.”

“Article 24. Reproduction of a Work for Judicial Proceedings/

“(1) Reproduction of a work is permitted to the extent justified for the purposes of judicial proceedings without the permission of the author and without remuneration to the author.

“(2) The provisions of this Article shall not apply to computer programs.”

“Article 25. Use of a Work on Public Display

“(1) It shall be permitted to use images of works of architecture, photography, fine arts, design, as well as of applied arts, permanently displayed in public places, in broadcasts.

“(2) The provision of this Article shall not apply to cases when the image of a work is an object for further reproduction of the work, for broadcast by broadcasting organizations or for the purposes of commercial use of the image of a work.”

“Article 26. Free Use of a Work in a Public Performance

“A musical work may be performed in public without the consent of the author and without the payment of remuneration to the author:

1. during official and religious ceremonies, to the extent justified by the nature of the ceremony; and

2. in educational institutions in a face-to-face teaching process with the participation of teachers and learners, if the audience comprises only the teachers and learners, as well as persons who are directly associated with the implementation of an educational program.”

“Article 27. Free Recordings for Ephemeral Use by Broadcasting Organizations

“(1) Subject to the provisions of Article 18(2) of this Law, a broadcasting organization may make ephemeral recordings of works which the organization has the right to use in broadcasting, if the broadcasting organization makes such recordings on its own account for its own use.

“(2) The broadcasting organizations shall have the obligation to destroy such recordings within six months after their preparation, if there has not been an agreement with the author regarding a longer storage time.

“(3) Recordings of works that have a particular documentary or cultural and historical significance may be preserved in official archives without an agreement with the author of the work, but the use of such a work shall require the permission of the author.”

“Article 28. Reproduction of a Work for Technical Use in a Broadcasting Organization

“A broadcasting organization may perform technical processing of a work, including reproduction, if it is necessary in order to make professional use of the license granted by the author for the use of the work or to broadcast or make the relevant work available to the public.”

“Article 29. Restrictions Regarding the Rights of Reproduction, Translation, Adaptation and any other Transformation of Computer Programs

“(1) If not specified otherwise by contract and the right to use a computer program has been lawfully obtained, its reproduction, translation, adaptation or any other transformation and the reproduction of the results of such activities shall not require any special permission from the holder of the copyright, as long as such activities (including correction of errors) are necessary for the purpose of the intended use of the computer program.

“(2) A contract entered into with a person who has lawfully acquired the right to use a computer program may not prohibit the making of a back-up copy, if such copy is necessary for the use of the computer program.

“(3) A person who has the right to use a computer program may, without the permission of the holder of the copyright, observe, study or test the functioning of the program in order to discover the ideas and principles which underlie any element of the computer program, if such person does so while loading, displaying, running, transmitting or storing the computer program in the computer memory.”

“Article 30. Ensuring the Interoperability of Computer Programs

“(1) The permission of the holder of a copyright shall not be required if, without reproducing the code of the computer program or modifying its form, it is not possible to obtain the necessary information in order to achieve the interoperability of an independently created computer program with other computer programs. Such use shall be permitted if the following provisions are observed in their entirety:

1. a person who has lawfully acquired the right to use a copy of the computer program performs the relevant activities;
2. the information necessary to achieve interoperability may not be accessed by other means; and
3. only those parts of the computer program which are necessary to achieve interoperability, are subject to such activities.

“(2) In accordance with the provisions of paragraph (1) this Article, the information obtained may not be:

1. used for purposes other than to achieve interoperability with an independently created computer program;
2. disclosed to other persons, except in cases when it is necessary to achieve interoperability with an independently created computer program; and
3. used with the intention of developing, producing or selling a substantially similar computer program, or for any other activity whereby copyright is infringed.”

“Article 31. Restrictions with Respect to Databases

“(1) A lawful user of a database or of a copy thereof may perform any action which is necessary in order to access the contents of the databases and its use. If the lawful user is authorized to use only a part of the database, the above-mentioned provisions shall apply only to that part.

“(2) Agreements which are contrary to the provisions of this Article shall not have effect.”

“Article 54. Restrictions on Rights of Performers, Phonogram Producers, Film Producers and of Broadcasting Organizations

“(1) The use of a performance, phonogram, film and broadcast, as well as a fixation of such, without the consent of the performers, phonogram producers, film producers and broadcasting organizations and without remuneration, shall be permitted in the following cases:

1. for personal use in accordance with the provisions of Article 33-34 of this Law;
2. as short excerpts within reports of current events;
3. for educational and research purposes; and
4. for other purposes specified in Chapter V of this Law with respect to restriction of the economic rights of authors.

“(2) The right of a holder of related rights to control the distribution of the fixation of his performance, phonogram or film, or of their copies shall be exhausted in Latvia on the day on which they are sold in Latvia for the first time, if done by the holder of the related right himself, or with his consent.

“(3) The restrictions provided for in this Article shall be applied in such a way that they do not result in hindering the normal use of work, and the use of subject matter contained in them as well as without prejudice to the lawful interests of authors, performers, phonogram producers, film producers and broadcasting organizations.”

“Article 59. Restrictions to Rights of Protection of Databases

“(1) Without the consent of the maker of a database which is available to the public, the lawful users of a database may:

1. extract the contents of an on-line electronic database for personal use;
2. extract a substantial part of the contents of a database for the purposes of education or scientific research, mandatorily stating the source, but only to the extent necessary for the non-commercial purpose to be achieved; and
3. extract or re-utilize a substantial part of the contents of a database for the purposes of State security, as well as for the purposes of administrative or judicial proceedings.

“(2) The right of the maker of a database to control the resale of the database in Latvia shall be exhausted at the moment when the database is sold in Latvia for the first time, if it has been done by the maker of the database himself, or if it has been done with his consent.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

Not found in the Law reviewed.

3.3 What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4 Generally, what measures for enforcement of rights are in the Law?

“Article 68. Infringement of Copyright and Related Rights

“(1) An action whereby the moral or economic rights of a holder of copyright or related rights are infringed, including fixation of protected subject matter, the publication, communication to the public, reproduction or distribution in any form without the consent of the holder of the rights, shall be considered an infringement on copyright and related rights.

“(2) In determining whether an act qualifies as an infringement of copyright or related rights, the restriction on copyright or related rights specified in this Law shall be taken into account.

“(3) Copies of works produced as a result of illegal acts shall constitute infringing copies.

“(4) Copies of works protected in Latvia which have been imported from countries where such works are not protected by copyright or where the term of protection has expired shall also be deemed to be infringing copies.

“Article 69. Protection of Copyright and the Rights of Holders of Related Rights

“(1) Holders of copyright and of related rights, or organizations that administer their economic rights on a collective basis and other representatives shall have the right:

1. to require that the infringer recognize their rights;
2. to prohibit the use of their works;
3. to require that the infringer renew the status prior to the infringement of these rights, and that the illegal activity be stopped or that creative work not be threatened;
4. to require that the infringer compensate the losses, including lost profits, or also to require that an infringer provide compensation at the discretion of the court;
5. to require that the infringing copies be destroyed.

“(2) To protect their rights, holders of copyright and of related rights may resort to the courts. In such matters, pursuant to a petition by the plaintiff, the court may apply measures specified by law to secure the claim also in cases when the action does not have an economic character (the action has not been brought for compensation of losses).

“(3) The court may, pursuant to a petition by the plaintiff, make a decision that, regarding materials and equipment used for making of infringing copies, collection may be made to compensate the losses incurred by the author or also that such materials and

equipment be given for use for charitable purposes or confiscated. Their infringing copies shall be destroyed.

“(4) If rights protected in accordance with the procedure specified by Chapter X of this Law have been infringed, an action for protection of the infringed rights may be brought in the name of the holders of copyright or of related rights by the holder of copyright or of related rights himself or by an organization that administers economic rights on a collective basis.

“(5) In submitting an action concerning infringement of rights to a court, the holders of copyright and of related rights, as well as organizations that administer economic rights on a collective basis, shall be exempt from the State fee.”

“Article 70. Confiscation and Destruction of Infringing Copies

“(1) Upon identifying infringing copies, police, customs or other competent State institutions shall confiscate them.

“(2) In deciding the liability of the offender, a decision shall be taken regarding destruction of the infringing copies. If the offender is not identified, a decision regarding destruction of the infringing copies shall be taken by the institution which has confiscated them.”

“Article 71. Liability for Infringement of Copyright or of Related Rights

“Depending on the nature of the infringement of copyright or of related rights and the consequences thereof, the infringers shall be held liable in accordance with law.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

“Article 1. Terms Used in this Law

“1. The following terms are used in this Law:

[...]

15. “reproduction” – the making of one or more copies, in any form and by any means, of a work or other subject matter protected by this Law, also the making of three-dimensional copies of a two-dimensional work or two-dimensional copies of a three-dimensional work, including short-term or long-term storage in electronic form of a work or subject matter of related rights, or a part of such.”

“[...]”

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

LITHUANIA

Law on Copyright and Related Rights

(Law Reviewed: No. VIII -1185 of May 18, 1999, as amended by Law No. VIII -1886, of July 20, 2000)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Article 5. Works Excluded from the Protection Afforded by Copyright

“Copyright shall not apply to:

1. ideas, procedures, processes, systems, methods of operation, concepts, principles, discoveries or mere data;

[...]”

1.2 Are computer programs protected in the Law as literary works?

“Article 4. Works to which Copyright Applies

“(1) Copyright shall apply to original literary, scientific and artistic works which are the result of the intellectual creation of an author, expressed in any objective form.

“(2) The subject matter of copyright shall comprise in particular:

1. books, brochures, articles, diaries, computer programs (expressed in any language and any form, including the preparatory design material) and other literary works;

[...]”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 3.

“The subject matter of copyright shall also include:

1) collections of works or collections of data, databases (expressed in a machine-readable form, or in any other form), which, by reason of the selection or arrangement of their contents are the result of intellectual creation of an author;

[...]”

1.4 Is there a right of distribution in the Law?

“Article 16. Distribution of a Work after the First Sale

“(1) Upon the first sale of the original or copies of a work in the Republic of Lithuania by the author or his successor in title (or with their consent), the exclusive right of distribution of the work or its copies which are lawfully in circulation (sold) shall be exhausted within the territory of the Republic of Lithuania.”

“[...]”

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

“Article 16 Distribution of a Work After the First Sale

“[...]”

“(2) The provisions of paragraph (1) of this Article shall not apply to the exclusive right of rental or lending of the work or its copies subsequent to their sale.

“(3) When the lending of books and other publications is carried out through libraries, their authors shall have the right to receive equitable remuneration for the transferred exclusive right to lend a work. The amount of remuneration and the procedure for payments shall be established by the Government, taking into account the proposals of the Board of Copyright and Related Rights of Lithuania. This remuneration shall not be paid when the lending of books and other publications is carried out through the libraries of educational and scientific institutions.”

“Article 15.

“[...]

“(4) The author, after the transfer of his rental or lending right in respect of a phonogram of his work to the producer of a phonogram, shall retain an unwavering right to obtain equitable remuneration for the rental and lending of such work.”

1.6 Is there a right of communication to the public in the Law?

“Article 15. Economic Rights of Authors

“(1) The author shall have the exclusive right to perform or to authorize any of the following acts:

[...]

11. communication to the public of a work.”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

e

“Article 2. Main Definitions

“[...]

“(28) ‘communication to the public’ means the transmission to the public of images and/or sounds of a work or object of related rights, or their expression by wire or wireless means, including the making available to the public of these works in such a way that members of the public may access them from a place and at a time individually chosen by them.

“[...]

1.8 Are photographic works given the same duration of protection as other works in the Law?

Not found in the Law reviewed.

1.9 What is the effective time -frame for application of the rights in the Law?

“Article 73.

“(1) Paragraph (3) of Article 16 and paragraph (4) of Article 23 of this Law shall enter into force on July 1, 2002.

“[...]

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 2. Main Definitions

“[...]

“(3) ‘performer’ means an actor, singer, musician, dancer or another person who plays in, sings, reads, recites, or otherwise performs literary, artistic, circus works or expressions of folklore. For the purpose of this Law “performer” shall also include a director of a play or other stage performance, a leader and conductor of an orchestra, group or choir.

“[...]

2.1.2 Is phonogram defined in the Law?

“Article 2. Main definitions:

“(7) ‘phonogram’ means the fixation of the sounds of a performance, or of other sounds, or of their representation of sounds, by technical devices in any material sound recording medium. -

“[...]

2.1.3 Is fixation defined in the Law?

Not found in the Law reviewed.

2.1.4 Is “producer of a phonogram” defined in the Law?

“Article 2. Main Definitions”

“(8) ‘producer of a phonogram’ means a natural or legal person, or an enterprise which does not have the rights of a legal person, which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds.

“[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Article 73.”

“(1) Unless otherwise provided by statute, the performer’s consent shall be sought for:

[...]

e) making his performance available to the public by cable or any other device or in any other manner so that the members of the public can choose the place and time of the availability individually.

“[...]”

2.1.6 Is “broadcasting” defined in the Law?

“Article 2. Main Definitions”

“[...]”

“(25) ‘broadcasting’ means the transmission by means of telecommunications, including by satellite, for public reception of sounds or images and sounds, or their expression; the transmission of coded signals is considered to be transmission if a broadcasting organization provides society with special decoding devices or grants permission to acquire them.

“[...]”

2.1.7 Is “communication to the public” defined in the Law?

Article 2. Main Definitions

“[...]”

“(28) ‘communication to the public’ means the transmission to the public of images and/or sounds of a work or object of related rights, or their expression by wire or wireless means, including the making available to the public of these works in such a

way that members of the public may access them from a place and at a time individually chosen by them.

“[...]”

2.2 Is the concept of ‘national treatment’ contained in the Law?

“Article 60. Collective Administration of the Rights of Foreign Owners of Copyright and Related Rights

“[...]”

“(2) When implementing the rights of owners of copyright and related rights specified in paragraph (1) of this Article, collective administration associations must treat foreign authors and owners of related rights in the same manner they treat the authors and owners of related rights— members of collective administration associations who are citizens of the Republic of Lithuania or natural persons permanently residing in Lithuania, or legal persons, or enterprises which do not have the rights of a legal person, the offices of which are located in the Republic of Lithuania.

“[...]”

2.3 Do performers have moral rights in the Law?

“Article 43. Moral Rights of Performers

“(1) A performer, independently of his exclusive economic rights, and even after the transfer of those rights to other persons, shall retain his moral rights in his live performance or the fixation of his performance. A performer shall have the right to claim to be identified as the performer in connection with any use of his performance or the fixation thereof, and to object to any distortion or other modification of his performance or the fixation thereof, as well as other derogatory action in relation thereto which would be prejudicial to his honor or reputation.

“(2) A performer’s moral rights shall not be subject to transfer to other persons. After the death of the performer, his moral rights shall be exercised in conformity with the provisions of paragraph (2) of Article 40 of this Law.”

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones.

“Article 44. Economic Rights of Performers

“(1) A performer shall have the exclusive right to perform or to authorize any of the following acts:

[...]

2. fixation of his unfixated (unrecorded) performance;

“[...]”

2.5 Do performers have a right of reproduction in the Law?

“Article 44. Economic Rights of Performers”

“(1) A performer shall have the exclusive right to perform or to authorize any of the following acts:

[...]

3. direct or indirect reproduction of a fixation of his performance in any manner or form;

“[...]”

2.6 Do performers have a right of distribution in the Law?

“Article 44. Economic Rights of Performers”

“(1) A performer shall have the exclusive right to perform or to authorize any of the following acts:

[...]

5. distribution of the original or copies of a fixation of his performance by sale, rental, lending or any other form of transferring ownership or possession;

6. importation of copies of the fixation of his performance.

“[...]”

2.7 Do performers have a right of rental in the Law?

“Article 44. Economic Rights of Performers”

“(1) A performer shall have the exclusive right to perform or to authorize any of the following acts:

[...]

5. distribution of the original or copies of a fixation of his performance by sale, rental, lending or any other form of transferring ownership or possession;

“[...]”

2.8. Do performers have a right of making available in the Law?

“Article 2. Main definitions

“[...]

“(28) ‘communication to the public’ means the transmission to the public of images and/or sounds of a work or object of related rights, or their expression by wire or wireless means, including the making available to the public of these works in such a way that members of the public may access them from a place and at a time individually chosen by them.

“[...]

2.9. Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 45. Rights of Producers of Phonograms

(1) The producer of a phonogram shall have the exclusive right to perform or to authorize any of the following acts:

1. direct or indirect reproduction of a phonogram in any manner or form;

“[...]

2.10. Do producers have a right of distribution in the Law?

“Article 45. Rights of Producers of Phonograms

“(1) The producer of a phonogram shall have the exclusive right to perform or to authorize any of the following acts:

[...]

4. distribution of a phonogram or copies thereof to the public by sale, rental or lending, or any other form of transferring ownership or possession;

“[...]

2.11. Do producers have a right of rental in the Law?

“Article 45. Rights of Producers of Phonograms

“(1) The producer of a phonogram shall have the exclusive right to perform or to authorize any of the following acts:

[...]

4. distribution of a phonogram or copies thereof to the public by sale, rental or lending, or any other form of transferring ownership or possession;

“[...]”

2.12. Do producers have a right of making available in the Law?

“Article 2. Main Definitions

[...]

“(28) ‘communication to the public’ means the transmission to the public of images and/or sounds of a work or object of related rights, or their expression by wire or wireless means, including the making available to the public of these works in such a way that members of the public may access them from a place and at a time individually chosen by them.

“[...]”

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 46. Remuneration for the Exploitation of Phonograms Published for Commercial Purposes

“(1) Performers and producers of phonograms shall have the right to receive equitable remuneration for the exploitation of phonograms or copies thereof, published for commercial purposes and distributed through the trading channels of distribution, for broadcasting, retransmission, communication to the public or public performance. Equitable remuneration shall be paid by natural or legal persons, or enterprises which do not have the status of a legal person, who use the phonograms or copies thereof. The amount of remuneration and the conditions of the payment thereof shall be determined by the agreement between the users and the producers of phonograms together with the performers or the associations of collective administration of related rights, which represent them. If the parties fail to agree upon the amount of remuneration and the conditions of payment thereof, the amount of remuneration and the payment conditions shall be set by an institution authorized by the Government, after consultation with the Board of Copyright and Related Rights of Lithuania.

“(2) The remuneration provided for in paragraph (1) of this Article shall be distributed in equal shares between the performers and producers of phonograms, unless otherwise provided for by the agreement.

“(3) The provisions of paragraph (1) of this Article shall be exercised without prejudice to the authors’ right to obtain remuneration for the use of works fixed in phonograms.”

2.14. Are rights in the Law subject to any formalities?

“Article 12. Copyright Notice

“The author or any other owner of copyright may notify the public of his rights by using the copyright notice, which consists of the following three elements: the letter C in a circle or circular brackets, followed by the name of the author or any other owner of copyright (title) and the year of the first publication of the work.”

2.15. What is the term of protection for:

2.15.1 performers?

“Article 50. Duration of Related Rights

“(1) The rights of performers shall run for 50 years after the date of the performance. If a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights of performers shall run for 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The protection of the moral rights of performers shall be of unlimited duration.

“[...]”

2.15.2. producers of phonograms?

“Article 50. Duration of Related Rights

“[...]”

“(2) The rights of producers of phonograms shall run for 50 years after the fixation is made. If the phonogram is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.”

2.16. What is the effective time-frame for application of rights in the Law?

Not found in the Law reviewed.

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Article 19. Limitation on Economic Rights

“Condition of Limitation on Economic Rights

“Any limitations on economic rights shall be permitted exclusively in the cases provided for in this Law. They must not conflict with the normal exploitation of a work and must not prejudice the legitimate interests of the author or other owner of copyright.”

“Article 20. Reproduction of Works for Personal Use

“(1) It shall be permitted, without the authorization of the author or any other owner of copyright and without payment of remuneration, to reproduce a published work in a single copy, where the reproduction is made by a natural person exclusively for his individual use and is done only once.

“(2) The provisions of paragraph (1) of this Article shall not apply to the reproduction of the following works:

1. works of architecture in the form of a building or other architectural structure;
2. reprographically the whole text of a book or a substantial part thereof, or a musical work in a graphic form;
3. computer programs (with the exception of the cases provided for in Articles 25 and 26 of this Law);
4. electronic databases (with the exception of the cases provided for in Article 27 of this Law).”

“Article 21. Quotation

“(1) It shall be permitted, without the authorization of the author or any other owner of copyright, to reproduce a relatively short passage of a published work, both in the original and translated language, in the form of a quotation in another work, provided that such a reproduction is compatible with fair practice and its extent does not exceed the extent justified by the purpose.

“(2) The indication of the source and the name of the author must accompany the quotation if the name of the author appears in the work from which the quotation is taken.”

“Article 22. Reproduction of a Work for Teaching and Scientific Research Purposes

“(1) The following shall be permitted without the authorization of the author of a work or any other owner of copyright in this work, and without the payment of remuneration:

1. the reproduction for teaching and scientific research purposes of short published works or a short extract of a published work, by way of illustration, in writings or sound or visual recordings, provided that such reproduction does not exceed the extent justified by the purpose;
2. the reproduction for non-commercial purposes of lawfully published works in raised characters or any other special method meant for the blind or sight impaired, with the exception of works specifically created for this purpose.

“(2) When a work is used for the purposes specified in paragraph (1) of this Article, the name of the author and the source used shall be indicated.”

“Article 23. Reprographic Reproduction of Works

“(1) Without the authorization of the author or other owner of copyright in a work, any library or archive may, for non-commercial purposes, reprographically make a copy of such work, where:

- “1. the work reproduced is a published article or any other short work or short extract of writing, with or without illustrations, and the purpose of such a reproduction is to meet the request of a natural person, provided that the copy is used solely for the purpose of personal studies, education or scientific research. The act of reproduction shall be an isolated case occurring, if repeated, on separate and unrelated occasions;
- “2. a copy of a work is made for the purpose of preservation or replacement of a copy that is lost, destroyed or rendered unusable, or for the purpose of replacement of a lost, or destroyed copy or one which is unfit for use of another similar library or archive, if it is impossible to obtain such a copy by other acceptable means. The act of reprographic reproduction shall be an isolated case occurring, if repeated, on separate and unrelated occasions.

“(2) It shall be permitted for non-commercial purposes to reprographically reproduce for classroom teaching at the institutions of education and studies a published article or any other short work or short extract of writing, with or without illustrations, and to the extent justified by the objectives sought. The act of reproduction shall be an isolated case occurring, if repeated, on separate and unrelated occasions.

“(3) When a work is used for the purposes specified in paragraphs (1) and (2) of this Article, the author’s name and the source used shall be indicated on the reproduced copy of the work.

“(4) The author and publishers shall be entitled to equitable remuneration for reprographic reproduction (by photocopying or any other manner of reproduction on paper) of works. Such remunerations shall be paid by natural or legal persons, or

enterprises which do not have the rights of a legal person, providing the services of reprographic reproduction. The Governments shall establish the amount of remuneration and the procedure for payment.”

“Article 24. Use of a Work for Information Purposes

“(1) The following acts shall be permitted without the authorization of the author or other owner of copyright in a work, however by indicating, where possible, the source and the name of the author:

1. the reproduction in newspapers, radio and television broadcasts, repeated and broadcast broadcasts and programs, or other mass media, of an article published in a newspaper or other periodical on current economic, political or religious issues, or of a broadcast work of the same character. This permission shall not apply where the exclusive right to authorize or prohibit the reproduction, broadcasting, retransmission, or other communication to the public of a work is retained by the author or other owner of copyright;
2. the use of literary and artistic works the place of performance or display of which renders information on public or current events in the press, radio or television, provided that such a use is motivated for informative purposes and that it constitutes additional information material;
3. use in newspapers or periodicals, as well as broadcasting, retransmission, cable retransmission or other communication to the public, for the purpose of reporting current events, of political speeches, reports, lectures or other works of a similar nature delivered in public, as well as speeches delivered during court proceedings, to the extent justified by the purpose.

“(2) The provisions of subparagraph 3 of paragraph (1) of this Article shall not apply to the exclusive right to compile or authorize the compiling of collections of such works.”

“Article 25. Reproduction and Adaptation of Computer Programs

“(1) A person, who has lawfully acquired a computer program shall have the right, without the authorization of the author or other owner of copyright, to reproduce the program in a single copy or to adapt the computer program, provided that the copy or adaptation is necessary:

1. for the use of the computer program in accordance with the purpose and to the extent for which it has been acquired, including the correction of errors therein;
2. for the replacement of the lawfully acquired copy of the computer program in the event that the copy is lost, destroyed or rendered unusable.

“(2) A lawful user of a computer program shall be entitled, without the authorization of the author or any other owner of copyright, to observe, study or test the functioning

of the program in order to determine the ideas and principles which underlie the program or any constituent element thereof, if he does so while performing any of the acts (loading of the program, displaying of the data provided by the program, transmitting or storing of the data of the program), which the user is entitled to do.

“(3) No copy or adaptation of a computer program shall, without the authorization of the author or other owner of copyright, be used for goals other than those determined in paragraph (1) of this Article.

“(4) Any agreements impeding the performance of the acts provided for in paragraphs (1) and (2) of this Article shall be null and void.”

“Article 26. Decompilation of Computer Programs

“(1) The authorization of the author or other owner of copyright shall not be required where reproduction of the code of a computer program or translation of its form are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

1. these acts are performed by the licensee or another person having the right to use a copy of a program, or on their behalf by a person authorized to do so;
2. the information necessary to achieve the interoperability of the programs has not been previously readily available to the persons referred to in subparagraph 1 of paragraph (1) of this Article;
3. these acts are confined to the parts of the original program which are necessary to achieve interoperability of the programs.

“(2) The provisions of paragraph (1) of this Article shall not permit the information obtained through its application:

1. to be used for goals other than to achieve the interoperability of the independently created computer program with other programs;
2. to be given to other persons, except when necessary for the interoperability of the independently created program with other programs;
3. to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

“(3) Any agreements impeding any of the acts stipulated in paragraph (1) of this Article shall be null and void.”

“Article 27. Use of Databases

“(1) A legitimate user of a database or a copy thereof shall have the right, without the authorization of the author or other owner of copyright, to perform the acts listed in paragraph (1) of Article 15 of this Law, provided that such acts are necessary for the purposes of access to, and an appropriate use of the contents of a database.

“(2) Where a legitimate user of a database is authorized to use only a certain part of the database, the provisions of paragraph (1) of this Article shall apply only to that part.

“(3) Any agreements impeding any of the acts stipulated in paragraph (1) of this Article shall be null and void.

“(4) A database which has been published or otherwise communicated to the public may, without the authorization of the author or other owner of copyright, be used for the needs of educational development or scientific research, provided that the source of the database is indicated and that the exploitation thereof is justified for non-commercial purposes, as well as if it is used for the purpose of public safety and State security or for the purposes of administrative or judicial proceedings.”

“Article 28. Display of Works

“28. The public display of an original work of fine arts or a copy thereof without the authorization of the author or other owner of copyright shall be permitted in the following cases:

1. where a work has been sold or its ownership has been otherwise transferred to another natural or legal person, or the enterprise which does not have the rights of a legal person, and where the author or any other owner of copyright in the work knows or has reasonable ground to know that such a public display (exhibition) of works constitutes part of the regular economic activities of the natural or legal person who has acquired the work;
2. in any other case where such a public display of a work does not conflict with the normal exploitation of the work and does not otherwise unreasonably prejudice the legitimate interests of the author or other owner of copyright.”

3.2. What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Article 64. Infringement of Copyright and Related Rights

“64. The following acts shall be deemed infringement of copyright and related rights:

[...]

4. removal of any technological measures that are used by owners of copyright and related rights in connection with the exercise or protection of their rights provided for in this Law, as well as the offering to do so, and the manufacture,

importation, transportation, keeping for the purpose of distribution and distribution of appropriated devices specifically designed or adapted to circumvent those technological protective measures;

[...]"

3.3. What obligations are in the Law for the protection of "rights management information?"

"Article 12. Main definitions

"[...]"

"(12) 'Copyright or related rights management information' means information which identifies the work, the author of the work, another owner of copyright or the performer, his performance, phonogram, the producer of a phonogram, another owner of related rights, as well as information about the terms and conditions of use of the work, performance or phonogram, including all the numbers or codes that represent such information which is attached to a copy of the work, a fixed performance or a phonogram, or appears in connection with their communication to the public.

"[...]"

"Article 64. Infringement of Copyright and Related Rights

"64. The following acts shall be deemed infringement of copyright and related rights:

[...]"

5. removal or alteration of the information regarding the management of copyright or related rights without the authorization of authors or owners of related rights, as well as distribution, importation, broadcasting, communication to the public or making;

[...]"

3.4. Generally, what measures for enforcement of rights are in the Law?

"Article 64. Infringement of Copyright and Related Rights

"The following acts shall be deemed infringement of copyright and related rights:

1. use of a work or a object of related rights (including the publication, reproduction, public performance, broadcasting and retransmission or communication to the public), distribution and importation thereof without the license of the author or owner of copyright and related rights (without the conclusion of an agreement, or upon violation of its terms and conditions);

2. importation, exportation, distribution, transportation or keeping for commercial advantage of infringing copies of works and objects of related rights;
3. refusal to pay remuneration provided for by this Law or copy right agreements;
4. removal of any technological measures that are used by owners of copyright and related rights in connection with the exercise or protection of the rights provided for in this Law, as well as the offering to do so, and the manufacture, importation, transportation, keeping for the purpose of distribution and distribution of appropriated devices specifically designed or adapted to circumvent those technological protective measures;
5. removal or alteration of the information regarding the management of copyright or related rights without the authorization of authors or owners of related rights, as well as distribution, importation, broadcasting, communication to the public or making”

“Article 65. Remedies for Infringement

“(1) With the aim of protecting their rights, owners of copyright and related rights shall be entitled to appeal to the court in accordance with the procedure prescribed by law, which may make a decision relative to:

1. recognition of rights;
2. injunction to terminate unlawful acts;
3. redress of the infringed moral rights (injunction to make appropriate amendments, to announce the infringement in the press, or any other way);
4. exaction of unpaid remuneration;
5. reimbursement of losses or damage (material and/or moral), including the lost income and other expenses;
6. payment of compensation;
7. seizure or destruction of infringing copies of works, computer programs, fixations of audiovisual works (films), phonograms and the devices or equipment used for their manufacture, as well as other devices and equipment used in connection with the infringement of rights under this Law;
8. other legislative measures for the protection of violated rights.

“(2) County courts, as courts of first instance shall hear the civil cases related to the protection of copyright and related rights.”

“Article 67. Reimbursement of Losses and Material Damage. Compensation

“(1) The procedure for the reimbursement of losses and material damages shall be regulated by the Civil Code and the provisions of this Law.

“(2) When assessing the amount of the losses, the court shall take into account the substance of violation, the amount of the inflicted damage and the lost income, as well as other expenses incurred by the owner of copyright or related rights. Infringing copies of works or objects of related rights may be handed over to the respective owners of copyright or related rights, if requested.

“(3) Instead of the reimbursement of losses, the owner of copyright or related rights may claim compensation, the amount of which shall be determined according to the price of legal sale of an appropriate work or object of related rights, by increasing it up to 200 percent, or up to 300 percent if the infringer has committed the infringement deliberately.”

“Article 68. Compensation for Moral Damage

“(1) A person who has infringed moral rights of the author or performer, provided for in Articles 14 and 43 of this Law, must compensate for moral damage inflicted, the amount of which expressed in money shall be determined by the court.

“(2) The amount of compensation for moral damage in each case may not be less than 5,000 litas and not more than 25,000 litas. In assessing the amount of moral damage expressed in money, the court must take into account the degree of culpability of the infringer, his financial position, the consequences of the moral damage, as well as other circumstances that are of significance to the case.”

“Article 69. Provisional Measures

“(1) In urgent cases, with the presence of sufficient evidence about the infringement of copyright or related rights, the court may, upon receiving a claim application from an owner of copyright or related rights, apply provisional measures necessary for the execution of the court’s decision:

1. to order persons to terminate the unlawful exploitation of works or objects of related rights;
2. to prohibit the release into circulation of infringing copies of works, fixations of audiovisual works (films) and phonograms;
3. to seize infringing copies of works, fixations of audiovisual works or phonograms, as well as technical devices and equipment used for reproduction thereof, and appropriated documents;

4. to apply other similar measures.

“(2) Where essential irreparable damage may be caused to the owner of copyright or related rights, or where the evidence may be destroyed, the court or the judge may, at his own discretion, apply provisional measures, specified in paragraph (1) of this Article, without informing the other party and without calling it to the court hearing.”

“Article 70. Administrative and Criminal Liability

“Administrative and criminal liability for the violation of this Law shall be applied in accordance with the Administrative Code and the Criminal Code.”

“Art 71. Application of Customs Procedures

“Customs procedures provided for by the laws of the Republic of Lithuania, may be applied to infringing copies of works, computer programs, fixations of audiovisual works (films) and phonograms imported into the Republic of Lithuania.”

3.5. How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6. Are there any provisions in the Law on temporary storage?

Not found in the Law reviewed.

3.7. Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

MALI

(LawReviewed:CopyrightStatute-OrdinanceConcerningLiteraryandArtisticProperty
July12,1977.Dateofentryintoforce:July15,1977)

1. WCTprovisions

1.1. DoesthescopeofcopyrightprotectionintheLawextendonlytoexpressions,andnot
toideas,procedures,methodsofoperationormathematicalconcepts?

NotfoundintheLawreviewed.

1.2. ArecomputerprogramsprotectedintheLawasliteraryworks?

NotfoundintheLawreviewed.

1.3. Arecompilationsofdataorothermaterial,inanyform,whichbyreasonoftheselection
orarrangementoftheircontentsconstituteintellectualcreations,protectedintheLaw?

“Article6

*“Theauthorsoftranslations,adaptations,transformationsorarrangementsofliterary,
scientificorartisticworksshallenjoytheprotectionprovidedbythisOrdinance,
withoutprejudicetotherightsoftheauthoroftheoriginalwork.*

“Thesameshallapplyto:

(a) authorsofanthologiesorcollectionsofvariousworkswhichbyreasonof
thechoiceandarrangementoftheircontents, constituteintellectualcreations;

[...]”

1.4. IstherearightofdistributionintheLaw?

NotfoundintheLawreviewed.

1.5. IstherearightofrentalintheLaw,andifso,towhichworksdoesitapply?

NotfoundintheLawreviewed.

1.6. Is there a right of communication to the public in the Law?

“Article 31

“The attributes of a non-economic nature confer on the author of a work the exclusive right to disclose and exploit this work in any form and at any time and to derive monetary benefit from such exploitation, except in the case of a work of art or of a commissioned portrait, where the express consent of the person having commissioned the work or portraits shall be required; however, in the case of manifest abuse on the part of the latter person preventing the exercise of the right of disclosure, the competent authority may order any appropriate action.

“They confer on him also the exclusive right to perform or authorize anyone of the following acts:

[...]

(b) communication of the work to the public by performance or sound or visual broadcasting;

[...]”

1.7. Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

Not found in the Law reviewed.

1.8. Are photographic works given the same duration of protection as other works in the Law?

Not found in the Law reviewed.

1.9. What is the effective time-frame for application of the rights in the Law?

Not found in the Law reviewed.

2. WPPT provisions

2.1. Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

Not found in the Law reviewed.

2.1.2. Is “phonogram” defined in the Law?

“Article 5xiv

“[...]

‘phonogram’ means the fixation in a material object of the sounds of a performance or of other sounds, and other aural fixations synchronized with images;

[...]”

2.1.3 Is ‘fixation’ defined in the Law?

Not found in the Law reviewed.

2.1.4 Is “producer of a phonogram” defined in the Law?

“Article 5xiii

“[...]

‘producer of phonograms’ means the natural person or legal entity responsible for publishing phonograms;

[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.6 Is “broadcasting” defined in the Law?

Not found in the Law reviewed.

2.1.7 Is “communication to the public” defined in the Law?

Not found in the Law reviewed.

2.2. Is the concept of “national treatment” contained in the Law?

Not found in the Law reviewed.

2.3. Do performers have moral rights in the Law?

Not found in the Law reviewed.

2.4. Do performers have economic rights in their unfixated performances, and if so, which ones?

Not found in the Law reviewed.

2.5. Do performers have a right of reproduction in the Law?

Not found in the Law reviewed.

2.6. Do performers have a right of distribution in the Law?

Not found in the Law reviewed.

2.7. Do performers have a right of rental in the Law?

Not found in the Law reviewed.

2.8. Do performers have a right of making available of fixated performances in the Law?

Not found in the Law reviewed.

2.9. Do producers of phonograms (“producers”) have a right of reproduction in the Law?

Not found in the Law reviewed.

2.10. Do producers have a right of distribution in the Law?

Not found in the Law reviewed.

2.11. Do producers have a right of rental in the Law?

Not found in the Law reviewed.

2.12. Do producers have a right of making available of phonograms in the Law?

Not found in the Law reviewed.

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

Not found in the Law reviewed.

2.14. Are rights in the Law subject to any formalities?

Not found in the Law reviewed.

2.15. What is the term of protection for:

2.15.1 performers?

Not found in the Law reviewed.

2.15.2 producers of phonograms?

Not found in the Law reviewed.

2.16. What is the effective time-frame for application of rights in the Law?

Not found in the Law reviewed.

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Article 34

“Where the work has been lawfully made available to the public, the author may not prohibit:

- i. communication (performance, broadcasting, etc.):
 - (a) if it is private and free of charge;
 - (b) if it is effected free of charge for educational, teaching or religious purposes;
- ii. reproductions, translations and adaptations intended for strictly personal and private use.

“However, in the case of theatrical performances, whether free or subject to an admission charge, the organizers shall inform either the author or his successors in title or his representative in advance.”

“Article 35

“The author of a work of architecture may not prevent any alteration that the owner may decide to make, but he may object to the mentioning of his name as being the author of the project.

“Article 36. The following shall be lawful:

- i. quotations from a work that has already been lawfully made available to the public, provided that this is compatible with fair practice and justified by the scientific, critical, educational or informative purpose, including quotations and borrowings from articles in periodical publications in the form of press summaries. Such quotations and borrowings may be used in their original form or in translation, and must be accompanied by a mention of the source, and of the name of the author if it appears thereon;
- ii. reproduction for cinematographic or broadcasting purposes and communication to the public of works of figurative art and of architecture permanently located in a place where they can be viewed by the public and included in the film of broadcast only by way of background or as incidental to the essential matters represented;
- iii. reproduction and communication to the public, to the extent justified by the informative purpose, of literary, scientific or artistic works that may be seen or heard in the reporting of current events by means of photography or broadcasting;
- iv. reproduction for strictly personal and private use of literary, scientific, artistic or any other broadcast works;
- v. reproduction in the press and publication by broadcasting of articles on current political, social, economic or religious topics, except where the right of reproduction is expressly reserved.

However, the source must always be clearly indicated;

- vi. the acts specified below when they relate to works already lawfully made available to the public and where the author is not represented by the copyright office:
 - (a) lectures;
 - (b) works created for the stage or broadcasting, including dramatic and dramatico-musical works as well as choreographic works and pantomimes.”

“Article 37

“The Minister responsible for the arts and culture may, if need be, authorize public libraries, non-commercial documentation centers, scientific institutions, educational establishments, literary centers and any cultural association recognized by the Government to reproduce by a photographic or similar process literary, scientific or artistic works in the amount necessary for the purpose of their activities, subject to the payment of equitable remuneration.”

3.2. What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

Not found in the Law reviewed.

3.3. What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4. Generally, what measures for enforcement of rights are in the Law?

“Article 87

“All disputes arising from the application of this Ordinance shall be submitted to the civil courts, without prejudice to the right of the injured party to institute criminal proceedings under the general rules of law.”

“Article 88

“Disputes arising from the application of this Ordinance shall be governed by the provisions of this Chapter which follow. Regularly constituted bodies for the protection of copyright are entitled to institute legal proceedings to defend the interests for which they are statutorily responsible.”

“Article 89

“Commissioners of police and, where there are no commissioners of police, justices of the peace shall be required, on request by any author of a work protected under this Ordinance or by his successors in title, to seize the copies constituting an unlawful reproduction of the work. If seizure has the effect of delaying or suspending public performances already in progress or announced, a special authorization shall be obtained from the president of the civil court by means of an order issued on request. The president of the court may, under the same conditions, order: the seizure, even at hours not provided for by Article 69 of the Code of Criminal Procedure, of the copies constituting an unlawful reproduction of the seizure of the proceeds from any

reproduction, performance or dissemination, by any means whatever, of an intellectual work, made in violation of the author's rights.

"In the orders provided for above, the president of the civil court may require the person requesting seizure to furnish suitable prior security.

"This Article shall also apply to the unauthorized exploitation of folklore and the performance of works which are in the public domain."

"Article 90

"The measures laid down in Article 89 may also be ordered by the examining magistrate or the criminal court competent to hear infringement proceedings. Such magistrate or such court may at any time order the withdrawal of the measures prescribed, on condition, where appropriate, that security be given or a receiver be appointed to resume the manufacture or the public performances and to hold the proceeds from the exploitation of the work pending determination of ownership."

"Article 91

"The measures ordered by the president of the court shall be withdrawn automatically on the thirtieth day following the decision of the plaintiff to refer the matter to the competent civil court, unless criminal proceedings are in progress. They may be withdrawn at any time by the president of the court in a summary proceeding or by the civil court hearing the main issue, in accordance with the conditions provided for in Article 90, where appropriate.

"The president of the civil court, acting in a summary proceeding, may, if he allow the request of the distrainee or garnishee, order the petitioner to deposit a sum as guarantee for the damages to which the author might be entitled."

"Article 92

"Where the proceeds from exploitation due to the author of an intellectual work are the subject of a seizure, the president of the civil court may order payment to the author, as maintenance, of a specified sum or proportion of the amounts seized."

"Article 93

"Any publication of writings, musical compositions, drawings, paintings or any other printed or engraved production, in part or in whole, in defiance of the laws and regulations on authors' property shall constitute an infringement, and any infringement shall constitute an offense.

"Anyone shall be guilty of the offense of infringement and shall be punished by the penalties contained in Article 85 of the Criminal Code (from 15 days' to 3 months)

imprisonment and a fine of between 20000 and 100000 francs, or one only of these two penalties) who:

- (a) imports into the territory of Mali any reproduction of a work made in violation of this Ordinance;
- (b) infringes on the territory of Mali works published abroad or sells, exports or imports such infringing works;
- (c) reproduces, performs or disseminates, by any means whatsoever, an intellectual work in violation of the author's rights as defined and governed by this Ordinance.

“The penalties shall be doubled if it is established that the offender habitually engaged in the acts referred to in subparagraphs (a), (b) and (c).”

“In the event of further infringement following a condemnation under the immediately preceding paragraph, the temporary or definitive closure of the establishments operated by the habitual infringer or his accomplices may be ordered.”

“Where such closure is ordered, the employees shall receive compensation equal to their salaries, together with all benefits in kind, for the duration of closure, up to a maximum of six months.”

“Where collective or individual agreements provide for greater compensation on dismissal, such compensation shall be due.”

“Any infringement of the provisions of the two preceding paragraphs shall be subject to the penalties provided for in the first paragraph of this Article, which shall be doubled in the event of a further infringement.”

“Article 94

“In all the cases provided for in Article 93, the offenders shall also be condemned to confiscation of sum equal to their shares in the proceeds from the unlawful reproduction, performance or dissemination and to confiscation of all equipment specially installed for the purposes of the unlawful reproduction and of all the infringing copies and articles.”

“The equipment or infringing copies and the proceeds or shares in proceeds which have been confiscated shall be handed to the author or his successors in title as compensation for the damages suffered; the residual compensation, or the entire compensation where no equipment, infringing articles or proceeds have been confiscated, shall be paid through the ordinary channels.”

“Article95

“Evidenceofviolationsofthelawonthe protectionofcopyrightmaybeobtainednot onlyfromthereportsofpoliceofficersbutalsofromthestatementsofswornagents.”

“Article96

“Incases ofviolationofArticle75,theacquirerandtheministerialofficialsmaybe jointlycondemnedtopaydamagestothebeneficiariesofthe *droitdesuite* .”

3.5. HowdoesthelawdefinetheliabilityoftheInternetserviceproviders?

Notfoundinthe Lawreviewed.

3.6 ArethereanyprovisionsintheLawontemporarystorage?

NotfoundintheLawreviewed.

3.7 Arethereanyexplicitprovisionstoensurethattheanti -circumventionprovisionsdonot restricttheoperationoflimitations/exceptio nstorightsprovidedintheLaw?

NotfoundintheLawreviewed.

MEXICO

(LawReviewed:Copyright,Law,05/12/1996(19/05/1997))

1. WCTprovisions

1.1 DoesthescopeofcopyrightprotectionintheLawextendonlytoexpressions,andnot
toideas,procedures,methodsofoperationormathematicalconcepts?

“Article13

*“ThecopyrightreferredtointhisLawisrecognizedinrespectofworksinthefollowing
categories:*

- (i) literaryworks;
- (ii) musicalworkswithorwithoutwords;
- (iii) dramaticworks;
- (iv) dances;
- (v) pictorialworksorworksofdrawing;
- (vi) sculpturesandworksofthree -dimensionalart;
- (vii) worksofcaricatureandshortstories;
- (viii) architecturalworks;
- (ix) cinematographicandotheraudiovisualworks;
- (x) radioandtelevisionprograms;
- (xi) computerprograms;
- (xii) photographicworks;
- (xiii) worksofappliedart,includingworksofgraphicortextiledesign;
- (xiv) worksofcompilation,consistingofcollectionsOfWorkssuchas
encyclopedias,anthologiesand worksorotherelementslikedatabases,provided
thatsaidsaidcollectionsconstituteintellectualcreationsbyreasonoftheselection
orarrangementoftheircontentsorsubjectmatter.

*“Otherworkswhichmaybyanalogybeconsideredliteraryorartist icworksshallbe
includedinthecategorythatmostcloselycorrespondstotheirnature.”*

“Article 14

“The following shall not benefit from the copyright protection referred to in this Law:

- (i) ideas in themselves, formulas, solutions, concepts, methods, systems, principles, discoveries, processes and inventions of any kind;
- (ii) the industrial or commercial exploitation of the ideas embodied in works;
- (iii) schemes, plans or rules for performing mental acts, playing games or doing business;
- (iv) letters, digits or colors in isolation, except where they are stylized to such an extent that they become original designs;
- (v) names and titles or phrases in isolation;
- (vi) mere layouts or blank forms for completion with any kind of information, and related instructions;
- (vii) unauthorized reproductions or imitations of coats of arms, flags or emblems of any country, State, municipality or equivalent political subdivision, or the names, abbreviated names, symbols or emblems of intergovernmental or non-governmental international organizations, or those of any other officially recognized organization, and also the verbal designation thereof;
- (viii) legislative, regulatory, administrative or judicial texts, and official translations thereof; where they are published, they must conform to the official text, and they shall confer no exclusive right of publication; nevertheless, protection shall be available for parallel texts, interpretations, comparative studies, annotations, commentaries and other similar works that entail on the part of their author, the creation of an original work;
- (ix) the information content of news, where the form of expression thereof is protected;
- (x) information in everyday use, such as proverbs, sayings, legends, facts, calendars and scales of measurement.”

“Article 5

“(1) The protection provided by this Law is accorded to works from the time at which they are fixed in a material medium, regardless of their merit, intended purpose or form of expression.

“[...]”

1.2 Are computer programs protected in the Law as literary works?

“Article 13

“The copyright referred to in this Law is recognized in respect of works in the following categories:

[...]

(xi) computer programs;

[...]”

“Article 102

“Computer programs shall be protected on the same terms as literary works . The said protection shall extend to both operating programs and application programs, whether in source code or object code form . Computer programs whose purpose is to have a harmful effect on other program s or devices are excluded.”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 13

“The copyright referred to in this Law is recognized in respect of works in the following categories:

[...]

(xiv) works of compilation, consisting of collections of works such as encyclopedias, anthologies and works or other elements like databases, provided that the said collections constitute intellectual creations by reason of the selection or arrangement of their contents or subject matter.

[...]”

“Article 78

“Derived works such as arrangements, compendia, expanded editions, translations, adaptations, paraphrased versions, compilations, collections and transformations of literary or artistic works shall be protected with respect to their own original content, but they may only be exploited when they have been authorized by the owner of the economic rights in the original work.

“Where derived works are in the public domain, they shall be protected with respect to their own original content, but that protection shall not include the right of exclusive use of the original work, or afford the right to prevent the making of other versions thereof.”

“Article 107

“Databases or other materials in machine readable or otherwise decipherable form which, on account of the selection and arrangement of their contents, constitute intellectual creations shall be protected as compilations. Such protections shall not extend to the data and materials in themselves.”

1.4 Is there a right of distribution in the Law?

“Article 27

“The owners of the economic rights may authorize or prohibit:

[...]

(iv) the distribution of the work, including all or other forms of transfer of the ownership of the physical material in which it is embodied, and also any form of transfer of the use or exploitation thereof; where distribution is effected by means of sale, the right of opposition shall be considered exhausted on the first sale, except in the case expressly provided for in Article 104 of this Law;

[...]”

“Article 106

The economic rights in a computer program include the right to authorize or prohibit:

[...]

(iii) Any form of distribution of the program itself or of a copy, including rental.

[...]”

“Article 110

The owner of the economic rights in a database shall have the exclusive right, with respect to the form of expression of the structure of the said database, to authorize or prohibit:

[...]

(iii) Distribution of the original or copies of the database;

[...]”

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

“Article 27

“The owners of the economic rights may authorize or prohibit:

[...]

(iv) the distribution of the work, including sale or other forms of transfer of the ownership of the physical material in which it is embodied, and also any form of transfer of the use or exploitation thereof; where distribution is effected by means of sale, the right of opposition shall be considered exhausted on the first sale, except in the case expressly provided for in Article 104 of this Law;

[...]”

“Article 104.

“As an exception to the provisions of Article 27 (IV), the owner of the copyright in a computer program or database shall retain the right to authorize or prohibit the lending of copies thereof, even after the sale of the said copies. This principle shall not apply where the copy of the computer program does not in itself constitute an essential element of the license for use” 1

“Article 106

“The economic rights in a computer program include the right to authorize or prohibit:

[...]

(iii) Any form of distribution of the program itself or of a copy, including rental; and

[...]”

1.6 IstherightofcommunicationtothepublicintheLaw?

“Article27

“Theownersoftheeconomicrightsmayauthorizeorprohibit:

[...]

- (ii) thecommunicationofhisworktothepublicinanyofthefollowingways:
 - (a) publicationpresentation,recitationandperformanceinthecaseof literaryandartisticworks;
 - (b) publicshowingbyanymeansorprocessinthecaseofliteraryand artisticworks;
 - (c) publicaccessbytelecommunication;
- (iii) thepublictransmissionorthebroadcastingofthe workbyanyprocess, includingthetransmissionorretransmissionoftheworksby:
 - (a) cable;
 - (b) opticfiber;
 - (c) microwaves;
 - (d) satellite;
 - (e) anyothercomparablemeans.”

[...]

- (vii) anypublicuseoftheworkexceptincasesexpresslyprovidedforinthis Law.”

“Article109

“Accesstoinformationofprivatecharacterconcerningpersonsthat iscontainedinthedatabasesreferredtointheforegoingArticle,andalsothepublication, reproduction, disclosure,communicationtothepublicandtransmissionofsuchinformation,shall requirepriorauthorizationbythepersonsconcerned. Theforegoingshallnotapplytoinvestigationsbytheauthoritiesresponsibleforthe administrationandenforcementofjusticeaccordingtotherelevantlegislation,orto accesstopublicarchivesonthepartofpersonsauthorizedbythelaw,providedthatthe accessishadaccordingtotherelevantprocedures”

Article 110

“The owner of the economic rights in a database shall have the exclusive right, with respect to the form of expression of the structure of the said database, to authorize or prohibit:

[...]

(iv) Its communication to the public;

[...]”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

Article 27

“The owners of the economic rights may authorize or prohibit:

[...]

(ii) the communication of his work to the public in any of the following ways:

(c) public access by telecommunication;

[...]”

Article 113

“Works and performance transmitted by electronic means across the electromagnetic field and over telecommunication networks, and the results obtained from such transmission, are protected by this Law.”

1.8 Are photographic works given the same duration of protection as other works in the Law?

Article 13

“The copyright referred to in this Law is recognized in respect of works in the following categories:

[...]

(xii) photographic works;

[...]”

“Article 29

“Economic rights shall remain in force for:

(I) the life of the author and 75 years after his death; where the work belongs to two or more co-authors, the 75 years shall be counted as from the death of the last co-author;

[...]”

1.9 What is the effective time-frame for application of the rights in the Law?

“Article 5

“The protection provided by this Law is accorded to works from the time at which they are fixed in a material medium, regardless of their merit, intended purpose or form of expression.

[...]”

“Article 9

“All the prescribed periods that determine the protection granted by this Law shall be calculated as from the first of January of the year following that in which the reference event for the start of the calculation occurred, except where this Law itself provides otherwise”

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 116

“Performer means the actor, narrator, speaker, singer, musician, dancer or any other person who performs a literary or artistic work or an expression of folklore or who engages in a similar activity, even though he may have no pre-existing text to guide his performance. Extras and understudies are not included in this definition.”

2.1.2 Is “phonogram” defined in the Law?

“Article 129

“A phonogram is any fixation exclusively of the sounds of a performance or other sounds, or digital representation thereof.”

2.1.3 Is “fixation” defined in the Law?

“Article 6

“Fixation means the incorporation of letters, numbers, signs, sounds, images and other elements by means of which the work has been expressed, or digital representations thereof, which, in any form or material medium, including an electronic medium, enable the said work to be perceived, reproduced or otherwise communicated.”

2.1.4 Is “producer of a phonogram” defined in the Law?

“Article 130

“A producer of phonograms is a person, whether a natural person or legal entity, who first fixes the sounds of a performance or other sounds, or a digital representation thereof, and is responsible for the manufacture, production and publication of phonograms.”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Article 16

“The work may be brought to public notice by the acts described below:

[...]

(ii) publication: the act of reproducing the work in tangible form and making it available to the public in the form of copies, or of storing it permanently or temporarily in an electronic medium, in such a way that the public may read it or perceive it by sight, touch or hearing;

[...]”

2.1.6 Is “broadcasting” defined in the Law?

“Article 140

“Broadcasting or transmission means the communication of works, sounds or images by means of electromagnetic waves, cable, optic fiber or other comparable media. The concept of broadcasting likewise includes the sending of signals from a terrestrial station towards a satellite for subsequent broadcasting.”

2.1.7 Is “communication to the public” defined in the Law?

“Article 16

“The work may be brought to public notice by the acts described below:

[...]

(iii) communication to the public: the act by which the work becomes generally accessible by any means or process of dissemination that does not consist in the distribution of copies;

[...]”

2.2 Is the concept of “national treatment” contained in the Law?

“Article 7

“Foreign authors or owners of rights and their successors in title have the same rights as nationals by virtue of this Law and international treaties on copyright and neighboring rights signed and ratified by Mexico.”

“Article 8

“Performers, publishers and producers of phonograms and videograms and broadcasting organizations that have effected, respectively, the first fixing of their performances, their publications, the first fixing of the sounds of their performances or the images of their videograms or the communication of their broadcasts outside the national territory shall benefit from the protection accorded by this Law and the international treaties on copyright and neighboring rights signed and ratified by Mexico.”

2.3 Do performers have moral rights in the Law?

“Article 117

“The performer has the right to have his name associated with his performances, and also to object to any distortion or mutilation of his performance or other adverse act in relation to it that might damage his prestige or reputation.”

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones.

“Article 118

“Performers have the right to object to:

(i) the communication of their performances to the public;

- (ii) the fixing of their performances in a physical medium;
- (iii) the reproduction of such a fixation of their performances.

The above rights shall be considered exhausted once the performer has authorized the incorporation of his performance in a visual, sound or audiovisual fixation.”

“Article 122

“The duration of the protection granted to performers shall be 50 years counted from:

[...]

- (ii) the first performance of works not recorded on phonograms;

[...]”

2.5 Do performers have a right of reproduction in the Law?

“Article 118

“Performers have the right to object to:

[...]

- (iii) the reproduction of such a fixation of their performances.

The above rights shall be considered exhausted once the performer has authorized the incorporation of his performance in a visual, sound or audiovisual fixation.”

2.6 Do performers have a right of distribution in the Law?

Not found in the Law reviewed.

2.7 Do performers have a right of rental in the Law?

Not found in the Law reviewed.

2.8 Do performers have a right of making available in the Law?

Not found in the Law reviewed.

2.9 Do producers of phonograms (“producers”) have a right to reproduction in the Law?

“Article 131

“Producers of phonograms have the right to authorize or prohibit:

- (i) the direct or indirect reproduction of all or part of their phonograms, and also the direct or indirect exploitation thereof;

[...]”

2.10 Do producers have a right of distribution in the Law?

“Article 131

“Producers of phonograms have the right to authorize or prohibit :

[...]

- (iii) the distribution to the public of the original and every copy of the phonogram by sale or other means, including distribution by means of signals or broadcasts;

[...]”

2.11 Do producers have a right of rental in the Law?

“Article 131

“Producers of phonograms have the right to authorize or prohibit:

[...]

- (v) the commercial rental of the original phonogram or a copy thereof, even after it has been sold, provided that the authors or owners of the economic rights have not reserved it for themselves.”

2.12 Do producers have a right of making available in the Law?

“Article 131

“Producers of phonograms have the right to authorize or prohibit:

- (i) the direct or indirect reproduction of all or part of their phonograms, and also the direct or indirect exploitation thereof;

[...]

(iii) the distribution to the public of the original and every copy of the phonogram by any other means, including distribution by means of signals or broadcasts;

[...]"

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

Not found in the Law reviewed.

2.14. Are rights in the Law subject to any formalities?

"Article 5

"[...]"

"(2) The recognition of copyright and neighboring rights shall not require registration or documentation of any kind, or be subject to compliance with any formality."

"Article 162

"[...]"

Literary and artistic works and neighboring rights shall be protected even if they are not registered"

2.15. What is the term of protection for:

2.15.1 performers?

"Article 122

"The duration of the protection granted to performers shall be 50 years counted from:

- (i) the first fixing of the performance in a phonogram;
- (ii) the first performance of works not recorded on phonograms;
- (iii) the first transmission by radio, television or other medium."

"Article 9

"All the prescribed periods that determine the protection granted by this Law shall be calculated as from the first of January of the year following that in which the reference

event for the start of the calculation occurred, except where this Law itself provides otherwise.”

2.15.2 producers of phonograms?

“Article 134

“The protection referred to in this Chapter shall be for 50 years following the first fixation of the sound on the phonogram.”

“Article 9

“All the prescribed periods that determine the protection granted by this Law shall be calculated as from the first of January of the year following that in which the reference event for the start of the calculation occurred, except where this Law itself provides otherwise.”

2.16. What is the effective time -frame for application of rights in the Law?

“Article 5

“The protection provided by this Law is accorded to works from the time at which they are fixed in a material medium, regardless of their merit, intended purpose or form of expression.”

“Article 9

“All the prescribed periods that determine the protection granted by this Law shall be calculated as from the first of January of the year following that in which the reference event for the start of the calculation occurred, except where this Law itself provides otherwise.”

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Title VI

“Limitations on Copyright and Neighboring Rights

“Chapter I

“Limitation in the Public Interest

“Article 147

“The publication or translation of literary or artistic works shall be considered in the public interest where they are necessary for the advancement of science and national culture and education.

“Where it is not possible to obtain the consent of the owner of the corresponding economic rights, the Federal Executive may, through the Secretariat of Public Education and either ex officio or at the request of a party, license the publication or translation in question against payment of compensatory remuneration. The foregoing shall be without prejudice to any international treaties on copyright and neighboring rights signed and ratified by Mexico.”

“Chapter II

“Limitations on Economic Rights

“Article 148

“Literary and artistic works that have already been disclosed may only be used in the following cases without the consent of the owner of the economic rights and without remuneration, provided that the normal exploitation of the work is not adversely affected thereby and provided also that the source is invariably mentioned and that no alteration is made to the work:

(i) quotation of texts, provided that the amount quoted may not be considered a substantial, simulated reproduction of the contents of the work;

(ii) reproduction of articles, photographs, illustrations and commentary relating to current events that have been published in the press or broadcast by radio or television, or any other medium of communication, if this has not been expressly prohibited by the owner of the rights;

(iii) reproduction of parts of the work for the purposes of scientific, literary or artistic criticism and research;

(iv) reproduction of a literary or artistic work once, and in a single copy, for the personal and private use of the person doing it, and without gainful intent; a legal

entity may not avail itself of the provisions of this subparagraph except where it is an educational or research institution, or is not devoted to trading activities;

(v) reproduction of a single copy by archives or a library for reasons of security and preservation where the work is out of print, no longer catalogued and liable to disappear;

(vi) reproduction for the purposes of evidence in a judicial or administrative proceeding;

(vii) reproduction, communication and distribution in drawings, paintings, photographs and audiovisual processes of works that are visible from public places.”

“Article 149

“The following may be done without authorization:

(i) literary and artistic works may be used in shops or establishments open to the public that trade in copies of the said works, provided that no charge is made for admission and that the use does not go beyond the place in which the sale is effected and serves the sole purpose of promoting the sale of copies of the works;

(ii) ephemeral recordings may be made, subject to the following conditions:

(a) transmissions shall take place within the period agreed for the purpose;

(b) no related or simultaneous broadcast or communication shall be made on the pretext of the recording;

(c) the recordings shall afford entitlement to one broadcast only.

“The recording and fixation of the image and sound, carried out in the manner described above, shall not require any additional payment other than that due for the use of the works.

“The provisions of this subparagraph shall not apply where the author or performer has entered into an agreement for consideration that authorizes subsequent broadcasts.”

“Article 150

“There shall be no royalties for public performance where the following circumstances obtain:

(i) the performance takes the form of the communication of a transmission received direct by means of a radio or television receiving set of a type commonly used in private homes;

- (ii) no charge is made for viewing or listening to the transmission, which also does not form part of a range of services;
- (iii) the transmission received is not retransmitted for profit-making purposes;
- (iv) the receiving party is a minor operative or micro industry.”

“Article 151

“The use of performances, phonograms, videograms or broadcasts shall not constitute a violation of the rights of the performers, producers of phonograms or videograms or broadcasting organizations where:

- (i) no direct economic benefit is sought;
- (ii) only short fragments are used for information on current events;
- (iii) the use is made for educational or scientific research purposes;
- (iv) the cases concerned are those contemplated in Articles 147, 148 and 149 of this Law.”

“Chapter III

“Public Domain

“Article 152

“Works in the public domain may be freely used by any person, subject to the sole condition of respect for the moral rights of the authors concerned.”

“Article 153

“The use of the work of an anonymous author shall be free provided that the said author does not reveal his identity or that there is no recognized owner of economic rights.

3.3. What obligations are in the Law for the protection of “rights management information?”

“Article 112

“It is prohibited to import, manufacture, distribute and use apparatus, or render services, whose purpose is to remove the technical protection of computer programs, transmissions by electromagnetic waves and over telecommunication networks, and programs containing electronic elements as mentioned in the foregoing Article”

“Article 231. The following practices constitute trade -related infringements when they are engaged in for direct or indirect profit -making purposes:

[...]

(v) Importation, sale, rental or any act that affords possession of a device or system whose purpose is to deactivate electronic devices for the protection of a computer program;

[...]”

3.4. Generally, what measures for enforcement of rights are in the Law?

Title XII Administrative Proceedings

Chapter I Copyright Infringement

“Article 229

“The following shall constitute copyright infringement:

(i) the conclusion by the publisher, impresario, producer, employer, broadcasting organization or licensee of a contract whose purpose is the transfer of copyright in a manner contrary to the provisions of this Law;

(ii) violation by the licensee of the terms of the compulsory license accorded under Article 146 of this Law;

(iii) purporting to be a collecting society without having effected the appropriate registration with the Institute;

(iv) failure, without just cause, to supply to the Institute, when serving as a director of a collecting society, the information and documents referred to in Articles 204 (IV) and 207 of this Law;

(v) failure to insert the notice referred to in Article 17 of this Law in a published work;

(vi) omission from a publication of the particulars referred to in Article 53 of this Law, or the insertion of false particulars;

- (vii) omission of the information referred to in Article 54 of this Law, or the insertion of false information;
- (viii) failure to fix on a phonogram the information referred to in Article 132 of this Law;
- (ix) publication of a work, being authorized to do so, without a mention on the copies of the said work of the name of the author, translator, compiler, adapter or arranger;
- (x) publication of a work, being authorized to do so, in a manner that damages the author's reputation as such, and where applicable that of the translator, compiler, arranger or adapter;
- (xi) publication before the Federation, the States or the municipalities, and without authorization, of works created in the course of official duties;
- (xii) fraudulent use in a work of a title that causes confusion with a work published previously;
- (xiii) fixation, performance, publication, communication in any way or use in any form of a literary or artistic work protected under Chapter III of Title VII of this Law without any mention of the community or ethnic group or where applicable the region of the Mexican Republic to which it is specific;
- (xiv) any other offending acts deriving from interpretation of this Law and the Regulations under it."

"Article 230

"Copyright infringements shall be punished by the Institute, pursuant to the provisions of the Federal Law on Administrative Procedure, with a fine of:

- (i) 5,000 to 15,000 times the minimum daily wage in the cases provided for in subparagraphs (I), (II), (III), (IV), (XI), (XII), (XIII) and (XIV) of the foregoing Article;
- (ii) 1,000 to 5,000 times the minimum daily wage in the other cases provided for in the foregoing Article.

"An additional fine of up to 500 times the minimum daily wage for every day of persistence in the infringement."

Chapter II Trade -Related Infringements

“Article 231

“The following practices constitute trade -related infringements when they are engaged in for direct or indirect profit -making purposes;

- (i) communication to the public or public use of a protected work by any means and in any form without the express prior authorization of the author, his lawful heirs or the owner of the author’s economic rights;
- (ii) use of the likeness of a person without his permission or that of his successors in title;
- (iii) production, manufacture, stocking, distribution, transportation or marketing of unlawful copies of works protected by this Law;
- (iv) the fact of offering for sale, stocking, transporting or distributing works protected by this Law that have been distorted, altered or mutilated without the permission of the owner of the copyright;
- (v) importation, sale, rental or any act that affords possession of a device or system whose purpose is to deactivate electronic devices for the protection of a computer program;
- (vi) retransmission, fixation, reproduction and dissemination to the public, without due authorization, of the broadcasts of broadcasting organizations;
- (vii) use, reproduction or exploitation of a reserved rights notice or computer program without the consent of the owner;
- (viii) use of exploitation of a name, title or denomination or physical or psychological characteristics or operational characteristics in such a way as to mislead or cause confusion with a preservation of rights that is protected;
- (ix) use of literary or artistic works protected by Chapter III of Title VII of this Law in a manner contrary to the provisions of Article 158 thereof;
- (x) other infringements of the provisions of the Law that involve action on a commercial or industrial scale in relation to works protected by this Law.”

“Article 232

“The trade -related infringements provided for in this Law shall be punished by the Mexican Institute of Industrial Property with a fine of:

- (i) 5,000 to 10,000 times the minimum daily wage in the cases provided for in subparagraphs (I), (III), (IV), (V), (VII), (VIII) and (IX) of the foregoing Article;

(ii) 1,000 to 5,000 times the minimum daily wage in the cases provided for in subparagraphs (II) and (VI) of the foregoing Article;

(iii) 500 to 1,000 times the minimum daily wage in the other cases provided for in subparagraph (X) of the foregoing Article.

“An additional fine of up to 500 times the applicable minimum general daily wage for each day of persistence in the infringement.”

“Article 233

“If the infringer is a publisher or broadcasting organization or any natural person or legal entity exploiting works on a commercial scale, the fine may be increased by up to 50 percent of the amounts provided for in the foregoing Article.”

“Article 234

“The Mexican Institute of Industrial Property shall punish trade -related infringements according to the procedure and formalities provided for in Titles VI and VII of the Law on Industrial Property .

“The Mexican Institute of Industrial Property may adopt the precautionary measures provided for in the Law on Industrial Property.

“To that end, the Mexican Institute of Industrial Property shall be empowered to conduct investigations, order and carry out inspection tours and demand information and data.”

“Article 235

“With regard to trade -related infringements, the Mexican Institute of Industrial Property is empowered to issue resolutions suspending, at the border, the free circulation of merchandise of foreign origin in terms of the provisions of the Customs Law.”

“Article 236

“For the purposes of the application of the sanctions referred to in this Title, the minimum wages shall be understood as the general minimum wage payable in the Federal district on the date on which the infringement was committed.”

“Chapter III

“Administrative Appeal

“Article 237

“Persons affected by acts and decisions of the Institute that put an end to an administrative process or proceeding or settle an issue may file an appeal for review under the Federal Law on Administrative Procedure.”

“Article 238

“The persons affected by the acts and decisions of the Mexican Institute of Industrial Property concerning trade -related infringements that put an end to an administrative process or proceeding or settle an issue may avail themselves of the means of defense provided for in the Law on Industrial Property.”

3.5. How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

“Article 16

“(vi) reproduction: the making of one or more copies of a work, phonogram or videogram in any tangible form, including permanent or temporary storage in an electronic medium, and also the making two -dimensional of a three -dimensional work or vice versa.

[...]”

3.7 Are there any explicit provisions to ensure that the anti -circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

MONGOLIA

(Law Reviewed: Law of Mongolia on Copyright)

1. WCT provisions

1.1. Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

Not found in the Law reviewed.

1.2. Are computer programs protected in the Law as literary works?

“Article 3. Subject matter of copyright

“1. The subject matter of copyright shall include the following works irrespective of their content, purpose, form, merit, mode of creation or availability to the public:

1) literary works in the scientific or literary domain whether verbal or written;

[...]

10) computer programmes;

[...]”

1.3. Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 3. Subject matter of copyright

“1. The subject matter of copyright shall include the following works irrespective of their content, purpose, form, merit, mode of creation or availability to the public:

[...]

12) derivative works based upon pre-existing works;

[...]”

“Article 20. Rights of authors of derivative works

“1. Actors, translators, compilers, producers, choreographers, conductors and other authors of derivative works shall enjoy the following rights in respect of their works:

- 1) the right to use of name and the right of attribution;
- 2) inviolability of works;
- 3) the right to authorise the use of works in any manner or form subject to agreement and remuneration;
- 4) other rights transferred to them under agreements concluded with the author of the original work.

[...]”

1.4. Is there a right of distribution in the Law?

“Article 9. Exclusive (property) rights in copyrighted works

“1. An author shall enjoy the following exclusive (property) rights in respect of his or her copyrighted works:

- 1) the right to reproduce. An author has the exclusive right to publish, draw, engrave, mould, photograph, make sound and visual recordings of, or reproduce his or her original work in any other manner or form;

[...]”

1.5. Is there a right of rental in the Law, and if so, to which works does it apply?

Not found in the Law reviewed.

1.6. Is there a right of communication to the public in the Law?

“Article 9. Exclusive (property) rights in copyrighted works

“1. An author shall enjoy the following exclusive (property) rights in respect of his or her copyrighted works:

[...]”

- 3) the right to make a work available to the public. An author has the exclusive right to make his or her original work or a reproduction of it available to the public by way of sale or transfer/licence;

4) the right to make a public communication of a work . An author has the exclusive right to make a public communication of his or her work by any means other than the transfer of copyright.

[...]"

1.7. Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

"Article 9. Exclusive (property) rights in copyrighted works

"1. An author shall enjoy the following exclusive (property) rights in respect of his or her copyrighted works:

[...]

3) the right to make a work available to the public . An author has the exclusive right to make his or her original work or a reproduction of it available to the public by way of sale or transfer/licence;

4) the right to make a public communication of a work . An author has the exclusive right to make a public communication of his or her work by any means other than the transfer of copyright.

[...]"

1.8. Are photographic works given the same duration of protection as other works in the Law?

"Article 3 .Subject matter of copyright

"1. The subject matter of copyright shall include the following works irrespective of their content, purpose, form, merit, mode of creation or availability to the public:

[...]

8) photographic works and all works expressed by a process analogous to photography;

[...]"

“Article 17. Term of copyright

“1. The term of copyright in a particular work shall be deemed to begin from the day of its making.

“2. The term of exclusive rights in copyrighted works shall be the life of the author and fifty years after his or her death. The term of exclusive rights in copyrighted works after the death of the author shall be deemed to begin on 1 January of the year following the death. In the case of joint authorship this term shall be deemed to begin on 1 January of the year following the death of the last surviving author.

“3. In the case of pseudonymous or anonymous works the term of the exclusive right of the author in copyrighted works shall be a period of 75 years from 1 January of the year following the year the work was first made available to the public. If the identity of the author of pseudonymous or anonymous work is disclosed to the public, the applicable term for the exclusive rights of the author in copyrighted works shall be determined in accordance with paragraph 2 of this article .

“4. The term of any copyrighted work where the author is a legal person shall last for a period of 75 years from 1 January of the year following the year of the *making of the work*.

[...]”

1.9. What is the effective time -frame for application of the rights in the Law?

Not found in the Law reviewed.

2. WPPT provisions

2.1. Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

Not found in the Law reviewed.

2.1.2 Is “phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.3 Is “fixation” defined in the Law?

Not found in the Law reviewed.

2.1.4 Is “producer of a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.6 Is “broadcasting” defined in the Law?

Not found in the Law reviewed.

2.1.7 Is “communication to the public” defined in the Law?

Not found in the Law reviewed.

2.2. Is the concept of “national treatment” contained in the Law?

“Article 3. Subject matter of copyright

“1. The subject matter of copyright shall include the following works irrespective of their content, purpose, form, merit, mode of creation or availability to the public:

[...]

11) sound and visual recordings;

12) derivative works based upon pre-existing works;

13) any other works expressing the intellectual creative activity of the author.

“The subject matter of copyright hereinafter shall be referred to as a ‘work’.

“[...]

“Article 5. Persons entitled to copyright

“1. The following persons are entitled to enjoy copyright:

“1) citizens of Mongolia, foreign citizens or stateless persons having permanent residence in Mongolia and who are authors of a work;

“2) foreign citizens whose work has been first made available to the public in Mongolia. A work of a foreign citizen shall be treated as having been first made available to the public in Mongolia if it was made available to the public within 30 days from the date when it was first made available to the public in any other country;

“[...]”

2.3. Do performers have moral rights in the Law?

Not found in the Law reviewed.

2.4. Do performers have economic rights in their unfixated performances, and if so, which ones?

Not found in the Law reviewed.

2.5. Do performers have a right of reproduction in the Law?

Not found in the Law reviewed.

2.6. Do performers have a right of distribution in the Law?

Not found in the Law reviewed.

2.7. Do performers have a right of rental in the Law?

Not found in the Law reviewed.

2.8. Do performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9. Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 21. Rights of producers of sound and visual recordings

“1. A producer of sound and visual recordings shall enjoy the following rights in respect of copyright:

“1) the right to reproduce his or her sound and visual recordings;

“[...]”

2.10. Do producers have a right of distribution in the Law?

“Article 21. Rights of producers of sound and visual recordings

“1. A producer of sound and visual recordings shall enjoy the following rights in respect of copyright:

[...]

3) the right to reproduce his or her sound and visual recordings and thus make them available to the public;

“[...]”

2.11. Do producers have a right of rental in the Law?

Not found in the Law reviewed.

2.12. Do producers have a right of making available of phonograms in the Law?

“Article 21. Rights of producers of sound and visual recordings

“1. A producer of sound and visual recordings shall enjoy the following rights in respect of copyright:

[...]

3) the right to reproduce his or her sound and visual recordings and thus make them available to the public;

“[...]”

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 21. Rights of producers of sound and visual recordings

“1. A producer of sound and visual recordings shall enjoy the following rights in respect of copyright:

[...]

3) the right to reproduce his or her sound and visual recordings and thus make them available to the public;

4) the right to authorise the use of his or her sound and visual recordings subject to agreement and remuneration;

[...]

3. The producer of sound and visual recordings shall enjoy the right to authorise the reproduction of his or her work to be made available to the public by organisations and may charge for such availability.

“[...]”

2.14. Are rights in the Law subject to any formalities?

Not found in the Law reviewed.

2.15. What is the term of protection for:

2.15.1 Performers?

Not found in the Law reviewed.

2.15.2 Producers of phonograms?

“Article 21. Rights of producers of sound and visual recordings

“[...]”

“4. The term of the rights in respect of copyright of the producers of sound and visual recordings shall last for a period of 25 years from 1 January of the year following the year the recording first took place. It shall not be permissible within this period to reproduce the recordings without the producer’s consent.

“[...]”

2.16. What is the effective time-frame for application of rights in the Law?

Not found in the Law reviewed.

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Article 13. Requisition of work

“1. The State or its competent organisations may, by way of agreement to be concluded with the author, purchase his or her work for immediate public interest. If agreement is not reached, then the State or its competent organisations may requisition the work in question.

“[...]

“Article 14. Public communication of works for public benefit

“1. In the following cases it shall be permissible to make for the public benefit, without the author’s consent and without payment of any remuneration, a public communication of part of a work which has already been made available to the public, provided that mention shall be made of the source and of the name of the author:

“1) use for teaching;

“2) use in public arrangements for a non-profit purpose;

“3) the public communication by the regular press and broadcasters of speeches delivered at official or public meetings.

“2. In the cases referred to in sub-paragraphs 5 and 7 of article 16 of this law, it shall be permissible to make, without the author’s consent and without payment of any remuneration, a public communication of a work by a person who has reproduced the work.”

“Article 15. Reproduction of works for private use

“1. It shall be permissible to reproduce a work exclusively for private use without the author’s consent and without payment of any remuneration if that work has already been made available to the public.

“[...]

“Article 16. Re production of works for public benefit

“In the following cases it shall be permissible to make for the public benefit, without the author’s consent and without payment of any remuneration, a reproduction of part of a work which has already been made available to the public, provided that mentions shall be made of the source and of the name of the author:

- “1) use of works as part of collections of archives, museums, or libraries for a non-profit purpose;
- “2) use for teaching;
- “3) use of works by radio and television in their broadcasts;
- “4) reproduction for use by blind people;
- “5) reproduction for use in research and for literary criticism;
- “6) publication of graphic works and works of applied art in periodicals for the purpose of reporting current events;
- “7) reproduction of works displayed in streets, squares and other public places. In case of such reproduction for the purpose of commercial advantage, the author’s consent should be sought in advance and the amount of royalties payable to him or her should be agreed upon;
- “8) advertising and announcement of works which are destined for sale or public display;
- “9) press summaries of works published in the press.”

3.2. What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

Not found in the Law reviewed.

3.3. What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4. Generally, what measures for enforcement of rights are in the Law

“Article 24. Liability for breach of legislation on copyright

“1. If a breach of the legislation on copyright is held not to constitute a criminal offence, a judge shall impose on an offending person a fine of up to 50,000 to grogs or on an offending business entity or organisation a fine of up to 250,000 to grogs.

“2. If a fraudulent use of a notice of copyright or alteration of such a notice is held not to constitute a criminal offence, a judge shall impose on an offending person a fine of up to 50,000 togrogs, or on an offending business entity or organisation a fine up to 250,000 togrogs.

“3. Compensation for material loss suffered as a result of infringement of exclusive rights in copyrighted works shall be paid in accordance with the Civil Law of Mongolia.

“[...]”

“Article 25. Protection of non-property personal rights of authors

“In the case of a breach of the inviolability of a worker or of other non-property personal rights of an author, the author of a work or his or her heir or successor, or the [Intellectual Property Office] (if there is no apparent heir or if such heir has waived or has been deprived of his or her right of succession) shall be entitled to demand from the infringing party the restoration of the infringed rights and to bring an action to resolve his or her claim in the Courts.”

3.5. How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6. Are there any provisions in the Law on temporary storage?

Not found in the Law reviewed.

3.7. Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

NICARAGUA

(Legislación revisada: Ley No. 312 de Derecho de Autor y Derechos Conexos (Publicada el 31 de Agosto, 1999, D.O. No. 66) Reglamento de la Ley (Publicado en la Gaceta No. 84 del 5 de mayo del 2000 por decreto No. 22 -2000)

1. Disposiciones del WCT

1.1. ¿Se extiende el alcance de la protección del derecho de autor solamente a las expresiones, y no a las ideas, procedimientos, métodos de funcionamiento o conceptos matemáticos?

“Artículo 13

“Están protegidas por esta Ley todas las creaciones originales y derivadas, literarias, artísticas o científicas, independientemente de su género, mérito o forma actual o futura, tales como:

- 1) Las obras artísticas artesanales producto del arte popular en sus diversas expresiones y formas;
- 2) Las obras literarias, y sean orales como los discursos, alocuciones, sermones, conferencias, alegatos de estrado y las explicaciones de cátedra; y escritas como las novelas, cuentos, poemas, comprendiendo también los programas de cómputo, sean estos programas fuente o programa objeto y cualquiera que sea su modo o formas de expresión;
- 3) Las composiciones musicales, con o sin letra;
- 4) Las obras dramáticas, las dramáticas musicales, las coreográficas, las pantomimas y en general, las obras teatrales;
- 5) Las obras audiovisuales dentro de las cuales se comprenden los videogramas;
- 6) Las esculturas, pinturas, grabados, fotogramas, litografías, dibujos, las historietas gráficas cómicas y las obras plásticas en general;
- 7) Las fotografías y las producidas por un procedimiento análogo;
- 8) Las obras de arquitectura y sus proyectos, ensayos, bosquejos, planos, maquetas, bosquejos y diseños de obras de arquitectura;
- 9) Los gráficos, mapas, diseños y figuras tridimensionales referidos a la geografía y topografía, y en general, a la ciencia.

“No son objeto de protección las ideas, procedimientos, métodos o conceptos matemáticos.”

1.2. ¿Se encuentran los programas de ordenador protegidos en la ley como obras literarias?

“Artículo 2

“Para efectos de esta Ley se entiende por:

[...]

“2.26. Programa de Cómputo: Es un conjunto de instrucciones expresadas mediante palabras, códigos, gráficos, diseños o en cualquier otra forma que, al ser incorporadas en un dispositivo de lectura autorizada, es capaz de hacer que un ordenador, un aparato electrónico o similar capaz de elaborar informaciones, ejecute determinada tarea u obtenga determinado resultado. También forma parte del programa o documentación técnica y sus manuales de uso.

[...]”

“Artículo 13

“Están protegidas por esta Ley todas las creaciones originales y derivadas, literarias, artísticas o científicas, independientemente de su género, mérito o forma actual o futura, tales como:

[...]

(2) Las obras literarias, y sean orales como los discursos, alocuciones, sermones, conferencias, alegatos de estrado y las explicaciones de cátedra; ya escritas como las novelas, cuentos, poemas, comprendiendo también los programas de cómputo, sean estos programas fuente o programa objeto y cualquiera que sea su modo o formas de expresión.

[...]”

1.3. ¿Se encuentran las recopilaciones de datos suotromaterial, en cualquier forma, protegidas en la ley como creaciones intelectuales, en razón de la selección o arreglo de los contenidos?

“Artículo 14

“Son consideradas como obras independientes, sin perjuicio del Derecho de Autor, que en su caso, correspondan a las partes que las integren, las colecciones de obras literarias, artísticas o científicas, tales como las antologías, compilaciones de textos, resoluciones administrativas o judiciales y de otros elementos, comprendidas las bases de datos que, por la selección o disposición de las materias constituyan creaciones intelectuales.”

1.4. ¿Existe en la ley el derecho de distribución?

“Artículo 2

“Para efectos de esta Ley se entiende por:

[...]

2.6. Distribución: Es la puesta a disposición del público del original o copias de la obra fonograma, mediante su venta, alquiler, importación, préstamo o cualquier otra forma de transferencia de la propiedad o posesión. El término distribución comprende la efectuada mediante un sistema de transmisión digital individualizada y a solicitud de cualquier miembro del público, siempre que la copia así obtenida no tenga carácter transitorio o incidental.

[...]”

“Artículo 23

“El derecho patrimonial es alienable, temporal y, sin perjuicio de otras modalidades, comprende las siguientes:

[...]

(5) Derecho de comunicación al público, como:

[...]

(f) Derecho de distribución al público.

[...]”

“Artículo 24

“Las clases de derechos patrimoniales señaladas en el artículo precedente, serán debidamente desarrollados en el Reglamento de la presente Ley.”

“Artículo 21 (reglamento) Distribución

“La distribución comprende el derecho del autor de autorizar o no la puesta a disposición del público de los ejemplares de su obra, por medio de la venta u otra forma de transmisión de la propiedad, alquiler o cualquier modalidad de uso a título oneroso.”

1.5. ¿Existe en la ley el derecho de alquiler? En caso afirmativo, ¿a cuáles obras se aplica?

“Artículo 22

“Corresponde al autor el derecho exclusivo de autorizar o prohibir la explotación de su obra en cualquier forma.”

“Artículo 23

“El derecho patrimonial es alienable, temporal y, sin perjuicio de otras modalidades, comprende las siguientes:

[...]

(5) Derecho de comunicación pública, como:

[...]

(g) Derecho de alquiler.

[...]”

“Artículo 24

“Las clases de derechos patrimoniales señaladas en el artículo precedente, serán debidamente desarrollados en el Reglamento de la presente Ley.”

“Artículo 22 (reglamento) Arrendamiento

“Encuanto al derecho de alquiler, los autores de programas informáticos, obras cinematográficas y obras incorporadas en fonogramas gozarán del derecho exclusivo de autorizar el alquiler comercial al público del original o de los ejemplares de sus obras.”

1.6. ¿Existe en la ley el derecho de comunicación pública?

“Artículo 23

“El derecho patrimonial es alienable, temporal y, sin perjuicio de otras modalidades, comprende las siguientes:

[...]

(5) Derecho de comunicación pública, como:

(a) La declamación;

(b) La representación, ejecución, en forma directa o indirecta;

- (c) Laproyecciónyexhibiciónoexposiciónpública;
- (d) Latransmisióndigitaloanalógica,oporcuquiermedio,porhiloosinhilo,desonidos,imágenes,palabras,adistancia,loquecomprende lacaptaciónensitiopúblicodeobrasyproduccionesprotegidas,comprendida lapuestaadisposicióndelpúblicodelasobrasdetalformaquelos miembrosdelpúblicopuedanaccederaestasobrasdesdeel lugaryenel momentoqueelloselijan;
- (e) Elacesopúblicoabasededatosinformáticospormediodela telecomunicación;
- (f) Derechodedistribuciónalpúblico;
- (g) Derechodealquiler;
- (h) Derechodeimportación.”

“Artículo24

“LasclasesderechospatrimonialesseñaladasenelArtículoprecedente,serán debidamente desarrolladosenelReglamentodelapresenteLey.”

“Artículo18(reglamento)ActosdeComunicaciónPública

“DeconformidadalArto.23delaLey,sonactosdecomunicaciónpública, especialmente lossiguientes:

1. Lasrepresentacionesescénicas,recitaciones,disertacionesyejecuciones públicasdelasobrasdramáticas,dramáticos -musicales,literariasyartísticasde cualquierformaoprocedimiento;
2. Laproyecciónoexhibiciónpúblicadelasobrasaudiovisuales:laemisión deunaobraporradiodifusiónoporcuquiermedioquesirvaparaladifusión inalámbricadesignos,sonidosoimágenes;
3. Latransmisióndecualquierobraalpúblicoporhilo,cable,fibraópticau otroprocedimientoanálogo;
4. Laretransmisiónporcuquieradelosmedioscitadosenlosnumerales anterioresyporunaentidademisora distintadeladeorigendelaobra radiodifundidaotelevisada;
5. Lacaptación,enlugaraccesiblealpúblico,mediantecualquier procedimientoidóneo,de laobraradiodifundidaporradiootelevisión;
6. Lapresentaciónyexposiciónpúblicasdeobrasdearteodesus reproducciones;

7. El acceso público a bases de datos informáticos por medio de telecomunicación, cuando éstas se incorporan o constituyen obras protegidas;
8. La difusión, por cualquier procedimiento conocido o por conocerse, de los signos, las palabras, los sonidos o las imágenes.”

1.7. ¿Existe en la ley el derecho de puesta a disposición al público de obras de tal manera que los miembros del público puedan acceder a éstas en el lugar y momento individualmente escogido por ellos?

“Artículo 23

“El derecho patrimonial es alienable, temporal y, sin perjuicio de otras modalidades, comprende las siguientes:

[...]

- (5) Derecho de comunicación al público, como:

[...]

- (d) La transmisión digital o analógica, o por cualquier medio, por hilo o sin hilo, de sonidos, imágenes, palabras, a distancia, lo que comprende la captación en sitio público de obras y producciones protegidas, comprendida la puesta a disposición del público de las obras de tal forma que los miembros del público puedan acceder a estas obras desde el lugar y en el momento que ellos elijan.”

1.8. ¿Gozan las obras fotográficas del mismo término de duración de la protección establecido para el resto de las obras?

“Artículo 13

“Están protegidas por esta Ley todas las creaciones originales y derivadas, literarias, artísticas o científicas, independientemente de su género, mérito o forma actual o futura, tales como:

[...]

- (7) Las fotográficas y las producidas por un procedimiento análogo.

[...]”

“Artículo 27

“Los derechos patrimoniales durarán toda la vida del autor y setenta años después de su muerte o de la declaración de su fallecimiento o de la respectiva declaración de ausencia.”

1.9. ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

“Artículo 28

“En las obras pseudónimas o anónimas y colectivas los derechos patrimoniales durarán setenta años desde su divulgación, a menos que antes de cumplirse este plazo fuere conocido el autor. En tal caso se aplicará lo previsto en el artículo anterior.”

“Artículo 29

“En el caso de una obra en colaboración, el plazo de duración de los derechos previstos en el artículo 27 de la presente Ley se computará desde la muerte del último coautor sobreviviente.”

“Artículo 30

“Los plazos establecidos en esta sección se computarán desde el primer día de enero del año siguiente a la muerte del autor, o en su caso, a la divulgación, publicación o terminación de la obra.”

2. Disposiciones del WPPT

2.1. Definiciones

2.1.1 ¿Se encuentran las “interpretaciones o ejecuciones” o los “artistas intérpretes o ejecutantes” definidos en la ley?

“Artículo 2

“Para efectos de esta Ley se entienden por:

[...]

2.3. Artista Intérprete o Ejecutante: Es todo actor, cantante, músico, bailarín u otra persona que represente un papel, cante, recite, declame, interprete o ejecute en cualquier forma una obra literaria o artística o una expresión de folklore.

[...]”

2.1.2 ¿Se encuentra el “fonograma” definido en la ley?

“Artículo 2

“Para efectos de esta Ley se entiende por:

[...]

2.12. Fonograma: Es toda fijación de los sonidos de una ejecución o interpretación de sonidos, o de una representación de sonidos que no sea en forma de una fijación incluida en una obra cinematográfica o audiovisual.

[...]”

2.1.3 ¿Se encuentra la “fijación” definida en la ley?

“Artículo 2

“Para efectos de esta Ley se entiende por:

[...]

2.11. Fijación: Es la incorporación de sonidos, o la representación de éstos, a partir de la cual pueden percibirse, reproducirse o comunicarse mediante un dispositivo.

[...]”

2.1.4 ¿Se encuentra el “productor de fonogramas” definido en la ley?

“Artículo 2

“Para efectos de esta Ley se entiende por:

[...]

2.23. Productor Fonográfico: Es la persona natural o jurídica que fija, toma la iniciativa y tiene la responsabilidad económica de la primera fijación de los sonidos de una ejecución o interpretación u otros sonidos o las representaciones de los sonidos.

[...]”

2.1.5 ¿Se encuentra la “publicación de una interpretación o ejecución fijada de un fonograma” definida en la ley?

“Artículo

“Para efectos de esta Ley se entiende por:

[...]

2.27. **Publicación:** Es todo acto por el que, una obra o un fonograma cuyos ejemplares se han puesto a disposición del público, con el consentimiento del autor cuando se trata de una obra, con el consentimiento del productor en el caso de un fonograma, para su venta, alquiler, préstamo público o para cualquier otra transferencia de propiedad o posesión, en cantidad suficiente para cubrir las necesidades normales del público.

[...]”

2.1.6 ¿Se encuentra la “radiodifusión” definida en la ley?

“Artículo 2

“Para efectos de esta Ley se entiende por:

[...]

2.28. **Radiodifusión:** Es la transmisión al público por medio inalámbrico, incluye la transmisión por satélite.

[...]”

2.1.7 ¿Se encuentra la “comunicación al público” definida en la ley?

“Artículo 2

“Para efectos de esta Ley se entiende por:

[...]

2.5. **Comunicación Pública:** Es todo acto por el cual una pluralidad de personas pueden tener acceso a la obra, interpretación, fonograma, o emisión de radiodifusión sin previa distribución de ejemplares, incluyendo la puesta a disposición del público, de tal forma que los miembros del público puedan acceder desde el lugar y en el momento que cada uno de ellos elija. No se considerará pública la comunicación cuando se lleve a efecto dentro del círculo familiar ordinario de una persona natural y sin fines lucrativos.

[...]”

2.2. ¿Se encuentra el concepto de “trato nacional” contenido en la ley?

No existen ninguna disposición al respecto en la ley.

2.3. ¿Gozan los artistas intérpretes o ejecutantes de derechos morales en la ley?

“Artículo 91

“El artista goza además del derecho al crédito de su nombre en sus interpretaciones o ejecuciones, y al de oponerse a toda deformación o mutilación de su actuación que lesione su prestigio o reputación. Estos derechos son irrenunciables e intransmisibles. A su fallecimiento, el ejercicio de estos derechos pasará a sus herederos por un plazo de 70 años desde la muerte del artista.”

2.4. ¿Gozan los artistas intérpretes o ejecutantes de derechos patrimoniales por sus interpretaciones o ejecuciones no fijadas?, y en caso afirmativo, ¿Cuáles son estos derechos?

“Artículo 86

“Los artistas intérpretes o ejecutantes gozarán del derecho de autorizar, en lo relativo a sus interpretaciones o ejecuciones no fijadas, la radiodifusión y la comunicación pública de sus interpretaciones o ejecuciones, salvo que esa interpretación o ejecución se aparta de la radiodifusión; así como el derecho a la fijación de sus interpretaciones o ejecuciones.”

2.5. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de reproducción en la ley?

“Artículo 87

“Los artistas intérpretes o ejecutantes, en cuanto a sus interpretaciones o ejecuciones fijadas, tendrán el derecho de autorizar la reproducción directa o indirecta de sus interpretaciones o ejecuciones fijadas, el derecho sobre esas mismas fijaciones de distribución mediante la puesta a disposición al público, de ejemplares de las mismas; el derecho de alquiler, el derecho de comunicación al público, lo que incluye el derecho de autorizar la puesta a disposición del público de esas interpretaciones o ejecuciones ya sea por hilo o por medio inalámbrico, de tal manera que los miembros del público puedan tener acceso a ellas desde el lugar y en el momento que cada uno de ellos elija.”

“Artículo 89

“Los artistas intérpretes o ejecutantes que participen colectivamente en una misma actuación, tales como integrantes de un grupo musical, coro, ballet, etc., deberán designar en el contrato a la persona que los represente para la cesión de sus derechos. Esta obligación no alcanza a los solistas ni directores de orquesta de escena.”

2.6. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de distribución en la ley?

“Artículo 87

“Los artistas intérpretes o ejecutantes, en cuanto a sus interpretaciones o ejecuciones fijadas, tendrán el derecho de autorizar la reproducción directa o indirecta de sus interpretaciones o ejecuciones fijadas, el derecho sobre esas mismas fijaciones de distribución mediante la puesta a disposición al público, de ejemplares de las mismas; el derecho de alquiler, el derecho de comunicación al público, lo que incluye el derecho de autorizar la puesta a disposición del público de esas interpretaciones o ejecuciones ya sea por hilo o por medio inalámbrico, de tal manera que los miembros del público puedan tener acceso a ellas desde el lugar y en el momento que cada uno de ellos elija.”

“Artículo 89

“Los artistas intérpretes o ejecutantes que participen colectivamente en una misma actuación, tales como integrantes de un grupo musical, coro, ballet, etc., deberán designar en el contrato a la persona que los represente para la cesión de sus derechos. Esta obligación no alcanza a los solistas ni directores de orquestas de escena.”

2.7. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de alquiler en la ley?

“Artículo 87

“Los artistas intérpretes o ejecutantes, en cuanto a sus interpretaciones o ejecuciones fijadas, tendrán el derecho de autorizar la reproducción directa o indirecta de sus interpretaciones o ejecuciones fijadas, el derecho sobre esas mismas fijaciones de distribución mediante la puesta a disposición al público, de ejemplares de las mismas; el derecho de alquiler, el derecho de comunicación al público, lo que incluye el derecho de autorizar la puesta a disposición del público de esas interpretaciones o ejecuciones ya sea por hilo o por medio inalámbrico, de tal manera que los miembros del público puedan tener acceso a ellas desde el lugar y en el momento que cada uno de ellos elija.”

“Artículo 89

“Los artistas intérpretes o ejecutantes que participen colectivamente en una misma actuación, tales como integrantes de un grupo musical, coro, ballet, etc., deberán designar en el contrato a la persona que los represente para la cesión de sus derechos. Esta obligación no alcanza a los solistas ni directores de orquestas de escena.”

2.8. ¿Gozan los artistas intérpretes o ejecutantes de un derecho de puesta a disposición de sus interpretaciones o ejecuciones fijadas en la ley?

“Artículo 87

“Los artistas intérpretes o ejecutantes, en cuanto a sus interpretaciones o ejecuciones fijadas, tendrán el derecho de autorizar la reproducción directa o indirecta de sus interpretaciones o ejecuciones fijadas, el derecho sobre esas mismas fijaciones de distribución mediante la puesta a disposición al público, de ejemplares de las mismas; el derecho de alquiler, el derecho de comunicación al público, lo que incluye el derecho de autorizar la puesta a disposición del público de esas interpretaciones o ejecuciones ya sea por hilo o por medio inalámbrico, de tal manera que los miembros del público puedan tener acceso a ellas desde el lugar y en el momento que cada uno de ellos elija.”

“Artículo 89

“Los artistas intérpretes o ejecutantes que participen colectivamente en una misma actuación, tales como integrantes de un grupo musical, coro, ballet, etc., deberán designar en el contrato a la persona que los represente para la cesión de sus derechos. Esta obligación no alcanza a los solistas ni directores de orquestas de escena.”

2.9. ¿Gozan los productores de fonogramas (“productores”) de un derecho de reproducción en la ley?

“Artículo 92

“El productor tiene respecto de sus fonogramas los derechos exclusivos de autorizar o prohibir su reproducción, distribución en forma de venta o alquiler, importación, adaptación, comunicación al público y el derecho exclusivo de autorizar la puesta a disposición del público de sus fonogramas, ya sea por hilo o por medios inalámbricos, de tal manera que los miembros del público puedan tener acceso a ellos desde el lugar y en el momento que cada uno de ellos elija.

El productor de fonogramas tiene respecto de sus fonogramas los derechos exclusivos de autorizar, realizar o prohibir:

(1) La reproducción directa o indirecta, total o parcial, de sus fonogramas por cualquier medio o procedimiento, así como su explotación de cualquier forma que sea.

[...]”

2.10. ¿Gozan los productores de un derecho de distribución en la ley?

“Artículo 92

“El productor tiene respecto de sus fonogramas los derechos exclusivos de autorizar o prohibir su reproducción, distribución en forma de venta o alquiler, importación,

adaptación, comunicación al público y el derecho exclusivo de autorizar la puesta a disposición del público de sus fonogramas, yasea por hilo o por medios inalámbricos, de tal manera que los miembros del público puedan tener acceso a ellos desde el lugar y en el momento que cada uno de ellos elija.

El productor de fonogramas tiene respecto de sus fonogramas los derechos exclusivos de autorizar, realizar o prohibir:

[...]

(2) La distribución de sus fonogramas desde el original o de sus copias mediante venta u otra forma de transmisión de propiedad, incluyendo su distribución a través de señales o emisiones.

[...]”

2.11. ¿Gozan los productores de un derecho de alquiler en la ley?

“Artículo 92

“El productor tiene respecto de sus fonogramas los derechos exclusivos de autorizar o prohibir su reproducción, distribución en forma de venta o alquiler, importación, adaptación, comunicación al público y el derecho exclusivo de autorizar la puesta a disposición del público de sus fonogramas, yasea por hilo o por medios inalámbricos, de tal manera que los miembros del público puedan tener acceso a ellos desde el lugar y en el momento que cada uno de ellos elija.

El productor de fonogramas tiene respecto de sus fonogramas los derechos exclusivos de autorizar, realizar o prohibir:

[...]

(6) El alquiler y préstamo público de sus fonogramas, o la transmisión de posesión por cualquier forma permitida por la ley.

[...]”

2.12. ¿Gozan los productores de un derecho de puesta a disposición de fonogramas en la ley?

“Artículo 92

“El productor tiene respecto de sus fonogramas los derechos exclusivos de autorizar o prohibir su reproducción, distribución en forma de venta o alquiler, importación, adaptación, comunicación al público y el derecho exclusivo de autorizar la puesta a disposición del público de sus fonogramas, yasea por hilo o por medios inalámbricos, de tal manera que los miembros del público puedan tener acceso a ellos desde el lugar y en el momento que cada uno de ellos elija.

El productor de fonogramas tiene respecto de sus fonogramas los derechos exclusivos de autorizar, realizar o prohibir:

[...]

(7) La puesta a disposición del público de los fonogramas, y sea por hilo o sin hilo, de tal manera que el público pueda tener acceso a los fonogramas desde el lugar o al momento en que cada uno de sus miembros los elija.

[...]”

2.13. ¿Gozan los productores y/o artistas intérpretes o ejecutantes de un derecho de remuneración por la radiodifusión y/o comunicación al público de fonogramas en la ley?

“*Artículo 87*

“Los artistas intérpretes o ejecutantes, en cuanto a sus interpretaciones o ejecuciones fijadas, tendrán el derecho de autorizar la reproducción directa o indirecta de sus interpretaciones o ejecuciones fijadas, el derecho sobre esas mismas fijaciones de distribución mediante la puesta a disposición al público, de ejemplares de las mismas; el derecho de alquiler, el derecho de comunicación al público, lo que incluye el derecho de autorizar la puesta a disposición del público de esas interpretaciones o ejecuciones y sea por hilo o por medio inalámbrico, de tal manera que los miembros del público puedan tener acceso a ellas desde el lugar y en el momento que cada uno de ellos las elija.”

“*Artículo 88*

“Sin perjuicio y con independencia de lo dispuesto en los Artículos 101 y 102 de la presente Ley el artista tendrá siempre un derecho irrenunciable e intransmisible por acto de vivos y deberá obtener una remuneración equitativa de los que exploten directamente cualquier de los derechos establecidos en el Artículo 87 de la presente Ley, sobre sus interpretaciones o ejecuciones fijadas.

[...]”

“*Artículo 92*

“El productor tiene respecto de sus fonogramas los derechos exclusivos de autorizar o prohibir la reproducción, distribución en forma de venta o alquiler, importación, adaptación, comunicación al público y el derecho exclusivo de autorizar la puesta a disposición del público de sus fonogramas, y sea por hilo o por medios inalámbricos, de tal manera que los miembros del público puedan tener acceso a ellos desde el lugar y en el momento que cada uno de ellos los elija.”

2.14. ¿Se encuentran estos derechos sujetos a formalidades?

“Artículo 131

“La falta del registro o depósito no perjudica la adquisición y el ejercicio de los Derechos Autor y Derechos Conexos establecidos en esta Ley.”

2.15. ¿Cuáles el término de protección para:

2.15.1 los artistas intérpretes o ejecutantes?

“Artículo 90

“Los derechos comprendidos en el presente Capítulo tendrán una duración de setenta años, contados desde el primer día de enero del año siguiente a la publicación de su presentación fijada, o, en su defecto, a la interpretación o ejecución.”

“Artículo 91

“El artista goza además del derecho al crédito de su nombre en sus interpretaciones o ejecuciones, y al de oponerse a toda deformación o utilización de su actuación que lesione su prestigio o reputación. Estos derechos son irrenunciables e intransmisibles. A su fallecimiento, el ejercicio de estos derechos pasará a sus herederos por un plazo de 70 años desde la muerte del artista.”

2.15.2 productores de fonogramas?

“Artículo 93

“La duración de los derechos mencionados en el Artículo anterior será de setenta años, contados desde el primer día de enero del siguiente año a la publicación del fonograma o, en su defecto, a la fijación.”

2.16. ¿Cuáles la fecha efectiva para la aplicación de los derechos en la ley?

“Artículo 4

“El Derecho de Autor de una obra literaria, artesanal, artística o científica corresponde al autor por el solo hecho de su creación.”

“Artículo 27

“Los derechos patrimoniales durarán toda la vida del autor y setenta años después de su muerte o de la declaración de su fallecimiento o de la respectiva declaración de ausencia.”

“Artículo 28

“En las obras pseudónimas o anónimas y colectivas los derechos patrimoniales durarán setenta años desde su divulgación, a menos que antes de cumplirse este plazo fuer conocido el autor. En tal caso se aplicará lo previsto en el Artículo anterior.” e

“Artículo 29

“En el caso de una obra en colaboración, el plazo de duración de los derechos previstos en el Artículo 27 de la presente Ley se computará desde la muerte del último coautor sobreviviente.”

“Artículo 30

“Los plazos establecidos en esta sección se computarán desde el primer día de enero del año siguiente a la muerte del autor, o en su caso, a la divulgación, publicación o terminación de la obra.”

3. Disposiciones comunes

3.1. ¿Cuáles son las limitaciones y excepciones en la ley?

“Artículo 31

“Está permitida sin autorización del autor exclusivamente para uso personal la reproducción en una copia de una obra divulgada.

La disposición anterior no se aplica a:

- 1) La reproducción de obras de arquitectura que revistan la forma de edificios o de otras construcciones similares;
- 2) La reproducción reprográfica de un libro íntegro o de una obra musical en forma gráfica (partituras);
- 3) La reproducción de la totalidad de partes importantes de bases de datos en forma numérica;
- 4) La reproducción de programas de ordenador, salvo en los casos previstos en el Artículo 39 de la presente Ley;
- 5) Ni, en ninguna otra reproducción de una obra que pudiera afectar a la explotación normal de la obra o que pudiera perjudicar de forma injustificada a los intereses legítimos del autor.”

“Artículo 32

“Es lícita, sin autorización del autor, la reproducción de un fragmento de obras ajenas, así como la de obras aisladas de carácter plástico o fotográfico, siempre que se trate de obras ya divulgadas y se reproduzca o realice a título de cita para su análisis, comentario o juicio crítico, en la medida justificada por el fin que se persiga, conforme a los usos honrados e indicando la fuente y el nombre del autor de la obra utilizada.”

“Artículo 33

“Está permitida, sin autorización del autor, la reproducción, por medio de la reprografía y para fines de enseñanza, de artículos aislados publicados en la prensa de extractos cortos de una obra, siempre que una y otra hayan sido publicadas, a condición de que se reproduzca o se efectúe en establecimientos de enseñanza y no se persiga un fin directo o indirectamente comercial y se realice en la medida justificada para el objetivo que se pretenda alcanzar, conforme a los usos honrados y citando la fuente y el nombre del autor, si figura en la misma.”

“Artículo 34

“Está permitida sin autorización del autor, la reproducción de la obra para uso privado de los no videntes, siempre que la reproducción o copiarse efectúe mediante el Sistema Braille u otro procedimiento específico y que las copias no sean objeto de utilización lucrativa.”

“Artículo 35

“Las bibliotecas y servicios de archivo, cuyas actividades no persigan un fin directo o indirectamente un provecho comercial, pueden reproducir, sin autorización del autor, ejemplares aislados de una obra que forme parte de su colección permanente a fin de conservarlos o reemplazarlos, si el ejemplar en cuestión ha sido perdido, destruido o se ha hecho inutilizable, a condición de que no se aposee de él y se adquiera el ejemplar en un tiempo y bajo condiciones razonables.”

“Artículo 36

“Las conferencias o lecciones dictadas en establecimientos de enseñanza pueden ser anotadas y recogidas libremente pero están prohibidas su publicación o reproducción integral o parcial, sin la autorización del autor.”

“Artículo 37

“No será considerada transformación que exija la autorización del autor, la parodia de una obra divulgada.”

“Artículo 38

“La comunicación pública efectuada en establecimientos dedicados a la comercialización de fonogramas, videogramas y materiales y aparatos de reproducción, sonora o audiovisual, o de recepción de emisiones de radio o televisión, cuando la comunicación se realice en el fin de demostrar al cliente el contenido o funcionamiento de tales soportes, materiales o aparatos, en la medida estrictamente necesaria para dicho fin y no como reclamo o publicidad de los mismos.”

“Artículo 39

“El propietario legítimo de un ejemplar de un programa de ordenador podrá, sin la autorización del autor, hacer una copia o adaptación de ese programa, a condición de que dicha copia o adaptación sea:

- 1) Necesaria para la utilización del programa de ordenador a los efectos para los que se obtuvo el programa; o
- 2) Necesaria para archivar o reemplazar el ejemplar lícitamente poseído, en el caso de que éste se haya perdido, destruido o sea inutilizable.”

“Artículo 40

“Los trabajos y artículos sobre temas de actualidad económica, política o religiosa y de otro índole difundidos por los medios de comunicación social podrán ser reproducidos, distribuidos y comunicados públicamente por cualesquiera otro de la misma clase sin autorización del autor, salvo que la reproducción, distribución o comunicación se hayan reservado expresamente. Sin embargo, habrá que indicarse siempre claramente la fuente y el nombre del autor, si figura en ella.”

“Artículo 41

“Las conferencias, discursos, alocuciones, informes ante los tribunales o autoridades administrativas y otras obras del mismo carácter que se hayan pronunciado en público, podrán ser reproducidos, distribuidos y comunicados públicamente sin autorización del autor por los medios de comunicación social, siempre que esos actos se realicen en el exclusivo fin de informar de la actualidad y citando el nombre del autor. En cualquier caso, quedará reservado al autor el derecho de publicar en colección tales obras.”

“Artículo 42

“Cualquier obra susceptible de ser vista u oída con ocasión de informaciones sobre acontecimientos de la actualidad, puede ser reproducida, distribuida y comunicada públicamente sin la autorización del autor, en la medida justificada por dicha finalidad informativa y de acuerdo con la naturaleza de la obra solo en casos excepcionales la reproducción podrá ser total.”

“Artículo 43

“Las obras situadas permanentemente en parques, calles, plazas u otras vías públicas pueden ser reproducidas, sin autorización del autor, por medio de la pintura, el dibujo, la fotografía y las grabaciones audiovisuales. En cuanto a las obras de arquitectura, el Artículo anterior solo se aplicará a su aspecto exterior.”

3.2. ¿Qué protección jurídica, y cuáles recursos jurídicos proporcional a ley contra la elisión de las medidas tecnológicas de protección eficaces?

“Artículo 111

“Los siguientes actos serán considerados ilícitos y se asimilarán a una infracción de los derechos de los autores y de los demás titulares del derecho de autor:

- 1) La fabricación o la importación, para la venta o el alquiler, de un dispositivo o medio especialmente concebido o adaptado para volver inoperante todo dispositivo o medio encaminado a impedir o limitar la reproducción de una obra o a deteriorar la calidad de los ejemplares realizados;
- 2) La fabricación o la importación, para la venta o el alquiler, de un dispositivo o medio que permita facilitar la recepción de un programa codificado, radiodifundido o comunicado en cualquier otra forma al público, por personas que no están habilitadas a recibirlo;
- 3) La supresión o modificación, sin estar habilitado para ello, de cualquier información relativa a la gestión de derechos que se presente en forma electrónica;
- 4) La distribución o la importación con fines de distribución, la radiodifusión, la comunicación al público, o la puesta a disposición del público sin estar habilitado para ello, de obras, interpretaciones o ejecuciones, fonogramas o emisiones de radiodifusión, a sabiendas de que se han suprimido o modificados sin autorización la información relativa a la gestión de derechos que se presentan en forma electrónica;
- 5) A los fines del presente Artículo, se entenderá por “información sobre la gestión de derechos”, la información que permita identificar al autor, a la obra, al artista intérprete o ejecutante, a la interpretación o ejecución, al productor de fonogramas, al fonograma, al organismo de radiodifusión, a la emisión de radiodifusión, y a todo titular de derechos en virtud de esta Ley, o toda información relativa a las condiciones y modalidades de utilización de la obra y de otras producciones contempladas por la presente Ley, y de todo número o código que represente dicha información, cuando se hayan adjuntado cualesquiera de esos elementos de información a un ejemplar de una obra, de una interpretación o ejecución fijada, a un ejemplar de un fonograma o a una emisión de radiodifusión fijada, o que figure en relación con la radiodifusión, la comunicación al público o la puesta a disposición del público de una obra, de una interpretación o ejecución fijada, de un fonograma o de una emisión de radiodifusión.”

3.3. ¿Cuáles obligaciones se encuentran en la ley para la protección de “información sobre la gestión de derechos”?

“Artículo 111

“Los siguientes actos serán considerados ilícitos y se asimilarán a un acto de infracción de los derechos de los autores y de los demás titulares del derecho de autor:

- 1) La fabricación o la importación, para la venta o el alquiler, de un dispositivo o medio especialmente concebido o adaptado para volver inoperante todo dispositivo o medio encaminado a impedir o limitar la reproducción de una obra o a deteriorar la calidad de los ejemplares realizados;
- 2) La fabricación o la importación, para la venta o el alquiler, de un dispositivo o medio que permita facilitar la recepción de un programa codificado, radiodifundido o comunicado en cualquier otra forma al público, por personas que no están habilitadas a recibirlo;
- 3) La supresión o modificación, sin estar habilitado para ello, de cualquier información relativa a la gestión de derechos que se presente en forma electrónica;
- 4) La distribución o la importación con fines de distribución, la radiodifusión, la comunicación al público, o la puesta a disposición del público sin estar habilitado para ello, de obras, interpretaciones o ejecuciones, fonogramas o emisiones de radiodifusión, sabiendo que se han suprimido o modificados sin autorización informaciones relativas a la gestión de derechos que se presentan en forma electrónica;
- 5) A los fines del presente Artículo, se entenderá por “información sobre la gestión de derechos”, la información que permita identificar al autor, la obra, al artista intérprete o ejecutante, a la interpretación o ejecución, al productor de fonogramas, al fonograma, al organismo de radiodifusión, a la emisión de radiodifusión, y a todo titular de derechos en virtud de esta Ley, o toda información relativa a las condiciones y modalidades de utilización de la obra y de otras producciones contempladas por la presente Ley, y de todo número o código que represente dicha información, cuando se hayan adjuntado cualesquiera de esos elementos de información a un ejemplar de una obra, de una interpretación o ejecución fijada, a un ejemplar de un fonograma o a una emisión de radiodifusión fijada, o que figuren en relación con la radiodifusión, la comunicación al público o la puesta a disposición del público de una obra, de una interpretación o ejecución fijada, de un fonograma o de una emisión de radiodifusión.”

3.4. De manera general; ¿Cuáles son las medidas de observancia de derechos en la ley?

“Artículo 97

“Los titulares, originarios o derivados, de los derechos regulados en esta Ley, y los cesionarios en exclusividad de los derechos de autor y derechos conexos, sin perjuicio de otras acciones que les correspondan, podrán instar acciones, en caso de violación de su derecho, el cese de la actividad ilícita y exigir la indemnización de los daños morales y

patrimoniales causados, en los términos previstos en el presente Capítulo. También podrá solicitar la adopción de las medidas de protección provisional que se regulan en el mismo.”

“Artículo 99

“El derecho moral de autor se entenderá lesionado por los efectos indicados en el Artículo anterior, además de por las violaciones de algunas de sus facultades, por la infracción de cualquier derecho de explotación exclusiva de las obras.

En ambos casos y sin perjuicio de la que proceda por daños patrimoniales, procederá la indemnización de los daños morales, aún no probada la existencia de perjuicio económico derivados de ellos. Para su valoración se atenderá a las circunstancias de la violación, gravedad de la lesión y grado de difusión ilícita de la obra.”

“Artículo 106

“Será sancionado con prisión de uno a dos años el que violare los derechos de autor, del artista intérprete o ejecutante, del productor de fonograma u organismo de radiodifusión, en los casos siguientes:

- 1) Empleando sin el consentimiento escrito del titular del derecho, el título de una obra que la individualice efectivamente de otras del mismo género, cuando exista peligro de confusión entre ambas;
- 2) Realizando cualquier traducción, arreglo u otra transformación de la obra sin autorización escrita de su autor o del titular de los derechos;
- 3) Comunicando públicamente una obra fonogramas sin autorización por escrito del autor o del titular de los derechos por cualquier forma o procedimiento en forma original o modificada íntegra o parcialmente;
- 4) Distribuyendo ejemplares de una obra fonograma por medio de venta, arrendamiento, importación o cualquier otra modalidad de distribución sin la autorización del titular del derecho;
- 5) Retransmitiendo o distribuyendo por cualquier medio alámbrico o inalámbrico, una emisión de radiodifusión o televisión, sin autorización del titular de la emisión;
- 6) Cuando el cesionario o licenciataria o autorizado por el titular del respectivo derecho, reproduzca o distribuya un mayor número de ejemplares que el permitido por el contrato, comunique, reproduzca o distribuya la obra después de vencido el plazo de autorización que se haya convenido;
- 7) Cuando una persona se atribuya falsamente la calidad de titular, originario o derivado de algunos de los derechos de autor o conexos y con esa atribución obtenga que la autoridad judicial o administrativa competente suspenda la

comunicación, reproducción o distribución de la obra, interpretación o producción; y

8) Cuando la persona autorizada para usar o explotar una o más obras, presente declaraciones falsas en cuanto a: certificación de ingreso, repertorio utilizado, identificación de los autores, autorización obtenida, número de ejemplares de cualquier otra alteración de datos susceptibles de causar perjuicio a cualquier de los titulares de derechos de autor o conexos.”

“Artículo 107

“Las sanciones de dos a tres años de prisión, para quien:

- 1) Sin autorización por escrito del titular del derecho, reproduzca u obtenga copias de obras fonogramas por cualquier medio o procedimiento en forma original o modificada, íntegra o parcialmente;
- 2) Importe, almacene, distribuya, exporte, venda, ofrezca a la venta, tenga en su poder, dé en arrendamiento o ponga de cualquier otra manera en circulación reproducciones ilícitas de obras fonogramas;
- 3) Deposite en el Registro de Derecho de Autor una obra, interpretación o producción ajena como si fuera propia o de persona distinta del verdadero autor o titular del derecho; y
- 4) Sin autorización por escrito del titular, total o parcialmente, reproduzca, fije o copie por cualquier medio una obra, la actuación de un intérprete o ejecutante, un fonograma o una emisión de radiodifusión o televisión o importe a la venta, tenga en depósito, distribuya, exporte o venda, dé en arrendamiento o ponga de cualquier otra manera en circulación dichas reproducciones o copias.”

“Artículo 108

“Las sanciones previstas en los artículos anteriores, podrán aumentarse en un tercio de la pena, cuando los delitos sean cometidos respecto de una obra, interpretación, producción, no destinada a la divulgación, o con atribución falsa de paternidad, con deformación, mutilación u otras modificaciones que pongan en peligro el decoro o la reputación o una de las personas protegidas por la Ley.

Además de las sanciones indicadas, el Juez impondrá al responsable, una multa de tres mil córdobas a veinticinco mil córdobas de acuerdo a la gravedad del infracción y si éste fue comerciante ordenará la suspensión, sin perjuicio de sus responsabilidades civiles.”

“Artículo 109

“Las imprentas y demás empresas que se dediquen a actividades similares no podrán realizar trabajos de impresión, reproducción de etiquetas portadas y material necesario para difusión de obras y fonogramas sin la autorización del titular del derecho.”

“Artículo 110

“La indemnización pecuniaria que el infractor deberá pagar al ofendido por la violación de los derechos de autor conexos, será como mínimo igual al precio de venta de un ejemplar legítimo multiplicado por el número de copias ilícitas que hubieren sido incautadas. El monto de la indemnización, en todo caso, no será inferior al valor de 100 ejemplares.”

3.5. ¿Cómo define la ley la responsabilidad de los proveedores de servicio?

No se encuentra ninguna disposición al respecto en la ley.

3.6. ¿Existen algunas disposiciones en la ley relativas al almacenamiento temporal?

“Artículo 2

“Para efectos de esta Ley se entiende por:

[...]

2.29. Reproducción: Es la incorporación de una obra, o producción intelectual en un medio, que permita su comunicación incluyendo su almacenamiento electrónico y la obtención de copias de ella por cualquier medio o procedimiento.

[...]”

“Artículo 23

“El derecho patrimonial es alienable, temporal y, sin perjuicio de otras modalidades, comprende las siguientes:

(1) Derechos de reproducción de la obra total o parcial, permanente o temporal, en cualquier tipo de soporte.

[...]”

3.7. ¿Existen algunas disposiciones expresas para asegurar que las disposiciones en contra de la elisión no restrinjan el funcionamiento de las limitaciones o excepciones a los derechos otorgados en la ley?

No se encontraron disposiciones al respecto en la ley.

PANAMA

(LawReviewed:CopyrightLaw,08/08/1994,No.15)

1. WCTprovisions

1.1. DoesthescopeofcopyrightprotectionintheLawextendonlytoexpressions,andnot toideas,procedures,methodsofoperationormathematicalconcepts?

NotfoundintheLawreviewed.

1.2. ArecomputerprogramsprotectedintheLawasliteraryworks?

“*Article2* .ForthepurposesofthisLaw,thefollowingexpressionsshallhavethe meaningsgiventhem:

[...]

30.’computerprogram’meansasetofinstructio nsexpressedinwords,incodeor ingraphicoranyotherformwhich,onbeingincorporatedinanautomated readingdevice,iscapableofcausingacomputerorsimilarelectronicapparatus withinformation- processingcapabilitiestocarryoutorachievea particulartask orresult;

[...]”

“SubjectMatter

“*Article7* .Thesubjectmatterofcopyrightisthework,astheresultofintellectual creation.Thefollowinginparticularshallbeconsideredincludedamongworks protectedbylaw:worksexpressedin writing,includingcomputerprograms,lectures, addresses,sermonsandotherworksconsistingofworksexpressedorally;musical compositionswithorwithoutwords,dramaticanddramaticmusicalworks, choreographicandmimedworks,audiovisualworks,regardlessofthephysicalmedium orprocessused;photographicworksandworksexpressedbyaprocessanalogousto photography;worksoffineart,includingpaintings,drawings,sculptures,engravings andlithographs;worksofarchitecture,worksofappliedart,illustrations,maps,plans, sketchesandworksrelatingtogeography,topography,architectureorscience;and, finally,anyliterary,artistic,educationalorscientificproductionsusceptibleof disclosureorpublicationbyanymeansorprocess .”

1.3. Arecompilationsofdataorothermaterial,inanyform,whichbyreasonoftheselection orarrangementoftheircontentsconstituteintellectualcreations,protectedintheLaw?

“*Article8* .Withoutprejudicetotherightsintheoriginalwork ,protectionshallalsobe extendedtotranslations,adaptations,transformationsorarrangementsofworksor expressionsoffolklore,andalsoanthologiesorcompilationsofassortedworksanddata

bases which, by reason of these selection or arrangement of their subject matter, constitute personal creations.”

1.4. Is there a right of distribution in the Law?

“Economic Rights

“*Article 36*. The author shall likewise have the exclusive right to exploit the work in any form and derive profit from it in all but the exceptional cases expressly provided for in this Law.

“Economic rights are not attachable, but the benefits derived from exploitation are, and shall be considered income for the purposes of any privileges provided for by law.

“Economic rights shall in particular include the right of amendment, communication to the public, reproduction and distribution, and each of them, and the procedures associated therewith, shall be mutually independent.

“[...]”

1.5. Is there a right of rental in the Law, and if so, to which works does it apply?

Not found in the Law reviewed.

1.6. Is there a right of communication to the public in the Law?

“Economic Rights

“*Article 36*. The author shall likewise have the exclusive right to exploit the work in any form and derive profit from it in all but the exceptional cases expressly provided for in this Law.

“Economic rights are not attachable, but the benefits derived from exploitation are, and shall be considered income for the purposes of any privileges provided for by law.

“Economic rights shall in particular include the right of amendment, communication to the public, reproduction and distribution, and each of them, and the procedures associated therewith, shall be mutually independent.

“[...]”

“*Article 38*. The following in particular shall be acts of communication to the public:

1. stage performances, recitations, analyses and public renderings of dramatic, dramatico-musical, literary and musical works in any form and by any process;
2. the public projection or display of audiovisual works;

3. the broadcasting of a work by radio or any other medium used for the wireless dissemination of signs, sounds or images;
4. the transmission of any work to the public by wire, cable, optic fiber or other comparable processes;
5. the retransmission of the broadcast or televised work by any of the means identified in the foregoing subparagraphs by a broadcasting organization different from the original one;
6. the receiving of the work broadcast by radio or television, by any appropriate process, in a place accessible to the public;
7. the public presentation or display of works of art or reproductions thereof;
8. public access to computer databases by telecommunication where the databases incorporate or constitute protected works;
9. the dissemination of signs, words, sounds or images by any process that is known or may be known in the future.”

1.7. Is it right to make available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

Not found in the Law reviewed.

1.8. Are photographic works given the same duration of protection as other works in the Law?

“Subject Matter

“*Article 7*. The subject matter of copyright is the work, as the result of intellectual creation. The following in particular shall be considered included among works protected by law: works expressed in writing, including computer programs, lectures, addresses, sermons and other works consisting of work expressed orally; musical compositions with or without words, dramatic and dramatic musical works, choreographic and mimed works, audiovisual works, regardless of the physical medium or process used; photographic works and works expressed by a process analogous to photography; works of fine art, including paintings, drawings, sculptures, engravings and lithographs; works of architecture, works of applied art, illustrations, maps, plans, sketches and works relating to geography, topography, architecture or science; and, finally, any literary, artistic, educational or scientific productions susceptible of disclosure or publication by any means or process.”

“Term

“*Article 42*. Economic right shall subsist for the life of the author and 50 years following his death, and shall be transferred *mortis causa* in accordance with the provisions of the Civil Code.”

1.9. What is the effective time -frame for application of the rights in the Law?

“Transitional Provisions

“*Article 130*. Rights in works that did not enjoy protection under the previous Law because they were not registered shall automatically enjoy the protection afforded by this Law, without prejudice to rights acquired by third parties prior to the entry into force thereof, provided that such uses have already been made or are being made on the date of promulgation of this Law.”

2. WPPT provisions

2.1. Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“*Article 2*. For the purposes of this Law, the following expressions shall have the meanings given them:

[...]

3. ‘performer’ means the person who performs, sings, reads, recites, interprets or otherwise executes a work;

[...]”

2.1.2 Is “phonogram” defined in the Law?

“*Article 2*. For the purposes of this Law, the following expressions shall have the meanings given them:

[...]

13. ‘phonogram’ means any fixation solely of the sounds of a performance or of other sounds; phonograph records and magnetic -tape recordings shall be copies of phonograms;

[...]”

2.1.3 Is “fixation” defined in the Law?

“Article 2. For the purposes of this Law, the following expressions shall have the meanings given them:

[...]

12. ‘fixation’ means the incorporation of signs, sounds or images in a physical medium that allows them to be perceived, reproduced or communicated;

[...]”

2.1.4 Is “producer of a phonogram” defined in the Law?

“Article 2. For the purposes of this Law, the following expressions shall have the meanings given them:

[...]

29. ‘producer of phonograms’ means the person, whether a natural person or legal entity, on whose initiative and responsibility and under whose coordination the sounds of a performance or other sounds are first fixed;

[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Article 2. For the purposes of this Law, the following expressions shall have the meanings given them:

[...]

31. ‘publication’ means the production of copies to be placed at the disposal of the public with the consent of the owner of the rights involved, provided that the availability of such copies is such as will satisfy the reasonable needs of the public, due account being taken of the nature of the work;

[...]”

2.1.6 Is “broadcasting” defined in the Law?

“Article 2. For the purposes of this Law, the following expressions shall have the meanings given them:

[...]

10. ‘broadcasting’ means the sending of sounds or images and sound over a distance for reception by the public;

[...]”

2.1.7 Is “communication to the public” defined in the Law?

“Article 2. For the purposes of this Law, the following expressions shall have the meanings given them:

[...]

4. ‘communication to the public’ means any act by which the work is made accessible to the public by any means or process, as provided in this Law, that does not consist in the distribution of copies; the entire process necessary and appropriate for making the work accessible to the public shall constitute communication;

[...]”

2.2. Is the concept of “national treatment” contained in the Law?

“Scope of the Law

“Article 127. Intellectual works shall be subject to this Law where the author or at least one of the co-author thereof is Panamanian or resident in the Republic or where, regardless of the nationality or residence of the author, the works have been first published in Panama, or published in Panama within 30 days of their first publication elsewhere.

“Works of art permanently located in a building situated in Panama shall be considered equivalent to published works.

“Stateless refugees and persons of disputed nationality shall be treated on the same footing as nationals of the State in which they have their residence.”

“Article 128. Intellectual works not covered by the foregoing Article shall be protected in accordance with the international convention to which the Republic is party or may become party in the future.

“In the absence of an applicable convention, such works shall enjoy the protection provided for in this Law insofar as the State to which the author belongs grants equivalent protection to Panamanian authors.”

“*Article 129*. Performances, phonographic productions and broadcasts protected under Title VIII shall be subject to this Law where the owner of the rights concerned is Panamanian or resident in the Republic or where, regardless of the owner’s nationality or residence, the said performances, productions or broadcasts have been made in Panama, first published in Panama or published in Panama within the 30 days following first publication elsewhere.

“The provisions of the last part of *Article 127* and of *Article 128* shall be applicable to foreign productions and other neighboring rights recognized by this Law.”

2.3. Do performers have moral rights in the Law?

“Performers

“*Article 87*. Performers or their successors in title shall have the exclusive right to authorize or prohibit the fixation, reproduction or communication to the public, by any means or process, of their performances. However, they may not object to communication when it is effected on the basis of a fixation made with their prior consent and published for commercial purposes.

“Performers shall likewise have the moral right to the association of their names or pseudonyms with their performances, and also the right to prevent any distortion of the work that might jeopardize their integrity or reputation.”

2.4. Do performers have economic rights in their unfixed performances, and if so, which ones?

“Performers

“*Article 87*. Performers or their successors in title shall have the exclusive right to authorize or prohibit the fixation, reproduction or communication to the public, by any means or process, of their performances. However, they may not object to communication when it is effected on the basis of a fixation made with their prior consent and published for commercial purposes.”

“[...]”

2.5. Do performers have a right of reproduction in the Law?

“Performers

“*Article 87*. Performers or their successors in title shall have the exclusive right to authorize or prohibit the fixation, reproduction or communication to the public, by any

means or process, Performers of their performances. However, they may not object to communication when it is effected on the basis of a fixation made with their prior consent and published for commercial purposes.”

“[...]”

2.6. Do performers have a right of distribution in the Law?

Not found in the Law reviewed.

2.7. Do performers have a right of rental in the Law?

Not found in the Law reviewed.

2.8. Do performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9. Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Producers of phonograms

“*Article 90*. Producers of phonograms shall have the exclusive right to authorize or prohibit the reproduction of their phonograms. The importation and distribution of phonograms shall be allowed, provided that they are legal.”

2.10. Do producers have a right of distribution in the Law?

“Producers of phonograms

“*Article 90*. Producers of phonograms shall have the exclusive right to authorize or prohibit the reproduction of their phonograms. The importation and distribution of phonograms shall be allowed, provided that they are legal.”

2.11. Do producers have a right of rental in the Law?

Not found in the Law reviewed.

2.12. Do producers have a right of making available of phonograms in the Law?

Not found in the Law reviewed.

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“*Article 91* .Producers of phonograms shall have the right to receive remuneration for the communication of the phonogram to the public, except in the case of the relevant lawful uses specified in Chapter II of Title VI of this Law.”

“*Article 92* .The producers of phonograms or their successors in title shall collect the remuneration referred to in the foregoing *Article* and pay the performers of the works incorporated in the phonogram 50 percent of the net amount that the producer receives from the collective administration organization referred to in Title IX of this Law.”

“*Article 93* .Unless otherwise agreed between them, the remuneration payable to the performers shall be divided into a two-third share for the performers and a one-third share for the accompanying musicians, including orchestra members and conductors.”

2.14. Are rights in the Law subject to any formalities?

“Registry of Copyright and Neighboring Rights

“*Article 103* .The Registry of Copyright and Neighboring Rights, under the authority of the Directorate General of Copyright, shall be responsible for processing applications for the registration of protected works and phonographic productions, performances and broadcasts fixed on a material medium and also instruments and contracts relating to rights recognized by this Law. One registration shall be made for the entire national territory.”

“*Article 104* .The Directorate General of Copyright shall lay down the requirements for the registration of works and other acts that have to be recorded, depending on the nature thereof.”

“*Article 105* .Registrations shall constitute authentic evidence, in the absence of proof to the contrary, of the existence of the work, performance or phonographic or broadcast production and the fact of the disclosure and publication thereof, and also the authenticity and legality of facts by which rights recognized by this Law are totally or partly transferred or representative powers for their administration or disposal are granted.

“It shall be presumed, in the absence of proof to the contrary, that the persons named in the register are the owners of the rights attributed to them as such.”

“*Article 106* .The authors, publishers, performers, producers or disclosers of the works and productions protected by this Law shall deposit the copies of the work or production at the Registry on terms laid down by the Directorate General of Copyright.

“The Directorate General of Copyright may, by virtue of a decision accompanied by a statement of reasons, allow the deposit of a copy to be replaced, for certain creative genres, by the submission of vouchers and documents that afford sufficient identification of the characteristics and content of the work or production to be registered.”

“Article 107. The formalities provided for in the foregoing Articles shall be only declaratory in character, in the interest of the legal security of the owners thereof, and shall not be constitutive of rights.

“Consequently, failure to effect registration or deposit shall not prejudice either the enjoyment or the exercise of the rights recognized by this Law.”

2.15. What is the term of protection for:

2.15.1 performers?

“Article 89. The term of the protection granted under this Chapter shall be 50 years, counted from January 1 of the year following the performance in the case of unfixed performances, or that of publication where the performance has been recorded on a sound or audiovisual medium.”

2.15.2 producers of phonograms?

“Article 94. The protection granted to the producer of phonograms shall be 50 years, counted from January 1 of the year following the first publication of the phonogram.”

2.16. What is the effective time-frame for application of rights in the Law?

“Transitional Provisions

“Article 130. Rights in works that did not enjoy protection under the previous Law because they were not registered shall automatically enjoy the protection afforded by this Law, without prejudice to rights acquired by third parties prior to the entry into force thereof, provided that such uses have already been made or are being made on the date of promulgation of this Law.”

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Limitations

“Article 47. The following shall be lawful communications without authorization from the author or payment of remuneration:

1. those made in the family circle, provided that there is no direct or indirect profit-making purpose;
2. those made with a view to the general interest in the course of official events and religious ceremonies, provided that the public may attend them free of charge and none of the participants in the communication is paid specific remuneration for his involvement in the event or ceremony;
3. those shown to be for exclusively educational purposes in teaching establishments, provided that they are communications without gainful intent;
4. those that are made for the blind and for other handicapped persons, provided that those persons are able to attend the communication free of charge and none of the participants is paid specific remuneration for his involvement in the act;
5. those that are made in trading establishments solely for the demonstration of receiving, reproduction or other similar apparatus to customers, or for the sale of the sound or audiovisual media in which the works are embodied;
6. those made because they are essential to the production of judicial or administrative evidence.”

“Article 48. With regard to works that have already been lawfully disclosed, the following shall be allowed without authorization from the author or remuneration:

1. the reproduction in one copy of the work by the prospective user with his own facilities and for his personal and exclusive use;
2. photomechanical reproductions, such as photocopies and microfilm, for exclusively personal use, provided that they are confined to small portions of a protected work or to works that are out of print; any use of pieces reproduced by any means or process other than personal purposes that is made in competition with the author's exclusive right to exploit this work shall be treated as unlawful reproduction;
3. the reproduction by reprographic means of articles or extracts from lawfully published short works for teaching or the holding of examinations at educational establishments, provided that there is no gainful intent and to the extent justified by the aim pursued, and on condition that the use is made in accordance with proper practice;

4. the reproduction in single copies of a work by non-profit-making libraries or archives where the original forms part of the permanent stocks, for its preservation and replacement where necessary, or for the replacement, in the permanent stocks of another library or archive, of a copy that has been mislaid, destroyed or rendered unusable, where it is not possible to acquire such a copy in a reasonable time and on reasonable terms;
5. the reproduction of a work for the purpose of judicial or administrative proceedings, if proof is given of the aim pursued;
6. the reproduction of a work of art on permanent display in a street, square or other public place by means of an artistic technique different from that used for the making of the original; with regard to buildings, this exception shall be confined to the outer façade;
7. the reproduction in a single copy of a computer program exclusively for backup or safety purposes;
8. the loading of the computer program in the memory of the computer for the purposes of the use alone.

“Article 49. It shall be permissible, without authorization from the author or payment of remuneration, to make quotations from lawfully published works, subject to the obligation to name the author and the source and on condition that the quotations are made in conformity with proper practice and to the extent justified by the aim pursued.

“Article 50. The following shall likewise be lawful without authorization or remuneration, provided that the author and source are named:

1. reproduction and distribution in the press, or transmission by any medium, of topical articles on economic, social, artistic, political or religious matters published in mass communication media, provided that reproduction or transmission have not been expressly reserved;
2. the dissemination of information on current events by sound or audiovisual media, and of images or sounds of the works seen or heard in the course of the said events, to the extent justified by the informative purpose;
3. the dissemination in the press or transmission by any medium, as news items, of speeches, debates, addresses, sermons and other works of similar character presented in public, and also addresses delivered in the course of judicial proceedings, when this is justified by the informative purposes pursued and without prejudice to the right, retained by the author of the works disseminated, to publish them individually or in the form of a collection.”

“*Article 51* .Itshallbelawfulforbroadcastingorganizations,withoutauthorization fromtheauthororpaymentofspecialremuneration,tomakeephemeralrecordings, usingtheirownfacilitiesandforuseintheirownbroadcasts,ofaworkthattheyhave therighttobroadcast.Thebroadcastingorganizationmust,however,destroy the recordingwithinsixmonthsofthetimeofitsmaking,exceptwherealongerperiodhas beenagreeduponwiththeauthor.Therecordingmayneverthelessbepreservedin officialarchiveswhenithasexceptionaldocumentarycharacter.”

“*Article 52* .Itshallbelawful,withoutauthorizationfromtheauthororpaymentof specialremuneration,forabroadcastingorganizationtotransmitorretransmitpublicly, bycable,aworkoriginallybroadcastbyitwiththeconsentoftheauthor,providedthat thetransmissionorretransmissiontothepublictakesplaceatthesametimeasthe originalbroadcastandtheworkistransmittedunalteredbybroadcastingortransmission tothepublic.”

“*Article 53* .Adaptationofacomputerprogramcarriedoutbytheuserhimselfforhis ownexclusiveusehallnotconstitutealterationforthepurposesof *Article 37* ofthis Law.”

3.2. Whatlegalprotection,andwhatlegalremedies,doesthelawprovideagainstthe circumventionofeffectivetechologicalmeasuresof protection?

NotfoundintheLawreviewed.

3.3. WhatobligationsareintheLawforthe protectionof“rightsmanagementinformation?”

NotfoundintheLawreviewed.

3.4. Generally,whatmeasuresforenforcementofrightsareintheLaw?

“CivilActionsandProcedures

“*Article 116* .Civilactionsthat arebrought invokingthe provisionsofthisLawshallbe heardandruleduponinsummaryproceedingsaccordingtotheprovisionsofthe JudicialCode.”

“*Article 117* .Thepersonhavingoriginalorder ivedownershipofrightsrecognizedby thisLawwhichhavebeenviolatedmay,withoutprejudicetoanyotheractionthatmay beappropriate,applytothecourtforanorderrestrainingtheunlawfulactivityofthe infringer,andmaydemandindemnification formaterialandmoraldamagecausedby theviolation.

“Hemayalsoseektheadoption,aspreliminaryprotection,ofthegeneralprecautionary measureslaid downintheJudicialCodeandtheprecautionarymeasuresofurgent protectionsspecifiedin *Article 119* ofthisLaw.

“A period of five years is established for the institution of civil action, which period shall be counted from the date as from which such action could be brought.”

“*Article 118*. Cessation of the unlawful activity may include the following:

1. suspension of the infringing use;
2. prohibition of the infringer from resuming such use;
3. withdrawal from the market and destruction of the unlawful copies;
4. disablement of molds, plates, dies, negatives and other equipment used exclusively for the unlawful reproduction, and destruction of the said equipment where necessary.

“The owner of the rights infringed may apply for the surrender to him of the unlawful copies and of the material used for the reproduction, at cost price, the amount to be set against the appropriate indemnification for damages and prejudice.”

“*Article 119*. In the event of an infringement or violation that has already taken place, the court may, at the request of the aggrieved owner, order whatever precautionary measures may, under the circumstances, be necessary for the immediate protection of such rights, including the following:

1. sequestration of all proceeds from the unlawful use;
2. sequestration of the unlawfully reproduced copies and of the apparatus used for reproduction;
3. suspension of the unauthorized reproduction, communication or distribution activity, as the case may be.

“The measures laid down in this *Article* shall be ordered if the alleged infringer fails to provide written proof of the requisite assignment or license, or if an element of proof is submitted to the court that constitutes a serious presumption of the alleged infringement of rights, or if such a presumption emerges from the evidence ordered by the court for the consideration of the allegedly unlawful act.

“In any event, the party requesting the precautionary measures specified in this *Article* shall post a bond or guarantees sufficient to compensate for any prejudice and cost that might be incurred.

“Suspension of a public show for unlawful use of protected works, performances or productions may be ordered by the court of the place in which the infringement occurs, even if it does not have jurisdiction on the main issue.

“These sequestration referred to in this *Article* shall have no effect on a person who has acquired an unlawfully produced original or copy in good faith for his personal use.”

“*Article 120* .The precautionary measures specified in the foregoing *Article* may be granted in connection with criminal proceedings instituted for infringement of the rights recognized by this Law, without prejudice to any other measure provided for in criminal procedure legislation.”

“*Chapter II*

“Infringements and Sanctions

“*Article 121* .Any person shall be punished with imprisonment for 30 days to 18 months who, without authorization:

1. makes improper use of the title of a work, in violation of *Article 28* ;
2. makes an amendment to the work in violation of the provisions of *Article 37*;
3. deliberately communicates a work protected by this Law to the public in any form or by any process in violation of *Article 36* and *38*, whether in its original or an altered form, in its entirety or in part;
4. uses copies of the work in violation of the rights laid down in *Article 40*, including the distribution of unlawfully reproduced phonograms;
5. retransmits a broadcast by any wire or wireless means in violation of *Article 95*;
6. reproduces or distributes, being the assignee or licensee authorized by the owner of the rights concerned, a greater number of copies than the assignment or license contract permits, or communicates, reproduces or distributes the work after the agreed period of authorization has expired;
7. falsely attributes to himself original or derived ownership of any of the rights recognized by this Law, and by virtue of that false attribution causes the competent judicial or administrative authority to suspend the communication, reproduction or distribution of the work, performance or production;
8. makes false statements in accounts of proceeds, works used and authors' identities or regarding authorization obtained or numbers of copies, or makes any other alteration to data that is liable to prejudice any of the owners of rights protected by this Law.

“The sanction under this *Article* shall be imposed according to the nature of the offense committed as determined by the competent authority, which shall observe the appropriate procedures.”

“*Article 122* .Thesanctions shall be imprisonment for two to four months for any person who:

1. reproduces, in violation of *Articles 36 and 39*, works protected by this Law either in their original or in an altered form, in their entirety or in part;
2. imports into the country, stocks, distributes, exports, sells or hires unlawful reproductions of protected works or otherwise brings them into circulation;
3. registers the work, performance or production of another at the Registry of Copyright and Neighboring Rights as if it were his own or that of a person different from the true owner, performer or producer.”

“*Article 123* .The sanction provided for in the foregoing *Article* shall likewise be imposed on any person who, without authorization, reproduces or copies by any means the performance of a performer, a phonogram or a broadcast, either in its entirety or in part, or who imports into the country, stocks, distributes, exports, sells or hires such reproductions or copies, or otherwise brings them into circulation.”

“*Article 124* .The sanctions provided for in the foregoing *Articles* shall be increased by one-third when the offenses concerned are committed in relation to a work, performance or production that is not intended for disclosure, or in the case of appropriation of authorship, or information, mutilation or other alteration liable to prejudice the honor or reputation of any of the persons protected by this Law.”

“*Article 125* .As a subsidiary sanction, the court shall impose on the person responsible for any of the offenses specified in this Chapter a fine of 1,000 to 20,000 balboas, depending on the seriousness of the offense.”

“*Article 126* .For all the offenses provided for in this Chapter, proceedings shall start at the instigation of the party concerned.”

3.5. How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

Not found in the Law reviewed.

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exception rights provided in the Law?

Not found in the Law reviewed.

PARAGUAY

(Law Reviewed: Law No. 1328/98 on Copyright and Related Rights)

1. WCT provisions

1.1. Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

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

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

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

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

“8. The following shall not qualify for copyright protection:

1. the ideas contained in literary or artistic works, processes, operating methods or mathematical concepts, or the ideological or technical content of scientific works, or their industrial or commercial exploitation;
2. official texts of legislative, administrative or judicial character, or translations thereof, without prejudice to the obligation to respect the text and mention the source;
3. news of the day;
4. mere facts or data”

1.2. Are computer programs protected in the Law as literary works?

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

[...]

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

[...]

“4. The work to which the foregoing Article refers includes the following in particular:

[...]

13. computer programs;

[...]”

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

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

1.3. Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the law?

“4. The work to which the foregoing Article refers includes the following in particular:

[...]

14. collections of works such as encyclopedias and anthologies of works or other elements, such as databases, provided that such collections show originality in the selection, coordination or arrangement of their contents;

[...]”

1.4. Is there a right of distribution in the Law?

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

[...]

7. ‘distribution to the public’, the making available to the public of the original or one or more copies of the work or a permanent or temporary image of the

work, including disclosure by sale, rental, transfer or any other known or as yet unknown means;

[...]

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

[...]

3. distribution of copies of the work to the public;

[...]”

1.5. Is there a right of rental in the Law, and if so, to which works does it apply?

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

[...]

7. ‘distribution to the public’, the making available to the public of the original or one or more copies of the work or a permanent or temporary image of the work, including disclosure by sale, rental, transfer or any other known or as yet unknown means;

[...]”

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

[...]

3. distribution of copies of the work to the public;

[...]

Applies to all works.

1.6. IstherearightofcommunicationtothepublicintheLaw?

“25. Economicrightsshallinparticularincludetheexclusiverighttodo,authorizeor prohibitthefollowing:

[...]

2. communicationoftheworktothepublicbyanymeans;

[...]”

“27. Communicationtothepublicmayinparticularbeeffectedbymeansof:

1. stageperformances,recitals,dissertationsandpublicrenderingsofdramatic, dramatico-musical,literaryandmusicalworksbyanymeansorprocess,whether withthedirectinterventio noftheperformersorreceivedorgeneratedby mechanical,opticalorelectronicinstrumentsorprocessesorproducedfroma soundoraudiovisualrecordingorothersource;

2. thepublicprojectionorshowingofcinematographicandotheraudiovisual works;

3. thetransmissionofanyworkbybroadcastingorothermediumofwireless transmissionorbywire,cable,opticfiberorothercomparableprocessservingto disseminatesigns,words,soundsorimagesoveradistance,whetherornoton subscriptionor againstpayment;

4. theretransmissionofabroadcastworkbyabroadcastingorganization differentfromtheoriginalone;

5. thereceivingofaworkbroadcastbyradioortelevisionbymeansofany appropriateapparatus,inaplaceaccessibletothepu blic;

6. thepublicshowingofworksofartorreproductionsthereof;

7. accessbytelecommunicationtoanelectronicdata -retrievalsystem, includingcomputerdatabases,serversorothermemorystorage deviceswheretheyincorporateorconstituteprotectedworks;

8. thetransmissionofaworkbysatellite;

9. thepoint -to-pointtransmissionofaworkthatismadeavailabletothe public,includingvideo -on-demand;

10. accessbytelecommunicationtoanelectronicretrievalsystem,including computerdatabases,serversorsimilarelectronicstorage devices;

11. theliveperformanceofaworkbeforeanaudience;

12. ingeneral,thedisseminationordisclosureofsigns,signals,words,sounds orimagesbyanyknownoras yetunknownmeansorprocess.”

1.7. Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

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

[...]

3. the transmission of any work by broadcasting or other medium of wireless transmission or by wire, cable, optic fiber or other comparable process serving to disseminate signs, words, sounds or images over a distance, whether or not on subscription or against payment;

[...]”

1.8. Are photographic works given the same duration of protection as other works in the Law?

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

[...]

“10. photographic works and works expressed by a process analogous to photography;

[...]”

“Term

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

1.9. What is the effective time-frame for application of the rights in the Law?

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

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

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

“183. Societies or associations of owners of rights already operating as collective management bodies shall have a period of six months following the date of entry into force of this Law within which to adapt their constituent instruments, statutes and rules of operation to the provisions contained in Title X, to file the documentation referred to in Articles 141 and 142 and to seek the final operating license provided for in Articles 136, 137 and 139 of this Law.

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

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

2. WPPT provisions

2.1. Definitions:

2.1.1. Is “performer” or “performers” defined in the Law?

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

[...]

2. ‘performer’, the person who presents, sings, reads, recites, performs or in any way executes a literary or artistic work or an expression of folklore, including the variety artiste or circus performer;

[...]”

2.1.2 Is “phonogram” defined in the Law?

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

[...]

13. ‘phonogram’, any fixation of sounds of a performance or other sounds, or of a representation of such sounds;

[...]”

2.1.3 Is “fixation” defined in the Law?

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

[...]

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

[...]”

2.1.4 Is “producer of a phonogram” defined in the Law?

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

[...]

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

[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

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

[...]

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

[...]”

2.1.6 Is “broadcasting” defined in the Law?

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

[...]

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

[...]”

2.1.7 Is “communication to the public” defined in the Law?

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

[...]

4. ‘communication to the public’, the act by which the work is made accessible to the public by any means or process;

[...]”

2.2. Is the concept of “national treatment” contained in the Law?

“Scope of Law

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

2.3. Do performers have moral rights in the Law?

“122. Performers shall enjoy the moral right:

1. to the recognition of their names in relation to their performances;

2. to oppose any distortion, mutilation or any other act in relation to their performances that is detrimental to their prestige or reputation.”

2.4. Do performers have economic rights in their unfixed performances, and if so, which ones?

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

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

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

2.5. Do performers have a right of reproduction in the Law?

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

[...]

2. fixation and reproduction of their performances by any means or process;
3. reproduction of an authorized fixation where it is done for purposes different from those for which the authorization was given.”

2.6. Do performers have a right of distribution in the Law?

Not found in the Law reviewed.

2.7. Do performers have a right of rental in the Law?

Not found in the Law reviewed.

2.8. Do performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9. Do producers of phonograms (“producers”) have a right of reproduction in the Law?

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

1. direct or indirect reproduction of their phonograms;

[...]”

2.10. Do producers have a right of distribution in the Law?

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

[...]

2. distribution to the public, including exportation, rental, public lending and any other transfer of possession for a consideration of copies of their phonograms;

[...]”

2.11. Do producers have a right of rental in the Law?

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

[...]

2. distribution to the public, including exportation, rental, public lending and any other transfer of possession for a consideration of copies of their phonograms;

[...]”

2.12. Do producers have a right of making available of phonograms in the Law?

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

[...]

4. digital communication by optic fiber, radiowave, satellite or any other system that has been or may yet be created where such communication is equivalent to an act of distribution, in that it enables the user to select the work and production by digital means;

[...]”

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

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

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

2.14. Are rights in the Law subject to any formalities?

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

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

2.15. What is the term of protection for:

2.15.1 performers?

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

2.15.2. producers of phonograms?

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

2.16. What is the effective time-frame for application of rights in the Law?

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

“Works and other productions that have passed into the public domain on expiry of the term provided for in the legislation repealed by this Law shall return to the private

domain until such time as the term provided for in this Law expires, without prejudice to rights acquired by third parties prior to the entry into force thereof.

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

“183. Societies or associations of owners of rights already operating as collective management bodies shall have a period of six months following the date of entry into force of this Law within which to adapt their constituent instruments, statutes and rules of operation to the provisions contained in Title X, to file the documentation referred to in Articles 141 and 142 and to seek the final operating license provided for in Articles 136, 137 and 139 of this Law.

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

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

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Limitations on Exploitation Rights

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

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

5. where it is essential to the provision of judicial or administrative evidence.

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

1. reproduction by reprographic means, for the purposes of teaching or the holding of examinations at educational establishments, provided that there is no gainful intent and only to the extent justified by the objective pursued, of articles or short extracts from lawfully published works, on condition that the use is in keeping with proper practice;
2. the reproduction of a single copy of a work by non-profit-making public libraries or archives, where the copy is in the permanent collection, in order to preserve that copy and replace it in the event of its being lost, destroyed or rendered unusable, or to replace the copy in the permanent collection of another library or archive that has been lost, destroyed or rendered unusable, provided that it is not possible to acquire such a copy in a reasonable time and on acceptable terms;
3. the reproduction of a work for judicial or administrative proceedings, to the extent justified by the aim pursued;
4. the reproduction of a work of art on permanent display in streets, squares or other public places, or on the outer walls of buildings, where the artistic medium used is different from that used for the making of the original, provided that the name of the author and the title of the work, if known, and the place in which it is located are mentioned;
5. the lending to the public of the lawful copy of a work expressed in writing by a library or archive that does not pursue any direct or indirect profit-making purpose;
6. the reproduction of works in Braille or another specific form for the exclusive use of the visually handicapped, provided that the reproduction is not done with gainful intent and the copies are not used for profit-making purposes;
7. where the work is used as a sign, emblem or distinctive mark of a political party or non-profit-making civil association or entity.

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

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

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

1. reproduction and distribution in the press, or transmission in any medium, of topical articles on economic, social, artistic, political or religious issues that are published in mass communication media or disclosed by broadcasting, without prejudice to the author's exclusive right to publish them separately, either singly or in a collection;
2. the dissemination, in connection with news reporting on current events in sound or audiovisual media, of the images or sounds of works seen or heard in the course of these events, to the extent justified by the informatory purpose;
3. the dissemination in the press or transmission in any medium, as news of current events, of speeches, dissertations, addresses, sermons and other works of similar character given in public, and also speeches delivered in the course of judicial proceedings, to the extent justified by the informatory purposes pursued and without prejudice to the rights that the authors retain in the works disseminated with respect to their publication either singly or in a collection;
4. the transmission by broadcasting or cable distribution or any other known or as yet unknown medium of the image of an architectural work, a work of fine art, a photograph or a work of applied art located permanently in a place open to the public.

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

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

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

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

3. a database or compilation of data.

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

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

3.2. What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

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

[...]

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

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

[...]

7. where a person manufactures, imports, sells, rents or in any other way brings into circulation devices or systems that are of prime importance in the unauthorized decrypting of an encrypted program -carrying satellite signal or in facilitating unauthorized reception of a program broadcast or otherwise communicated to the public in coded form.

[...]”

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

3.3. What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4. Generally, what measures for enforcement of rights are in the Law?

“Civil Action and Procedure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“164. The user of the works, performances, productions, broadcasts and other intellectual property recognized by this Law shall be considered guilty of negligent delay where he fails to make the payments specified in the tariffs laid down for the form

of use concerned, or the compensatory remuneration, within the 10 consecutive days following a judicial or notarial summons to do so.

“165. Owners of copyright may exercise all the rights relating to civil actions and procedures provided for in this Chapter against a person who possesses, uses, designs, manufactures, imports, exports or distributes, whether by sale, rental, lending or other means, any device or computer program, or against a person who offers or renders a service whose purpose or effect is to permit or facilitate the avoidance of coding technology.

“Criminal Sanctions

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

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

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

1. where a person improperly uses the title of a work in breach of Article 6 of this Law;
2. where a person makes an alteration to the work in violation of the provisions of Article 30 of this Law;
3. where a person communicates a work to the public in violation of the provisions of Article 27, an audiovisual recording provided for in Article 134 or photographic image provided for in Article 135 of this Law;
4. where a person distributes copies of the work in breach of the rights provided for in Article 28, of phonograms in violation of Article 127, of an audiovisual recording as provided for in Article 134 or of a photographic image provided for in Article 135 of this Law;
5. where a person imports copies of the work not intended for the national territory in violation of the provisions of Article 29, or of phonograms, in violation of the provisions of Article 127 of this Law;

6. where a person, by any wire or wireless means, retransmits a radio broadcast or a transmission by wire, cable, optic fiber or other comparable process in breach of the provisions of Article 25, 26, 131 or 132 of this Law;

7. where a person communicates to the public performances or phonograms that are intended solely for private performance;

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

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

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

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

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

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

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

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

5. where a person reproduces or copies by any means the performance of a performer, a phonogram, a radio broadcast or a transmission by wire, cable, optic

fiber or other comparable process, or who brings into the country, stocks, distributes, exports, sells, rents or in any other way brings into circulation such unlawful reproduction;

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

7. where a person manufactures, imports, sells, rents or in any other way brings into circulation devices or systems that are of prime importance in the unauthorized decrypting of an encrypted program -carrying satellite signal or in facilitating unauthorized reception of a program broadcast or otherwise communicated to the public in coded form.

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

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

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

“Border Control

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

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

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

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

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

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

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

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

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

3.5. How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6. Are there any provisions in the Law on temporary storage?

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

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

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

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

PERU

(LawReviewed:CopyrightLegislativeDecree,23/04/1996,No.822)

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1. WCTp rovisions

1.1 DoesthescopeofcopyrightprotectionintheLawextendonlytoexpressions,andnot toideas,procedures,methodsofoperationormathematicalconcepts?

“*Article8.* Protectionshallapplyexclusivelytotheformofexpressionusedto describe,explainorillustratetheauthor’sideasorincorporatedthem inworks.

“*Article9.* Thefollowingarenoteligibleforcopyrightprotection:

- (a) theideascontainedinliteraryorartisticworks,processes,operating methodsormathematicalconcepts inthemselves,systemsortheideologicalor technicalcontentofscientificworks,ortheindustrialorcommercialexploitation thereof.

[...]”

1.2 ArecomputerprogramsprotectedintheLawasliteraryworks?

“*Article5.* Protectedworksshallincludethefollowing:

[...]

- (k) computerprograms;

[...]”

“*Article69.* Computerprogramsshallbeprotectedonthesametermsasliteraryworks. Thatprotectionshallextendtoeveryformofexpressionthereof,includingboth operatingandapplicationprograms,intheformofeithersourcecodesorobjectcodes.

“TheprotectionprovidedforinthisLawshallextendtoanyofthesuccessiveversions oftheprogram,andalsoderivedprograms.”

¹⁰ AccordingtotheConstitutionofPeru(Article55)“TreatiesmadebytheStateandinforceform partoftheNationalLaw.”

1.3 Are compilations of data or other material, in any form, which by reason of these selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 5. Protected works shall include the following :

[...]

(1) anthologies or compilations of various works or expressions of folklore, and databases, provided that the said collections are original in the selection, coordination or arrangement of their contents;

[...]”

“Article 78. Databases or compilations of data or other material that are machine readable or accessible in another form shall be protected provided that they constitute intellectual creations in terms of these selection or arrangement of their subject matter. The protections so recognized shall not extend to the actual data, information or material compiled, but shall not affect any right that may subsist in the work or constituent subject matter.”

1.4 Is there a right of distribution in the Law?

“Article 2. For the purposes of this Law, the expressions that follow, and the various derived forms thereof, shall have the meanings specified:

[...]

(8) distribution: making the original or copies of the work available to the public by sale, rental, lending by any means that is or may yet become known of transferring ownership or possession of the said original or copy;

[...]”

“Article 31. Economic rights shall in particular include the exclusive right to perform, authorize or prohibit any of the following acts:

[...]

(c) distribution of the work to the public;

[...]”

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

“Article 34. For the purposes of this Chapter, distribution includes the making available to the public, by any means or process, of the original or copies of the work by means of sale, exchange, assignment or another form of transfer of ownership, or by rental, public lending or another method of use or exploitation .

[...]"

"Article 72. The right of rental or lending shall not apply to computer programs when the program concerned is incorporated in a machine or product and cannot be reproduced or copied in the course of the normal use of the said machine or product, or alternatively where the rental or lending does not relate essentially to the computer program itself."

1.6 Is there a right of communication to the public in the Law?

"Article 2. For the purposes of this Law, the expressions that follow, and the various derived forms thereof, shall have the meanings specified:

[...]

(5) communication to the public: any act where by one or more persons, either gathered together in one place or not, are afforded access to the work without the prior distribution of copies to each one of them, by any analog or digital means or process that is or may yet become known for the purpose of disseminating signs, words, sounds or images; the entire process necessary to make the work accessible to the public constitutes communication;

[...]"

"Article 33. Communication to the public may take the following forms in particular:

(a) stage performances, recitals, public presentations and renderings or dramatic, dramatico-musical, literary and musical works by any means or process, whether with the live participation of the performers or received or generated by mechanical, optical or electronic instruments or processes or produced from a sound or audiovisual recording or from a digital representation or other source;

(b) public projection or showing of cinematographic and other audiovisual works;

(c) analog or digital transmission of any works by broadcasting or another means of wireless dissemination or by wire, cable, optic fiber or another analog or digital process serving for the transfer over a distance of signs, words, sounds or images, whether or not simultaneously and whether or not against subscription or payment;

(d) retransmission of a broadcast work by a broadcasting entity other than the original one;

(e) reception in a place open to the public, and by means of any appropriate apparatus, of a work broadcast by radio or television;

(f) public display of works of art or reproduction thereof;

(g) public access to computer databases by means of telecommunication or any other means or process insofar as they incorporate or constitute protected works;

(h) in general, dissemination of signs, words, sounds or images by any means or process that is or may yet become known.”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

Not found in the Law reviewed.

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Article 5. Protected works shall include the following:

[...]

(h) photographic works and works expressed by a process analogous to photography;

[...]”

“Article 52. The term of economic rights shall be the lifetime of the author and 70 years following his death, regardless of the country of origin of the work, and shall be transferred on death in accordance with the provisions of the Civil Code. In the case of works of joint authorship, the term of protection shall be counted from the date of the death of the last surviving co-author.”

“Article 53. The term of protection of anonymous and pseudonymous works shall be 70 years from the year of disclosure, except where the author reveals his identity before that term expires, in which case the provisions of the foregoing Articles shall apply.”

1.9 What is the effective time-frame for application of the rights in the Law?

Not found in the Law reviewed.

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 2. For the purposes of this Law, the expressions that follow, and the various derived forms thereof, shall have the meanings specified:

[...]

(2) performer: the person who acts, sings, reads, recites, interprets or in any form executes a literary or artistic work or an expression of folklore, including variety and circus performers;

[...]”

2.1.2 Is “phonogram” defined in the Law?

“Article 2. For the purposes of this Law, the expressions that follow, and the various derived forms thereof, shall have the meanings specified:

[...]

(14) phonogram: the sounds of a performance or other sounds, or digital representations thereof, when fixed for the first time exclusively in the form of sounds; phonographic, magnetic –tape and digital recordings constitute copies of phonograms;

[...]”

2.1.3 Is “fixation” defined in the Law?

“Article 2. For the purposes of this Law, the expressions that follow, and the various derived forms thereof, shall have the meanings specified:

[...]

(13) fixation: the incorporation of signs, sounds, images or digital representations thereof in a physical medium that allows them to be read or otherwise perceived, reproduced, communicated or used;

[...]”

2.1.4 Is “producer of phonogram” defined in the Law?

“Article 2. For the purposes of this Law, the expressions that follow, and the various derived forms thereof, shall have the meanings specified:

[...]

(33) producer of phonograms: the person, whether natural person or legal entity, on whose initiative and responsibility and at whose direction the sounds of a performance or other sounds, or digitized reproduction thereof, are fixed for the first time;

[...]”

2.1.5 Is “publication of a fixed performance or phonogram” defined in the Law?

Not found in the Law reviewed

2.1.6 Is “broadcasting” defined in the Law?

“Article 2. For the purposes of this Law, the expressions that follow, and the various derived forms thereof, shall have the meanings specified:

[...]

(36) broadcasting: communication to the public by wireless transmission; broadcasting includes communication by satellite from the moment of injection of the signal, both in the upward and in the downward stage of the transmission, until such time as the program is carried by the signal is made accessible to the public;

[...]”

2.1.7 Is “communication to the public” defined in the Law?

Not found in the Law reviewed.

2.2 Is the concept of “national treatment” contained in the Law?

“Article 203. Works, artistic performances, phonographic productions, radiobroadcasts or transmissions by wire, cable, optic fiber or another comparable process, audiovisual recordings, photographic fixations and other intellectual property having originated abroad shall enjoy national treatment within the Republic, regardless of the nationality or domicile of the owner of the rights concerned, or the place of publication or disclosure.”

2.3 Do performers have moral rights in the Law?

“Article 131. Performers shall enjoy the moral right:

- (a) to be recognized by name in relation to their performances;
- (b) to object to any distortion, mutilation or any other adverse act in relation to their performance that would damage their prestige or reputation.”

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones?

“Article 132. Performers or their successors in title shall have the exclusive right to carry out, authorize or prohibit any of the following acts:

- (a) communication of their performance to the public in any form;
 - (b) fixation and reproduction of their performances by any means or process;
- [...]”

2.5 Do performers have a right of reproduction in the Law?

“Article 132. Performers or their successors in title shall have the exclusive right to carry out, authorize or prohibit any of the following acts:

- [...]
- (c) reproduction of an authorized fixation where intended for purposes other than those for which authorization was given.
- [...]”

2.6 Do performers have a right of distribution in the Law?

Not found in the Law reviewed.

2.7 Do performers have a right of rental in the Law?

Not found in the Law reviewed.

2.8 Do performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 136. Producers of phonograms shall have the exclusive right to carry out, authorize or prohibit any of the following acts:

(a) reproduction of their phonograms, either direct or indirect;

[...]”

2.10 Do producers have a right of distribution in the Law?

“Article 136. Producers of phonograms shall have the exclusive right to carry out, authorize or prohibit any of the following acts:

[...]

(b) distribution, rental or lending of copies of their phonograms to the public, or any other transfer of possession thereof, for consideration;

[...]”

2.11 Do producers have a right of rental in the Law?

“Article 136. Producers of phonograms shall have the exclusive right to carry out, authorize or prohibit any of the following acts:

[...]

(b) distribution, rental or lending of copies of their phonograms to the public, or any other transfer of possession thereof, for consideration;

[...]”

2.12 Do producers have a right of making available of phonograms in the Law?

Not found in the Law reviewed.

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 133. Performers shall likewise have the right to equitable remuneration for the communication to the public of a phonogram published for commercial purposes that contains their performance, except where the communication falls within the limits of the right of exploitation under this Law. Such remuneration, in the absence of agreement between the owners of the rights, shall be shared equally with the phonogram producer.”

“Article 137. The producers of phonograms shall have the right to receive remuneration for the communication of the phonograms to the public by any means or process, except in the case of the lawful communications provided for in this Law; such remunerations shall be shared equally among the performers.”

2.14 Are rights in the Law subject to any formalities?

Not found in the Law reviewed.

2.15 What is the term of protection for:

2.15.1 performers?

“Article 135. The term of the protection granted under this Chapter shall be the lifetime of the performer and 70 years thereafter, counted from the first of January of the year following his death. On the expiration of the corresponding period, the performance shall fall into the public domain.”

2.15.2 producers of phonograms?

“Article 139. The protection granted to the phonogram producers shall be for 70 years counted from the first of January of the year following that of the first publication of the phonogram. On expiration of the term of protection, the phonograms shall fall into the public domain.”

2.16 What is the effective time-frame for application of rights in the Law?

Not found in the Law reviewed.

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 41. The intellectual works protected by this Law may be lawfully communicated, without the necessity of authorization by the author or payment of any remuneration, in the following cases:

- (a) where the act takes place in an exclusively domestic environment, provided that there is no direct or indirect economic interest and that the communication is not deliberately relayed outside by any means, either in its entirety or in part;
- (b) where the act takes place in the course of official events or religious ceremonies, involving small fragments of music or parts of musical works, provided that the public is able to take part in them free of charge and none of the participants in the act is paid specific remuneration for his performance in it;

(c) where the acts show to have an exclusively educational purpose, being performed in the course of the activities of a teaching institution by the staff and students of that institution, provided that the communication pursues no direct or indirect profit-making purpose and the audience is composed solely of the staff and students of the institution or parents or teachers of students and other persons directly associated with the institution's activities;

(d) where the act takes place in commercial establishments for the purpose of demonstrating, receiving, reproduction or other similar apparatus to customers or with a view to the sale of the sound or audiovisual media that contain the work, provided that the communication is not deliberately relayed outside, either entirely or in part;

(e) where the acts are essential to the provision of legal or administrative evidence.

“Article 42. Lectures given either in public or in private by the lecturers of universities, higher institutes of learning and colleges may be annotated and collected in any form by those to whom they are addressed, provided that no person may disclose them or reproduce them either a complete or a partial collection without the prior written consent of the authors.”

“Article 43. With regard to works that have already been lawfully disclosed, the following shall be permitted without the author's consent:

(a) reproduction by reprographic means, for teaching or the holding of examinations at educational institutions, provided that there is no gainful intent and to the extent justified by the aim pursued, of articles or brief extracts from lawfully published works, on condition that the use made of them is consistent with proper practice, involves no sale or other transaction for consideration and has no direct or indirect profit-making purpose;

(b) reproduction by reprography of short fragments or of works published in graphic form that are out of print, for exclusively personal use;

(c) individual reproduction of a work by a public library or archive that pursues no direct or indirect profit-making purpose, where a copy of the work is available in the permanent collection of the said library or archive, with a view to preserving the work and replacing the copy where it has been mislaid, destroyed or rendered unusable, or alternatively to replace a copy belonging to the permanent collection of another library or archive that has been mislaid, destroyed or rendered unusable, provided that it has proved impossible to acquire such a copy within a reasonable time and on reasonable terms;

(d) the reproduction of a work for the purposes of judicial or administrative proceedings, to the extent justified by the aim pursued;

(e) the reproduction of a work of art on permanent display in a street, square or other public place, or that of the outer façade of a building, where it is done in an art form different from that used for the making of the original, provided that the name of the author, if known, the title of the work, if any, and the place in which it is located are specified;

(f) the lending to the public of the lawful copy of a work in written form by a library or archive whose activities have no direct or indirect profit-making purpose.

“In all the cases specified in this Article, any use of works that competes with the author’s exclusive right to exploit this work shall be equivalent to unlawful use.

“*Article 44.* It shall be permissible to make quotations from lawfully disclosed works without the author’s consent or payment of remuneration, subject to the obligation to state the name of the author and the source, and to the condition that such quotations are made in accordance with proper practice and only to the extent justified by the aim pursued.”

“*Article 45.* The following shall likewise be lawful without authorization, provided that the name of the author and the source are stated and that reproduction or disclosure have not been expressly reserved:

(a) dissemination, in connection with the reporting of current events by sound or audiovisual means to the extent justified by the informative purpose, of images or sounds or works seen or heard in the course of such events;

(b) dissemination by the press or transmission by any means, as news of current events, of speeches, lectures, addresses, sermons and other works of similar character delivered in public, and speeches delivered in the course of judicial proceedings, to the extent justified by the informative purpose pursued, and without prejudice to the right retained by the author of the works disseminated to publish them individually in the form of a collection;

(c) dissemination by broadcasting or transmission by cable or any other means that is or may yet become known of the image of an architectural work, a work of three-dimensional art, a photographic work or a work of applied art located permanently in a place open to the public.”

“*Article 46.* It shall be lawful for a broadcasting organization, without the consent of the author or payment of additional remuneration, to make ephemeral recordings, using its own facilities and for a single use in its own broadcasts, of a work that it has the right to broadcast. The recordings shall be destroyed within three months, unless a longer period has been agreed upon with the author. Such a recording may however be preserved in official archives, likewise without the author’s consent, where the work possesses exceptional documentary character.”

“Article 47. It shall be lawful, without the author’s consent or payment of additional remuneration, for a broadcasting organization to transmit or retransmit a work or originally broadcast by it, provided that the retransmission or transmission to the public takes place simultaneously with the original broadcast and the work is broadcast or transmitted to the public without alteration.”

“Article 48. It shall be lawful to make copies for exclusively personal use of works, performances or productions published as sound or audiovisual recordings. The reproductions permitted by this Article shall not however include the following:

- (a) the reproduction of a work of architecture in the form of a building or any other structure;
- (b) the reproduction of the whole of a book, a musical work in written form or the original or a copy of a three-dimensional work made and signed by the author;
- (c) a database or compilation of data.”

“Article 49. A parody of a disclosed work shall not be considered a transformation requiring authorization by the author where it does not involve a risk of confusion therewith or risk of damaging the original work or its author, without prejudice to the remuneration accruing to him for such use.”

“Article 50. The exceptions provided for in the foregoing Articles shall be interpreted restrictively, and may not be applied to cases that are contrary to proper practice.”

“Article 51. The limitations on the exploitation rights in computer programs shall be exclusively those provided for in the Chapter concerning such programs.”

“Article 74. The lawful user of a computer program may make a copy or adaptation of the said program provided that:

- (a) it is essential for the use of the program;
- (b) it is intended exclusively as a reserve copy to replace a legitimately acquired copy where the latter cannot be used on account of damage or loss.

“Reproduction of a computer program, including for personal use, shall require permission from the author of the rights, with the exception of the reserve copy.”

“Article 75. The adaptation of a program by the lawful user, including the correction of errors, shall not constitute an adaptation or transformation unless it has been expressly prohibited, except in the case of express prohibition by the owner of the rights, provided that the adaptation is intended solely for personal use.

“Themakingofcopiesoftheprogramsoadaptedforusebytwoormorepersons,orthedistributionthereaftertothe public,shallrequiretheexpresspermissionoftheowneroftherights.”

“*Article 76.* Theconsentoftheauthors shallnotberequiredforthereproductionofaprogramcodeandthetranslationoftheformthereofwhensuchactionisessentialtoachievetheinteroperabilityofanindependentlycreatedprogramwithotherprograms, providedthatthefollowingrequirement saremet:

- (a) theactsmustbeperformedbythelawfullicenseeorbyanyotherperson empoweredtouseacopyofaprogram,orintheirnamebyapersonduely authorizedbytheowner;
- (b) theinformationessentialforinteroperabilitytobeachievedmustnot have beenpreviously,ormustnotbereadilyandrapidlyinthelightofallthe circumstancessubjecttoareasonablerequestmadetotheowner,availabletothe personsreferredtointheforegoingsubparagraph;
- (c) theactsmustbeconfinedstrictlytothosepartsoftheoriginalprogramthat areessentialtotheachievementofinteroperability.

“InnoeventmaytheinformationobtainedbyvirtueoftheprovisionsofthisArticlebe usedforpurposesotherthanthosementionedtherein,orforthedevelopment, productionormarketingofaprogramthatissubstantiallysimilarinexpression,orfor anyotheractinviolationoftheauthor’srights.Suchinformationmaylikewisenotbe communicatedtothirdpartiesexceptwhereitisessentialto theinteroperabilityofthe independentlycreatedprogram.

“TheprovisionsofthisArticleshallnotbesointerpretedthattheapplicationthereofis liabletoprejudiceunjustifiablythelegitimateinterestsoftheauthoroftheprogramor is contrarytothenormalexploitationthereof.”

“*Article 77.* NoneoftheprovisionsofthisChaptermaybesointerpretedthatthe applicationthereofunjustifiablyprejudicesthelegitimateinterestsoftheownerofthe rightsor iscontrarytothenormalexploitationofthecomputerprogram.”

3.2 Whatlegalprotection,andwhatlegalremedies,doesthelawprovideagainstthe circumventionofeffectivetechnologicalmeasuresofprotection?

“*Article 38.* Theowneroftheeconomicrightsisentitledtoeffort todemand,forthe reproductionorcommunicationofthework,theincorporationofsafeguarding mechanisms,systemsordevices,includingtheencodingofsignals,inordertoprevent theunauthorizedcommunication,reception,retransmission,reproductionor modificationofthework.

“Itshallthereforebeunlawfultoimport,manufacture,sell,rentorofferasservice,or placeincirculationinanyform,apparatusordevicesdesignedtodecodeencodesignals orcircumventanyofthesafeguardingsystems usedbytheowneroftherights.”

“Article 186. The Copyright Office is empowered to impose the sanctions corresponding to infringements of the copyright and neighboring rights protected by this legislation according to the seriousness of the offense, the conduct of the infringer throughout the proceedings, the economic prejudice caused by the infringement, the unlawful benefits realized by the infringer and other criteria that the said Office may set fit to apply in the light of each individual case.

“The infringers shall be considered to have committed a serious offense where he has violated any rights and where at least one of the following situations obtains:

- (a) violation of any of the moral rights recognized by this Law;
- (b) motivation by gainful intent or marketing purposes, whether direct or indirect;
- (c) submission of false statements regarding the certification of proceeds, the repertoire used, the identities of the owners of the rights involved, authorizations supposedly obtained and numbers of copies, or any other tampering with data that is liable to prejudice any of the owners of rights protected by this Law;
- (d) performance of acts attributable to a collective management society without having received the appropriate authorization from the Copyright Office;
- (e) repercussion that the infringement committed has had;
- (f) a second or further instance of prohibited conduct.”

“Article 187. A serious offense shall also have been committed by a person who manufactures, assembles, imports, alters, sells, rents, offers for sale or rents in any other way brings into circulation devices, systems, schemes or equipment capable of circumventing another device intended to prevent or restrict the making of copies of works or to impair the quality of copies so made, or those capable of permitting or promoting their reception by unauthorized persons of a coded program that is broadcast or otherwise communicated to the public.”

“Article 188. The Copyright Office may impose the following sanctions either together or indiscriminately:

- (a) reprimands;
- (b) fine not exceeding 150 tax units (UIT);
- (c) rectification of omissions;
- (d) temporary closure of premises, not exceeding 30 days;
- (e) permanent closure of premises;

- (f) permanent attachment or confiscation;
- (g) publication of the ruling at the infringer's expense."

"Article 189. In the event of a second or subsequent offense, understood as being the perpetration of an act of the same nature within a period of two years, the fine imposed may be doubled successively and without limitation."

"Article 190. The amount of fines shall be paid to INDECOPI within a period of five years, after which enforced recovery shall be ordered."

"Article 191. The Copyright Office may impose successive coercive fines on the infringer until he complies with the terms of the sentence handed down in a final decision, and also with the obligation to rectify omissions or alterations that they may have made, in which case he shall be given notice of a mandatory period on pain of the fines specified in Article 28 of Legislative Decree No. 807, the foregoing being without prejudice to the application of such other sanctions and measures as may be appropriate."

"Article 192. The authority may order, either *ex officio* or at the request of a party, a single publication of the relevant decision in the Official Gazette El Peruano, at the expense of the infringer."

"Final Provisions"

"[...]"

"Third. Articles 216 to 221 of Book II, Title VII, Chapter I of the Criminal Code are amended as follows:

"[...]"

"Article 218. The sanctions shall be confinement for no fewer than two or more than eight years and a fine of 60 to 100 times his averaged daily income where:

"[...]"

- (d) devices, systems, schemes or equipment are manufactured, assembled, imported, altered, sold, rented, offered for sale or rent or in any other way brought into circulation that are capable of circumventing another device intended to prevent or restrict the making of copies of works, or to impair the quality of copies so made, or that are capable of permitting or promoting the reception of a coded program that is broadcast or otherwise communicated to the public by persons not authorized to do so;

[...]"

"Article 221. Where offenses provided for in this Chapter are committed, the unlawful copies and apparatus or materials used for the commission of the unlawful act shall first be seized. At the request of the Public Prosecutor, the court shall likewise order the searching or forcible unlocking of the premises in which the unlawful act was being committed."

"Where a condemnatory sentence is passed, the unlawful copies may be delivered to the owner of the rights violated or to an appropriate institution; where such a step is not appropriate, they shall be destroyed. Delivery shall not have indemnifying character."

"In no case shall the unlawful copies be returned to the offender."

3.3 What obligations are in the Law for the protection of "rights management information?"

"Article 186. The Copyright Office is empowered to impose the sanctions corresponding to infringements of the copyright and neighboring rights protected by this legislation according to the seriousness of the offense, the conduct of the infringer throughout the proceedings, the economic prejudice caused by the infringement, the unlawful benefits realized by the infringer and other criteria that the said Office may set fit to apply in the light of each individual case."

"The infringers shall be considered to have committed a serious offense where he has violated any rights and where at least one of the following situations obtains:

[...]

(c) submission of false statements regarding the certification of proceeds, the repertoire used, the identities of the owners of the rights involved, authorizations supposedly obtained and numbers of copies, or any other tampering with data that is liable to prejudice any of the owners of rights protected by this Law;

[...]"

3.4 Generally, what measures for enforcement of rights are in the Law?

"Chapter III

"Administrative Procedure

"Article 173. Without prejudice to any civil and criminal actions that may be brought before the competent judicial authorities, the owners of any of the rights recognized in copyright and neighboring rights legislation, or their representatives, may report the infringement of their rights to the Copyright Office in its capacity as competent administrative authority, provided that such reports shall not in itself constitute a first instance proceeding."

“Article 174. Infringement actions initiated ex officio or at the request of a party shall be subject to the procedure laid down in Title V of Legislative Decree No. 807, with the exception of Article 22 thereof.

“To that end it shall be understood that, where reference is made in the said Title V to the Commission, it shall be construed as a reference to the Head of the Office and, where reference is made to the Technical Secretary, it shall be construed as a reference to the official designated by the competent office.”

“Article 175. Administrative actions for infringements shall be statute-barred after two years.

“Chapter IV

“Preventive or Precautionary Measures

“Article 176. Without prejudice to the provisions of Title V of Legislative Decree No. 807, the owners of any of the rights provided for in this Law, or their representatives, may, without prejudice to any other actions that may be available to them, apply on their own account and at their own expense and risk for the immediate cessation of the unlawful activity of the infringer in the terms provided for in this Chapter. To that end the Copyright Office, as an administrative authority, shall be empowered to order rapid and effective preventive or precautionary measures:

- (a) to avoid an infringement of any of the rights recognized by this Law, and in particular to prevent the introduction into commercial distribution circuits of suspected infringing merchandise, which shall include measures to prevent the entry of imported merchandise, at least immediately after customs clearance;
- (b) to preserve relevant evidence concerning the presumed infringement.”

“Article 177. The preventive or precautionary measures shall include the following:

- (a) immediate suspension or cessation of the unlawful activity;
- (b) attachment or confiscation, and withdrawal from commercial distribution circuits, of any copies produced or used and of the material or equipment used for the infringing activity;
- (c) the conduct of inspections, attachments or confiscations without prior notice.

“The precautionary measure of attachment or confiscation may be applied for only in connection with an administrative report procedure, without prejudice to any action that may be taken ex officio.”

“Article 178. The Copyright Office may, where appropriate, order the delivery to the injured party or to a suitable institution of the infringing merchandise and any of the materials and equipment used for the perpetration of the infringement, or it may order the destruction thereof. Where the injured party fails to appear in person before 20 days have elapsed following the corresponding notification, the authority may dispose of the unlawful materials as it sees fit .

“The selection of the suitable institution referred to in the foregoing paragraph shall be announced by the administration of INDECOPI. Precautionary and final measures shall not apply to a copy acquired in good faith for strictly personal use.”

“Article 179. Any person applying for a preventive or precautionary measure shall first file with the administrative authority any proof that is reasonably accessible to him and which the said authority considers sufficient to establish that:

- (a) the applicant is the owner of the rights or has authority to act;
- (b) the rights of the applicant are being infringed, or that such infringement is imminent;
- (c) any delay in the ordering of the measures could do irreparable harm to the owner of the rights, or if there is a demonstrable risk of evidence being destroyed.”

“Article 180. The person applying for preventive or precautionary measures shall file with the authority, in addition to the proof referred to in the foregoing Article, any information that might be necessary for the identification of the merchandise in relation to which the application is being made, and details of the place in which the said merchandise is located.”

“Article 181. The Copyright Office is entitled to order preventive or precautionary measures at the request of a single party, without having to give prior notice to the other party, especially where any delay is liable to do irreparable harm to the owner of the rights, or where there is an immediate risk of evidence being destroyed.”

“Article 182. The provisions of the foregoing Articles shall not apply to cases of communication to the public of a protected work, artistic performance, production or broadcast, carried out by an organizer or impresario who does not have the proper authorization, in which case revocation of the suspension or prohibition may only be achieved by the submission of the consent of the owner of the rights or of the collective management society representing him, or authentic evidence that the subject matter in question is not protected.

“The Copyright Office shall in that case proceed, at the request of the owner or of the management society representing him, to notify the alleged infringer immediately and prohibit him from making use of the work, performance, production or broadcast to

which the measure relates, giving due warning of the fine and other sanctions provided for in the Law.”

“Chapter V

“Infringements

“Article 183. The violation of any of the provisions of this Law shall be deemed an infringement.”

“Article 184. At the request of the owner of the rights concerned or of the collective management society representing him, the police authority shall immediately investigate the commission of any act in violation of this Law, and shall convey a copy of its report to the person concerned.”

“Article 185. Where the circumstances to which the administrative procedure relates constitute an alleged offense, the Copyright Office may file a criminal report with the Public Prosecutor.

“Where the Copyright Office has destroyed and disposed of the copies that constituted the subject matter of the copyright or neighboring rights infringement, the report shall be accompanied by a certified copy of the corresponding administrative decision, and also copies of the documents associated with the measures, which shall give an account of the subject matter to which they relate, for assessment as proof of the presumed offense.”

“Chapter VI

“Sanctions

“Article 186. The Copyright Office is empowered to impose the sanctions corresponding to infringements of the copyright and neighboring rights protected by this legislation according to the seriousness of the offense, the conduct of the infringer throughout the proceedings, the economic prejudice caused by the infringement, the unlawful benefits realized by the infringer and other criteria that the said Office may set fit to apply in the light of each individual case.

“The infringers shall be considered to have committed a serious offense where he has violated any rights and where at least one of the following situations obtains:

- (a) violation of any of the moral rights recognized by this Law;
- (b) motivation by gainful intent or marketing purposes, whether direct or indirect;
- (c) submission of false statements regarding the certification of proceeds, the repertoire used, the identities of the owners of the rights involved, authorizations

supposedly obtained and numbers of copies, or any other tampering with data that is liable to prejudice any of the owners of rights protected by this Law;

- (d) performance of facts attributable to a collective management society without having received the appropriate authorization from the Copyright Office;
- (e) repercussion that the infringement committed has had;
- (f) a second or further instance of prohibited conduct.”

“*Article 187.* A serious offense shall also have been committed by a person who manufactures, assembles, imports, alters, sells, rents, offers for sale or rents in any other way brings into circulation devices, systems, schemes or equipment capable of circumventing another device intended to prevent or restrict the making of copies of works or to impair the quality of copies so made, or those capable of permitting or promoting the reception by unauthorized persons of a coded program that is broadcast or otherwise communicated to the public.”

“*Article 188.* The Copyright Office may impose the following sanctions either together or indiscriminately:

- (a) reprimands;
- (b) fine not exceeding 150 tax units (UIT);
- (c) rectification of omissions;
- (d) temporary closure of premises, not exceeding 30 days;
- (e) permanent closure of premises;
- (f) permanent attachment or confiscation;
- (g) publication of the ruling at the infringer’s expense.”

“*Article 189.* In the event of a second or subsequent offense, understood as being the perpetration of a new act of the same nature within a period of two years, the fine imposed may be doubled successively and without limitation.”

“*Article 190.* The amount of fines shall be paid to INDECOPI within a period of five years, after which enforced recovery shall be ordered.”

“*Article 191.* The Copyright Office may impose successive coercive fines on the infringer until he complies with the terms of the sentence handed down in a final decision, and also with the obligation to rectify omissions or alterations that he may have made, in which case he shall be given notice of a mandatory period on pain of the fines specified in Article 28 of Legislative Decree No. 807, the foregoing being without prejudice to the application of such other sanctions and measures as may be appropriate.”

“Article 192. The authority may order, either ex officio or at the request of a party, a single publication of the relevant decision in the Official Gazette El Peruano, at the expense of the infringer.”

“Article 193. Where appropriate and without prejudice to the imposition of a fine, the authority shall order the infringer to pay the remuneration accruing to the owner of the rights concerned or to the society representing him.”

“Article 194. The amount of remuneration payable shall be determined according to the value that the owner of the rights, or the society representing him, would have collected if exploitation had been authorized.”

“Payment of the aforesaid remunerations shall in no case imply acquisition of copyright by the infringer. Consequently, the infringers shall not be relieved of the obligation to put this legal position in order by obtaining the relevant authorization or license.”

“Title XI

“Civil Actions and Procedures

“Article 195. Where, on the grounds of the violation of the provisions of this Law, the person concerned has chosen to institute several actions, those actions shall be conducted according to the rules of summary procedure laid down in the Civil Procedure Code and the provisions contained in special legislation.”

“Article 196. The owners of any of the rights provided for in this Law, their representatives or collective management societies may, without prejudice to any other action that may be available to them, seek the cessation of the infringer’s unlawful activity and demand compensation for the material and moral damage caused by the violation, and also repayment of all costs.”

“Article 197. Cessation of unlawful activity may include the following:

- (a) immediate suspension of the infringing activity;
- (b) prohibition of the infringer from resuming that activity;
- (c) withdrawal of the unlawful copies from the market, their delivery to the owner of the rights violated where appropriate, or their destruction;
- (d) disablement of molds, plates, matrices, negatives and other material intended for the reproduction of unlawful copies, and where necessary destruction of such material;

(e) seizure of the equipment used for unauthorized communication to the public.

“The courts may likewise order publication of the sentence, at the infringer’s expense, in one or more newspapers.”

Article 198. The court shall, at the request of the owner of the rights concerned, his representative or the corresponding management society, order the immediate institution of the necessary precautionary measures to avoid the perpetration of the infringement or the continuation or repetition of a violation already committed, including the following measures in particular:

- (a) seizure of the income realized through the unlawful activity or, where appropriate, of the amounts owed in remuneration;
- (b) immediate suspension of the unlawful manufacture, reproduction, distribution, communication or importation, as the case may be;
- (c) sequestration of the copies produced or used and of the material or equipment used for the infringing activity.

“The precautionary measures provided for in this Article shall not prevent the adoption of others provided for in ordinary legislation.”

Article 199. The measures provided for in the foregoing Articles shall be allowed by the judicial authority provided that the need for them is demonstrated and evidence is submitted in support of the likely existence of the alleged violation of rights.

“The need for the measure or the alleged violation of rights may also emerge from an inspection ordered by the court on the site of the infringement to produce advance evidence.”

Article 200. The precautionary measures specified in the foregoing Articles shall be lifted by the judicial authority where:

“(a) the person against whom the measure has been decreed provides sufficient security, in the court’s estimation, to cover the results of the action;

“(b) the person seeking the measures fails to give evidence of having initiated the procedure for securing a decision on the substance of the affair within a period of 30 days counted from the ordering or implementation of the said measures.”

Article 201. The precautionary measures provided for in the foregoing Articles shall apply without prejudice to the obligation on the customs authority, specified in Chapter III of Title III of this Law, or to the competence accorded to the Copyright Office.”

“Article 202. The user of the works, performances, productions, broadcasts and other intellectual property recognized by this Law shall be considered in default when he does not make the payments due according to the tariffs laid down for the form of use concerned within 10 consecutive days following a judicial or notarial notice served on him to do so.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provision in the Law on temporary storage?

Not found in the Law reviewed.

3.7 Are there any explicit provision to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

PHILIPPINES

(Law Reviewed: Republic Act No. 8293, An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions, and for Other Purposes)

1. WCT provisions

1.1. Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Section 175. Unprotected Subject Matter

“Notwithstanding the provisions of Sections 172 and 173, no protection shall extend, under this law, to any idea, procedure, system, method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof. (n)”

1.2. Are computer programs protected in the Law as literary works?

“Section 171. Definitions

“For the purpose of this Act, the following terms shall have the following meaning:

[...]

171.4.A ‘computer’ is an electronic or similar device having information processing capabilities, and a ‘computer program’ is a set of instructions expressed in words, codes, schemes or in any other form, which is capable when incorporated in a medium that the computer can read, or causing the computer to perform or achieve a particular task or result;

[...]”

“Section 172. Literary and Artistic Works.

“172.1 Literary and artistic works, hereinafter referred to as ‘works’, are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

[...]

(n) Computer programs; and

[...]”

1.3. Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Section 173. Derivative Works

“173.1. The following derivative works shall also be protected by copyright:

[...]

(b) Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents. (Sec. 2, [P] and [Q], P.D. No. 49)

[...]”

1.4. Is there a right of distribution in the Law?

“Section 177. Copy or Economic Rights.

“Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

[...]

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

[...]”

1.5. Is there a right of rental in the Law, and if so, to which works does it apply?

“Section 171. Definitions.

“For the purpose of this Act, the following terms have the following meaning:

[...]

171.8. ‘Rental’ is the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time, for profit-making purposes;

[...]”

“Section 177. Copy or Economic Rights.

“Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

[...]

177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n)

[...]”

1.6. Is there a right of communication to the public in the Law?

“Section 171. Definitions.

“For the purpose of this Act, the following terms have the following meaning:

[...]

171.3. ‘Communication to the public’ or ‘communicated to the public’ means the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them;

[...]”

“Section 177. Copy or Economic Rights

“Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

[...]

177.7. Other communication to the public of the work (Sec. 5, P.D. No. 49a).

[...]”

1.7. Is aright of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

“Section 171. Definitions.

“For the purpose of this Act, the following terms have the following meaning:

[...]

171.3. ‘Communication to the public’ or ‘communicated to the public’ means the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them;

[...]”

“Section 177. Copy or Economic Rights.

“Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

[...]

177.7. Other communication to the public of the work (Sec. 5, P.D. No. 49a)

[...]”

1.8. Are photographic works given the same duration of protection as other works in the Law?

“Section 213. Term of Protection

“213.1. Subject to the provisions of Subsections 213.2 to 213.5, the copyright in works under Sections 172 and 173 shall be protected during the life of the author and for fifty (50) years after his death. This rule also applies to posthumous works. (Sec. 21, First Sentence, P.D. No. 49a).

[...]

“213.5. In case of photographic works, the protection shall be for fifty (50) years from publication of the work and, if unpublished, fifty (50) years from the making. (Sec. 24(C), P.D. 49a.)

[...]”

1.9. What is the effective time-frame for application of the rights in the Law?

Not found in the Law reviewed.

2. WPPT provisions

2.1. Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Section 202. Definitions

“For the purpose of this Act, the following terms shall have the following meanings:

“202.1. ‘Performers’ are actors, singers, musicians, dancers, and other persons who act, sing, declaim, play in, interpret, or otherwise perform literary and artistic work;

“[...]”

2.1.2 Is “phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.3 Is “fixation” defined in the Law?

“Section 202. Definitions

“For the purpose of this Act, the following terms shall have the following meanings:

“[...]

“202.4. ‘Fixation’ means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

“[...]”

2.1.4 Is “producer of a phonogram” defined in the Law?

“Section 202. Definitions.

“For the purpose of this Act, the following terms shall have the following meanings:

[...]

202.5. ‘Producer of a sound recording’ means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;

[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Section 202. Definitions

“For the purpose of this Act, the following terms shall have the following meanings:

[...]

202.6. ‘Publication of a fixed performance or a sound recording’ means the offering of copies of the fixed performance or the sound recording to the public, with the consent of the rightholder: *Provided*, That copies are offered to the public in reasonable quality;

[...]”

2.1.6 Is “broadcasting” defined in the Law?

“Section 202. Definitions

“For the purpose of this Act, the following terms shall have the following meanings:

[...]

202.7. ‘Broadcasting’ means the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is also ‘broadcasting’ where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

[...]”

2.1.7 Is “communication to the public” defined in the Law?

“Section 202. Definitions.

“For the purpose of this Act, the following terms shall have the following meanings:

[...]

202.9. ‘Communication to the public of a performance or a sound recording means the transmission to the public, by any medium, other than by broadcasting, of sounds of a performance or the representation of sounds fixed in a sound recording. For purposes of Section 209, ‘communication to the public’ includes making the sounds or representations of sounds fixed in a sound recording audible to the public.

[...]”

2.2. Is the concept of “national treatment” contained in the Law?

“Section 222. Points of Attachment for Performers.

“The provisions of this Act on the protection of performers shall apply to:

222.1. Performers who are nationals of the Philippines;

222.2. Performers who are not nationals of the Philippines but whose performances:

- (a) Take place in the Philippines; or
- (b) Are incorporated in sound recordings that are protected under this Act; or
- (c) Which has not been fixed in sound recording but are carried by broadcast qualifying for protection under this Act. (n)”

“Section 223. Points of Attachment for Sound Recordings

“The provisions of this Act on the protection of sound recordings shall apply to:

223.1. Sound recordings the producers of which are nationals of the Philippines;
and

223.2. Sound recordings that were first published in the Philippines. (n)”

2.3. Do performers have moral rights in the Law?

“Section 203. Scope of Performers’ Rights.

“Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

203.1. As regards their performances, the right of authorizing:

(a) The broadcasting and the communication to the public of their performance; and

(b) The fixation of their unfixed performance.

[...]”

“Section 204. Moral Rights of Performers

“204.1. Independently of a performer’s economic rights, the performer, shall, as regards his live aural performances or performances fixed in sound recordings, have the right to claim to be identified as the performer of his performances, except where the omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

“204.2. The rights granted to a performer in accordance with Subsection 203.1 shall be maintained and exercised fifty (50) years after his death, by his heirs, and in default of heirs, the government, where protection is claimed. (Sec. 43, P.D. no. 49)”

2.4. Do performers have economic rights in their unfixed performances, and if so, which ones?

“Section 203. Scope of Performers’ Rights.

“Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

203.1. As regards their performances, the right of authorizing:

[...]

(b) The fixation of their unfixed performance.

[...]”

2.5. Do performers have a right of reproduction in the Law?

“Section 203. Scope of Performers’ Rights

“Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

[...]

203.2. The right of authorizing the director indirect reproduction of their performances fixed in sound recordings, in any manner or form;

[...]”

2.6. Do performers have a right of distribution in the Law?

“Section 203. Scope of Performers’ Rights.

“Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

[...]

203.3. Subject to the provisions of Section 206, the right of authorizing the first public distribution of the original and copies of their performance fixed in the sound recording through sale or rental or other forms of transfer of ownership;

[...]”

“Section 206. Additional Remuneration for Subsequent Communications or Broadcasts

“Unless otherwise provided in the contract, in every communication to the public or broadcast of a performance subsequent to the first communication or broadcast thereof by the broadcasting organization, the performers shall be entitled to an additional remuneration equivalent to at least five percent (5%) of the original compensation he or she received for the first communication or broadcast. (n)”

2.7. Do performers have a right of rental in the Law?

“Section 203. Scope of Performers’ Rights.

“Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

[...]

203.4. The right of authorizing the commercial rental to the public of the original and copies of their performances fixed in sound recordings, even after distribution of them by, or pursuant to the authorization by the performer; and

[...]"

2.8. Do performers have a right of making available of fixed performances in the Law?

"Section 203. Scope of Performers' Rights

"Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

[...]

203.5. The right of authorizing the making available to the public of their performances fixed in sound recordings, by wire or wireless means, in such a way that members of the public may access them from a place and time individually chosen by them (Sec. 42, P.D. No. 49a)."

2.9. Do producers of phonograms ("producers") have a right of free production in the Law?

"Section 202. Definitions

"For the purpose of this Act, the following terms shall have the following meanings:

[...]

202.2. 'Sound recording' means the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

[...]

202.5. 'Producer of a sound recording' means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;

[...]"

“Section 208. Scope of Right

“Subject to the provisions of Section 212, producers of sound recordings shall enjoy the following exclusive rights:

208.1. The right to authorize the direct or indirect reproduction of their sound recordings, in any manner or form; the placing of these reproductions in the market and the right of rental or lending;

[...]

2.10. Do producers have a right of distribution in the Law?

“Section 202. Definitions

“For the purpose of this Act, the following terms shall have the following meanings:

[...]

202.2. ‘Sound recording’ means the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

[...]

202.5. ‘Producer of a sound recording’ means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;

[...]”

“Section 208. Scope of Right

“Subject to the provisions of Section 212, producers of sound recordings shall enjoy the following exclusive rights:

[...]

208.2. The right to authorize the first public distribution of the original and copies of their sound recordings through sale or rental or other forms of transferring ownership; and

[...]”

2.11. Do producers have a right of rental in the Law?

“Section 202. Definitions

“For the purpose of this Act, the following terms shall have the following meanings:

[...]

202.2. ‘Sound recording’ means the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

[...]

202.5. ‘Producer of a sound recording’ means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;

[...]”

“Section 208. Scope of Right

“Subject to the provisions of Section 212, producers of sound recordings shall enjoy the following exclusive rights:

[...]

“208.3. The right to authorize the commercial rental to the public of the original and copies of their sound recordings, even after distribution by them by or pursuant to authorization by the producer (Sec. 46, P.D. No. 49a).”

2.12. Do producers have a right of making available of phonograms in the Law?

Not found in the Law reviewed.

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Section 202. Definitions.

“For the purpose of this Act, the following terms shall have the following meanings:

[...]

202.2. ‘Sound recording’ means the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

[...]

202.5. ‘Producer of a sound recording’ means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or the sounds, or the representation of sounds;

[...]”

“Section 206. Additional Remuneration for Subsequent Communications or Broadcasts

“Unless otherwise provided in the contract, in every communication to the public or broadcast of a performance subsequent to the first communication or broadcast thereof by the broadcasting organization, the performers shall be entitled to an additional remuneration equivalent to at least five percent (5%) of the original compensation he or she received for the first communication or broadcast.(n)”

“Section 209. Communication to the Public

“If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or for other communication to the public, or is publicly performed with the intention of making and enhancing profit, a single equitable remuneration for the performer or performers, and the producer of the sound recordings shall be paid by the user to both the performers and the producer, who, in the absence of any agreement shall share equally (Sec. 47, P.D. No. 49a). ”

2.14. Are rights in the Law subject to any formalities?

“Section 218. Affidavit Evidence.

“218.1. In an action under this Chapter, an affidavit made before a notary public by or on behalf of the owner of the copyright in any work or other subject matter and stating that:

- (a) At the times specified therein, copyrights subsisted in the work or other subject matter;
- (b) He or the person named therein is the owner of the copyright; and
- (c) The copy of the work or other subject matter annexed thereto is a true copy thereof, shall be admitted in evidence in any proceedings for an offense under this Chapter and shall be prima facie proof of the matters therein stated until the contrary is proved, and the court before which such affidavit is produced shall assume that the affidavit was made by or on behalf of the owner of the copyright.

[...]”

“Section 219. Presumption of Authorship

“219.1. The natural person whose name is indicated on a work in the usual manner as the author shall, in the absence of proof to the contrary, be presumed to be the author of the work. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

“219.2. The person or body, corporate whose name appears on an audio-visual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of said work. (n)”

“Section 220. International Registration of Works

“A statement concerning a work, recorded in an international register in accordance with an international treaty to which the Philippines is or may become a party, shall be construed as true until the contrary is proved except:

220.1. Where the statement cannot be valid under this Act or any other law concerning intellectual property.

220.2. Where the statement is contradicted by another statement recorded in the international register. (n)”

2.15. What is the term of protection for:

2.15.1 Performers?

“Section 215. Term of Protection for Performers, Producers and Broadcasting Organizations

“215.1. The rights granted to performers and producers of sound recordings under this law shall expire:

(a) For performances not incorporated in recordings, fifty (50) years from the end of the year in which the performance took place; and

(b) For sound or image and sound recordings and for performances incorporated therein, fifty (50) years from the end of the year in which the recording took place.

“215.2. In case of broadcasts, the term shall be twenty (20) years from the date the broadcast took place. The extended term shall be applied only to old works with subsisting protection under the prior law. (Sec. 55, P.D. No. 49a)”

2.15.2 Producer of phonograms?

“Section 202. Definitions

“For the purpose of this Act, the following terms shall have the following meanings:

[...]

202.2. ‘Sound recording’ means the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

[...]

202.5. ‘Producer of a sound recording’ means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;

[...]”

“Section 215. Term of Protection for Performers, Producers and Broadcasting Organizations

“215.1. The rights granted to performers and producers of sound recordings under this law shall expire:

[...]

(b) For sound or image and sound recordings and for performances incorporated therein, fifty (50) years from the end of the year in which the recording took place.

[...]”

2.16. What is the effective time-frame for application of rights in the Law?

Not found in the Law reviewed.

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Section 184. Limitations on Copyright

“184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

- (a) the recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society; (Sec. 10(1), P.D. No. 49)
- (b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: Provided, That the source and the name of the author, if appearing on the work, are mentioned; (Sec. 11, Third Par., P.D. No. 49)
- (c) The reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topic, lectures, addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved: Provided, That the source is clearly indicated; (Sec. 11, P.D. No. 49)
- (d) The reproduction and communication to the public of literary, scientific or artistic works as part of reports of current events by means of photography, cinematography or broadcasting to the extent necessary for the purpose; (Sec. 12, P.D. No. 49)
- (e) The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: Provided, That the source and of the name of the author, if appearing in the work, are mentioned;
- (f) The recording made in schools, universities, or educational institutions of a work included in a broadcast for the use of such schools, universities or educational institutions: Provided, That such recording must be deleted within a reasonable period after they were first broadcast: Provided, further, That such recording may not be made from audiovisual works which are part of the general cinema repertoire of feature films except for brief excerpts of the work;
- (g) The making of ephemeral recordings by a broadcasting organization by means of its own facilities and for use in its own broadcast;
- (h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use;
- (i) The public performance or the communication to the public of a work, in a place where no admission fee is charged in respect of such public performance or

communication, by a club or institution for charitable or educational purpose only, whose aim is not profit making, subject to such other limitations as may be provided in the Regulations; (n)

(j) Public display of the original or a copy of the work not made by means of a film, slide, television image or otherwise on screen or by means of any other device or process: Provided, That either the work has been published, or, that original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title; and

(k) Any use made of a work for the purpose of any judicial proceedings or for the giving of professional advice by a legal practitioner.

[...]"

“Section 185. Fair Use of a Copyrighted Work

“185.1. The fair use of a copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the interoperability of an independently created computer program with other programs may also constitute fair use. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:

(a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;

(b) The nature of the copyrighted work;

(c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(d) The effect of the use upon the potential market for or value of the copyrighted work.

[...]"

“Section 186. Work of Architecture.

“Copyright in a work of architecture shall include the right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original; Provided, That the copyright in any such work shall not include the right to control the reconstruction or rehabilitation in the same style as the original of a building to which the copyright relates. (n)”

“Section 187. Reproduction of Published Work.

“187.1. Notwithstanding the provision of Section 177, and subject to the provisions of Subsection 187.2, the private reproduction of a published work in a single copy, where the reproduction is made by a natural person exclusively for research and private study, shall be permitted, without the authorization of the owner of copyright in the work. re

“187.2. The permission granted under Subsection 187.1 shall not extend to the reproduction of:

- (a) A work of architecture in form of building or other construction;
- (b) An entire book, or a substantial part thereof, or of a musical work in which graphics form by reprographic means;
- (c) A compilation of data and other materials;
- (d) A computer program except as provided in Section 189; and
- (e) Any work in cases where reproduction would unreasonably conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author. (n)”

“Section 188. Reprographic Reproduction by Libraries

“188.1. Notwithstanding the provisions of Subsection 177.6, any library or archive whose activities are not for profit may, without the authorization of the author or copyright owner, make a single copy of the work by reprographic reproduction:

- (a) Where the work by reason of its fragile character or rarity cannot be lent to user in its original form;
- (b) Where the works are isolated articles contained in composite works or brief portions of other published works and the reproduction is necessary to supply them, when this is considered expedient, to a person requesting their loan for purposes of research or study instead of lending the volumes or booklets which contain them; and
- (c) Where the making of such a copy is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable and copies are not available with the publisher.

“188.2. Notwithstanding the above provisions, it shall not be permissible to produce a volume of a work published in several volumes or to produce missing tomes or pages of magazines or similar works, unless the volume, tome or part is out of stock; Provided, That every library which, by law, is entitled to receive copies of a printed work, shall be entitled, when special reasons so require, to reproduce a copy of a published work

which is considered necessary for the collection of the library but which is out of stock.
(Sec. 13, P.D. 49a)”

“Section 189. Reproduction of Computer Program.

“189.1. Notwithstanding the provisions of Section 177, the reproduction in one (1) back-up copy or adaptation of a computer program shall be permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful owner of that computer program: Provided, That the copy or adaptation is necessary for:

- (a) The use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has been obtained; and
- (b) Archival purposes, and, for the replacement of the lawfully owned copy of the computer program in the event that the lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

[...]”

“Section 190. Importation for Personal Purposes

“190.1. Notwithstanding the provision of Subsection 177.6, but subject to the limitation under the Subsection 185.2, the importation of a copy of a work by an individual for his personal purposes shall be permitted without the authorization of the author of, or other owner of copyright in, the work under the following circumstances:

- (a) When copies of the work are not available in the Philippines and: (i) Not more than one (1) copy at one time is imported for strictly individual use only; or (ii) The importation is by authority of and for the use of the Philippine Government; or (iii) The importation, consisting of not more than three (3) such copies or likenesses in any one invoice, is not for sale but for the use only of any religious, charitable, or educational society or institution duly incorporated or registered, or is for the encouragement of the fine arts, or for any state school, college, university, or free public library in the Philippines.
- (b) When such copies form parts of libraries and personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: Provided, That such copies do not exceed three (3).

[...]”

“Section 212. Limitations on Rights

“Sections 203, 208 and 209 shall not apply where the acts referred to in those Sections are related to:

212.1. The use by a natural person exclusively for his own personal purposes;

212.2. Using short excerpts for reporting current events;

212.3. Use solely for the purpose of teaching or for scientific research; and

212.4. Fair use of the broadcasts subject to the conditions under section 185. (Sec. 44, P.D. No. 49a)”

3.2. What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

Not found in the Law reviewed.

3.3. What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4. Generally, what measures for enforcement of rights are in the law?

“Section 216. Remedies for Infringement.

“216.1. Any person infringing a right protected under this law shall be liable:

(a) To an injunction restraining such infringement. The court may also order the defendant to desist from an infringement, among others, to prevent the entry into the channels of commerce of imported goods that involve an infringement, immediately after customs clearance of such goods.

(b) Pay to the copyright proprietor or his assignor or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the infringement as well as the profits the infringer may have made due to such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty.

(c) Deliver under oath, for impounding during the pendency of the action, upon such terms and conditions as the court may prescribe, sales invoices and other documents evidencing sales, all articles and their packaging alleged to infringe a copyright and implements for making them.

(d) Deliver under oath for destruction without any compensation all infringing copies or devices, as well as all plates, molds, or other means for making such infringing copies as the court may order.

(e) Such other terms and conditions, including the payment of moral and exemplary damages, which the court may deem proper, wise and equitable and the destruction of infringing copies of the work even in the event of acquittal in a criminal case.

“216.2. In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings. (Sec. 28, P.D. No. 49a)”

“Section 217. Criminal Penalties

“217.1. Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:

(a) Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (P50,000) to One hundred fifty thousand pesos (P150,000) for the first offense.

(b) Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (P150,000) to Five hundred thousand pesos (P500,000) for the second offense.

(c) Imprisonment of six (6) years and one (1) day to nine (9) years plus a fine ranging from Five hundred thousand pesos (P500,000) to One million five hundred thousand pesos (P1,500,000) for the third and subsequent offenses.

(d) In all cases, subsidiary imprisonment in cases of insolvency.

[...]

“Section 232. Appeals

“232.1 Appeals from decisions of regular courts shall be governed by the Rules of Court. Unless restrained by a higher court, the judgment of the trial court shall be executory even pending appeal under such terms and conditions as the court may prescribe.

[...]

3.5. How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

“Section 189. Reproduction of Computer Program

“189.1. Notwithstanding the provisions of Section 177, the reproduction in one (1) back-up copy or adaptation of a computer program shall be permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful owner of that computer program: *Provided*, That the copy or adaptation is necessary for:

- (a) The use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has been obtained; and
- (b) Archival purposes, and, for the replacement of the lawfully owned copy of the computer program in the event that the lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

“189.2. No copy or adaptation mentioned in this Section shall be used for any purpose other than the ones determined in this Section, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

[...]”

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

REPUBLICOFMOLDOVA

(LawReviewed:LawonCopyrightandNeighboringRightsofNovember23,1994,
No.293 -XIII,amendedbytheLawofJuly25,2002 ,No.1268 -XV)

1. WCTprovisions

1.1 DoesthescopeofcopyrightprotectionintheLawextendonlytoexpressions,andnot
toideas,procedures,methodsofoperationormathematicalconcepts?

“Article7:WorksNotProtectedbyCopyright

“[...]

*“(2) Themodeofexpressionratherthanideas,processes,functioningmethodsor
mathematicalconceptssuchshallbeprotectedbycopyright. ”*

1.2 ArecomputerprogramsprotectedintheLawasliteraryworks?

“Article3:BasicConcepts

“Forthepurposes ofthisLaw:

[...]

*– computerprogram meansasetofinstructionsandcommandsexpressedin
words,codesordiagramspresentedinmachine -readableformandwhichmay
operateacomputerwithaviewtoaspecificaimorresult;thisconceptcovers
boththepreparatorymaterialproducedduringdevelopmentoftheprogramand
theaudiovisualdisplaysgeneratedbytheprogram;*

[...]”

“Article6:WorksProtectedbyCopyright

“[...]

“(2) Copyrightprotectionsshallextendto:

(a) literaryworks(books,brochures ,articles,computerprograms,etc.);

[...]

“(3) The protection of computer programs shall extend to all types of programs (including operating systems) whatever the language and form in which they are expressed, including source code and object code.

“[...]

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“*Article 3: Basic Concepts*

“For the purposes of this Law:

[...]

– *database* means a compilation of data or other materials both in a mechanically readable form and in other form, which by selection and arrangement of contents represents the result of a creative work;

[...]”

“*Article 6: Works Protected by Copyright*

“[...]

“(2) Copyright protection shall extend to:

[...]

(k) derived works and composite works (translations, adaptations, arrangements and other transformations of literary, artistic or scientific works, instrumental adaptations of musical works, and encyclopedias, anthologies, collections, databases, etc.); derived works and composite works shall be protected by copyright regardless of any protection that may attach to the works from which they are derived or to the works they include;

[...]”

“*Article 13: Copyright in Composite Works*

“(1) The compiler of a collection or any other composite work shall enjoy copyright in the compilation or arrangement he has made of the materials if such compilation or arrangement constitutes the result of a creative effort.

“[...]

1.4 IstherearightofdistributionintheLaw?

“Article 10. Economic Rights

“(1) An author or other holder of copyright shall enjoy the exclusive right to exploit his work in any form and by any means.

“(2) The exclusive right to exploit a work means the right to perform, authorize or prohibit the following acts:

[...]

(b) distribution of copies of the work by sale, rental or in any other way;

[...]”

1.5 IstherearightofrentalintheLaw,andifso,towhichworksdoesitapply?

“Article 10. Economic Rights

“(1) An author or other holder of copyright shall enjoy the exclusive right to exploit his work in any form and by any means.

“(2) The exclusive right to exploit a work means the right to perform, authorize or prohibit the following acts:

[...]

(b) distribution of copies of the work by sale, rental or in any other way;

[...]

“(3) The right to distribute by rental the original or copies of an audiovisual work, a computer program, a database, a work fixed on a phonogram or a musical work in the form of a score shall belong to the author or other holder of copyright independently of the right of ownership in such copies.

“[...]”

1.6 IstherearightofcommunicationtothepublicintheLaw?

“Article 3: Basic Concepts

“For the purposes of this Law:

[...]

– *public communication (communication to the public)* means the transmission by air, including by satellite, by cable or by any other means, of

images, sounds or images and sounds of works, performances, phonograms or broadcasts or broadcasting or cable distribution organisations where such images or sounds may be perceived by persons outside the usual family circle and their close acquaintances in places sufficiently distant for the images or sounds not to be perceivable without such transmission. Communication of codified signals shall represent a transmission by air when the decoding means are offered to the public by the air broadcasting organisation or with its consent;

[...]

“Article 10: Economic Rights

“(1) An author or other holder of copyright shall enjoy the exclusive right to exploit his work in any form and by any means.

“(2) The exclusive right to exploit a work means the right to perform, authorize or prohibit the following acts:

[...]

(f) communication of the work to the public, including by retransmission;

[...]”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from any place and at any time individually chosen by them, contained in the Law?

“Article 10: Economic Rights

“(1) An author or other holder of copyright shall enjoy the exclusive right to exploit his work in any form and by any means.

“(2) The exclusive right to exploit a work means the right to perform, authorize or prohibit the following acts:

[...]

(i) making available of the work to the public in such a manner as to enable public representatives to access the work, on their own choice, from any place and at any time (the right to public communication in interactive regime, including by Internet);

[...]”

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Article 6: Works Protected by Copyright

“[...]

“(2) Copyright protection shall extend to:

(i) photographic works and works obtained by processes analogous to photography;

[...]”

“Article 17: Transfer of Copyright by Succession; Term of Copyright

“[...]

“(3) Copyright shall have effect throughout the lifetime of the author and for 50 years after his death computed as from January 1 of the year following that of his death, except in the cases referred to in paragraphs (4), (5) and (7) of this Article.

“(4) Copyright in an audiovisual work shall be protected for 50 years and copyright in works of applied art for 25 years computed from the day of lawful publication of such work or from the day of their creation if they have not been published, or computed as from January 1 of the year following that of publication or of creation of the work.

“(5) Copyright in an anonymous or pseudonymous work shall have effect for 50 years after publication of the work computed as from January 1 of the year following that of publication of the work, except with regard to the works referred to in paragraph (4) of this Article. If the author of an anonymous or pseudonymous work reveals his identity or if his identity becomes obvious during that period of time, the provisions of paragraphs (3) and (4) of this Article shall apply.

“[...]

“(7) Copyright in a posthumous work shall be protected for 50 years as from the day of first publication of the work, with the proviso that publications shall have taken place within 30 years following the death of the author; this provision shall not apply to the works referred to in paragraph (4) of this Article.

“(8) Copyright in a work of joint authorship shall be protected until the death of the last surviving joint author and, after his death, for 50 years computed from January 1 of the year following that of his death.

“(9) The moral rights of authors shall be protected without limitation in time. After the death of an author, the protection of his moral rights shall be assumed by his heirs and by the organisations duly authorized to assume the defence of authors’ rights. Such organisations shall also assume protection of moral rights in the absence of heirs or where the copyright of the heir has terminated.

“[...]”

1.9 What is the effective time -frame for application of the rights in the Law?

Not found in the Law reviewed.

2. WPPT Provisions

2.1 Definitions

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 3: Basic Concepts

“For the purpose of this Law:

[...]

- *performer* means an actor, conductor, singer, musician, dancer or any other person who performs, sings, narrates or executes in any other way a literary or artistic work, or folklore expressions;

[...]”

2.1.2 Is “phonogram” defined in the Law?

“Article 3: Basic Concepts

“For the purposes of this Law:

[...]

- *phonogram* means any exclusively sound recording of performances, or of other sounds or representations thereof, except for recording of sounds included in the audio-visual work; a duplicate of a phonogram on any material medium whatsoever, made directly or indirectly from another phonogram and incorporating all or some of the sound recorded on such phonogram, constitutes a copy of a phonogram;

[...]”

2.1.3 Is “fixation” defined in the Law?

“Article 3: Basic Concepts

“For the purposes of this Law:

[...]

- *recording* means the fixing, by technical means, of sounds or images and (or) representations thereof in a material form that permits them to be repeatedly perceived, reproduced or communicated;

[...]”

2.1.4 Is “producer of a phonogram” defined in the Law?

“Article 3: Basic Concepts

“For the purposes of this Law:

[...]

- *phonogram producer* means the natural or legal person on whose initiative and responsibility the first fixation of a performance, of other sounds or of some sound representations is made;

[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Article 3: Basic Concepts

“For the purposes of this Law:

[...]

- *publication* means the causing to appear or putting into circulation of a work or a phonogram with the consent of the author or other holder of the copyright or neighboring rights, in sufficient quantity to satisfy the needs of the public; this concept also covers the lawful making available of a work or of a phonogram by computerized means;

[...]”

2.1.6 Is “broadcasting” defined in the Law?

Not found in the Law reviewed.

2.1.7 Is “communication to the public” defined in the Law?

“Article 3: Basic Concepts

“For the purposes of this Law:

[...]

- *public communication (communication to the public)* means the transmission by air, including by satellite, by cable or by any other means, of images, sounds or images and sounds of works, performances, phonograms or broadcasts of broadcasting or cable distribution organisations where such images or sounds may be perceived by persons outside the usual family circle and their close acquaintances in places sufficiently distant for the images or sounds not to be perceivable without such transmission. Communication of codified signals shall represent a transmission by air when the decoding means are offered to the public by the air broadcasting organisation or with its consent;

[...]”

2.2 Is the concept of national treatment contained in the Law?

“Article 26: *Holders of Neighboring Rights; Scope of Neighboring Rights*

“(1) Performers, phonogram producers and broadcasting and cable distribution organizations shall be the holders of neighboring rights. Neighboring rights shall be exercised without prejudice to authors’ rights.

“[...]

“(7) The neighboring rights of foreign natural and legal persons shall be protected in accordance with the international agreements to which the Republic of Moldova is party.”

2.3 Do performers have moral rights in the Law?

“Article 27: *Rights of Performers*

“(1) A performer shall enjoy the following moral rights and economic rights with respect to his performance:

(a) the right to be named;

(b) the right to respect for his reputation – the right to protect of his performance against any mutilation or distortion or other derogatory act liable to prejudice his honor or dignity.

“[...]”

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones?

“Article 27: Rights of Performers

“[...]”

“(2) Performers shall enjoy the exclusive right to authorize or prohibit the following acts:

(a) recording of a performance not previously recorded;

[...]

(c) broadcasting of the performance over the air or by cable or making any other communication of it to the public, including by retransmission, except where recording of the performance for which he has given his consent or a performance that has been broadcast over the air or by cable is used for that purpose;

“[...]”

2.5 Do performers have a right of reproduction in the Law?

“Article 27: Rights of Performers

“[...]”

“(2) Performers shall enjoy the exclusive right to authorize or prohibit the following acts:

[...]

(b) direct and indirect reproduction, in any form and in any manner, of his performances recorded on phonograms;

“[...]”

2.6 Do performers have a right of distribution in the Law?

“Article 27: Rights of Performers

“[...]

“(2) A performer shall enjoy the exclusive right to authorize or prohibit the following acts:

[...]

(e) distribution by sale or by other way of transmission of property right of the original and copies of performances recorded on phonograms;

[...]”

2.7 Do performers have a right of rental in the Law?

“Article 27: Rights of Performers

“(2) A performer shall enjoy the exclusive right to authorize or prohibit the following acts:

[...]

(d) rental of the original and copies of performances recorded on phonograms, even after their distribution, with the performer’s consent and notwithstanding the property right on copies;

[...]”

2.8 Do performers have a right of making available of fixed performances in the Law?

“Article 27: Rights of Performers

“[...]

“(2) A performer shall enjoy the exclusive right to authorize or prohibit the following acts:

[...]

(f) making available to the public, by wire or wireless means, of the performance recorded on phonogram in such a way as to enable the representatives of the public, on their own choice, to access the performance from any place and at any time (the right to public communication in interactive regime, including by Internet).”

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 28: Rights of Phonogram Producers

“(1) A phonogram producer shall enjoy the exclusive right to exploit this phonogram in any form, including the right to remuneration for each type of use of the phonogram.

“(2) The exclusive right to exploit a phonogram shall mean the right to authorize or prohibit:

(a) direct or indirect reproduction, in any form and any manner, of the phonograms;

[...]”

2.10 Do producers have a right of distribution in the Law?

“Article 28 : Rights of Phonogram Producers

“(1) A phonogram producer shall enjoy the exclusive right to exploit this phonogram in any form, including the right to remuneration for each type of use of the phonogram.

“(2) The exclusive right to exploit a phonogram shall mean the right to authorize or prohibit:

[...]

(b) distribution of copies of the phonogram (by sale, rental, etc.);

[...]”

2.11 Do producers have a right of rental in the Law?

“Article 28: Rights of Phonogram Producers

“(1) A phonogram producer shall enjoy the exclusive right to exploit this phonogram in any form, including the right to remuneration for each type of use of the phonogram.

“(2) The exclusive right to exploit a phonogram shall mean the right to authorize or prohibit:

[...]

(b) distribution of copies of the phonogram (by sale, rental, etc.);

[...]

“[...]

“(4) Therighttodistributecopiesofaphonogrambyrentalshallbelongtothe phonogram producerirrespectiveofanyrightofownershipinthecopies.

“[...]

2.12 Doproducers havearightofmakingavailableofphonogramsintheLaw?

“Article28:RightsofPhonogramProducers

“(1) Aphonogramproducershallenjoytheexclusiverighttoexploitthisphonogramin anyform,includingtherighttoremunerationforeachtypeofus eofthephonogram.

“(2) Theexclusiverighttoexploitaphonogramshallmeantherighttoauthorizeor prohibit:

[...]

(e) makingavailableofphonogramstothepublic,bywireorwirelessmeans, in suchawayastoenabletherepresentativesofthepu blic,ontheirownchoice,to accessthephonogramsfromanyplaceandatanytime(therightto public communicationininteractiveregime,includingbyInternet).”

2.13 Doproducersand/orperformershavarighttoremunerationforbroadcastingand/or communicationtothepublicofphonogramsintheLaw?

“Article31:UseofPhonogramsPublishedforCommercialPurposes

“(1) Thefollowingactsshallbepermittedwithouttheconsentoftheproducerofa phonogrampublishedforcommercialpurposesando fthep performerwhose performanceisrecordedonsuchphonogram,subjecttopaymentofremuneration:

- (a) publicperformanceofthephonogram;
- (b) communicationofthephonogramovertheair;
- (c) communicationofthephonogrambycable;
- (d) retransmissionofthephonogram.

“[...]

“(3) Thecollection,distributionandpaymentoftheremunerationreferredtoin paragraph(1)ofthisArticleshallbecarriedoutbyoneoftheorganizationsforthe collectiveadministrationoftherightsofphonogrampro ducersandperformers,in accordancewithanagree mentconcludedbythoseorganizations.Unlessotherwise stipulatedintheagreement,theremunerationthuscollectedshallbedistributedas

follows: 40% to the authors, 30% to the performers and 30% to the phonogram producers.

“[...]”

2.14 Are rights in the Law subject to any formalities?

“Article 26: Holders of Neighboring Rights; Scope of Neighboring Rights”

“(1) Performers, phonogram producers and broadcasting and cable distribution organizations shall be the holders of neighboring rights. Neighboring rights shall be exercised without prejudice to authors’ rights.

“[...]”

“(3) The generation and exercise of neighboring rights shall not be subject to compliance with any formality.

“[...]”

2.15 What is the term of protection for:

2.15.1 performers?

“Article 33: Term of Neighboring Rights”

“(1) The rights of performers referred to in Article 27 shall have effect for 50 years as from the first performance. The performer’s right to be named and his right for respect for his reputation shall be protected without limitation in time.

“[...]”

2.15.2 producers of phonograms?

“Article 33: Term of Neighboring Rights”

“[...]”

“(2) The rights of phonogram producers referred to in Article 28 shall have effect for 50 years as from first publication of the phonogram or for 50 years as from its first recording if the phonogram is not published during that period.

“[...]”

2.16 What is the effective time-frame for application of rights in the Law?

Not found in the Law reviewed.

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 19: Use of the Works of Authors by Other Persons

“(1) These by other persons of an author’s work, unchanged, after transformation or in translation, shall require a contract to be concluded with the author or his successors in title, except in the cases referred to in Articles 20 to 23 of this Law. The limitations provided for with respect to authors’ rights shall apply on condition that the users shall not prejudice normal exploitation of the work nor the rights and legitimate interests of the authors. all

“[...]

“Chapter III

“Limitations on Economic Rights

“Article 20: Reproduction of Works for Personal Use

“(1) The reproduction of a single copy of a lawfully published work shall be permitted without the consent of the author or other holder of copyright and without payment of remuneration if made by a natural person for his own exclusive personal use and in compliance with the conditions set out in paragraph (3) of this Article.

“(2) The faculty afforded by paragraph (1) of this Article shall not extend to:

- (a) reproduction of a work of architecture in the form of a building or similar construction;
- (b) reproduction of a database;
- (c) reproduction of a computer program, except in the cases referred to in Article 23;
- (d) reproduction of a complete book, a musical score or the original of a work of fine art;
- (e) unauthorised reproduction of works made available to the public by public communication in an interactive regime.

“(3) The holder of copyright in a work that has been reproduced in accordance with paragraph (1) of this Article shall be entitled to compensatory remuneration. Such remuneration in the amount of 3% of the retail sale prices shall be paid by enterprises (including manufacturers or importers) of recording appliances (sound recording equipment, video recorders, etc.) and mediums (texts and cassettes for sound or video recording, optical discs, compact discs, etc.) used for reproduction.

“(4) The collection, distribution and payment of the compensatory remuneration shall be undertaken by the organisations for the collective administration of the economic

rights of authors, performers and phonogram producers, in accordance with an agreement concluded by such organisations. Unless otherwise stated in such agreement, the remuneration shall be shared as follows: 40% to authors, 30% to performers and 30% to phonogram producers.

“(5) The amount of the compensatory remuneration and the manner of payments shall be determined by agreement between the above-mentioned enterprises (including manufacturers or importers), on the one hand, and the organisations for the collective administration of the economic rights of authors, performers and phonogram producers, on the other.

“(6) The compensatory remuneration shall be shared amongst the authors of the works referred to in paragraph (3) of this Article, where it may be assumed that their works have been subject to reproduction for personal use, and the other holders of copyright or neighbouring rights in such works.

“(7) No compensatory remuneration shall be paid in respect of the equipment and recording mediums referred to in paragraph (3) of this Article where they are exported, where they constitute professional equipment not intended for home recording or where they are imported by a natural person for his own exclusive use.

“(8) With the author’s consent or with the consent of another copyright holder and without paying any royalty, the temporary reproduction of the work shall be allowed subject to the following conditions:

- a) the reproductions shall be carried out in the process of digital broadcasting of the work or during the action by which the work saved in digital form becomes accessible for perception;
- b) the reproductions shall be initiated by the natural or legal person who, upon copyright holder’s consent or under the provisions of the present law, has the right in the above-mentioned digital broadcasting or in the action assuring work accessibility to perception;
- c) reproductions shall accompany the digital broadcasting or the action assuring work accessibility to perception within the normal operation process of the used equipment and shall entail automatic removal of the copy, excluding finding and exploitation of the work for any other purposes, except for cases specified in subparagraphs (a) and (b).”

*“Article 21: Reprographic Reproduction by Libraries;
Archive Services and Teaching Establishments*

“(1) It shall be permissible without the consent of the author or other holder of copyright and without payment of remuneration, but subject to mention of the name of the author whose work is used and of the source of the borrowing, to make reprographic reproduction in one copy, without gainful intent and to the extent justified by the aim pursued:

(a) of a lawfully published work if the reproduction, in one copy, is made by a library or an archives service and if its purpose is to replace copies that have been lost, destroyed or have become unusable or to make a copy available to other libraries or similar archive services in order to replace in their own collections works that have been lost, destroyed or have become unusable, where it is impossible to obtain copies of the work through usual channels;

(b) of isolated articles and other succinct works or of short extracts of written works (save for computer programs) that have been lawfully published if such reproduction, in one copy, is made by a library or archives service to meet the need of natural persons whose copy is obtained for the purpose of study or research or for their own personal use;

(c) of isolated articles and other succinct works or of short extracts of written works (save for computer programs) that have been lawfully published if such reproduction is made by a teaching establishment and the copy so obtained is intended for use in the classroom.

“(2) Reprographic reproduction as referred to in paragraph (1)(b) and (c) of this Article shall be permitted on condition that no reprographic reproduction license is offered by an organisation for the collective administration of the economic right of authors in such a manner that the library, archives service or teaching establishment is aware or should be aware thereof.”

“Article 22: Free Use of Works

“(1) The following shall be authorized without the consent of the author or other holder of copyright and without payment of remuneration, but subject to mentioning the name of the author whose work is used and the source of the borrowing:

(a) quotation in the original language or in translation, in articles or studies, press reviews or radio and television programs of a critical, polemic, teaching, scientific or informational nature, of extracts from lawfully published works; in order to be authorized without payment of remuneration, the length of quotations may not exceed:

– for an isolated extract (prose): 400 words,

– for more than one extract from the same work: in the case of prose, 300 words for each extract, but not more than one author's sheet in all; in the case of poetry, 40 lines, subject to the extract not constituting more than one quarter of the work of poetry concerned.

(b) reproduction for informational purposes in the press, on radio or television, in the original language or in translation, of extracts of published works (on condition that they form part of a report), of addresses given in public, of reports, and of published articles concerning matters of economic, political, social or religious current affairs; broadcasting and cable distribution organisations may only make ephemeral recordings of such works (for a period of time not exceeding six months);

- (c) reproduction in Braille for the use of the blind of published works, except for works specially created for such means of reproduction;
 - (d) public performance, during official or religious ceremonies or during funeral services of lawfully published works of music;
 - (e) reproduction of works for the purposes of legal or administrative proceedings, to the extent justified by such purposes;
 - (f) reproduction or communication to the public of works of architecture, photographic works and works of fine art permanently located in a public place, except where presentation of the work constitutes the main purpose of the reproduction or if it is used for commercial purposes.
- “(2) The exporting of a copy of a work by a natural person for his own exclusive use shall be permitted without the consent of the author or other holder of copyright and without payment of remuneration.

*“Article 23: Reproduction of Computer Programs;
Decompilation of Computer Programs*

“(1) Any person lawfully in possession of a copy of a computer program may, without the consent of the author and without payment of royalty:

- (a) make alterations to the computer program or the database where they are necessary for use of the equipment of the user, or correct any obvious errors, except as otherwise provided by contract;
- (b) make a backup copy of the computer program provided that the copy is intended either to replace a lawfully held copy if such copy has been lost, deteriorated or rendered unusable;
- (c) examine, study and experiment the way in which the computer program functions with the view to determining the ideas and principles which are at the basis of each element of the program, if this is carried out during any permissible action of launching for execution, showing on computer screen, execution, forwarding or saving of the program.

“(2) A backup copy of a computer program may not be used for any purposes other than those referred to in paragraph (1) of this Article and shall be destroyed in the event of possession of the copy of the computer program or of the database ceasing to be lawful.

“(3) Any person who lawfully holds a copy of a computer program may, without the consent of the author or other holder of copyright, decompile the computer program (reproduce and translate the object code to source code) in order to achieve interoperability of the program with other computer programs, on condition:

- (a) that the information needed for interoperability is not already available to the person concerned from other sources;
- (b) that the acts concerned are limited to those elements of the original program whose decompilation is essential to ensure interoperability;
- (c) that the information obtained by means of decompilation is used solely for the above-mentioned purposes and that it is neither communicated to other persons nor used to produce a computer program similar to the original program or to perform any other act that infringes copyright.

“(4) Computer programs shall be protected as literary works, regardless of their form and manner of expression. The author of a computer program shall enjoy all moral rights and economic rights referred to in Articles 9, 10 and 17.”

“Article 30: Limitation of the Rights of Performers, Phonogram Producers and Broadcasting and Cable Distribution Organizations

“(1) Notwithstanding the provisions of Articles 27 to 29 of this Law, it shall be permissible to use a performance, a phonogram or a program broadcast or transmitted by cable, or recording thereof, without the consent of the performer, the phonogram producer or the broadcasting or cable distribution organization and without payment of remuneration:

- (a) in order to quote short extracts of the performance, the phonogram or the program broadcast or transmitted by cable, on condition that the quotation is made for the purposes of science, research, polemics, criticism or information and that it remains commensurate with such aims;
- (b) in teaching or scientific research as an illustration in the form of short extracts;
- (c) for inclusion in the reporting of current events of short extracts from the performance, the phonogram or the program broadcast or transmitted by cable;”
- (d) in the cases referred to in Article 22.

“(2) It shall be permissible, without the consent of the performer, the phonogram producer or the broadcasting or cable distribution organization, for natural persons to use performances, broadcasts or recordings thereof to reproduce phonograms for personal purposes. Such acts shall be subject to payment of remuneration as set out in Article 20.

“(3) Application of the limitations on neighboring rights shall in no way prejudice either the normal exploitation of the subject matter of neighboring rights or normal

exploitation of the works incorporated therein and shall not prejudice either the legitimate interests of the performer, the phonogram producer or the broadcasting or cabled distribution organization or those of the authors of the works involved.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Article 3: Basic Concepts

“For the purposes of this Law:

[...]

– technical means of copyright and neighbouring rights protection means any technical equipment or its components which control the access to works or to objects of neighbouring rights, thus preventing or limiting the actions unauthorised by the holders whose rights are protected by the present law on copyright and neighbouring rights;

[...]”

“Article 37¹: Circumvention of Technical Means of Protection of Copyright and Neighbouring Rights and Modification of Information on Management of Copyright and Neighbouring Rights

“(1) The following actions, whether or not infringing, in anyway, the copyright or the neighbouring rights as a result of their performance, shall be deemed infringements of the legislation of the Republic of Moldova on copyright and neighbouring rights: the

- a) circumvention of technical means of copyright and neighbouring rights protection;
- b) manufacture, import, distribution (sale, renting, etc.), advertising of any equipment or components thereof, holding for commercial purposes and for service provision of any equipment or components thereof:
 - which are advertised or proposed for sale for the purpose of circumvention of technical means of protection of copyright and neighbouring rights;
 - the final objective of exploitation and/or the result of exploitation thereof is the circumvention of technical means of protection of copyright and neighbouring rights;
 - which initially are intended, adjusted or executed for the purpose of giving the possibility or facilitating the circumvention of technical means of protection of copyright and neighbouring rights;

“[...]

“(2) Actions referred to in paragraph (1) of this article shall be sanctioned under the provisions of the Minor Offences Code and the Penal Code.”

3.3 What obligations are in the Law for the protection of “rights management information?”

“Article 3: Basic Concepts

“For the purposes of this Law:

[...]

– *information on rights management* means any information, provided by the rightholder, identifying the work or any other object protected by the present law, the author or another rightholder, or information on work or another object exploitation conditions, as well as any figures and codes containing such information, taken into account that any such pieces of information are shown on the work copy or on another object protected by the present law, or which occur in relation with the publication or public communication of such work or of the object concerned;

[...]”

“Article 37¹: Circumvention of Technical Means of Protection of Copyright and Neighbouring Rights and Modification of Information on Management of Copyright and Neighbouring Rights

“(1) The following actions, whether or not infringing, in anyway, the copyright or the neighbouring rights as a result of their performance, shall be deemed infringements of the legislation of the Republic of Moldova on copyright and neighbouring rights:

[...]

c) any of the actions specified below, if the person carrying out such actions knew or should have known that their performance stimulates, allows, contributes or hides the infringement of copyright or neighbouring rights:

– deletion or modification without the authorisation of the rightholder of the information on management of copyright and neighbouring rights;

– distribution, import for distribution purposes, public communication, communication for general information in interactive regime of works and other objects protected by the present law, from which information on management of copyright and neighbouring rights has been deleted without the rightholder’s authorisation.

“(2) Actions referred to in paragraph (1) of this article shall be sanctioned under the provisions of the Minor Offences Code and the Penal Code.”

3.4 Generally, what measures for enforcement of rights are in the Law?

*“Article 37: Infringement of Copyright and Neighboring Rights;
Infringing Copies of Works and Phonograms*

“(1) Any use of a literary, artistic or scientific work that infringes the copyright or neighboring rights afforded by this Law shall be unlawful.

“(2) Copies of a work or a phonogram the manufacture or distribution of which infringe copyright or neighboring rights shall constitute infringing copies.

“(3) Copies of works or phonograms protected under this Law in the Republic of Moldova which are imported without the consent of the holder of copyright or neighboring rights from States in which the works or phonograms have never been protected or have ceased to be protected shall also constitute infringing copies.

“(4) Infringing copies of a work or a phonogram may be confiscated by court decision or by an arbitration award. Destruction of the materials and equipment used in their manufacture may also be ordered, depending on the nature of the infringement of copyright and neighboring rights.

“(5) Infringing copies of a work or a phonogram that have been confiscated may be handed on request to the holder of copyright or neighboring rights. Where the holder of copyright or neighboring rights has not requested that the infringing copies of a work or a phonogram be handed to him, they shall be sold or destroyed by court decision or arbitration award. Confiscated materials and equipment used in the manufacture of infringing copies shall become the property of the State by court decision or arbitration award.

“(6) Infringing copies of a work or a phonogram that have been lawfully acquired by other persons shall not be subject to confiscation.”

“Article 38: Remedies in Copyright and Neighboring Rights

“(1) A holder of exclusive rights, whether copyright or neighboring rights, may require a person infringing his rights:

- (a) to acknowledge those rights;
- (b) to restore the situation that existed prior to infringement of his rights and to cease committing the acts that infringe or are liable to infringe his rights;
- (c) to pay damages, including damages for loss of earnings;
- (d) to surrender, in place of payment of damages, the revenue obtained through the infringement;

(e) topaya nindemnity,inplaceofdamagesorsur renderofrevenue,of between500and500,000MoldovanLei.

“(2) Theholderofcopyrightorneighboringrightsmaychoosefreelybetweenthe measuresetoutinpara graph(1)(c)to(e)ofthisArticle.

“(3) Anype rsonwhoinfringescopyrightorneighboringrightsshallbeliabletothe civil,administrativeandcriminalsanctionsprovidedbylaw.

“(4) Anauthororaholderofneighboringrightswhosemoralrightshavebeen infringedmaytakelegalactionagainstt heinfringerfor:

(a) thenecessarycorrectionstotheworkandpubli cationinthepress,or notificationbyanyothermeans,ofthereinstatementoftheauthororholderinhis rights;

(b) prohibitiontopublishtheworkorinjunctio toceasedistribu tionofthe workandconfiscationofpublishedcopies;

(c) materialdamagesforthemoralprejudicesuf fered.

“(5) Anypersonwhoknowinglyorbynegligence de stroystheoriginalofaworkof fineart,amanuscriptoramastercopyofanaudiovisualw ork(negative,original recording)shall,iftheauthororholderofneighboringrightssorequires,makegoodthe materialandmoralprejudicesuffered,inaccordancewiththeprovisionsof paragraphs (1),(3)and(4)ofthisArticle.

“(6) Beforeexaminin gthecaseonitsmerits,thecourtmayissueanorderenjoining thedefendant,orthepersonthatithasgoodreasontobelieveisinfringingcopyrightor neighboringrights,fromperformingcertainacts:manufacture,reproduction,sale, rental,importa tion,etc.

“(7) Ifalegalpersoncommitsanisolatedorasystem aticseriousinfringementof copyrightorneighboringrights,thecourtmayorderasuspensionofitsactivitiesofup to30days.

“(8) Thecourtshallberequiredtoorderthedescrip tiveoractualeizureofall allegedlyinfringingcopiesofworksorphonogramstogetherwiththematerialsand equipmentusedfortheirmanufactureandreproduction.

“(9) Wheresufficientevidenceofaninfringementofcopyrightorneighboringrights hasb eengathered,thebodyresponsiblefortheinquiryorexaminationofthecaseshall berequiredtotakethenecessarymeasurestolocateandeffectdescriptive seizure:

(a) oftheallegedlyinfringingcopiesofworksorphonograms;

(b) ofthematerialsa ndequipmentusedintheirman ufactureandreproduction;

(c) of the accounts and other documents that may provide evidence of the acts performed contrary to this Law.

“(10) The customs authorities shall be entitled to seize copies of works or phonograms that have been the subject of attempted unauthorized importation or exportation. If such copies of works or phonograms prove to be infringing, the court may order anyone of the measures referred to in paragraph (1)(c) to (e) of this Article against the infringer.

“(11) Natural persons holding copyright or exclusive neighboring rights who themselves institute legal proceedings or who empower the National Copyright Agency or an organization for the collective administration of economic rights to do so on their behalf shall be exempted from court costs. The court may decide in such a case to sentence the person found guilty of infringement of copyright or neighboring rights to pay the court costs in accordance with the conditions and in the amount laid down by law.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

“Chapter III

“Limitation on Economic Rights

“Article 20: Reproduction of

Works for Personal Use

“[...]

“(8) With the author’s consent or with the consent of another copyright holder and without paying any royalty, the temporary reproduction of the work shall be allowed subject to the following conditions:

- a) the reproduction shall be carried out in the process of digital broadcasting of the work or during the action by which the work saved in digital form becomes accessible for perception;
- b) the reproduction shall be initiated by the natural or legal person who, upon copyright holder’s consent or under the provisions of the present law, has the right in the above -mentioned digital broadcasting or in the action assuring work accessibility to perception;
- c) reproduction shall accompany the digital broadcasting or the action assuring work accessibility to perception within the normal operation process of the used equipment and shall entail automatic removal of the copy, excluding finding and exploitation of the work for any other purposes, except for cases specified in subparagraphs (a) and (b).”

3.7 Are there any explicit provisions to ensure that the anti -circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

ROMANIA

(Law Reviewed: Law on Copyright and Neighboring Rights No. 8 of March 14, 1996)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Article 9

“The following shall not benefit from the legal protection accorded to copyright:

- (a) the ideas, theories, concepts, discoveries and inventions contained in a work, whatever the manner of their adoption, writing, explanation or expression thereof.*

[...]”

1.2 Are computer programs protected in the Law as literary works?

“Article 7

“The subject matter of copyright shall be original works of intellectual creation in the literary, artistic, or scientific field, regardless of their manner of creation, specific form or mode of expression and independently of their merit and purpose, such as:

- (a) literary and journalistic writings, lectures, sermons, pleadings, addresses and any other written or oral works, and also computer programs.*

[...]

“Article 72

“(1) Under this Law, the protection of computer programs includes any expression of a program, application programs and operating systems expressed in any kind of language, whether in source code or object code, the preparatory design material and the manuals.

[...]”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 8

“Without prejudice to the rights of the authors of the original work, copyright shall likewise subsist in derived works created on the basis of one or more pre-existing works, namely:

[...]

(b) collections of literary, artistic or scientific works, such as encyclopedias, anthologies and collections and compilations of protected or unprotected material or data, including data bases, which by the reason of the selection or arrangement of their subject matter constitute intellectual creations.”

1.4 Is there a right of distribution in the Law?

“Article 13

“The use or exploitation of a work gives the author distinct and exclusive rights to authorize:

[...]

(b) dissemination of the work.”

“Article 14

“(1) For the purposes of this Law, dissemination means the distribution to the public of the original or copies of a work by sale, rental, lending, or by any other means of disposal, either for a consideration or free of charge.

“[...].”

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

“Article 14

“[...]

“(2) For the purposes of this Law, dissemination means the distribution to the public of the original or copies of a work by sale, rental, lending, or by any other means of disposal, either for a consideration or free of charge.

“(3) Distribution to the public by the lending of a work free of charge shall not be considered circulation where it is made through the agency of public libraries.”

1.6 Is there a right of communication to the public in the Law?

“Article 13

“The use or exploitation of a work gives the author distinct and exclusive rights to authorize:

- (i) communication to the public by means of sound and audiovisual recordings.

[...]”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

Not found in the Law reviewed.

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Article 24

“(1) The copyright in literary, artistic or scientific works shall come into being at the time of the work’s creation, regardless of the specific form or manner of expression thereof.

[...]”

“Article 25

“(1) The economic rights provided for in Articles 13, 16, 17, 18 and 21 shall last for the author’s lifetime, and after his death shall be transferred by inheritance, according to civil legislation, for a period of 70 years, regardless of the date on which the work was legally disclosed to the public. If there are no heirs, the exercise of these rights shall devolve upon the collective administration organization mandated by the author during his lifetime or, failing a mandate, to the collective administration.

[...]”

1.9 What is the effective time-frame for application of the rights in the Law?

“Article 149

“(1) Legal acts executed under the former legislation shall produce all their effects according to that legislation, with the exception of clauses that provide for the transfer of the exploitation rights in any future works that the author might yet create.

“(2) Works created prior to the entry into force of this Law shall also enjoy protection under it, including computer programs, sound recordings, cinematographic or audiovisual works and the programs of television and radio broadcasting organizations, under the conditions specified in paragraph (1).

“(3) The duration of the exploitation rights in works created by authors deceased before the entry into force of this Law and for which the term of protection has expired shall be extended up to the limit of the term provided for in this Law. Such extension shall come into effect only on the entry into force of this Law.”

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 95

“For the purposes of this Law, performers are actors, singers, musicians, dancers and other persons who present, sing, dance, recite, declaim, act, interpret, direct, conduct or in any other way execute a literary or artistic work, a performance of any kind, including performances of folklore, variety or circus performances or puppet shows.”

2.1.2 Is “phonogram” defined in the Law?

“Article 103

“(1) A sound recording or phonogram within the meaning of this Law shall be taken to mean any fixing exclusively of the sounds of the performance of a work or of other sounds, or of digital representations of such sounds, whatever the method and the physical medium used for the fixing. An audiovisual fixation or the sound part thereof, or a digital representation of such a fixation, shall not be considered a sound recording.

“[...]”

2.1.3 Is “fixation” defined in the Law?

“Article 93

“For the purposes of this Law, fixing is the embodiment of codes, sounds, images or sounds and images, or digital representations thereof, on any physical, even electronic medium that allows them to be perceived, reproduced or communicated in any way.”

2.1.4 Is “producer of a phonogram” defined in the Law?

“Article 103

“[...]

“(2) The producer of a sound recording shall be the person, whether a natural person or legal entity, who assumes the responsibility for the organization and financing of the first fixing of the sounds, whether or not it constitutes a work in terms of this Law.

“[...]

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

Not found in the Law reviewed

2.1.6 Is “broadcasting” defined in the Law?

Not found in the Law reviewed

2.1.7 Is “Communication to the Public” defined in the Law?

“Article 15

“[...]

“(2) The communication of a work shall be considered public if it is made in a place open to the public or in any place in which a number of people gather who are more than the normal circle of family members or acquaintances, regardless of whether or not the persons constituting that public are capable of receiving the said communication or are able to do so in the same place or in different places, or at the same time or at different times.”

“Article 19

“The right of communication to the public by means of sound or audiovisual recordings consists in the author’s exclusive right to authorize the communication to the public of readings, musical or stage performances or any other form in which his work may be incorporated in a sound or audiovisual recording.”

“Article 98

“The performers shall have the exclusive economic right to authorize:

“[...]

“(d) the presentation in a public place or communication to the public of the performance, either unfixed or fixed on a physical medium.”

“Article 120

“For the purposes of this Law, communication to the public by cable retransmission means the simultaneous, unchanged and complete retransmission by cable or by a short wave relay system, for reception by the public, of an initial broadcast of television or radio programs conveyed to the public by wire or wireless means.”

2.2 Is the concept of “national treatment” contained in the Law?

“Article 146

“The provisions of this Law shall apply in any of the following situations:

[...]

B. to performances of performers:

- (a) where they take place on the territory of Romania;
- (b) where they are fixed in sound recordings, protected under this Law;
- (c) where they are not fixed in sound recordings but are retransmitted in television or radio broadcasts protected under this Law;

C. to sound recordings:

- (a) where the producers thereof are natural persons or legal entities with their domicile or headquarters in Romania;
- (b) where they were first fixed on a physical medium in Romania;
- (c) where they were first disclosed to the public in Romania, or in another country and simultaneously, or not later than 30 days thereafter, in Romania.”

“Article 147

“Foreigner owners of copyright or neighboring rights shall enjoy the protection provided by international conventions, treaties and agreements to which Romania is

party, failing which they shall enjoy treatment equal to that accorded to Romanian citizens, on condition that the latter, in turn, are accorded national treatment in the countries concerned.”

2.3 Do performers have moral rights in the Law?

“*Article 96*

“The performers shall have the following moral rights:

- (a) the right to demand recognition of the authorship of his own performance;
- (b) the right to demand that his name or pseudonym be mentioned or communicated each performance and on each use of a recording thereof;
- (c) the right to demand respect for the quality of his rendering and to oppose any distortion, falsification or other substantial modification of his performance or any infringement of his rights that might seriously prejudice his honor or reputation; the right to object to any use of his performance where such use might do him serious personal harm.”

“*Article 97*

“(1) The rights provided for in Article 96 may not be the subject of renunciation or alienation.

“[...]

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones?

“*Article 98*

“The performers shall have the exclusive economic right to authorize:

- “(a) the fixing of his performance.

[...]

2.5 Do performers have a right of reproduction in the Law?

“Article 98

“The performers shall have the exclusive economic right to authorize:

[...]

(b) the reproduction of the fixed performance.”

2.6 Do performers have a right of distribution in the Law?

“Article 98

“The performers shall have the exclusive economic right to authorize:

[...]

(c) the distribution of the fixed performance by sale, rental, lending or any other mode of transfer for a consideration or free of charge.”

2.7 Do performers have a right of rental in the Law?

“Article 98

“The performers shall have the exclusive economic right to authorize:

[...]

(c) the distribution of the fixed performance by sale, rental, lending or any other mode of transfer for a consideration or free of charge.”

2.8 Do performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 105

“(1) The producer of sound recordings shall have the exclusive economic right to authorize:

(a) the reproduction of his own sound recordings.

[...]”

2.10 Do producers have a right of distribution in the Law?

“Article 105

“(1) The producer of sound recordings shall have the exclusive economic right to authorize:

[...]

(b) the distribution of his own sound recordings by sale, rental, lending or any other mode of transfer for a consideration or free of charge.”

2.11 Do producers have a right of rental in the Law?

“Article 105

“(1) The producer of sound recordings shall have the exclusive economic right to authorize:

[...]

(b) the distribution of his own sound recordings by sale, rental, lending or any other mode of transfer for a consideration or free of charge.”

2.12. Do producers have a right of making available of phonograms in the Law?

Not found in the Law reviewed.

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 98

“(1) The performers shall have the exclusive economic right to authorize:

[...]

(d) the presentation in a public place or communication to the public of the performance, either unfixated or fixated on a physical medium;

[...]

(f) the broadcasting or transmission by television or radio of his rendering, either unfixated or fixated on a physical medium or the retransmission thereof by wireless means, by wire, by cable, by satellite or by any other similar procedure.

[...]”

“Article 105

“(1) The producer of sound recordings shall have the exclusive economic right to authorize:

[...]

(c) the broadcasting or transmission by television or radio of his own sound recordings, or the retransmission thereof by wireless means, by wire, by cable, by satellite or by any other similar procedure or means of communication to the public.

[...]”

2.14 Are rights in the Law subject to any formalities?

“Article 148

“(1) The existence and content of a work may be proved by any kind of evidence, including its presence in the repertoire of a collective administration Organization.

“(2) The authors and other owners of rights or owners of authors’ exclusive rights referred to in this Law shall have the right to enter on the original or authorized copies of the works a notice of reserved exploitation rights consisting of a circled letter C, accompanied by their name and the place and year of first publication.

“(3) Producers of sound recordings, performers and other owners of the exclusive rights of producers or performers referred to in this Law shall have the right to enter on the original or authorized copies of the sound or audiovisual recordings or on the box or sleeve containing the notice of reserved rights consisting of a circled letter P, accompanied by their name and the place and date of first publication.

“(4) In the absence of proof to the contrary, it shall be presumed that the exclusive rights signaled by the circled letters C and P exist and belong to the persons who have used them.

“(5) The provisions of paragraphs (2), (3), and (4) shall not determine the existence of the rights recognized and guaranteed by this Law.”

2.15.1 What is the term of protection for performers?

“Article 97

“After the performer’s death, the exercise of the rights provided for in Article 96 [moral rights] shall be transferred by inheritance, in accordance with civil legislation, for an unlimited period of time.”

“Article 102

“The duration of the economic rights of performers shall be 50 years from the first of January of the year following that in which the first fixing, or, failing that, the first communication to the public took place.”

2.15.2 What is the term of protection for producers of phonograms?

“Article 106

“(1) The duration of the economic rights of producers of sound recordings shall be 50 years from the first of January of the year following that in which the first fixing takes place.

“(2) Where the sound recording is disclosed to the public during that period, the term of the economic rights shall expire after 50 years have expired following the date on which it was disclosed to the public.”

2.16 What is the effective time-frame for application of rights in the Law?

“Article 149

“(1) Legal acts executed under the former legislation shall produce all their effects according to that legislation, with the exception of clauses that provide for the transfer of the exploitation rights in any future works that the author might yet create.

“(3) The duration of the exploitation rights in works created by authors deceased before the entry into force of this Law and for which the term of protection has expired shall be extended up to the limit of the term provided for in this Law. Such extension shall come into effect only on the entry into force of this Law.”

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 33

“(1) The following uses of a work already disclosed to the public shall be permitted without the author’s consent and without payment of remuneration, provided that such uses conform to proper practice, are not at variance with the normal exploitation of the work and are not prejudicial to the author or to the owners of the exploitation rights:

(a) the reproduction of a work in connection with judicial or administrative proceedings, to the extent justified by the purpose thereof;

(b) the use of brief quotations from a work for the purpose of an analysis, commentary or criticism, or for illustration, to the extent justified by use thereof;

- (c) the use of isolated articles or brief excerpts from works in publications, television or radio broadcasts or sound or audiovisual recording exclusively intended for teaching purposes and also the reproduction for teaching purposes, within the framework of public education or social welfare institutions, of isolated articles or brief extracts from works, to the extent justified by the intended purpose;
- (d) the reproduction of brief excerpts from works for information or research within the framework of libraries, museum, film archives, sound archives, archives of non-profit cultural or scientific public institutions: the complete reproduction of a copy of a work shall be allowed for the replacement of the sole copy in such an archive or library's permanent collection in the event of the destruction, serious deterioration or loss thereof;
- (e) the reproduction, circulation or communication to the public for the purpose of information on current topics, of short excerpt from press articles and radio or television documentary broadcasts;
- (f) the reproduction, circulation or communication to the public of short fragments of lectures, addresses, court pleadings, and others such work expressed orally in public, on condition that those uses are intended solely to provide information on current events;
- (g) the reproduction, circulation or communication of works to the public in the reporting of current events, but only to the extent justified by the informative purpose;
- (h) the reproduction, to the exclusion of any means involving direct contact with the work, circulation or communication to the public of the image of an architectural work. Work of three-dimensional art, photographic work or work of applied art permanently located in a public place, except where the image of the work is the principal subject of such reproduction, circulation or communication, and if it is used for commercial purposes;
- (i) the representation and execution of a work as part of the activities of educational institutions, exclusively for specific purposes and on condition that both the representation or execution and the public's access are free of charge.

“(2) In the cases provided for in subparagraphs (b), (c), (e), (f), and (h) it shall be mandatory to mention the source and the author's name if it appears on the work used, and, also in the case of works of three-dimensional art or architectural works, the place in which the original is to be found.”

“Article 34

“(1) It shall not be a violation of copyright, within the meaning of this Law, to reproduce a work without the author's consent for personal use or for use by a normal family circle, on condition that the work has already been disclosed to the public, that

thereproduction does not adversely affect the normal exploitation of the work or prejudice the author or the owner of the exploitation rights.

“(2) In the situation provided for in paragraph (1), remuneration established according to the provisions of this Law shall be paid for the physical material on which sound or audiovisual recordings may be made, and for devices serving for the reproduction thereof.”

“Article 35

“The alteration of a work shall be permissible without the author’s consent and without payment of remuneration in the following cases:

- (a) if the alteration is made privately and is neither intended for nor made available to the public;
- (b) if the result of the alteration is a parody or caricature, provided that the said result does not cause confusion with the original work and the author thereof;
- (c) if the alteration is made necessary by the purpose of the use permitted by the author.”

“Article 36

“(1) Works shown at exhibitions open to the public, auctions or fairs or in collections may be reproduced in catalogues published and distributed for the purpose of such activities by the organizers thereof.

“(2) In the cases mentioned in paragraph (1) it shall be mandatory to specify the source as well as the authorship of the works insofar as they are mentioned on the work used.”

“Article 37

“For the purpose of testing the operation of their products at the time of manufacture or sale, trading companies engaged in the production or sale of sound or audiovisual recordings, equipment for the reproduction or communication to the public thereof and also equipment for receiving radio and television broadcasts may reproduce and present extracts from works, provided that such acts are performed only to the extent required for testing.”

“Article 38

“(1) Authorization to broadcast a work by wireless means shall also constitute authorization to transmit the work by wire cable, or any other similar process without payment of separate remuneration, provided that the broadcast is made without alteration, simultaneously and in full by the original broadcasting organization and does not go beyond the geographical area for which the right of broadcasting was granted.

“(2) The provisions of paragraph (1) of this Article shall not apply to the digital broadcasting of a work by whatever means.

“(3) The transfer of the right to communicate a work to the public by radio or television shall entitle the broadcasting organization to record the work for its own wireless transmissions with a view to a single authorized transmission to the public. A new authorization shall be required for any new broadcast of the works so recorded. If no such authorization is requested within six months following the first broadcast, the recordings shall be destroyed.”

“Article 112

“The provisions of Articles 33, 34, and 38 shall apply by analogy to performers and to producers of sound recordings.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

Not found in the Law reviewed.

3.3 What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4 Generally, what measures for enforcement of rights are in the Law?

“Article 139

“(1) Violation of rights recognized and guaranteed by this Law shall make the offender guilty of a civil or criminal offense or of a misdemeanor, as the case may be, according to the law. The procedural provisions shall be those specified in this Law, completed with those of ordinary legislation.

“(2) The owners of rights that are violated may apply to the courts or other competent bodies, as the case may be, for recognition of their rights and of the violation thereof, and may seek redress for the prejudice in accordance with legal provisions.

“(3) Where rights recognized and protected by this Law have been violated, the owners thereof may apply to the court or any other competent bodies, in accordance with the law, for the immediate ordering of measures to prevent the occurrence of imminent damage or to secure redress therefor, as the case may be.

“(4) The owners of rights that have been violated may likewise apply to the court for the ordering of any of the following measures:

- (a) the surrender, in order to cover the prejudice suffered, of the proceeds from the unlawful act, if the prejudice cannot be redressed in that way, of the goods resulting from the unlawful act, with a view to their being turned to account up to the full amount of the prejudice caused;
- (b) the destruction of the equipment and means belonging to the offender that were solely or mainly intended for the perpetration of the unlawful act;
- (c) the removal from commercial channels by confiscation and destruction, of the unlawfully made copies;
- (d) the publication in the press of the court’s decision at the expense of the offender.

“(5) The provisions of paragraph (4)(c) shall not apply to architectural constructions unless destruction of the building is dictated by the circumstances of the case.”

“Article 140

“It shall be an offense punishable with imprisonment for one month to two years, or a fine of 200,000 to 3 million Lei, except where it constitutes a more serious offense, for a person to perform any of the following acts without the authorization or consent, as the case may be, of the owner of the rights recognized by this Law:

- (a) to disclose a work to the public;
- (b) to perform on stage, recite or execute a work or otherwise present a work directly in public;
- (c) to allow the public access to computer databases that contain or constitute protected works;
- (d) to translate, publish in a collection, adapt or transform a work to produce a derived work;
- (e) to fix on a performer’s performance on a physical medium;
- (f) to broadcast or transmit by television or radio a performance, either unfixed or fixed on a physical medium, or to retransmit it by wire or wireless means, by cable, by satellite or by any other similar procedure, or by any other means of communication to the public;
- (g) to present the sound recordings of a producer in a public place;
- (h) to broadcast or transmit by television or radio the sound recordings of a producer, or to retransmit them by wire or wireless means, by cable, by satellite or

by any other similar procedure, or by any other means of communication to the public;

(i) to fix television or radio broadcasts or to retransmit them by wire or wireless means, by cable, by satellite or by any other similar procedure, or by any other means of communication to the public;

(j) to communicate television or radio programs in a place accessible to the public with payment of an admission charge.”

“Article 141

“It shall be an offense and punishable with imprisonment for three months to five years, or a fine of 500,000 to 10 million Lei, except where the act constitutes a more serious offense, for a person improperly to assume the authorship of a work or to disclose a work to the public under a name other than the one decided upon by the author.”

“Article 142

“It shall be an offense punishable with imprisonment for three months to three years, or a fine of 700,000 to 7 million Lei, except where the act constitutes a more serious offense, for a person to do the following without the consent of the owner of the rights recognized by this Law:

- (a) reproduce a work in its entirety or in part;
- (b) distribute a work;
- (c) import copies of a work into the territory of Romania for commercial purposes;
- (d) exhibit a work of three-dimensional or applied art, a photograph or a work of architecture;
- (e) project a cinematographic or other audiovisual work in public;
- (f) broadcast a work by any means of wireless propagation of signals, sounds or images, including by satellite;
- (g) transmit a work to the public by wire, cable, optic fiber or any other similar procedure;
- (h) retransmit a work by any means for the wireless propagation of signals, sounds or images, including by satellite, or retransmit a work by wire, cable, optic fiber, or any other similar procedure;
- (i) broadcast or transmit a work transmitted by television or radio in a place accessible to the public;

- (j) reproduce the performance of a performer;
- (k) distribute the performance of a performer;
- (l) reproduce the sound recordings of a producer;
- (m) distribute the sound recordings of a producer, including by rental;
- (n) import the sound recordings of a producer into Romania for commercial purposes;
- (o) reproduce radio or television programs fixed on any kind of physical medium;
- (p) distribute radio or television programs fixed on any kind of physical medium, including by rental;
- (r) import radio or television programs fixed on any kind of physical medium into Romania for commercial purposes.”

“Article 143

“It shall be an offense punishable with imprisonment for three months to two years, or a fine of 500,000 to 5 million Lei, except where it constitutes a more serious offense, for a person to do the following:

- (a) place at the disposal of the public by sale or any other method of transfer, either for a consideration or free of charge, technical means designed for the unauthorized erasure or neutralization of the technical devices that protect a computer program;
- (b) refuse to declare to the competent bodies the origin of copies of a work or of the physical media on which a performance or a television or radio program is recorded, which are protected under this Law and are in the person's possession with a view to distribution.”

“Article 144

“Criminal proceedings shall be set in motion, in the case of the offenses provided for in Articles 140, 141, and 142(a), (c), (j), (l), (n), and (o), on a preliminary complaint filed by the injured party within the meaning of this Law.”

“Article 145

“Acts performed by the Romanian Copyright Office in the exercise of its supervisory powers under Article 138(d) and (f) shall be governed by the provisions of Article 214 of the Code of Criminal Procedure.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

“Article 14

“(1) For the purposes of this Law, reproduction means the making of one or more copies of a work in any material form, including the making of an audio or visual recording of the work, and also its permanent or temporary storage by electronic means.

“[...]”

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

SAINTLUCIA

(LawReviewed: CopyrightAct(No.10of1995))

1. WCTprovisions

1.1 DoesthescopeofcopyrightprotectionintheLawextendonlytoexpressions,andnot toideas,procedures,methodsofoperationormathematicalconcepts?

NotfoundintheLawreviewed.

1.2 ArecomputerprogramsprotectedintheLawasliteraryworks ?

“Section3:Interpretation.

“[...]

‘computerprogram’ meansasetofinstructionswhetherexpressedinwordSORin schematicorotherform,whichiscapable,whenincorporatedinamachine -readable medium,ofcausinganelectronicorotherdevicehaving information -processing capabilities toindicate,performorachieveaparticularfunction,taskorresult;

[...]

‘literarywork’ meansanywork,otherthanadramaticormusicalwork,whichis written,spokenorsung,andaccordinglyincludes:

[...]

(b) acomputerprogram;

[...]”

“Section7:Categoriesofprotectedworks.

“(1) Subjecttothissection,thecategoriesofworksinwhichcopyrightunderthisAct maysubsistare:

(a) originalliterary,dramatic,musicalorartisticworks;

“[...]”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Section 3: Interpretation.

“[...]

‘literary work’ means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes:

(a) a written table or compilation;

[...]”

“Section 7: Categories of protected works.

“(1) Subject to this section, the categories of works in which copyright under this Act may subsist are:

(a) original literary, dramatic, musical or artistic works;

“[...]”

1.4 Is there a right of distribution in the Law?

“Section 9: Nature of copyright.

“(1) Subject to the provisions of this Act, the owner of copyright shall have the exclusive right to do, authorize, or prohibit the following acts in relation to the work:

[...]

(d) the first public distribution of the original and each copy of the work by sale, rental or otherwise;

“[...]”

“Section 3: Interpretation.

‘distribution’ means the distribution to the public, for commercial purposes, of copies of a work by way of rental, lease, hire, loan or similar arrangement and distributing has a corresponding meaning.

[...]”

1.5 IstherearightofrentalintheLaw,andifso,towhichworksdoesitapply?

“Section9:Natureofcopyright.

“(1) SubjecttotheprovisionsofthisAct,theownerofcopyrightshallhavethe exclusiverighttodo,authorize,orprohibitthefollowingactsinrelationtothework:

[...]

(e) rentalorpubliclendingoftheoriginaloracopyofanaudiovisualwork,a workembodiedinasoundrecording,acomputerprogramme,adatabaseora musicalworkintheformofnotation,irrespectiveoftheownershipoftheoriginal orcopyconcerned;

[...]

“(2) Therightofrentalandlendingunderparagraph(e)ofsubsection(1)donotapply:

(a) torentalorlendingofcomputerprogrammeswheretheprogrammeitselfis nottheessentialobjectoftherentalorlending;or

(b) tocinematographicworks, unlesssuchcommercialrentalhasledto widespreadcopyingofsuchworksmateriallyimpairingtheexclusiverightof production.

“(3) Theonusofprovingthatwidespreadcopyingofacinematographicworkhas materiallyimpairedtheexclusiverightofproductionunderthissectionrestsuponthe personwhoallegesthatsuchisthecase.”

“Section3:Interpretation.

“[...]

‘rental’meansanyarrangementunderwhichacopyofaworkismadeavailable:

(a) forpayment(inmoneyormoney’sworth)or

(b) inthecourseofabusiness,aspartofservicesorforamenitiesforwhich paymentismade,ontermsthatitwillormaybereturned;

[...]”

1.6 IstherearightofcommunicationtothepublicintheLaw?

“Section9:Natureofcopyright.

“(1) SubjecttotheprovisionsofthisAct,theownerofcopyrightshallhavethe exclusiverighttodo,authorize,orprohibitthefollowingactsinrelationtothework:

[...]

(j) communicationtothepublicofthework;

“[...]”

“Section3:Interpretation.

“[...]”

‘communicationtothepublic’isthetransmissionbywireorwirelessmeans,ofthe imagesorsounds,orboth,ofawork,aperformanceorasoundrecordinginsuchaway thattheimagesorsoundscanbeperceivedbypersonsoutsidethenormalcirclesofa familyanditsclosestsocialacquaintancesataplaceorplacessodistantfromtheplace wherethetransmissionoriginates,that,withoutthetransmission,theimagesorsounds wouldnotbeperceivableandfurther,irrespectiveofwhetherthepersoncan receive the imagesorsoundsatthesameplaceandtime,oratdifferentplacesortimes.

“[...]”

1.7 Isarightofmakingavailabletothepublicofworksinsuchawaythatmembersofthe publicmightaccesstheseworksfromaplaceandatatimeindivid uallychosenbythem, containedintheLaw?

“Section9:Natureofcopyright.

“(1) SubjecttotheprovisionsofthisAct,theownerofcopyrightshallhavethe exclusiverighttodo,authorize,orprohibitthefollowingactsinrelationtothework:

[...]

(j) communicationtothepublicofthework;

“[...]”

“Section 3: Interpretation.

“[...]

‘communication to the public’ is the transmission by wire or wireless means, of the images or sounds, or both, of a work, a performance or a sound recording in such a way that the images or sounds can be perceived by persons outside the normal circles of family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the images or sounds would not be perceivable and further, irrespective of whether the person can receive the images or sounds at the same place and time, or at different places or times.

“[...]

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Section 3: Interpretation.

“[...]

‘artistic work’ means:

(a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality;

[...]

“Section 10: Duration of copyright in literary works etc.

“(1) Subject to the provisions of this section, copyright in any literary, dramatic, musical or artistic work expires at the end of the period of fifty years from the end of the calendar year in which the author dies.

“[...]

1.9 What is the effective time-frame for application of the rights in the Law?

“Section 149: Repeals.

“(1) The Copyright (St. Lucia) Order, 1965 and the Copyright Act 1956 of the United Kingdom in so far as it has effect as part of the law of Saint Lucia are hereby repealed.

“(2) Without prejudice to section 27 of the Interpretation Act, the repeal effected by subsection (1) includes the repeal of:

- (a) any Order-in-Council made under the Copyright Act 1956 of the United Kingdom so repealed, in so far as it has effect as part of the law of Saint Lucia;
- (b) any subsidiary legislation made under the Acts so repealed, or in so far as it has effect as part of the law of Saint Lucia, made under any Order-in-Council so repealed.”

“Section 150: Savings.

“(1) Nothing in this Act shall affect the operation of any rule of equity relating to breaches of trust or confidence.

“(2) Nothing in this Act affects the right of the State, or any person deriving title from the State, to sell, use or otherwise deal with articles forfeited under the Customs Ordinance including any articles forfeited by virtue of this Act or an enactment repealed by this Act.”

“Section 151: Copyright subsists only under Act.

“No copyright or right in the nature of copyright shall subsist other than by virtue of this Act or some other enactment in that behalf.”

“Section 152: Enforcement of copyright subject to public interest.

“Nothing in this Act affects any rule of law preventing or restricting the enforcement of copyright or rights in the nature of copyright, on grounds of public interest or otherwise.”

“Section 153: Transitional.

“(1) Where immediately prior to the appointed day copyright subsists in Saint Lucia in any literary, dramatic, musical or artistic work by virtue of the Copyright Act 1956 of the United Kingdom, such copyright shall continue to subsist and the person entitled thereto by virtue of this Act shall be the owner thereof under and subject to this Act, and in particular:

- (a) the duration of such copyright;
- (b) the acts comprised within the exclusive rights attaching to such copyright; and
- (c) the effect upon the ownership of such copyright of any event or transaction occurring or of any contract or agreement made after the appointed day, shall be governed by this Act.

“(2) Wherebeforeth eappointeddayanypersonhasincurredanyexpenditureor liabilityinconnectionwithorincontemplationof,thedoingofanactinrelationtoa protectedworkortoaperformanceinrespectofwhichrightsareconferredbythisAct, beinganactwhich priortothatdatewouldhavebeenlawful,nothinginthisActshall diminishorprejudiceanyrightsorinterestswhich,inrelationtothatworkor performance,aresubsistingandvaluableontheappointedday,unlessthepersonwho, byvirtueofthisA ct,istheownerofthecopyrightorthepersonhavingrightsinthe performance,agreestopaysuchcompensationas,indefaultofagreement,maybefixed bythehighCourt.

“(3) Whereanactdonebeforetheappointeddaywasthenaninfringementof copyrightbutisnotinfringementofcopyrightorrightsinaformanceunderthis Act,then,proceedingsinrespectofthatactmaybetakenasifthisActhadnotbeen passed.

“(4) Anactdonebeforetheappointeddayshallnotbeaninfringementofco pyrightor rightsinaformanceconferredbythisActifthatactwouldnot,butforthepassingof thisAct,haveconstitutedaninfringement.

“(5) Proceedingsforinfringementofcopyrightinstitutedbutnotdisposedofbeforethe appointeddayshall bedisposedofasifthisActhadnotbeenpassed.

“(6) ProceedingsunderthisActforinfringementmaybetakennotwithstandingthe allegedinfringementoccurredbeforetheappointedday.

“(7) Inthissection‘appointedday’meansthedayappointedby theMinisterpursuant tosection1.”

2. WPPTprovisions

2.1 Definitions:

2.1.1 Is“performance”or“performers”definedintheLaw?

“Section3:Interpretation.

“[...]

‘performance’inrelationto:

[...]

(b) therightsconferredunderpartVIII,means:

- (i) adramaticperformancewhichincludesdanceandmime;
- (ii) amusicalperformance;or
- (iii) areadingorrecitationofaliterarywork,

which is, or to the extent that it is, a live performance given by one or more individuals.

[...]"

2.1.2 Is "phonogram" defined in the Law?

"Section 3: Interpretation.

"[...]"

'record' means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, irrespective of the form in which the sounds are represented, other than a sound-track associated with a film, but includes, in relation to a performance, a film incorporating the performance;

"[...]"

'recording', in relation to a performance, means a film or sound recording:

- (a) made directly from the live performance;
- (b) made from a broadcast of, or cable programme including, the performance; or
- (c) made, directly or indirectly, from another recording of the performance;

[...]"

'sound recording' means:

- (a) a recording of sounds from which the sounds may be reproduced; or
- (b) a recording of the whole or any part of a literary, dramatic or musical work from which sounds reproducing the work or part thereof may be produced, regardless of the medium in which the recording is made or the method by which the sounds are reproduced or produced or the form in which the sounds are represented;

[...]"

2.1.3 Is "fixation" defined in the Law?

Not found in the Law reviewed.

2.1.4. Is “producer of phonogram” defined in the Law?

“Section 3: Interpretation.

“[...]

‘author’ means the person who creates a work, being,

[...]

(e) in relation to a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken;

[...]

‘person having recording rights’ in relation to a performance (as defined in paragraph (b) of the definition of that expression in this section) means a person who, being a qualified person:

(a) is either a party to and has the benefit of an excluding recording contract to which the performance is subject or is a person to whom the benefit of such a contract has been assigned; or

(b) is licensed to make recordings of the performance with a view to their being sold or let for hire or shown or played in public, by a person who is within the definition in paragraph (a) but is not a qualified person;

[...]”

2.1.5 Is “publication of a fixed performance or phonogram” defined in the Law?

“Section 5: Publication.

“(1) In this Act ‘publication’, in relation to work:

(a) means the issue of copies to the public, and

(b) includes, in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system, and related expressions shall be construed accordingly.

“[...]

“(3) The following do not constitute publication for the purposes of this Act:

[...]

(c) in the case of a sound recording or film:

(i) the work being played or shown in public; or

(ii) the broadcasting of the work or its inclusion in a cable programme service.

“[...]”

2.1.6 Is “broadcasting” defined in the Law?

“Section 3: Interpretation.

“[...]

‘abroadcast’ means a transmission by wireless telegraphy of visual images, sounds or other information which:

(a) having regard to section 6, is capable of being lawfully received by members of the public; or

(b) is transmitted for presentation to members of the public;

‘to broadcast’ means to transmit, by the emission of electro-magnetic energy otherwise than over a path that is provided by a material substance, visual images or sounds, or other information, irrespective of the form in which the sounds, images or information are represented for reception by the public notwithstanding that:

(a) subsequent to the initial transmission, but before reception by the public, the images or sounds may be carried on a path provided by a material substance;

(b) the public receiving, or capable of receiving, the images or sounds is in a country other than that from which the original transmission took place;

(c) no member of the public actually receives the images or sounds, provided only that members of the public could, if in possession of suitable apparatus, receive them;

and ‘broadcasting’ and ‘re-broadcasting’ have corresponding meanings;

[...]

2.1.7 Is “communication to the public” defined in the Law?

“Section 3: Interpretation.

“[...]

‘Communication to the public’ is the transmission by wire or wireless means, of the images or sounds, or both, of a work, a performance or a sound recording in such a way that the images or sounds can be perceived by persons outside the normal circles of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the images or sounds would not be perceivable and further, irrespective of whether the person can receive the images or sounds at the same place and time, or at different places or times.

“[...]

2.2 Is the concept of “national treatment” contained in the Law?

“Section 8: Qualification for copyright protection.

“[...]

“(9) The provision of this Act shall also apply to works that are eligible for protection in Saint Lucia by virtue of and in accordance with any international convention and other agreement to which Saint Lucia is party.

“[...]

“Section 110A: Protection of rights in performance.

“[...]

“(2) The provisions in this Act also apply to performers who are eligible for protection by virtue of and in accordance with any international convention or other international agreement to which Saint Lucia is party.”

2.3 Do performers have moral rights in the Law?

“Section 114A: Performers’ moral rights.

“(1) A performer shall have as regards his or her live or aural performances and performances fixed in phonogram :

- (a) the right to claim to be identified as the performer of a performance, except where omission is dictated by the manner of the use of the performance; and
- (b) to object to any distortion, mutilation or other modification of his or her performance that would be prejudicial to his or her reputation.

“(2) The provisions of section 19(1) and 20 of the principal Act shall apply *mutatis mutandis*.”

“Section 19: Duration of moral rights and related rights

“(1) The rights conferred by sections 15, 16 and 17 shall subsist so long as copyright subsists in the work.

“[...]”

“Section 20: Consent and waiver of rights

“(1) A person entitled to a right conferred under this Part may waive the right or consent to the doing of any act in relation to the work in respect of which the right subsists and any act done in pursuance of such waiver or consent is not an infringement of the right.

“(2) A right may be waived by instrument in writing signed by the person giving up the right and the waiver:

- (a) may relate to works generally or to a specific work or class of works and may relate to existing or future works; and
- (b) may be conditional or unconditional and may be expressed to be subject to revocation.

“(3) Where a waiver is made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it shall be presumed to extend to his licensees and successors in title.

“(4) Nothing in this Part shall be construed as excluding the operation of the general law of contract estoppel in relation to an informal waiver or other transaction in relation to any of the rights to which this Part relates.”

2.4 Do performers have economic rights in their unfixated performances, and if so, which ones?

“Section 111: Consent required for recording or live transmission of performance.

“(1) A performer’s rights are infringed by a person who, without his consent:

- (a) makes, other than for his private and domestic use, a recording of the whole or any substantial part of a qualifying performance; or
- (b) broadcasts live, or includes live in a cable programme service, the whole or any substantial part of a qualifying performance.

(c) infringes his or her right of distribution or right of making available to the public a fixed performance, by wire or wireless means.

“(2) In an action for infringement of a performer’s rights brought by virtue of this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.”

2.5 Do performers have a right of reproduction in the Law?

“Section 111: Consent required for recording or live transmission of performance.”

“(1) A performer’s rights are infringed by a person who, without his consent:

(a) makes, other than for his private and domestic use, a recording of the whole or any substantial part of a qualifying performance;

[...]”

2.6 Do performers have a right of distribution in the Law?

“Section 114: Infringement of performer’s rights by importing, possessing, etc. illicit recording.”

“(1) A performer’s rights are infringed by a person who, without his consent:

(a) imports into Saint Lucia other than for his private and domestic use; or

(b) in the course of a business possesses, sells or lets for hire, offers for sale or hire, or distributes, a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

“(2) Where in an action for infringement of a performer’s rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

“(3) In subsection (2) ‘innocently acquired’ means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.”

“Section 3: Interpretation.

“[...]

‘distribution’ means the distribution to the public, for commercial purposes, of copies of a work by way of rental, lease, hire, loan or similar arrangement and distributing has a corresponding meaning;

“[...]”

2.7 Do performers have a right of rental in the Law ?

“Section 114: Infringement of performer’s rights by importing, possessing, etc. illicit recording.

“(1) A performer’s rights are infringed by a person who, without his consent:

[...]

(b) in the course of a business possesses, sells or lets for hire, offers for sale or hire, or distributes, a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

“[...]”

“Section 3: Interpretation.

“[...]

‘distribution’ means the distribution to the public, for commercial purposes, of copies of a work by way of rental, lease, hire, loan or similar arrangement and distributing has a corresponding meaning;

“[...]”

2.8 Do performers have a right of making available of fixed performances in the Law?

“Section 111: Consent required for recording or live transmission of performance.

“(1) A performer’s rights are infringed by a person who, without his consent:

[...]

(c) infringes his or her right of distribution or right of making available to the public a fixed performance, by wire or wireless means.

“[...]”

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Section 3: Interpretation.

“[...]

‘work’ means:

[...]

(b) a sound recording, film, broadcast or cable programme;

[...]

“Section 9: Nature of copyright.

“(1) Subject to the provisions of this Act, the owner of copyright shall have the exclusive right to do, authorize, or prohibit the following acts in relation to the work:

(a) to make copies of the work;

“[...]”

2.10 Do producers have a right of distribution in the Law?

“Section 3: Interpretation.

“[...]

‘work’ means:

[...]

(b) a sound recording, film, broadcast or cable programme;

[...]”

“Section 9: Nature of copyright.”

“(1) Subject to the provisions of this Act, the owner of copyright shall have the exclusive right to do, authorize, or prohibit the following acts in relation to the work:

[...]

(d) the first public distribution of the original and each copy of the work by sale, rental or otherwise;

“[...]”

“Section 117: Infringement of recording rights by importing, possessing etc. illicit recording.”

“(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer:

(a) imports into Saint Lucia other than for his private and domestic use; or

(b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes, a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

“(2) Where in an action for infringement of those rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

“(3) In subsection (2) ‘innocently acquired’ means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.”

“Section 3: Interpretation.”

“[...]”

‘distribution’ means the distribution to the public, for commercial purposes, of copies of a work by way of rental, lease, hire, loan or similar arrangement and distributing has a corresponding meaning;

“[...]”

2.11 Do producers have a right of rental in the Law?

“Section 3: Interpretation.

“[...]

‘work’ means

[...]

(b) a sound recording, film, broadcast or cable programme;

[...]”

“Section 9: Nature of copyright.

“(1) Subject to the provisions of this Act, the owner of copyright shall have the exclusive right to do, authorize, or prohibit the following acts in relation to the work:

[...]

(e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer programme, a database or a musical work in the form of notation, irrespective of the ownership of the original copy concerned;

“[...]”

“Section 3: Interpretation.

“[...]

‘rental’ means any arrangement under which a copy of a work is made available:

(a) for payment (in money or money’s worth) or

(b) in the course of a business, as part of services or for amenities for which payment is made, on terms that it will or may be returned;

[...]”

“Section 117: Infringement of recording rights by importing, possessing etc. illicit recording.

“(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consentor, in the case of a qualifying performance, that of the performer:

[...]

(b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes, a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

“[...]”

2.12 Do producers have a right of making available of phonograms in the Law?

“Section 3: Interpretation.

“[...]

‘work’ means:

[...]

(b) a sound recording, film, broadcast or cable programme;

[...]”

“Section 9: Nature of copyright.

“(1) Subject to the provisions of this Act, the owner of copyright shall have the exclusive right to do, authorize, or prohibit the following acts in relation to the work:

[...]

(j) communication to the public of the work;

“[...]”

“Section 3: Interpretation.

“[...]

‘communication to the public’ is the transmission by wire or wireless means, of the images or sounds, or both, of a work, a performance or a sound recording in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place

where the transmission originates that, without the transmission, the images or sounds would not be perceivable and further, irrespective of whether the person can receive the images or sounds at the same place and time, or at different places or times.

“[...]”

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Section 3: Interpretation.

“[...]”

‘work’ means:

[...]

(b) a sound recording, film, broadcast or cable programme;

“[...]”

“Section 9: Nature of copyright.

“(1) Subject to the provisions of this Act, the owner of copyright shall have the exclusive right to do, authorize, or prohibit the following acts in relation to the work:

(i) broadcasting of the work;

(ii) communication to the public of the work.

“[...]”

2.14 Are rights in the Law subject to any formalities?

[Rights in the Law are not subject to any formalities.]

2.15 What is the term of protection for:

2.15.1 performers?

“Section 118: Duration of rights in performance.

“The rights conferred by this Part subsist until the expiry of fifty years from the end of the calendar year in which the performance takes place.”

2.15.2 producers of phonograms?

“Section 11: Duration of copyright in sound recordings and films.

“(1) Copyright in a sound recording or film expires at the end of the period of fifty years from the end of the calendar year in which it was made, or where it is made available to the public before the end of that period, at the end of the period of fifty years from the end of the calendar year in which it is so made available.

“(2) For the purpose of subsection (1) a sound recording or film is made available to the public when it is first published, broadcast or included in a cable programme service, so, however, that in determining whether a sound recording or film has been made available to the public, any unauthorized act shall be disregarded.”

2.16 What is the effective time -frame for application of rights in the Law?

“Section 149: Repeals.

“(1) The Copyright (St. Lucia) Order, 1965 and the Copyright Act 1956 of the United Kingdom in so far as it has effect as part of the law of Saint Lucia are hereby repealed.

“(2) Without prejudice to section 27 of the Interpretation Act, the repeal effected by subsection (1) includes the repeal of:

(a) any Order -in-Council made under the Copyright Act 1956 of the United Kingdom so repealed, in so far as it has effect as part of the law of Saint Lucia;

(b) any subsidiary legislation made under the Acts so repealed, or in so far as it has effect as part of the law of Saint Lucia, made under any Order in-Council so repealed.”

“Section 150: Savings.

“(1) Nothing in this Act shall affect the operation of any rule of equity relating to breaches of trust or confidence.

“(2) Nothing in this Act affects the right of the State, or any person deriving title from the State, to sell, use or otherwise deal with articles forfeited under the Customs Ordinance including any articles forfeited by virtue of this Act or an enactment repealed by this Act.”

“Section 151: Copyright subsists only under Act.

“No copyright or right in the nature of copyright shall subsist other than by virtue of this Act or some other enactment in that behalf.”

“Section 152: Enforcement of copyright subject to public interest.

“Nothing in this Act affects any rule of law preventing or restricting the enforcement of copyright or rights in the nature of copyright, on grounds of public interest or otherwise.”

“Section 153: Transitional.

“(1) Where immediately prior to the appointed day copyright subsists in Saint Lucia in any literary, dramatic, musical or artistic work by virtue of the Copyright Act 1956 of the United Kingdom, such copyright shall continue to subsist and the person entitled thereto by virtue of this Act shall be the owner thereof under and subject to this Act, and in particular:

- (a) the duration of such copyright;
- (b) the acts comprised within the exclusive rights attaching to such copyright; and
- (c) the effect upon the ownership of such copyright of any event or transaction occurring or of any contract or agreement made after the appointed day, shall be governed by this Act.

“(2) Where before the appointed day any person has incurred any expenditure or liability in connection with or in contemplation of, the doing of an act in relation to a protected work or to a performance in respect of which rights are conferred by this Act, being an act which prior to that date would have been lawful, nothing in this Act shall diminish or prejudice any rights or interest which, in relation to that work or performance, are subsisting and valuable on the appointed day, unless the person who, by virtue of this Act, is the owner of the copyright or the person having rights in the performance, agrees to pay such compensation as, in default of agreement, may be fixed by the high Court.

“(3) Where an act done before the appointed day was then an infringement of copyright but is not an infringement of copyright or rights in a performance under this Act, then, proceedings in respect of that act may be taken as if this Act had not been passed.

“(4) An act done before the appointed day shall not be an infringement of copyright or rights in a performance conferred by this Act if that act would not, but for the passing of this Act, have constituted an infringement.

“(5) Proceedings for infringement of copyright instituted but not disposed of before the appointed day shall be disposed of as if this Act had not been passed.

“(6) Proceedings under this Act for infringement may be taken notwithstanding the alleged infringement occurred before the appointed day.

“(7) In this section ‘appointed day’ means the day appointed by the Minister pursuant to section 1.”

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Section 55: Definitions.

“For the purpose of this Part:

‘facsimile copy’ includes a copy which is reduced or enlarged in size:

‘reprographic process’ means a process:

- (a) for making facsimile copies; or
- (b) involving the use of an appliance for making multiple copies, and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a film or sound recording;

‘sufficient acknowledgement’ means an acknowledgement identifying the work in question by its title or other description and, unless the work is anonymous, or the author has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.”

“General Exceptions

“Section 56: Research and private study.

“(1) Subject to subsection (2) and section 58, fair dealing with a protected work for the purposes of research or private study does not infringe copyright in the work.

“(2) Copying by a person other than the researcher or student himself is not fair dealing if:

- (a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 68 would not permit to be done under section 69 or 70 (articles or parts of published works: restriction on multiple copies of same material); or
- (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.”

“Section 57: Criticism, review and reporting.

“(1) Subject to section 58, fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided it is accompanied by sufficient acknowledgement.

“(2) Subject to subsection (3) and section 58, fair dealing with a protected work (other than a photograph) for the purpose of reporting current events does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgment.

“(3) No acknowledgment is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.”

“Section 58: Determining fair dealing.

“For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the court determining the question shall take account of all factors which appear to it to be relevant, including:

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the effect of the act upon the potential market for or the commercial value of the work.”

“Section 59: Incidental inclusion of protected work.

“Copyright in a work is not infringed:

- (a) by its incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme; or
- (b) by the issue to the public of copies or the playing, showing, broadcasting or inclusion in a cable programme service of anything whose making was not an infringement of copyright by virtue of paragraph (a), and for the purposes of this section, a musical work, words spoken or sung with music, or so much of a sound recording, broadcast or cable programme as includes a musical work or such words, shall not be regarded as incidentally included if it is deliberately included.”

“Section 60: Anonymous and pseudonymous literary works etc.

“(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or in pursuance of an arrangement made at a time when:

- (a) it is not possible by reasonable inquiry to ascertain the identity of the author; and
- (b) it is reasonable to assume:
 - (i) that the copyright has expired; or
 - (ii) that the author died fifty years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

“(2) Subsection(1)(b)(ii)doesnotapplyinrelation toworkinwhichcopyright originallyvestedinaninternationalorganisationbyvirtueofsection147andinrespect ofwhichanorderunderthatsections specifiedacopyrightperiodlongerthanfiftyyears.

“(3) Inrelationtoworkofjointauthorship:

(a) thereferenceinsubsection(1)toitsbeingpossibletoascertaintheidentity oftheauthorshallbeconstruedasareferencetoitsbeingpossibletoascertainin theidentityofanyoftheauthors;and

(b) thereferenceinsubsection(1)(b)(ii) totheauthorhavingdiedshallbe construedasareferencetoaltheauthorshavingdied.”

“Section61:Useofnotesofrecordingsofspokenwords.

“(1) Wherearecordofspokenwordsismade,inwritingorotherwise,forthepurposeof:

(a) reportingcurrentevents;or

(b) broadcastingorincludinginacableprogrammeservicethewholeorpartof thework,itisnotinfringementofanycopyrightintheworkasaliteraryworkto usetherecordormaterialtakenfromit(ortocopytherecordor a nysuchmaterial andusethecopy)forthatpurpose,providingtheconditionsspecifiedin subsection(2)aremet.

“(2) Theconditionsreferredtoinsubsection(1)arethat:

(a) therecordisadifferentrecordofthespokenwordsandisnottakenfrom a previousrecordorfromabroadcastorcableprogramme;

(b) themakingoftherecordwasnotprohibitedbythespeakerand,where copyrightalreadysubsistedinthework,didnotinfringecopyright;

(c) theusemadeoftherecordormaterialtakenfrom itisnotakindprohibited byoronbehalfofthespeakerorcopyrightownerbeforetherecordwasmade; and

(d) theuseisbyorwiththeauthorityofapersonwhoislawfullyinpossession oftherecord.”

“UseofWorkforEducationalPurposes

“Section62:Actsdoneforpurposeofinstructionorexamination.

“(1) Copyrightinaliterary,dramatic,musicalorartisticworkisnotinfringedbyits beingcopiedinthecourseofinstructionorofpreparationforinstruction,providedthe copyingisdonebyapersongivingorreceivinginstructionandisnotbymeansofa reprographicprocess.

“(2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film sound-track in the course of instruction or of preparation for instruction in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.

“(3) Copyright in a work is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to candidates or answering the questions.”

“Section 63: Anthologies.

“(1) The inclusion in a collection for use in educational institutions, of a short passage from a published literary or dramatic work does not infringe copyright in the work if:

- (a) the collection is described in the title and in any advertisements thereof issued by or on behalf of the publisher, as being so intended;
- (b) the work was not itself published for the use of educational institutions;
- (c) the collection consists mainly of material in which no copyright subsists;
- (d) not more than one of the passages or parts from works by the same author is published by the same publisher within the period of five years immediately preceding the publication of that collection; and
- (e) the inclusion is accompanied by a sufficient acknowledgement.

“(2) Subsection (1) does not authorise the inclusion of more than two excerpts from protected works by the same author in collections published by the same publisher over any period of five years.

“(3) In relation to any given passage, the reference in subsection (2) to excerpts from works by the same author:

- (a) shall be taken to include excerpts from works by him in collaboration with another; and
- (b) if the passage in question is from such a work, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.

“Section 64: Performing, playing or showing works in course of educational activities.

“(1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment:

- (a) by a teacher or pupil in the course of the activities of the establishment, or
- (b) at the establishment by any person for the purposes of instruction, is not a public performance for the purposes of infringement of copyright.

“(2) The playing or showing of a sound recording, film, broadcast or cable programme before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright.

“(3) A person is not for this purpose directly connected with the activities of the educational establishments simply because he is the parent of the pupil at the establishment.”

“Section 65: Recording etc. of educational establishments.

“(1) Subject to subsection (2), a recording of a broadcast or cable broadcast, programme or copy of such a recording may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast or cable programme or in any work included in it.

“(2) Subsection (1) shall not apply if to the extent that there is a licensing scheme under which licences are available authorising the making of such recordings or copies, and the person making the recordings knows or ought to have been aware of that fact.”

“Section 66: Restriction on reprographic copying from published works.

“(1) Subject to the provisions of this section, reprographic copies of passages from published literary, dramatic or musical work may be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work or in the typographical arrangement.

“(2) Not more than one percent of any work may be copied by or on behalf of an educational establishment by virtue of this section in any quarter, that is to say, in any period 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December.

“(3) Copying is not authorised by this section if, to the extent that there is a licensing scheme under which licences are available authorising the copying in question and the person making the copies knows or ought to have been aware of that fact.

“(4) Where a licence is granted to an educational institution authorising the reprographic copying of passages from any published literary, dramatic or musical work, for use by the institution, then, any term of that licence which purports to restrict the proportion of work which may be copied (whether on payment or free of charge) to less than that permitted under this section shall be of no effect.”

“Section 67: Subsequent dealing with authorised copies.

“(1) Where a copy of a work would be an infringing copy if the making thereof were not authorised under sections 62, 65 and 66 and such copy is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright, for all subsequent purposes.

“(2) In subsection (1) ‘dealt with’ means sold, or let for hire or offered or exposed for sale or hire.”

“Exceptions affecting Libraries and Archives

“Section 68: Interpretation of references, regulations.

“(1) In section 69 to 72 references to the librarian or archivist include reference to a person acting on his behalf.

“(2) Regulations may provide that a librarian or archivist who is required to be satisfied as to a matter before making or supplying a copy of a work:

(a) is entitled to rely on a declaration as to that matter, signed by the person requesting the copy, unless he is aware that the declaration is false in any material particular;

(b) in such cases as may be prescribed, shall not make or supply a copy to any person in the absence of a declaration by that person.

“(3) Where a person requesting a copy makes a declaration that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him, that person shall be liable for infringement of copyright as if he had made the copy himself, and the copy supplied shall be treated as an infringing copy.”

“Section 69: Supply by librarian of copies of published work.

“(1) Subject to subsection (3) the librarian of a prescribed library or archive may, if the prescribed conditions are compiled with:

(a) make and supply a copy of an article in a periodical; or

(b) make and supply from a published edition, a copy of part of a literary, dramatic work or musical work, not being an article in a periodical, without infringing any copyright subsisting in the text of the article or in the work, as the

case may be, or in any illustrations accompanying such article or work, or in the typographical arrangement thereof.

“(2) The conditions prescribed pursuant to subsection (1) shall include the following:

(a) that copies shall be supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;

(b) in relation to an article, that no person shall be furnished with more than one article contained in the same issue of a periodical;

(c) in relation to a work referred to in paragraph (b) of subsection (1), that no person shall be furnished with more than one copy of the same material or of a copy of more than a reasonable proportion of any work;

(d) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution of the general expenses of the library) attributable to their production;

(e) that a copy shall be supplied only to a person satisfying the librarian that this requirement is not related to any similar requirement of another person;

(f) that requirements shall be regarded as similar if the requirements are for copies of substantially the same material at subsequently the same time and for substantially the same purpose; and

(g) that requirements of persons shall be regarded as related if those persons receive instruction to which the material is relevant at the same time and place.

“(3) Subsection (1) shall not apply if to the extent that there is a licensing scheme under which licences are available authorising the making of such copies, and the person making the copies knew or ought to have been aware of that fact.”

“Section 70: Supply of copies to other libraries.

“(1) The librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply to another prescribed library or archive a copy of:

(a) an article in a periodical; or

(b) the whole or part of a published edition of a literary, dramatic, musical, or artistic work, without infringing any copyright in the text of the article or the work, or in any illustrations accompanying such article or work, or in the case of a published edition, in the typographical arrangement.

“(2) Paragraph (b) of subsection (1) shall not apply if, at the same time the copy is made, the librarian making it knows or could, by reasonable inquiry, ascertain the name and address of a person entitled to authorise the making of the copy.”

“Section 71: Replacing copies of works.

“(1) The librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive for the purpose of:

- (a) preserving or replacing the item by placing the copy in such permanent addition to or in place of the item;
- (b) replacing in the permanent collection of another prescribed library or archive an item that has been lost, destroyed, or damaged, without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement.

“(2) The prescribed conditions shall include provisions restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question for the purpose.”

“Section 72: Copying of unpublished work.

“(1) Subject to subsection (2), the librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or any illustrations accompanying it.

“(2) Subsection (1) shall not apply where:

- (a) the work is published at the time when the copies are made; or
- (b) the copyright owner has prohibited copying of the work, and at the time the making of the copy the librarian ought to have been aware of that fact.

“(3) The prescribed conditions shall include the following:

- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study and will not use them for any other purpose;
- (b) that no person is furnished with more than one copy of the same material; and
- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.”

*“Exceptions Relating to Public Administration
“Section 73: Recording for archival purposes.*

“(1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or cable programme or in any work included in it.

“(2) In sub section (1) ‘designated’ means designated by the Minister, who shall not designate a body unless she is satisfied that it is not established or conducted for profit.”

“Section 74: Parliamentary and judicial proceedings and statutory inquiries.

“(1) Copyright in a work is not infringed by anything done for the purposes of parliamentary or judicial proceedings or, subject to subsection (3), for the purpose of reporting such proceedings.

“(2) Copyright in a work is not infringed by anything done for the purposes of the proceedings of a statutory inquiry or, subject to subsection (3), for the purposes of reporting any such proceedings held in public.

“(3) The provisions of subsections (1) and (2) relating to the reporting of proceedings shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

“(4) Copyright in a work is not infringed by the issue to the public of copies of the report of a statutory inquiry containing the work or material from it.

“(5) In this section, ‘statutory inquiry’ means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment.”

“Section 75: Public records.

“Where any protected work or a reproduction of any work is comprised in any public records and are open to public inspection, the copyright in the work is not infringed by the making or supplying to any person of any copy of the work by or under the direction of the officer in charge of the record.”

“Section 76: Design documents and models.

“(1) It is not an infringement of any copyright in a design document or in a model that records or embodies a design for anything (except an artistic work or a typeface) to make an article to the design or to copy an article made to the design.

“(2) It is not an infringement of any copyright to issue to the public or include in a film, broadcast or cable programme service, anything the making of which was, by virtue of subsection (1), not an infringement of that copyright.

“(3) In this section:

‘design’ means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article, other than surface decoration; and

‘design document’ means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise.”

“Section 77: Where design derived from artistic work is exploited.

“(1) Where an artistic work has been exploited by or with the licence of the copyright owner by:

(a) making by an industrial process articles falling to be treated under this Act as copies of the work, and

(b) marketing such articles in Saint Lucia or elsewhere, then, after the end of the period of twenty-five years from the end of the calendar year in which such articles are first marketed, a person may, without infringing copyright in the work, copy the work by making articles of any description or by doing anything for the purpose of making articles of any description, or by doing anything in relation to articles so made.

“(2) Where only part of an artistic work is exploited in the manner described in subsection (1), then, the provisions of that subsection apply only in relation to that part.

“(3) The Minister may by order make provision:

(a) as to the circumstances in which an article or any description of article, is to be regarded for the purposes of this section as made by an industrial process;

(b) excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.

“(4) In this section:

(a) references to articles do not include films; and

(b) references to the marketing of an article are to its being sold or let for hire or offered or exposed for sale or hire.”

*“Exceptions Relating to Works in Electronic Form
“Section 78: Transfer of works in electronic form.*

“(1) Where a copy of a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work, or to adapt it or make copies of an adaptation in connection with his use of it, then, in the absence of any express terms:

- (a) prohibiting the transfer of the copy by the purchaser or imposing obligations which continue after a transfer, or prohibiting the assignment of any licence, or
- (b) providing for the term on which a transferee may do the things which the purchaser was permitted to do, anything which the purchaser was allowed to do may also be done by a transferee without infringement of copyright.

“(2) Any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall, after the transfer, be treated as an infringing copy for all purposes.

“(3) Subsections (1) and (2) apply where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

“(4) This section applies also on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser by reference to the subsequent transferor.”

*“Miscellaneous Exceptions relating to Literary, Dramatic, Musical and Artistic Works
“Section 79: Statutory licences: recording for broadcasting, making of records, simultaneous transmission by cable of broadcast*

“(1) Where by virtue of an assignment or licence a person is authorised to broadcast or include in a cable programme service, a literary, dramatic, musical or artistic work or a film or sound recording from a place in Saint Lucia but (apart from this subsection) would not be entitled to make copies of it, then, subject to the conditions specified in subsection (2), the authority contained in the assignment or licence shall be deemed to extend to making one copy only for the purposes, and subject to the conditions, in subsection (2).

“(2) Subsection (1) shall apply only if the following conditions are satisfied:

- (a) the copy shall not be used for making any further copies or for any other purpose except either for broadcasting or inclusion in a cable programme service in accordance with the assignment or licence, or for archival purposes; and
- (b) the copy (unless kept for archival purposes) shall be destroyed before the end of the period of ninety days beginning with the day on which it is first used for broadcasting or included in a cable programme service in pursuance of the assignment or licence, or such extended period (if any) as may be agreed between the person who made the copy and the person who (in relation to the making of copies of the description in question) is the owner of the copyright.

“(3) A copy made in accordance with subsection 91 shall be treated as an infringing copy:

- (a) for the purposes of any use in breach of condition (a); and
- (b) for all purposes after that condition (b) has been broken.

“(4) Where records of a literary, dramatic or musical work have, with the licence of the owner of the copyright in the work, been previously made in Saint Lucia or imported into Saint Lucia, for the purposes of retail sale, then, any person may after the expiry of the period of four months immediately following upon the date of the first authorised manufacture in, or importation into, Saint Lucia of such records, and without first obtaining a licence from the owner of the copyright in the work, make or authorise the making of records of it provided that:

- (a) the person intends to sell the records by retail, or to supply them for the purpose of being sold by retail by another person, or intends to use them for making other records which are to be sold or supplied;
- (b) the person pays royalties calculated at the prescribed rates;
- (c) complies with such conditions relating to notice, method and time of payment, administration of royalties paid and other matters, as may be prescribed; and
- (d) the person whom makes or authorises the making of records pursuant to this subsection shall not make or authorise the making of any alterations in, or omissions from the work, unless records of that work containing similar alterations and omissions have been previously made by, or with the licence of, the owner of the copyright or unless such alterations and omissions are reasonably necessary for the adaptation of the work to the recording in question.

“(5) Where a literary, dramatic, musical or artistic work or film or sound recording is broadcast from a place within Saint Lucia or another country with the licence of the copyright owner, any person may, without obtaining the licence of the copyright owner incorporate (by means of the reception of the broadcast) the work in a cable programme service provided that:

- (a) the transmission by the cable service takes place simultaneously with the reception of the broadcast;
- (b) the programme in which the literary, dramatic, musical or artistic work or film or sound recording is incorporated, is transmitted without any alteration of any kind; and
- (c) the copyright owners shall be entitled to receive from the person providing the cable programme service, equitable remuneration in respect of the transmission, to be fixed in default of agreement, by the High Court, and for the purposes of this subsection, an alteration to a programme includes the addition thereto of new material not contained in the programme as broadcast, or the omission from the

transmission of any material contained in the programme as broadcast; and the term 'material' includes a commercial advertisement."

"Section 80: Reading or recitation in public.

"(1) The reading or recitation in public of any reasonable extract from a published literary or dramatic work is not an infringement of copyright in the work, if accompanied by sufficient acknowledgement.

"(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service of a reading or recitation which, by virtue of subsection (1), does not infringe copyright in the work, provided that the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection."

"Section 81: Representation of artistic works on public display.

"(1) This section applies to:

- (a) buildings;
- (b) sculptures, models of buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.

"(2) The copyright in such a work is not infringed by:

- (a) making a graphic work representing it;
- (b) making a photograph or film of it; or
- (c) broadcasting or including in a cable programme service a visual image of it.

"(3) The copyright in such a work is not infringed by the issue to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of this section, not an infringement of copyright."

"Section 82: Reconstruction of buildings.

"Anything done for the purposes of reconstructing a building does not infringe any copyright in the building or in any drawings, plans or specifications in accordance with which the building was, by or with the licence of the copyright owner, constructed."

“Section 83: Subsequent work by same artist.

“Where the author of an artistic work is not the copyright owner, he does not infringe the copyright in the work by copying it in making another artistic work, provided he does not reproduce or imitate the main design of the earlier work.”

“Miscellaneous Exceptions Respecting Broadcasts

“Section 84: Recording broadcasts for programmes supervision.

“Copyright is not infringed by the making or use by a prescribed broadcasting organisation for the purpose of maintaining supervision and control over programmes, of recordings of programmes of those programmes.”

“Section 85: Recording for purposes of timeshifting.

“The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or cable programme or in any work included in it.”

“Section 86: Provision of subtitled copies of broadcast or cable programme.

“(1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, copies which are subtitled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.

“(2) A ‘designated body’ means a body designated for the purposes of this section by order of the Minister, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.”

“Adaptations

“Section 87: Adaptations.

“An act which by virtue of this Part may be done without infringing copyright in a literary, dramatic or musical work does not, where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.”

“Prescribed Exceptions

“Section 88: Power of Minister to prescribe exceptions to infringement.

“(1) The Minister may, by order, provide that the copyright in a work, or in works within a category, specified in the order is not infringed where in relation to such work, or works, such acts as are specified in the order are done in certain circumstances specified in the order.

“(2) An order made under subsection (1) may:

(a) contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving due effect to the order;

(b) subject to section 104, prescribe the amount, or the formula by which the amount shall be calculated, which shall be paid by way of equitable remuneration to the owner of the copyright in any work to which the order relates.

“(3) No order may be made under this section unless the Minister is satisfied:

(a) that the acts specified are to be done in the public interest in connection with an event of national importance, and

(b) that the effect of the order would not contravene any convention relating to copyright to which Saint Lucia is a party.

“Exception to Infringement of Rights Conferred under this Part

(Part VIII: Rights in Performances)

“Section 127: Fair dealing for criticism, etc.

“Fair dealing with a performance or recording:

(a) for the purpose of criticism or review, of that or another performance or recording, or of a work; or

(b) for the purpose of reporting current events, does not infringe any of the rights conferred by this Part, and the provisions of section 58 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.”

“Section 128: Incidental inclusion of performance or recording.

“The rights conferred by this Part are not infringed:

(a) by the incidental inclusion of performance or recording in a sound recording, film, broadcaster cable programme;

(b) by anything done in relation to copies of, or the playing, broadcasting or inclusion in a cable programme service of anything whose making was by virtue of paragraph (a), not an infringement; and for the purpose of this section, a performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording, broadcaster cable programme if it is deliberately included.”

“Section 129: Acts done to recording of performance for purposes of instruction, etc.

“(1) The rights conferred by this Part are not infringed by the copying of a recording of a performance in the course of instruction, in the making of films or film soundtracks, provided the copying is done by a person giving or receiving instruction.

“(2) The rights conferred by this Part are not infringed:

(a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination; or

(b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

“(3) Where a recording which would otherwise be an illicit recording is made in accordance with this section but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by this Part for all subsequent purposes.

“(4) In subsection (3) and in section 130(2) ‘dealt with’ means sold or let for hire, or offered or exposed for sale or hire.”

“Section 130: Recording of broadcasts and cable programmes by educational establishments.

“(1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing any of the rights conferred by this Part in relation to any performance or recording included in it.

“(2) Where a recording which would otherwise be an illicit recording is made in accordance with this section but is subsequently dealt with (as defined in section 129(4)) it shall be treated as an illicit recording for the purpose of that dealing and if that dealing infringes any right conferred by this Part for all subsequent purposes.”

“Section 131: Acts done to performance or recording for Parliamentary etc.

“The rights conferred by this Part are not infringed by anything done for the purpose of:

(a) parliamentary or judicial proceedings or the reporting of such proceedings; or

(b) the proceedings of a statutory inquiry or the reporting of such proceedings held in public.”

“Section 132: Transfer of recording of performance in electronic form

“(1) Where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further recordings in connection with his use of the recording, then, in the absence of any express terms:

(a) prohibiting the transfer of the recording by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent on a transfer; or

(b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do, anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Part, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.

“(2) Subsection (1) also applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.

“(3) This section also applies on a subsequent transfer, with the substitution for references in subsection (1) to the purchaser by reference to the subsequent transferor.

“(4) This section does not apply in relation to a recording purchased before the commencement of this Act.”

“Section 133: Use of recordings of spoken works.

“(1) Where a recording of the reading or recitation of a literary work is made for the purpose:

(a) of reporting current events; or

(b) of broadcasting or including in a cable programme service the whole or part of the reading or recitation, it is not an infringement of the rights conferred by this Part to use the recording (or to copy the recording and use the copy) for that purpose, provided the following conditions specified in subsection (2) are met.

“(2) The conditions referred to in subsection (1) are that:

(a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme;

(b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;

(c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and

(d) the use is by or with the authority of a person who is lawfully in possession of the recording.”

“Section 134: Incidental recording for purposes cable programme.

“(1) Subject to subsection (2), a person who proposes to broadcast a recording of a performance, or include a recording of a performance in a cable programme service in circumstances not infringing the rights conferred by this Part shall be treated as having consent for the purpose of this Part for the making of a further recording for the purposes of the broadcast or cable programme.

“(2) The consent given under subsection (1) is subject to the condition that the further recording:

(a) shall not be used for any other purposes; and

(b) shall be destroyed within twenty-eight days of being first used for broadcasting the performance or including it in a cable programme service.

“(3) A recording made in accordance with this paragraph shall be treated as an illicit recording:

(a) for the purposes of any use in breach of the condition mentioned in paragraph (a) of subsection (2); and

(b) for all purposes after that condition or the condition mentioned in paragraph (b) of subsection (2) is breached.

“Section 135: Recordings for supervision and control of programmes permitted.

“The rights conferred by this Part are not infringed by the making or use by a prescribed broadcasting organisation for the purpose of maintaining supervision and control over programmes broadcast by that organisation, of recordings of those programmes.”

“Section 136: Order excepting acts from infringing rights under this Part.

“(1) The Minister may, by order, provide that the rights conferred by this Part in relation to performances specified in the order are not infringed by the doing of such acts as are specified in the order in the circumstances therein specified.

“(2) An order made under subsection (1) may:

(a) contain consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving due effect to the order;

(b) prescribe the amount, or the formula by which the amount shall be calculated, which shall be paid by way of equitable remuneration to the performer or other person whose rights under this Part are affected by the order.

“(3) No order may be made under this section unless the Minister is satisfied:

(a) that the acts specified are to be done in connection with an event of national importance, and

(b) that the effect of the order would not contravene any convention relating to rights in respect of performance to which Saint Lucia is a party.”

“Section 137: Court may consent on behalf of performer.

“(1) Subject to the provisions of this section, the High Court may, on the application of a person who wishes to make a recording from a previous recording of a performance, give consent in a case where:

(a) the identity or whereabouts of a performer cannot be ascertained by reasonable inquiry; or

(b) a performer unreasonably withhold his consent.

“(2) Consent given by the Court has effect as consent of the performer for the purpose of:

(a) the provisions of this Part relating to performers' rights; and

(b) paragraph (a) of subsection (3) of section 124, and may be given subject to such conditions as the Court may specify in the order.

“(3) The Court shall not give consent under paragraph (a) of subsection (1) except after the service or publication of such notices as may be required by rules made under section 90 or as the Court may in any particular case direct.

“(4) The Court shall not give consent under paragraph (b) of subsection (1) unless it is satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interest of his; but it shall be for the performer to show what his reasons are for withholding consent, and in default of evidence as to his reasons the Court may draw such inferences as it thinks fit.

“(5) In any case the Court shall take into account the following factors:

(a) whether the original recording was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording;

(b) whether the making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original recording was made.

“(6) Where the Court gives consent under this section it shall, in default of agreement between the applicant and the performer, make such order as it thinks fit as to the payment to be made to the performer in consideration of consent being given.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

Not found in the Law reviewed.

3.3 What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4 Generally, what measures for enforcement of rights are in the Law?

“Section 32: Action - definition of.

“For the purposes of this Part, the expression ‘action’ includes a counterclaim, and reference to the plaintiff and to the defendant in an action shall be construed accordingly.”

“Section 33: infringement by exercise of facts, by importation of infringing articles, by commercial dealing in such articles, infringement by distribution of infringing articles

“(1) The copyright in a protected work is infringed by any person who, not being the owner of the copyright and without the licence of the owner thereof:

- (a) in respect of the work, does, or authorises another unauthorised person to do, any of the acts mentioned in section 9, in relation to that work;
- (b) imports an article (other than for his private and domestic use) into Saint Lucia which he knows or has reason to believe, is an infringing copy of the work;
- (c) in Saint Lucia, or on any ship or aircraft registered in Saint Lucia:
 - (i) possesses in the course of business;
 - (ii) sells, lets for hire, or by way of trade offers or exposes for sale or hire; or
 - (iii) by way of trade exhibits in public, an article which he knows or has reason to believe, is an infringing copy of the work.

“(2) Subsection (1)(c) shall apply, in relation to the distribution of any article either:

- (a) for the purposes of trade; or

(b) for other purposes, but only to such an extent as to affect prejudicially the owner of the copyright, as it applies in relation to the sale of an article.

“(3) Copyright in a work is infringed by a person who, without the licence of the copyright owner:

- (a) makes;
- (b) imports into Saint Lucia;
- (c) possesses in the course of a business; or
- (d) sells or lets for hire or offers for sale or hire, an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.

“(4) Copyright in a work is infringed by a person who, without the licence of the copyright owner, transmits the work by means of a telecommunication system (other than by broadcasting or inclusion in a cable programme service) knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Saint Lucia or elsewhere.”

“Section 34: Proprietor of place of public entertainment liable for infringement.

“The copyright in a protected work is infringed by any person who, not being the owner of the copyright and without the licence of the owner thereof, permits a place of public entertainment to be used for a performance in public of the work where the performance constitutes an infringement of the copyright in the work; but this section shall not apply in a case where the person permitting the place to be used gave the permission gratuitously or for a consideration which was only nominal.”

“Section 35: Infringement by providing apparatus etc. for giving infringing performances.

“(1) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public by means of apparatus for:

- (a) playing sound recordings;
- (b) showing films;
- (c) receiving visual images or sounds conveyed by electronic means, the persons mentioned in the following subsections are also liable for the infringement.

“(2) A person who supplied the apparatus, or any substantial part of it, is liable for the infringement if when he supplied the apparatus or part:

- (a) he knew or had reason to believe that the apparatus was likely to be used as to infringe copyright; or
- (b) in the case of apparatus whose normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be used as to infringe copyright.

“(3) An occupier of premises who gave permission for the apparatus to be brought on to the premises is liable for the infringement if when he gave permission he knew or had reason to believe that the apparatus was likely to be used as to infringe copyright.

“(4) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement if when he supplied it he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be used as to infringe copyright.”

*“Remedies for Infringement of Economic Rights
“Section 36: Action by owner of copyright for infringement.*

“(1) Subject to this Act, infringements of copyright shall be actionable in the High Court at the suit of the owner of the copyright; and in any action for such an infringement all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of the infringements of other proprietary rights.

“(2) Where, in an action for infringement of copyright, it is proved or admitted that:

- (a) an infringement was committed; but
- (b) at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

“(3) Where in an action under this section an infringement of copyright is proved or admitted, the court, having regard (in addition to all other material considerations) to the flagrancy of the infringement, shall have power in assessing damages for the infringement, to award such additional damages as the court may consider appropriate in the circumstances.

“(4) In an action for infringement of copyright in respect of the construction of a building, no injunction or other orders shall be made:

- (a) after the construction of the building has been begun, so as to prevent it from being completed; or

(b) so as to require the building in so far as it has been constructed, to be demolished.”

“Section 37: Order for delivery up in civil proceedings

“(1) Subject to the provisions of this section, where a person:

(a) in the course of his business, has an infringing copy of a work in his possession, custody or control; or

(b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work, knowing or having reason to believe that it has been or is being used to make infringing copies, the copyright owner may apply to the court for an order that the infringing copy or article be delivered up to him or to such other person as the court may direct.

“(2) An application under subsection (1) shall not be made after the end of the period specified in section 139; and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 138 for the disposal of the infringing copies.

“(3) A person to whom an infringing copy or other article is delivered up pursuant to an order made under this section shall, if an order under section 138 is not made, retain it until an order or decision is made by the court under that section.”

“Section 38: Right to seize infringing copies, etc.

“(1) Subject to any decision of the court under section 138, and to the conditions specified in subsections (2), (3) and (4), an infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 37 may be seized and detained by him or a person authorised by him.

“(2) Before anything is seized under this section notice of the time and place of the proposed seizure shall be given to the nearest police station.

“(3) At the time that anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the ground on which it is made.

“(4) In this section ‘premises’ includes land, buildings, fixed or moveable structures, vehicles, vessels and aircraft.”

“Section 39: Wide injunction available to licensing bodies.

“Where, in an action under this Part:

- (a) the infringement of copyright is proved or admitted;
- (b) the plaintiff is a licensing body (as defined in section 91); and
- (c) the court, having regard to all material circumstances, is satisfied that effective relief would not otherwise be available to the plaintiff, the court may grant an injunction extending to all the protected works, of which the plaintiff is the owner of the copyright, notwithstanding that the infringement related to only one or some of the said works.”

“Section 40: Proceedings in case of copyrights subject to exclusive licence.

“(1) For the purpose of this section, the expression:

‘exclusive licence’ means a licence in writing, signed by or on behalf of an owner or prospective owner of copyright, authorising the licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would (apart from the licence) be exercisable exclusively by the owner of the copyright; and ‘exclusive licensee’ shall be construed accordingly;

‘if the licence has been an assignment’ means if, instead of the licence, there had been granted (subject to terms and conditions corresponding as nearly as may be with those subject to which the licence was granted) an assignment of the copyright in respect of its exercise or their application to the doing, at the places and times authorised by the licence, of the acts so authorised; and

‘the other party’, in relation to the owner of the copyright, means the exclusive licensee, and, in relation to the exclusive licensee, means the owner of the copyright.

“(2) This section shall have effect as to proceedings in the case of any copyright in respect of which an exclusive licence has been granted and is in force at the time of the events to which the proceedings relate.

“(3) Subject to the following provisions of this section, the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, under section 36 as if the licence had been an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under that section.

“(4) Where an action is brought either by the owner of the copyright or by the exclusive licensee, and the action, in so far as it is brought under section 36, relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is either joined

as a plaintiff in the action or added as a defendant; but this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

“(5) In any action brought by the exclusive licensee by virtue of this section, any defence which would have been available to a defendant in the action, if this section had not been enacted and the action had been brought by the owner of the copyright shall be available to that defendant as against the exclusive licensee.

“(6) Where an action is brought in the circumstances mentioned in subsection (4) and the owner of the copyright and the exclusive licensee are not both plaintiffs in the action, the court in assessing damages in respect of any such infringement as is mentioned in that subsection:

- (a) if the plaintiff is the exclusive licensee, shall take into account any liabilities (in respect of royalties or otherwise) to which the licensee is subject; and
- (b) whether the plaintiff is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy already awarded to the other party under section 36 in respect of that infringement, or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.

“(7) Where an action, in so far as it is brought under section 36, relates (wholly or partly) to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section, and in that action (whether they are both parties to it or not) an account of profits is directed to be taken in respect of that infringement, then, subject to any agreement of which the court is aware whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the court shall apportion the profits between them as the court may consider just and shall give such directions as the court may consider appropriate for giving effect to that apportionment.

“(8) In an action brought either by the owner of the copyright or by the exclusive licensee:

- (a) no judgment or order for the payment of damages in respect of an infringement of copyright shall be given or made under section 36, if a final judgment or order has been given or made awarding an account of profits to the other party under that section in respect of the same infringement; and
- (b) no judgment or order for an account of profits in respect of an infringement of copyright shall be given or made under that section, if a final judgment or order has been given or made awarding either damages or an account of profits to the other party under that section in respect of the same infringement.

“(9) Where, in an action brought in the circumstances mentioned in subsection (4), whether by the owner of the copyright or by the exclusive licensee, the other party is not joined as a plaintiff (either at the commencement of the action or subsequently) but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings. t

“(10) The copyright owner shall notify any exclusive licensee having concurrent rights before applying under section 37 for an order for the delivery up of infringing copies of a work or before exercising the right of seizure under section 38; and the court may, on the application of the licensee, if it thinks fit, having regard to the terms of the licence, make an order under section 37 or make an order prohibiting or permitting the exercise by the copyright owner of the right conferred under section 38.”

“Moral and related rights

“Section 41: Infringement of right to be identified as author or director.

“The right conferred on an author or director of a protected work by section 15 is infringed by any person who, in relation to the work, does, or authorises another person to do, any of the acts mentioned in subsections (2), (3), (4) or (5) of section 15 without the identification of the author or the director, as the case may be, in accordance with the requirements of that section.”

“Section 42: Infringement of right to object to derogatory treatment of work.

“The right conferred on an author or a director by section 16 to object to derogatory treatment of his work is infringed:

- (a) in the case of a literary, dramatic or musical work, by a person who:
 - (i) publishes commercially (within the meanings specified in section 23), performs in public, broadcasts or includes in a cable programme service, a derogatory treatment of the work; or
 - (ii) issues to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.
- (b) in the case of an artistic work, by a person who:
 - (i) publishes commercially (within the meanings specified in section 23) or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work;
 - (ii) shows in public a film which includes a visual image of a derogatory treatment of the work or issues to the public copies of such a film; or
 - (iii) in the case of a work of architecture in the form of a model for a building or in the case of a sculpture or work of craftsmanship, issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work;
- (c) paragraph (b) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment he has the right to require the identification to be removed;

- (d) in the case of a film, the right is infringed by a person who:
- (i) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film; or
 - (ii) issues to the public copies of a derogatory treatment of the film, or who, along with the film, plays in public, broadcasts or includes in a cable programme service, issues to the public copies of, a derogatory treatment of the film's soundtrack."

"Section 43: Infringement by possession of infringing article.

- "(1) The right conferred by section 16 is also infringed by a person who:
- (a) possesses in the course of a business;
 - (b) sells or lets for hire or offers or exposes for sale or hire;
 - (c) in the course of a business, exhibits in public or distributes; or
 - (d) distributes otherwise than in the course of a business, so as to affect prejudicially the honour or reputation of the author or director, an article which is, and which he knows or has reason to believe is, an infringing article.
- "(2) In this section an 'infringing article' means a work or a copy of a work which:
- (a) has been subjected to derogatory treatment as defined in section 16 (2); and
 - (b) has been or is likely to be the subject of any of the acts mentioned in section 42 in circumstances infringing that right."

"Section 44: False attribution of work; infringement.

- "(1) Subject to the provisions of this section, the right conferred on a person by section 17 not to have a literary, dramatic, musical or artistic work falsely attributed to him as its author or a film falsely attributed to him as its director, is infringed by any person who:
- (a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution;
 - (b) exhibits in public an artistic work or a copy of an artistic work in or on which there is a false attribution.

“(2) The right is also infringed by a person who:

(a) in the case of a literary, dramatic or musical work, performs the work in public, broadcasts it or includes it in a cable programme service as being the work of a person; or

(b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as being directed by a person; knowing or having reason to believe that the attribution is false.

“(3) The right is also infringed by any person who issues to the public or displays in public any material containing a false attribution in connection with any act referred to in subsection (1) or (2).

“(4) The right is also infringed by a person who, in the course of a business:

(a) possesses or deals with a copy of a work referred to in subsection (1) in or on which there is a false attribution; or

(b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it, knowing or having reason to believe that there is an attribution and that it is false.

“(5) In the case of an artistic work, the right is also infringed by a person who in the course of a business:

(a) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author; or

(b) deals with a copy of such a work as being a copy of the unaltered work of the author, knowing or having reason to believe that such is not the case.

“(6) In this section:

(a) ‘attribution’ in relation to a work means a statement (express or implied) as to who is the author or director;

(b) reference to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public or distributing.

“(7) This section applies where, contrary to the fact:

(a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person; or

(b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work, as it applies where the work is falsely attributed to a person as author.”

“Section 45: Infringement of privacy rights respecting photographs, etc.

“The right conferred by section 18 in relation to a commissioned photograph or film is infringed by a person who does or authorises the doing of an act mentioned in that section in relation to that work; but the right is not infringed by any of the following acts to the extent that, pursuant to Part VI, such act would not infringe copyright in the work:

- (a) the incidental inclusion of the work in an artistic work, film, broadcast or cable programme (section 59);
- (b) acts done for the purposes of parliamentary or judicial proceedings, or statutory enquiries (section 74).”

*“Remedies for Infringement of Moral Rights and Related Rights
Section 46: Remedies for infringing moral rights, etc.*

“(1) The infringement of a right conferred under sections 15, 16, 17 or 18 is actionable as a breach of statutory duty owed to the person entitled to the right .

“(2) In an action for infringement of the right conferred by section 16, the court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made on such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

“(3) Where in any action an infringement of a right referred to in subsection (1) is proved or admitted, the court may order the defendant to publish such correction in such terms and in such newspaper as the court may direct.”

“Presumptions.

“Section 47: Presumptions as to subsistence and ownership of copyright

“In an action brought by virtue of this Part:

- (a) copyright shall be presumed to subsist in the work to which the action relates if the defendant does not put in issue the question whether copyright subsists therein;
- (b) where the subsistence of the copyright is proved or admitted or is presumed in pursuance of paragraph (a), the plaintiff shall be presumed to be the owner of the copyright, if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership thereof; and

(c) if the question arises whether an article is an infringing copy of a work and it is shown:

- (i) that the article is a copy of the work; and
- (ii) that copyright subsists in the work or has subsisted at any time, it shall be presumed until the contrary is proved that the article was made at a time when copyright subsisted in the work.”

“Section 48: Presumption in relation to -authorship of protected works; ownership; originality; publication

“(1) Subject to section 47, where, in the case of a protected work, a name purporting to be that of the author appears on copies of the work as published or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears (if it is his true name or a name by which he is commonly known) shall, in any action brought by virtue of this Part, be presumed, unless the contrary is proved, to be the author of the work.

“(2) In the case of a protected work alleged to be a work of joint authorship, subsection (1) shall apply in relation to each person alleged to be one of the authors of the work, as if references in that subsection to the author were references to one of the authors.

“(3) Where, in an action brought by virtue of this Part with respect to a protected work, subsection (1) does not apply, but it is established that:

- (a) pursuant to paragraph (b)(i) of section 8(1), the work qualifies for copyright protection by virtue of the country of first publication; and
- (b) a name purporting to be that of the publisher appeared on copies of the work as first published, then, unless the contrary is proved, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication.

“(4) Where in an action brought by virtue of this Part with respect to a protected work it is established that the author of the work is dead:

- (a) the work shall be presumed to be an original work unless the contrary is proved; and
- (b) if it is alleged by the plaintiff that a publication specified in the allegation was the first publication of the work and that it took place in a country and on a date so specified, that publication shall be presumed, unless the contrary is proved, to have been the first publication of the work and to have taken place in that country and on that date.

“(5) For the purposes of this section, a fact shall be taken to be established if it is proved or admitted or if it is presumed in pursuance of this section.

“Section 49: Presumptions where action relates to sound recordings, films and computer programmes.

“(1) In an action brought by virtue of this Part with respect to a sound recording, film or computer program, the presumptions specified in this section shall apply.

“(2) In an action with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating:

(a) that a named person was the owner of copyright in the recording at the date of issue of the copies; or

(b) that the recording was first published in a specified year in a specified country, the label or mark shall be admissible evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

“(3) In an action with respect to a film, where copies of the film as issued to the public bear a statement:

(a) that a named person was the author or director of the film;

(b) that a named person was the owner of copyright in the film at the date of issue of the copies; or

(c) that the film was first published in a specified year or in a specified country, the statement shall be admissible evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

“(4) In an action with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement:

(a) that a named person was the owner of copyright in the program at the date of issue of the copies; or

(b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specified year, the statement shall be admissible evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

“(5) The presumptions specified in subsections (2), (3) and (4) apply equally in an action relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.

“(6) In an action with respect to a film, where the film as shown in public, broadcast or included in a cable program service bears a statement:

(a) that a named person was author or director of the film;

(b) that a named person was the owner of copyright in the film immediately after it was made, the statement shall be admissible evidence of the facts stated and shall be presumed to be correct until the contrary is proved; and the

presumption applies equally in an action relating to an infringement alleged to have occurred before the date on which the film is shown in public, broadcast or included in a cable program service.”

“Section 50: Withdrawal of privilege against incrimination of self for spouse in infringement and related proceedings

“(1) In this section:

‘related offence,’ in relation to any proceeding to which subsection (2) applies means:

(a) in the case of proceedings within subsection (3)(a) or (b):

(i) any offence committed by or in the course of the infringement to which those proceedings relate; or

(ii) any offence not within subparagraph (i) committed in connection with that infringement, being an offence involving fraud or dishonesty;

(b) in the case of proceedings within subsection (3)(c), any offence revealed by the facts on which the plaintiff relies in those proceedings;

‘related penalty,’ in relation to any proceeding to which subsection (2) applies, means:

(a) in the case of proceedings within subsection (3)(a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement to which those proceedings relate;

(b) in the case of proceedings within subsection (3)(c), any penalty incurred in respect of any act or omission revealed by the facts on which the plaintiff relies in those proceedings.

“(2) In any proceeding to which this subsection applies a person shall not be excused, by reason that to do so would tend to expose that person, or his or her spouse, to proceedings for a related offence or for the recovery of a related penalty:

(a) from answering any question put to that person in the first mentioned proceedings; or

(b) from complying with any order made in those proceedings.

“(3) Subsection (2) applies to the following civil proceedings in the High Court, namely:

- (a) proceedings for infringement of copyright;
- (b) proceedings brought to obtain disclosure of information relating to any infringement of such rights; and
- (c) proceedings brought to prevent any apprehended infringement of such rights.

“(4) Subject to subsection (5), no statement or admission made by a person:

- (a) in answering a question put to him in any proceedings to which subsection (2) applies; or
- (b) in complying with an order made in any such proceedings, shall, in proceedings for any related offence or for the recovery of any related penalty, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the spouse of that person.

“(5) Nothing in subsection (4) shall render any statement or admission made by a person as therein mentioned inadmissible in evidence against that person in proceedings for injury or contempt of court.

“(6) Any reference in this section to civil proceedings in the High Court of any description includes a reference to proceedings on appeal arising out of civil proceedings in the High Court of that description.”

“Section 51: Provision for restricting importation of infringing copies.

“(1) The owner of the copyright in any published literary or musical work or in any film or published sound recording may give notice in writing to the Comptroller:

- (a) that he is the owner of the copyright in the work, film or sound recording; and
- (b) that he requests the Comptroller, during a period specified in the notice, to treat as prohibited goods copies of the work, film or sound recording to which this section applies, but the period specified in a notice under this subsection shall not exceed five years and shall not extend beyond the end of the period for which the copyright may subsist.

“(2) This section applies, in the case of a literary or musical work, film or sound recording, to any copy made outside Saint Lucia which is an infringing copy of the work, film or sound recording.

“(3) Where an notice has been given under this section in respect of a literary or musical work, film or sound recording, and has not been withdrawn, the importation into Saint Lucia, at a time before the end of the period specified in the notice, of any copy of the

work, film or sound recording to which this section applies shall, subject to the following provisions of this section, be prohibited; but this subsection shall not apply to the importation of any article by a person for his private and domestic use.

“(4) The owner of the copyright in a literary or musical work, film or sound recording who gives notice to the Comptroller under this section shall comply with such conditions with respect to:

- (i) the form of the notice;
- (ii) the furnishing of evidence;
- (iii) the payment of fees;
- (iv) the giving of security; and
- (v) any other incidental or supplementary matters, as may be prescribed.

“(5) Notwithstanding anything in the Customs (Control and Management) Act 1990, a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) by reason that any goods are treated as prohibited goods by virtue of this section.”

“Offences

“Section 52: Penalties in respect of dealings which infringe copyright.

“(1) Any person who, without the licence of the copyright owner, at a time when copyright in a work subsists by virtue of this Act:

- (a) makes for sale or hire;
- (b) in the course of a business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes;
- (c) imports into Saint Lucia for purposes other than his private and domestic use;
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright; or
- (e) possesses in the course of business with a view to committing any act infringing the copyright, any article which he knows or has reason to believe is an infringing copy of that work, commits an offence.

“(2) Any person who, at the time when copyright subsists in a work by virtue of this Act makes or has in his possession an article specifically designed or adapted for making copies of a particular protected work, knowing that it is to be used for making infringing copies for sale or hire or for use in the course of business, commits an offence.

“(3) Any person who causes:

- (a) a literary, dramatic or musical work to be performed in public; or
- (b) a sound recording or film to be played, or as the case may be, shown in public, (otherwise than by reception of a broadcast or cable programme) knowing or having reason to believe that copyright subsists in the work or that the performance constitutes an infringement of the copyright, commits an offence.

“(4) Any person who is guilty of an offence under subsection (1)(b) shall be liable on summary conviction in the case of a first conviction, to a fine not exceeding Two thousand five hundred dollars for each article to which the offence related, and in the case of any subsequent conviction, to such a fine, or to imprisonment for a term not exceeding twelve months.

“(5) Any person who is guilty of an offence under this section other than an offence referred to in subsection (4) shall be liable on summary conviction in the case of a first conviction, to a fine not exceeding One thousand dollars and in the case of any subsequent conviction, to such a fine, or to imprisonment for a term not exceeding six months.”

“Section 53: Presumptions not to apply.

“The presumptions specified in sections 48 and 49 do not apply to proceedings for an offence under section 52, but without prejudice to their application in proceedings for an order under section 54.”

“Section 54: Order to deliver up in criminal proceedings.

“(1) Subject to subsection (2), the court before which proceedings are brought against a person for an offence under section 52 may, if it is satisfied that at the time of his arrest or charge:

- (a) he had in his possession, custody or control in the course of a business an infringing copy of a protected work; or
- (b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work knowing or having reason to believe that it had been or was to be used to make infringing copies, order that the infringing copy or article be delivered up to the copyright owner or to such other person as the court may direct.

“(2) An order may be made by the court of its own motion or on the application of the prosecution and may be made whether or not the person is convicted of the offence, so, however, that the court shall not make an order:

- (a) after the time specified in section 139; or
- (b) if it appears to the court unlikely that any order will be made under section 138.

“(3) An appeal lies from an order made under this section to the Court of Appeal.

“(4) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall retain it pending the making of an order or the decision not to make an order under section 138.

*“Remedies for Infringement of Rights in Performances
“Section 121: Infringement actionable as breach of statutory duty.*

“An infringement of any of the rights conferred by this Part is actionable by the person entitled to the right as a breach of statutory duty.

“Section 122: Order for delivery up of illicit recording in court.

“(1) Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer’s rights or recording rights under this Part in relation to the performance may apply to the court for an order that the recording be delivered up to him or to such other person as the court may direct.

“(2) An application shall not be made after the end of the period specified in section 139; and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 138.

“(3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 138 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

“(4) Nothing in this section affects any other power of the court.”

“Section 123: Right to seize illicit recordings.

“(1) Subject to any decision of the court under section 138 and to the conditions specified in subsections (2), (3) and (4), an illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under section 138 may be seized and detained by him or a person authorised by him.

“(2) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.

“(3) At the time when anything is seized under this section the sheriff shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the ground on which it is made.

“(4) In this section ‘premises’ includes land, buildings, fixed or movable structures, vehicles, vessels, and aircraft.”

“Offences in Relation to Performances

“Section 124: criminal liability for making, dealing with or using illicit recordings.

“(1) A person commits an offence who without sufficient consent:

- (a) makes for sale or hire;
- (b) imports into Saint Lucia other than for his private and domestic use;
- (c) possesses in the course of a business with a view to committing any act infringing the rights conferred by this Part;
- (d) in the course of a business:
 - (i) sells or lets for hire;
 - (ii) offers or exposes for sale or hire; or distributes, a recording which is, and which he knows or has reason to believe is, an illicit recording.

“(2) A person commits an offence who causes a recording of a performance made without sufficient consent to be:

- (a) shown or played in public; or
- (b) broadcast or included in a cable programme service, thereby infringing any of the rights conferred by this Part, if he knows or has reason to believe that those rights are thereby infringed.

“(3) In subsections (1) and (2) ‘sufficient consent’ means:

- (a) in the case of a qualifying performance, the consent of the performer, and
- (b) in the case of a non-qualifying performance subject to an exclusive recording contract:
 - (i) for the purpose of paragraph (a) of subsection (1), the consent of the performer or the person having recording rights; and
 - (ii) for the purposes of paragraphs (b), (c) and (d) of subsection (1) and subsection (2), the consent of the person having recording rights.

“(4) References in this subsection to the person having recording rights are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.

“(5) No offence is committed under subsection (1) of (2) by the commission of an act which, by virtue of any provision of this Part, may be done without infringing the rights conferred by this Part.

“(6) A person guilty of an offence under paragraphs (a), (b) or (d)(i) or (ii) of subsection (1) is liable:

(a) on summary conviction to a fine not exceeding \$2,500 dollars and to imprisonment for a term not exceeding ten months;

(b) on conviction on indictment to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

“(7) A person guilty of any other offence under this section is liable on summary conviction to a fine not exceeding \$1,000 and to imprisonment for a term not exceeding six months or to both such fine and imprisonment.”

“Section 125: Order for delivery up of illicit recording in criminal proceedings.”

“(1) The court before which proceedings are brought against a person for an offence under section 124 may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performers' rights or recording rights in relation to the performance or to such other person as the court may direct.

“(2) An order may be made by the court of its own motion or on the application of the prosecution and may be made whether or not the person is convicted of the offence, but shall not be made:

(a) after the end of the period specified in section 139; or

(b) if it appears to the court unlikely that any order will be made under section 138.

“(3) An appeal lies to the Court of Appeal from an order made under this section.

“(4) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 138.

“Section 126: False representation of authority to give consent.

“(1) It is an offence for a person to represent falsely that he is authorised by any person to give consent for the purposes of this Part in relation to a performance, unless he believes on reasonable grounds that he is authorised.

“(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding \$2,500 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”

“Part IX: General

“Supplementary provisions

“Section 138: Order for disposal of infringing copy or illicit recording.

“(1) An application may be made to the High Court for an order that:

(a) an infringing copy or article delivered up in pursuance of an order under section 37 or 54 or seized and detained in pursuance of the right conferred by section 38 shall be:

(i) forfeited to the copyright owner; or

(ii) destroyed or otherwise dealt with as the Court may direct,

(b) an illicit recording of a performance delivered up in pursuance of an order under section 122 or 125, or seized and detained in pursuance of the right conferred by section 123 shall be:

(i) forfeited to such person having performer's rights or recording rights in relation to the performance as the Court may direct; or

(ii) destroyed or otherwise dealt with as the Court thinks fit, or for a decision that no such orders should be made.

“(2) In considering what order (if any) should be made, the Court shall consider the following:

(a) where the infringement relates to copyright in a work, whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interests;

(b) where the infringement relates to rights conferred under Part VIII, whether other remedies available in an action for infringement of those rights would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

“(3) Provisions shall be made by rules of Court as to the service of notice on persons having an interest in the copy or other articles or their recording, as the case may be, and any such person is entitled:

- (a) to appear in proceedings for an order under this section;
- (b) to appeal against any order made, whether or not he appeared, and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

“(4) Where there is more than one person interested in a copy or other article, or as the case may be, recording, the Court shall make such order as it thinks just and may (in particular) direct that such copy, article or recording be sold, otherwise dealt with, and the proceeds divided.

“(5) If the Court decides that no orders should be made under this section, the person in whose possession, custody or control the copy or article or, as the case may be, the recording was before being delivered up or seized is entitled to its return.

“(6) References in this section to a person having an interest in a copy or other article or recording include any person in whose favour an order could be made in respect of the copy, article or, as the case may be, recording under this section.”

“Section 139: Period after which remedy of delivery up not available.

“(1) An application for an order under section 37 or 122 may not be made after the end of the period of six years from the date on which the infringing copy or article or, as the case may be, the illicit recording in question was made, subject to the following provisions.

“(2) If during the whole or any part of that period a person is entitled to apply for an order:

- (a) is under a disability; or
- (b) is prevented by fraud or concealment from discovering the facts entitling him to apply, an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

“(3) An order under section 37 or 122 shall not, in any case, be made after the end of the period of six years from the date on which the infringing copy or article or, as the case may be, the illicit recording in question was made.”

“Section 139A: General civil remedies.

“(1) The court shall have the authority:

(a) to order the impounding of copies of works or sound recordings suspected of being made or imported without the authorization of the owner of any right protected under this Act where the making or importation of copies is subject to such authorization, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referred to, such copies.

(b) to order the forfeiture and seizure of all plates, moulds, matrices, masters, tapes, film negatives, or other articles by means of which such copies of works or sound recordings may be reproduced, and all electronic mechanical or other devices for manufacturing, reproducing, or assembling such copies of works or sound recordings.

“(2) The provisions of subsection (1)(a) shall not be applicable to copies and their packaging which were acquired by a third party in good faith.

“(3) Where there is a danger that acts of infringement may be continued, the Court shall, in addition to any penalty imposed, impose a fine of five hundred dollars for each day on which the infringement is continued.”

“Section 140: Time limited for prosecution.

“No prosecution for an offence under this Act shall be commenced after the expiration of five years after the commission of the offence or one year after the discovery thereof, whichever date last occurs.”

“Section 141: Powers of police officers.

“(1) Any police officer not below the rank of Inspector may:

(a) subject to section 142, enter and search any premises or place;

(b) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft); or

(c) stop and search any vehicle, in which he reasonably suspects that there is an infringing copy of a work or an illicit recording or any article used or intended to be used for making infringing copies or illicit recordings; and

(d) seize, remove or detain:

(i) any article which appears to him to be an infringing copy or an illicit recording or any article which appears to him to be intended for use for making such copies or recordings; and

(ii) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Act.

“(2) Any police officer not below the rank of Inspector may:

- (a) break open any outer or inner door of any place which he is empowered or authorised by this Act to enter and search;
- (b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Act to stop, board and search;
- (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;
- (d) detain any person found in any place which he is empowered or authorised by this Act to search until such place has been searched;
- (e) detain any vessel or aircraft which he is empowered by this Act to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;
- (f) detain any vehicle which he is empowered by this Act to stop and search until it has been searched.”

“Section 142: Restrictions on the entry and search of domestic premises.

“(1) No domestic premises shall be entered and searched by a police officer unless a magistrate has issued a warrant under subsection (2).

“(2) A Magistrate may, if he is satisfied by information on Oath that there is reasonable ground for suspecting that there is in any domestic premises any article which may be seized, removed or detained under any provision of this Act, issue a warrant authorising a police officer not below the rank of Inspector to enter and search the premises.

“(3) A police officer not below the rank of Inspector authorised under subsection (2) to enter and search any premises may call upon any police officer to assist him in entering and searching the premises.

“(4) In this section ‘domestic premises’ means any premises or any part thereof, used exclusively or mainly as a dwelling.”

“Section 143: Obstruction of police officers.

“(1) Without prejudice to any other written law, any person who:

- (a) wilfully obstructs a member of the police force in the exercise of his powers or the performance of his duties under this Act;

- (b) wilfully fail to comply with any requirement properly made to him by any such member of the police force; or
- (c) without reasonable excuse, fail to give such member of the police force any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Act, commits an offence and is liable on summary conviction to a fine not exceeding \$2,500 or to imprisonment for a term not exceeding six months.

“[...]

“(3) Nothing in this section shall be construed as requiring any person to give any information which may incriminate himself.”

“Section 144: Offences by bodies corporate.”

“Where an offence under any of the preceding sections of this Act committed by a body corporate is proved to have been committed with the consent or connivance or, to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

“Section 3: Interpretation.”

“[...]

‘copy’ in relation to:

[...]

- (d) any category of work includes any copy of the work, however made and in whatever medium, that is transient or incidental to some other use of the work and copy includes storing a work of any description in any medium by electronic means

[...]”

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

SENEGAL

(Law Reviewed: Law No. 73 -52 of December 4, 1973 on the Protection of Copyright, repealed by the amendatory Act (No. 86 -05) of January 24, 1986)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

Not found in the Law reviewed.

1.2 Are computer programs protected in the Law as literary works?

Not found in the Law reviewed.

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 8

“The authors of anthologies or collections of various works which, by reason of the selection and arrangement of their contents, constitute intellectual creations, shall enjoy the protection provided by this Law, without prejudice to the rights of the author of the original work.”

1.4 Is there a right of distribution in the Law?

Not found in the Law reviewed.

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

Not found in the Law reviewed.

1.6 Is there a right of communication to the public in the Law?

“Article 3(b): Economic Rights

“The author shall have the exclusive right to exploit his work in any form and to derive monetary benefit from such exploitation. In particular, he has the exclusive right to accomplish or authorize anyone of the following acts:

[...]

(3) communication of the broadcast work to the public by wire, loudspeaker or any other process or means of transmitting sounds or images;

[...]"

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

Not found in the Law reviewed.

1.8 Are photographic works given the same duration of protection as other works in the Law?

"Article 1

"[...] The following in particular shall be considered intellectual works within the meaning of this Law:

[...]

xi. photographic works of artistic or documentary character, to which are assimilated, for the purposes of this Law, works expressed by a process analogous to photography;

[...]"

"Article 40

"Copyright shall subsist during the lifetime of the author and fifty calendar years from the end of the year of his death. In the case of works of joint authorship, the only date taken into consideration for the calculation of this term shall be that of the death of the last surviving co-author."

"Article 41

"The term of copyright shall be:

[...]

(b) twenty-five calendar years from the end of the year of the author's death in the case of works of photography or applied art. "

1.9 Whatistheeffectivetime -frameforapplicationoftherightsintheLaw?

“Article52

“TheprovisionsofthisLawshallapplytocurrentcontracts,theexecutionofwhich shallcontinueuntilthetimeprovidedforwhentheagreementwasmade.”

2. WPPTprovisions

2.1 Definitions:

2.1.1 Is“performance”or“performers”definedintheLaw?

NotfoundintheLawreviewed.

2.1.2 Is“phonogram”definedintheLaw?

NotfoundintheLawreviewed.

2.1.3 Is“fixation”definedintheLaw?

NotfoundintheLawreviewed.

2.1.4 Is“producerofaphonogram”definedintheLaw?

NotfoundintheLawreviewed.

2.1.5 Is“publicationofafixedperformanceoraphonogram”definedintheLaw?

NotfoundintheLawreviewed.

2.1.6 Is“broadcasting”definedintheLaw?

NotfoundintheLawreviewed.

2.1.7 Is“communicationtothepublic”definedintheLaw?

NotfoundintheLawreviewed.

2.2 Istheconceptof“nationaltreatment”containedintheLaw?

“Article53

“ThisLawshallapply:

- (a) to theworksofSenegalesenationals;
- (b) totheworksofforeignnationalswhicharepublishedforthefirsttimein Senegal;
- (c) toworksofarchitectureerectedontheterritoryofSenegal,andtoany artisticworkincorporatedinabuildinglocatedont hesaidterritory.

“Workswhichdonotfallintooneofthecategoriesreferredtoaboveshallonlyenjoy theprotectionprovidedbythisLawonconditionthatthecountryofwhichtheoriginal copyrightownerisanationalorresidentgrantsequivalentp rotectiontotheworksof Senegalesenationals.However,noderogatoryactionmaybeundertakenwithrespect totheintegrityortheauthorshipofsuchworks.Theroyaltiesshallbepaidtothe *Bureausénégalaisdudroitd’auteur* (BSDA).

“Thecountries forwhichthereciprocityconditionprovidedforinthesecondparagraph ofthisArticleisdeemedtobefulfilledshallbedecideduponjointlybytheMinisterin chargeofCulturalAffairsandtheMinisterforForeignAffairs.”

2.3 Doperformershavem oralrightsinthelaw?

Notfoundinthelawreviewed.

2.4 Doperformershavetheeconomicrightsintheirunfixedperformances,andifso,which ones?

Notfoundinthelawreviewed.

2.5 Doperformershavethearightofreproductioninthelaw?

Notfoundinthelawreviewed.

2.6 Doperformershavethearightofdistributioninthelaw?

Notfoundinthelawreviewed.

2.7 Doperformershavethearightofrentalinthelaw?

Notfoundinthelawreviewed.

- 2.8 Do performers have a right of making available of fixed performances in the Law?
Not found in the Law reviewed.
- 2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?
Not found in the Law reviewed.
- 2.10 Do producers have a right of distribution in the Law?
Not found in the Law reviewed.
- 2.11 Do producers have a right of rental in the Law?
Not found in the Law reviewed.
- 2.12 Do producers have a right of making available of phonograms in the Law?
Not found in the Law reviewed.
- 2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?
Not found in the Law reviewed.
- 2.14 Are rights in the Law subject to any formalities?
Not found in the Law reviewed.
- 2.15 What is the term of protection for:
- 2.15.1 performers?
Not found in the Law reviewed.
- 2.15.2 producers of phonograms?
Not found in the Law reviewed.
- 2.16 What is the effective time-frame for application of rights in the Law?
Not found in the Law reviewed.

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 10

“When the work has been lawfully made available to the public, the author may not prohibit:

- (1) communications such as performance and broadcasting:
 - (a) if they are private, made exclusively within a family circle and do not generate receipts of any kind;
 - (b) if they are made free of charge for strictly educational or school uses, or in the course of a religious service in premises reserved for the purpose;
- (2) reproductions, translations and adaptations intended for strictly personal and private use;
- (3) parodies, pastiches and caricatures, with due consideration for the rules governing this type of work.”

“Article 11

“Subject to the mention of the title of the work and the name of the author, it shall be lawful to make analyses of and short quotations from a work which has already been lawfully made available to the public, provided that this is compatible with fair practice and justified by the scientific, critical, polemic, educational or informative purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

“Such quotations and analyses may be used in the original version or in translation.”

“Article 12

“Subject to the mention of the name of the author and of the source, and provided that the right of reproduction is not expressly reserved, the following may be reproduced by the press or broadcast for the purposes of information:

- articles on current political, social and economic topics, in the original version or in translation;
- speeches intended for the public, made in political, judicial, administrative or religious gatherings, as well as in public meetings of a political nature and official ceremonies.

“Article 13

“In reporting current events by means of photography, cinematography or sound or visual broadcasting, it shall be lawful, to the extent justified by the informatory purpose, to record, reproduce and communicate to the public literary, scientific or artistic works which may be seen or heard in the course of the said event.

“Article 14

“It shall be lawful to reproduce, for the purposes of cinematography, television and communication to the public, works of figurative art and of architecture permanently located in a place where they can be viewed by the public or are included in the film or in the broadcast only by way of background or as incidental to the essential matters represented.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

Not found in the Law reviewed.

3.3 What obligations are in the Law for the protection of “rights management information?”

Not found in the Law reviewed.

3.4 Generally, what measures for enforcement of rights are in the Law?

“Article 44

“The *Bureau sénégalais dudoit d’auteur* (BSDA) may be party to legal proceedings for the defense of the interests entrusted to it, including all disputes relating directly or indirectly to the reproduction or the communication to the public of works benefiting from the provisions of this Law.”

“Article 45

“Any person who exploits a work of folklore or the right of performance of a work in the public domain and who fails to make a prior declaration of such exploitation to the *Bureau sénégalais dudoit d’auteur* (BSDA) shall be liable to a fine amounting to twice the amount of the royalties normally payable, and not less than 5,000 francs.”

“Article 46

“Importation, exportation, manufacture or exploitation of a work reproduced in violation of this Law and of the international copyright conventions is prohibited and

shall constitute the offense of infringement within the meaning of Articles 397 et seq. of the Penal Code.”

“Article 47

“At the request of any author of a work protected by this Law, his successors in title or the *Bureau sénégalaïs d’*droit d’auteur** (BSDA), the examining magistrate having competence for the infringement or the President of the Court in all cases, including when the copyright is in imminent danger of violation, shall be entitled, on provision of security where appropriate, to order the seizure in any place, even at hours other than those specified in Article 831 of the Code of Civil Procedure, of copies manufactured or in the course of manufacture of an unlawfully reproduced work, of unlawfully used copies, and of receipts from the unlawful reproduction, performance or dissemination of a protected work. He may also order the suspension of any manufacture or public performance, in progress or announced, which constitutes an infringement or an act preparatory to infringement.

“Notwithstanding the provisions of the preceding paragraph, in the event of flagrant infringement the public prosecutor may, at the request of the *Bureau sénégalaïs d’*droit d’auteur** (BSDA), of the author whose right has been infringed, or of his successors in title, call upon the police or the military, the customs or any other competent authorities to seize copies that constitute unlawful reproduction of a work together with the equipment that has served to reproduce such work.

“The provisions of this Article shall be applicable in the case of irregular exploitation of folklore or of the right of performance of a work in the public domain.”

“Article 48

“When the proceeds from exploitation which are due to the author of an intellectual work have been the subject of seizure, the President of the Court may order payment to the author, as an allowance for maintenance, of a certain sum or a specified proportion of the amounts seized.”

“Article 49

“The measures ordered by the examining magistrate under Article 47 shall be ended automatically in the event of a *non-suit* or *nolle prosequi* order. They may be ended at any time by the examining magistrate or by the criminal court subject, if appropriate, to the provision of security or the designation of an administrator -receiver responsible for the resumption of the manufacture or the public performances and for holding the proceeds from the exploitation of the work on behalf of the person entitled thereto.

“The measures ordered by the President of the Court shall be ended automatically on the thirtieth day following the decision where the plaintiff has failed to refer the matter to the competent civil court, unless criminal proceedings are in progress; they may also be ended at any time by the President of the Court in a summary proceeding, or by the civil

courthearingthemainissue,asappropriate,undertheconditionsprescribedbythe secondparagraphofthisArticle.”

“Article50

“Proofofinfringementsoftheprovisionsonthe protectionofcopyrightmayderive eitherfromthereportsof officersofthejudicialpolice,agentsofthecustomsor economiccontrolauthorities,orfrom reportsdrawnupbyswornagentsofthe *Bureau sénégalaisdudroitd’auteur* (BSDA).”

“Article51

“InthecaseofinfringementoftheprovisionsofArticle19,theassigneeandthe competentofficersmaybepronouncedjointlyliabletodamagesinfavore fthe beneficiariesofthedroitdesuite.”

3.5 HowdoesthelawdefinetheliabilityoftheInternetserviceproviders?

NotfoundintheLawreviewed.

3.6 ArethereanyprovisionsintheLawontemporarystorage?

NotfoundintheLawreviewed.

3.7 Arethereanyexplicitprovisionstoensurethattheanti -circumventionprovisionsdonot restricttheoperationoflimitations/exceptionstorightsprovidedinthelaw?

NotfoundintheLawreviewed.

SLOVAKIA

(Law Reviewed: Copyright Act No. 383/1997 of 5th December 1997 as changed and amended by Act No. 234/2000 of 20th June 2000)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Article 6. Work

“(1) The subject matter of copyright is constituted by literary work, scientific work and artistic work that are the result of creative intellectual activity of the author, in particular

“[...]

“(3) No protection shall extend to:

a) any idea, procedure, system, method, concept, principle, discovery or information, which was expressed, described, explained, illustrated or embodied in a work

[...]”

1.2 Are computer programs protected in the Law as literary works?

“Article 5. Definition of Certain Notions

“[...]

“(18) Computer program is a set of orders and instructions used directly or indirectly in computer. Orders and instructions can be written or expressed in source code or machine code. Inseparable part of the computer program is also the preparatory material necessary to its preparation; it is protected as a literary work if it complies with the notional characteristics set under § 6 Subs. 1 and § 15 Subs. 1.

“[...]”

“Article 6. Work

“(1) The subject of copyright is literary work, scientific work and artistic work which is the result of the author’s own creative intellectual activity, in particular:

- a) literary work and computer program,”

“[...]

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 5. Definition of Certain Notions

“[...]

“(19) Database is a collection of works, data, information or any other material (for example texts, images, sounds, numbers, facts) which are arranged systematically or by system and which are capable of being individually accessed by electronic or any other means.

“[...]

“Article 6(2) Database is also a subject of copyright, irrespective of its form, under the sole condition that it is original from the point of view of creative selection or arrangement of its contents”

1.4 Is there a right of distribution in the Law?

“Article 16

“[...]

“(2) The author of the works shall have an exclusive right to authorise any use of the work, in particular to authorise

- e) distribution of the original of the work or of a copy thereof to the public by sale, rental, lending or by any form of transfer of ownership or of possession,

“[...]

1.5 IstherearightofrentalintheLaw,andifso,towhichworksdoesitapply?

“Article5.DefinitionsofCertainNotions

“[...]

“(6) Torenttheworkistocedetheoriginaloftheworkoritscopyorobjectof neighbouringrightsforpaymentforlimitedperiodoftime.

“[...]”

“Article16.TheContentofCopyright

(2) Theauthoroftheworkshallhaveanexclusiverighttoauthoriseanyuseofthe work,inparticulartoauthorise:

“[...]

e) distributionoftheoriginaloftheworkoro facopythereoftothe publicbysale,rental,lendingorbyanyformoftransferofownershiporof possession,

“[...]”

1.6 IstherearightofcommunicationtothepublicintheLaw?

“Article5.DefinitionsofCertainNotions

“[...]

“(10)Communica tiontothepublicisadisseminationbymeansofwireorwithoutwire bymeansoftechnologicalequipmentorbyanyothermeans,oftheimagesorsoundsof fixations,oftheimagesorsoundsoftheworkoranobjectofneighbouringrights. Mentionedimag esorsoundscanbeperceivedbypersonsattheplaceswhereitwould notbepossiblewithoutsuchatransmissionto perceivesuchimagesorsounds.

“[...]”

“Article16TheContentofCopyright

(2) Theauthoroftheworkshallhaveanexclusiveright toauthorizeanyuseofthe work,inparticulartoauthorise:

[...]

j) communicationoftheworkbyanyothermethod.”

1.7 Is aright of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

“Article 5

[...]

“(24) The making available to the public is the communication to the public of a work or of a subject matter of related rights in such a way that an individual may access them from a place and at a time individually chosen by him/her.”

“Article 16

(2) The author of the work shall have an exclusive right to authorize any use of the work, in particular to authorize:

[...]

j) communication of the work by any other method.”

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Article 6

“(1) The subject matter of copyright is constituted by literary work, scientific work and artistic work that are the result of creative intellectual activity of the author, in particular:

[...]

g) photographic work,

“[...]”

“Duration of Copyright

“Article 18

“(1) The copyright shall last throughout the lifetime of the author and 70 years after his/her death.

“[...]”

1.9 What is the effective time-frame for application of the rights in the Law?

“Part Five

“Transitional and Final Provisions

“Article 54

“(1) The duration of rights shall be governed by this Act also in cases when it started before the entry into force of this Act. If this Act provides for longer term, this prolongation shall be applied only to the works right to which have not ceased to exist before entry into force of this Act.

“[...]”

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 5

“[...]

“(11) Performing artist is a singer, musician, actor, dancer and other person who sings, acts, interprets, delivers or otherwise performs the literary, artistic or folklore works.

“[...]”

2.1.2 Is “phonogram” defined in the Law?

“Article 5

“[...]

“(16) Phonogram is an exclusively aural fixation of the sounds irrespective of the method or the medium by which or on which these sounds are fixed.

“[...]”

2.1.3 Is “fixation” defined in the Law?

Not found in the Law reviewed.

2.1.4 Is “producer of a phonogram” defined in the Law?

“Article 5

“[...]

“(15) Producer of audiovisual work, any other audiovisual fixation or phonogram, is the physical person whose legal entity which initiated or otherwise facilitated the final making of work or fixation.

“[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

Not found in the Law reviewed

2.1.6 Is “broadcasting” defined in the Law?

“Article 5

“[...]

(14) “Broadcasting is a communication of a work or an object of neighbouring rights by radio broadcaster or television broadcaster by wire or wireless means, including that by satellite.

“[...]”

2.1.7 Is “communication to the public” defined in the Law?

“Article 5

“[...]

(10) “Communication to the public is a dissemination by means of wire or without wire by means of technological equipment or by any other means, of the images or sounds of fixations, of the images or sounds of the work or an object of neighbouring rights. Mentioned images or sounds can be perceived by persons at the places where it would not be possible without such a transmission to perceive such images or sounds.

“[...]”

2.2 Istheconceptof“NationalTreatment”containedintheLaw?

“TheScopeoftheAct

“Article3

“(1) TheprovisionsofthisActshallapplyto:

- a) performingartistswhoarenationalsofSlovakRepublic,
- b) performingartistswhoarenotnationalsofSlovakRepublicbutwhoseperformancetookplaceontheterritoryofSlovakRepublicorwhichare incorporatedinphonogramsthatareprotectedunderthisAct,orperformances whichhavenotbeenfixedinphonograms,butwhichwerecommunicatedby broadcastorbyoriginalprogramscommunicatedbywireandduetothisthey fulfiltheconditionsforprotectionunderthisAct.

“(2) TheprovisionsofthisActshallapplyto:

- a) phonogramsofthephonogramproducerswhoarenationalsofSlovak RepublicorwhohavetheirpermanentresidenceorseatinSlovakRepublic,
- b) phonogramsthefirstfixationofwhichwasmadeinSlovakRepublic,
- c) phonograms,thatweremadepublicforthefirsttimeSlovakRepublic.

“(3) Theprovisionsofthesubsection2shallapply*mutatis mutandis* totheaudiovisual fixations.

“(4) TheprovisionsofthisActshallapplyto:

- a) radiobroadcastandtelevisionbroadcastofbroadcastersandprogramsof organisationscommunicatingtothepublictheirownprograms,iftheirseatison theterritoryofSlovakRepublic,
- b) radiobroadcastandtelevisionbroadcastrealisedbybroadcastersandto originalprogramscommunicatedtothepublicfromtheplacewithintheterritory ofSlovakRepublic.”

“Article4

“(1) TheprovisionsofthisActonprotectionofpublishersofpreviouslyunpublished workshallapplytopublisherswhoarenationalsofSlovakRepublicorwhohavetheir permanentresidenceortheirseatwithintheterritoryofSlovakRepublic.

“(2) TheprovisionsofthisActshallapplytoperformingartists,phonogramproducers, producersofaudiovisualfixations,radiobroadcastersandtelevisionbroadcasters, broadcasterscommunicatingtheirownprogramsbywireandpublishersofpreviously unpublishedworkswhoorwhichareprotectedbyvirtueofinternationalagreementsor conventionsbywhichSlovakRepublicisbound.”

2.3 Do performers have moral rights in the Law?

“Article 16. The Content of Copyright

“(1) The author shall have the right to protect his/her authorship, in particular the right to:

- a) sign his/her work by his/her name; his/her name shall be indicated on all copies of work in appropriate manner, within any public use of that work, the manner of this indication depending on the nature of this use,
- b) sign his/her work by the pseudonym; his/her pseudonym shall be indicated on all copies of work in appropriate manner, within any public use, depending on the nature of this use.
- c) not to sign his/her work,
- d) inviolability of his/her work, in particular to protection against any interference into a work or against any derogatory disposal with his/her work which would cause the distortion of his/her honour or good reputation,
- e) to decide on making public of his/her work.”

“Article 46. The Content of Right of Performing Artists

“(1) The provisions of Article 16 Subs. 1 shall apply *mutatis mutandi* to the rights of performing artists.

“[...]

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones.

“Article 46. The Content of Right of Performing Artists

“[...]

“(2) The performing artists shall have the exclusive right to authorise any of the following acts:

- a) the broadcasting or other communication to the public of his/her artistic performance; the performing artist's authorisation shall not be required for the broadcasting of the artistic performance that has itself already been broadcast, for the broadcasting of the fixation of the artistic performance, for the communication to the public of the artistic performance that has itself been broadcast and for the communication to the public of the fixation of the artistic performance;
- b) the fixation of his/her unfixed performance;

[...]

“(3) The performing artists shall have the right to equitable remuneration for any use of his/her performance; this right might not be waived in advance.”

2.5 Do performers have a right of reproduction in the Law?

“Article 5

“[...]

“(7) Reproduction is the making of one or more copies of a work or of a subject matter of related rights in any form, directly or indirectly, including any permanent or temporary storage in electronic form; the direct reproduction is the making of one or more copies from the original of the work and the indirect reproduction is the making of one or more copies from a copy of the work.

“[...]

“Article 46

“[...]

“(2) Performing artists shall have the exclusive right to authorise any of the following acts:

[...]

c) the reproduction of a fixation of his/her performances.”

2.6 Do performers have a right of distribution in the Law?

“Article 46. The Content of Right of Performing Artists

“[...]

“(2) Performing artists shall have the exclusive right to authorize any of the following acts:

[...]

d) the distribution of a fixation of his/her artistic performance or of a copy thereof to the public by sale, rental, lending or by any form of transfer of ownership or possession,

“[...]

“(4) Therightoftheperformingartisttoauthorisethedistributionofa fixationof his/herartisticperformanceorofa copythereof tothepublicprovidedforin subsection 2(d)shallbeexhaustedfortheterritoryof theSlovakRepubliconthefirst lawfalsaleoronanyotheractoftransferofownershipofa fixationofartistic performanceorofa copythereofrealisedontheterritoryoftheSlovakRepublic,thisin respectofa fixationofartisticperformanceandycopies thereofthatweresubjectto saleortoanyotheractoftransferofownership;therightoftheperformingartistto authorisethedistributionofa fixationofhis/herartisticperformanceorofa copy thereoftothepublicbyrentalandth erightoftheperformingartisttoauthorisethe distributionofa fixationofhis/herartisticperformanceorofa copythereof tothe publicbythelendingsshallnotbeaffectedthereby.”

2.7 DoperformershavearightofrentalintheLaw?

“Article 46. The Content of Right of Performing Artists

“[...]

“(2) Performingartistsshallhavetheexclusiverighttoauthorizeanyofthefollowing acts:

[...]

d) thedistributionofa fixationofhis/herartisticperformanceorofa copy thereoftothepublic bysale,rental,lendingorbyanyformoftransferof ownershiporofpossession,”

[...]”

2.8. DoperformershavearightofmakingavailableintheLaw?

“Article 46. The Content of Right of Performing Artists

“[...]

“(2) Performingartistsshallhavetheexclusiverighttoauthorizeanyofthefollowing acts:

[...]

e) themakingavailabletothepublicofafixationofhis/herartistic performance.”

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 47. The Content of Rights of Producers of Phonograms

“[...]

“(2) The producer of phonogram shall have the exclusive right to authorize any of the following acts:

a) reproduction of the phonogram,”

[...]”

2.10 Do producers have a right of distribution in the Law?

“Article 47. The Content of Rights of Producers of Phonograms

“[...]

“(2) The producer of phonogram shall have the right to authorize any of the following acts:

[...]

b) the distribution of the phonogram or its copy to the public by rental, lending, sale or by any other form of transfer of ownership or of possession.”

2.11 Do producers have a right of rental in the Law?

“Article 47. The Content of Rights of Producers of Phonograms

“[...]

“(2) The producer of phonogram shall have the right to authorize any of the following acts:

[...]

b) the distribution of the phonogram or its copy to the public by rental, lending, sale or by any other form of transfer of ownership or of possession.”

2.12. Do producers have a right of making available in the Law ?

“Article 47. The Content of Rights of Producers of Phonograms

“[...]

“(2) The producer of phonogram shall have the right to authorize any of the following acts:

[...]

e) the making available to the public of the phonogram.”

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Article 46. The Content of Right of Performing Artists

“[...]

“(3) The performing artist shall have the right to equitable remuneration for any use of his/her performance; this right might not be waived in advance.”

“Article 47. The Content of Rights of Producers of Phonograms

“[...]

“(2) The producer of phonogram shall have the right to authorize any of the following acts:

[...]

c) broadcasting of phonograms or its copy by radio or television

d) communication of phonogram or its copy to the public by means of technological device.

“(3) The producers shall have the right to equitable remuneration for any use of phonograms or its copy.”

2.14. Are there rights in the Law subject to any formalities?

Not found in the Law reviewed.

2.15. What is the term of protection for:

2.15.1 performers?

“Article 46(6)

“The rights of the performing artists shall last for 50 years from the moment in which the performance takes place. However, where a fixation of an artistic performance is disclosed within this period, the rights of the performing artists shall last for 50 years from the moment of that disclosure.”

“Article 51a ” Calculation of the Duration of Related Rights

“The duration of rights of performing artists (§ Article 46 Subs. 6), phonogram producers (Article 47 Subs. 5), producers of audiovisual fixations (Article 49 Subs. 4) and broadcasters (Article 50 Subs. 3) shall be calculated from the first day of the year following the event which gives rise thereto.”

2.15.2 producers of phonograms?

“Article 47(5)

“The rights of the phonogram producers shall last for 50 years from the moment in which the phonogram was produced. However, where the phonogram is disclosed within this period, the rights of the phonogram producers shall last for 50 years from the moment of that disclosure.”

“Article 51a Calculation of the Duration of Related Rights

“The duration of rights of performing artists (Article 46 Subs. 6), phonogram producers (Article 47 Subs. 5), producers of audiovisual fixations (Article 49 Subs. 4) and broadcasters (Article 50 Subs. 3) shall be calculated from the first day of the year following the event which gives rise thereto.”

2.16. What is the effective time -frame for application of rights in the Law?

“Transitional and Final Provisions

“Article 54

“(1) The duration of rights shall be governed by this Act also in cases when it started before the entry into force of this Act. If this Act provides for longer term, this prolongation shall be applied only to the works right to which have not ceased to exist before entry into force of this Act.

“(2) The same shall apply to rights of performing artists, phonogram producers, radio broadcasters and television broadcasters.”

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Article 21 Reproduction of Work for Personal Purposes

“(1) A physical person may make a copy of a disclosed work for his/her personal purposes without the authorisation of author thereof. The said physical person is not obliged to pay remuneration to the author for such reproduction.

“(2) A physical person may not make a copy of a disclosed work for his/her personal purposes without the authorisation of the author in the case:

- a) of an architectural work in the form of project documentation of a building or other structure,
- b) of a copy of an entire literary work, cartographic work or musical work in written form, or of a substantial part thereof by means of reprographic equipment,
- c) of a computer program, subject to the exceptions provided for in Article 26 and Article 27,
- d) of a work the reproduction of which would conflict with the fair exploitation of the work or otherwise interfere with the interests of the author of the work or other holder of rights therein.

“(3) The authors or other holders of rights are entitled to compensatory remuneration for the reproduction of the work embodied in a phonogram or audiovisual fixation.

“(4) The authors of the works that can, on account of their nature, be reproduced by printing or copying, or by transfer onto another medium with the aid of reprographic or other technical apparatus, shall have the right to compensatory remuneration.

“(5) Compensatory remuneration shall be paid to the author or other right holders through the collective administration organisation by:

- a) the manufacturer or importer of blank recording material (“the carrier” hereinafter) generally used for reproduction of the work for personal purposes as provided in subsection 3; in amount of 6% from the sale price of the carrier,
- b) the manufacturer or importer of equipment capable of reproducing the phonograms or audiovisual fixations (“the equipment” hereinafter); in amount of 3% from the sale price of the said equipment,
- c) the manufacturer or importer of a reprographic device or other technical apparatus capable of reproducing the work (“the apparatus” hereinafter); in amount of 3% from the sale price of the said apparatus.
- d) the physical person who, or legal entity which, provides the reproduction services against the payment; in amount of 3% from the total incomes due to said services,

e) the vendor of the carrier, device or apparatus instead of persons liable under (a) to (c), shall the vendor fail to provide the data necessary for the identification of the importer of manufacturer upon the written request from the collective administration organisation; in amounts as provided for in (a) to (c).

“(6) Compensatory remunerations shall not be payable where the carrier, device or apparatus mentioned in subsection 5(a) to (c), is exported for further sale; compensatory remunerations shall not be payable also where the carrier is imported for the personal purposes of the importer.

“(7) Persons mentioned in subsection 5 are obliged to pay compensatory remuneration in prescribed amounts to respective collective administration organisation quarterly, however, not later than at the end of following month.

“(8) Persons mentioned in subsection 5 are obliged to present to respective collective administration organisation the information on the type and number of the imported carriers, devices and apparatuses and information on the sale price thereof. In the case these duties are not fulfilled even in the additional term, specified by the respective collective administration organisation, the rate of the compensatory remuneration is doubled.

“Article 22 Quotation from the Work

“A short part of a disclosed work may be used in the form of a quotation in another work without the authorisation of the author, provided that the reproduction constitutes fair use and its extent does not exceed that justified by the purpose of the quotation. The quotation shall be accompanied by a mention of the source and the name of author if a disclosed work features them. *There shall be no obligation to pay remuneration to the author for such use.*”

“Article 23 Reproduction for Teaching Purposes

“(1) The authorisation of the author shall not be required for:

a) reproduction of a short excerpt from a work that has been disclosed and set down in writing or fixed in the form of sound or visual recording, provided that such reproduction constitutes fair use and its extent does not exceed that justified by the teaching purpose,

b) reproduction by means of reprographic apparatus of a disclosed article or other short work or short extract with or without illustrations which are made public, if done for teaching purposes in education establishments,

“(2) The name of the author or his/her pseudonym shall be mentioned on any copy produced under the subsection 1.

“(3) There shall be no obligation to pay remuneration to the author in the cases provided for in subsection 1.”

“Article 23a Reproduction of the Work by Special Method to Cater for the Needs of the Visually Handicapped

“The authorisation of the author shall not be required for reproduction of a disclosed work by special method to cater the needs of the visually handicapped. There shall be no obligation to pay remuneration to the author for such use.”

“Article 24

“Reprographic Reproduction by Libraries or Archives

“(1) A library or archive may, by means of reprographic apparatus and without the authorisation of the author, make:

- a) a copy of a disclosed article or other short work or short extract without illustrations, if the purpose of that act of reproduction is to satisfy the request of a physical person who will use that copy for the purpose of education or research,
- b) a copy of any disclosed work, if the purpose of that act of reproduction is replacement, archiving or preservation for the cases of the loss or destruction or damage, or where the permanent collection is being constituted.

“(2) There shall be no obligation to pay remuneration to the author in the cases provided for in subsection 1.”

“Article 25 Use of Work for Information Purposes

“(1) The authorisation of the author is not required in the following cases if the source and the name of author or the pseudonym thereof are mentioned:

- a) reproduction of an article disclosed in a newspaper or other information medium on current economic, political or religious events or topics, broadcasting or rebroadcasting, cable retransmission or other communication of such subject matter; this shall not apply where the author of the work or other holder of rights in the work has reserved the right to authorise any reproduction, broadcasting, rebroadcasting and cable retransmission or other communication thereof,
- b) reproduction, broadcasting, rebroadcasting, cable retransmission or other communication of short excerpts from works perceivable in the course of current events being the subject of the news reporting,
- c) reproduction of a lecture, speech or other work of similar nature delivered in public.

“(2) There shall be no obligation to pay remuneration to the author in the cases provided for in subsection 1.”

“Article 26 Reproduction and Modification of a Computer Program

“(1) The law fulacquirer of a copy of a computer program may, without the authorisation of the author or other holder of rights, make a copy of that copy of the computer program or of an adaptation or translation thereof, provided that the copying, adaptation or translation is necessary:

- a) for the conjunction of the computer program with the computer according to the purpose and extent for which the program has been acquired, including the correction of errors in the computer program,
- b) for archiving and back-up purposes or for the replacement of a lawfully acquired copy of the computer program in the event of the copy of the computer program having been lost, destroyed or damaged.

“(2) The law fulacquirer of a copy of a computer program may, without the authorisation of the author or other holder of rights, observe, study or test the functionality of the program to determine the ideas or principles underlying any part thereof in the course of the downloading, display or transmission, functionality test and storage of the program into computer memory that he/she has been authorised to do.

“(3) Any such copy, adaptation or translation shall be destroyed where further use of the copy of the computer program provided for in the subsection 1 ceases to be lawful.

“(4) The right provided for in subsection 1 (b) and subsection 2 may not be withheld by contract.

“(5) There shall be no obligation to pay remuneration to the author in the cases provided for in subsections 1 and 2.”

“Article 27 Decompilation of Computer Programs

“(1) The authorisation of the author or other holder of rights shall not be required for reproduction of the code of a computer program or translation of the form of that code if that is necessary for obtaining the information required to achieve interoperability between independently created computer programs and other computer programs, provided that:

- a) the act is performed by the lawful acquirer who is entitled to use the copy of the computer program,
- b) the information necessary to achieve interoperability has not previously been commonly available to the persons entitled to reproduce or translate,
- c) the acts are confined to parts of the original computer program only, and are necessary for the interoperability of the independently created computer programs to be achieved.

“(2) The information obtained by acts provided for in the subsection 1 shall not be used:

- a) to pursue any aim other than the achievement of interoperability of the independently created computer programs,
- b) so that the information may be passed on to other persons, except where its use is necessary to achieve the interoperability between independently created computer programs,
- c) to facilitate the development or production, and for trade with a computer program that is similar in its expression,
- d) for any activity by means of which the right of author or other holder of rights could be violated.

“(3) The authorisation of the author or other holder of rights for the acts provided for in subsection 1 shall be required where the reproduction of a computer program would conflict with the fair exploitation of the computer program or otherwise unreasonably interfere with the legitimate interests of the author of the computer program or the other holder of rights in this program.

“(4) Neither reproduction of the machine code of the computer program nor translation of its form may be prevented by contract.

“(5) There shall be no obligation to pay remuneration to the author in the cases provided for in subsection 1.”

“Article 28 Display of the Work in Public

“(1) The direct display to the public of the original of the work or a copy thereof shall not require authorisation by the author in the following cases:

- a) where the public display is of the original of a work that has been sold, or the ownership of which has been otherwise transferred to a physical person or legal entity regarding whom the author or other holder of rights knew that the activity in question was part of his/her/its customary activity,
- b) where the public display does not conflict with the fair exploitation of the original of the work or a copy thereof and does not otherwise interfere with the rights of the author or other holder of rights.

“(2) There shall be no obligation to pay remuneration to the author in the cases provided for in subsection 1.”

“Article 28a

“Disposal of the work provided for in Article 21 to 28 may not conflict with a normal exploitation of the work and may not unreasonably prejudice the legitimate interests of the author.”

“Article 51 Limitation of the Protection of Related Rights

“(1) The provisions of Article 45 to 50 shall not apply where the acts referred to in those sections concern:

- a) use by a physical person for his/her own private purposes,
- b) use, to the extent justified, of a short excerpt for news reporting,
- c) use for the purposes of teaching and scientific research,
- d) cases in which a work may be used without authorisation from the author as provided in Article 21 to 28,
- e) ephemeral fixation by a broadcaster or by a person who communicates its own program to the public by wire, done by means of its own facilities and for its own broadcast or communication of program to the public by wire.

“(2) Performing artists, phonogram producers, producers of audiovisual fixations, broadcasters, persons communicating their own program to the public by wire and their successors-in-title have the right to compensatory remuneration for reproduction of the fixations of performances, phonograms, audiovisual fixations, broadcast and programs in the case of use in accordance with subsection 1 (a). The provisions of Article 21 shall apply *mutatis mutandis* to this right.”

3.2. What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Article 44 Imperilment and Violation of Copyright

“(1) An author whose copyright has been violated may demand in particular that further violation be prohibited, that the consequences of the violation be removed and that he/she be given an appropriate compensation. Where considerable prejudice of a non-material character has resulted from the violation of his/her copyright, the author has the right to monetary compensation provided that other form of compensation appears insufficient; the amount of the monetary compensation shall be determined by the court, which shall in particular take the extent of the prejudices sustained and also the circumstances of the violation into consideration.

“(2) The provisions of the Civil Code shall apply to the author’s claim for compensation for damages sustained on account of the violation.

“(3) The author may make the same claims of imperilment or violation of his/her rights against persons who import, manufacture or operate equipment designed exclusively or partly for removal, disablement or inhibition of the operation of effective technological measures that are used by author in connection with the exercise of his/her rights under this Act, or that restrict acts of use of the work, which are not authorised by him/her or permitted by this Act.”

3.3. What obligations are in the Law for the protection of “rights management information?”

“Article 5

“[...]

“(22) The Rights Management Information is data which identifies the work, the author of the work, the holder of any right in the work, information about the terms and conditions of use of the work and any numbers or codes that represent such information, when any of these information items is attached to a copy of a work or appears in connection with the communication of a work to the public.

“[...]

“Article 44 Imperilment and Violation of Copyright

“(1) An author whose copyright has been violated may demand in particular that further violation be prohibited, that the consequences of the violation be removed and that he/she be given an appropriate compensation. Where considerable prejudice of a non-material character has resulted from the violation of his/her copyright, the author has the right to monetary compensation provided that other form of compensation appears insufficient; the amount of the monetary compensation shall be determined by the court, which shall in particular take the extent of the prejudices sustained and also the circumstances of the violation into consideration.

“(2) The provisions of the Civil Code shall apply to the author’s claim for compensation for damages sustained on account of the violation.

“(4) The author may make the same claims of imperilment or violation of his/her rights against persons, who induce, enable, facilitate or conceal the violation of his/her rights under this Act by performing any of the following acts:

- a) removal or alteration of any electronic rights management information without authority,
- b) distribution, importation for distribution, broadcasting, communication to the public of works or copies of works, without authority, knowing that electronic rights management information has been removed or altered without the authorisation of the author.”

3.4. Generally, what measures for enforcement of rights are in the Law?

“Article 44 Imperilment and Violation of Copyright

“(1) An author whose copyright has been violated may demand in particular that further violation be prohibited, that the consequences of the violation be removed and that he/she be given an appropriate compensation. Where considerable prejudice of a non-material character has resulted from the violation of his/her copyright, the author has the right to monetary compensation provided that the form of compensation appears insufficient; the amount of the monetary compensation shall be determined by the court, which shall in particular take the extent of the prejudices sustained and also the circumstances of the violation into consideration.

“(2) The provisions of the Civil Code shall apply to the author’s claim for compensation for damages sustained on account of the violation.

“(3) The author may make the same claims of imperilment or violation of his/her rights against persons who import, manufacture or operate equipment designed exclusively or partly for removal, disablement or inhibition of the operation of effective technological measures that are used by author in connection with the exercise of his/her rights under this Act, or that restrict acts of use of the work, which are not authorised by him/her or permitted by this Act.

“(4) The author may make the same claims of imperilment or violation of his/her rights against persons, who induce, enable, facilitate or conceal the violation of his/her rights under this Act by performing any of the following acts:

- a) removal or alteration of any electronic rights management information without authority,
- b) distribution, importation for distribution, broadcasting, communication to the public of works or copies of works, without authority, knowing that electronic rights management information has been removed or altered without the authorisation of the author.

“(5) An author, whose copyright has been violated, may demand that all the copies of his/her works unlawfully manufactured, distributed or intended for distribution that are being in the possession of the person who violated his/her rights, be destroyed; he may also demand that all the equipments said person used, or could use, for the unlawful reproduction of his/her work, be destroyed. This destruction shall be realised on the expense of the person, who violated the rights of the author. The author has right to obtain information on the origin and distribution network of illegally manufactured copies, which were or are being possessed by the person, who violated his rights.”

3.5. How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6. Are there any provisions in the Law on temporary storage?

“Article 5

“[...]

“(7) Reproduction is the making of one or more copies of a work or of a subject matter of related rights in any form, directly or indirectly, including any permanent or temporary storage in electronic form; the direct reproduction is the making of one or more copies from the original of the work and the indirect reproduction is the making of one or more copies from a copy of the work.

“[...]

3.7. Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions or rights provided in the Law?

Not found in the Law reviewed.

SLOVENIA

(Law Reviewed: Copyright and Related Rights Act, Consolidated Text published in the Official Gazette of the Republic of Slovenia Nos. 21/1995, 9/2001, 30/2001)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Protected works

“Article 5

“(1) Copyright works are individual intellectual creations in the domain of literature, science, and art, which are expressed in any mode, unless otherwise provided by this Act.

“[...]

“Non-protected creations

“Article 9

“(1) Copyright protection shall not be afforded to:

1. ideas, principles, discoveries;
2. official legislative, administrative and judicial texts;
3. folk literary and artistic creations.

“[...]

1.2 Are computer programs protected in the Law as literary works?

“Definition

“Article 111

“(1) Computer programs, within the meaning of this Act, are programs expressed in any form, including preparatory design materials for their creation.

“(2) Ideas and principles, which underlie any element of a computer program, including those which underlie its interfaces, are not protected.

“(3) Computer programs shall be protected if they are individual works, in the sense that they are their author’s own intellectual creations.”

“Protected works

“Article 5

“[...]

“(2) As copyright works are considered in particular:

[...]

2. written works such as belletristic works, articles, manuals, studies, and computer programs;

[...]”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Collections

“Article 8

“(1) Collections of works or of other material, such as encyclopedias, anthologies, databases, collections of documents, etc., which, by virtue of selection, coordination or arrangement of their contents, are individual intellectual creations, shall be deemed independent works.

“(2) Rights of authors of pre-existing works shall not be infringed by the inclusion of such works in a collection; by the inclusion in a collection, pre-existing material does not become a protected work.

“(3) Databases as mentioned in Paragraph (1) of this Article are collections of independent works, data or other materials in any form, arranged in a systematic or methodical way and individually accessible by electronic or other means.

“(4) Protection under this Article shall not apply to computer programs used in the making or operation of electronic databases.”

1.4 Is there a right of distribution in the Law?

Economic Rights

“Article 22

“[...]

“(4) Use of copies of a work includes the following rights:

1. the right of distribution (Article 24);”

“Right of distribution

“Article 24

“(1) The right of distribution is the exclusive right to put into circulation the original or copies of the work by sale or other form of transfer of ownership, or to offer the same to the public with such intent.

“(2) The right of distribution includes also the exclusive right to import copies of the work to a country with the intent of their further distribution, regardless of whether such copies were legally made or not.”

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

“Economic Rights

“Article 22

“[...]

“(4) Use of copies of a work includes the following rights:

[...]

2. the rental right (Article 25);

[...]”

“Article 25. Rental right

“(1) The rental right is the exclusive right of making available for use the original or copies of a work, for a limited period of time, and for direct or indirect economic advantage.

“(2) The foregoing paragraph shall not apply to the use of:

1. architectural structures;
2. originals or copies of works of applied art and industrial design;
3. originals or copies of works for the purpose of public communication;
4. works for on-the-spot reference;

5. works by persons acting within the scope of their employment, if such use is intended exclusively for the execution of their work-related duties.”

1.6 Is there a right of communication to the public in the Law?

“*Economic Rights*

“*Article 22*

“[...]

“(2) Use of the work in non-material form (*communication to the public*) includes in particular the following rights:

1. the right of public performance (Article 26);
2. the right of public transmission (Article 27);
3. the right of public communication by phonograms and videograms (Article 28);
4. the right of public presentation (Article 29);
5. the right of broadcasting (Article 30);
6. the right of rebroadcasting (Article 31);
7. the right of secondary broadcasting (Article 32);
8. the right of making available to the public (Article 32.a).”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

“*Economic Rights*

“*Article 22*

“[...]

“(2) Use of the work in non-material form (*communication to the public*) includes in particular the following rights:

[...]

8. the right of making available to the public (Article 32.a).”

“Right to making available

“Article 32.a

“The right of making available is the exclusive right that a work, by wire or wireless means, is made available to the public in such a way that members of the public may access it from a place and at a time individually chosen by them or that a work is transmitted to a member of the public based on an offer, intended for the public.”

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Protected works

“Article 5

“(1) Copyright works are individual intellectual creations in the domain of literature, science, and art, which are expressed in any mode, unless otherwise provided by this Act.

“(2) As copyright works are considered in particular:

[...]

6. photographic works and works produced by a process similar to photography;

[...]”

“Article 59

“The copyright shall run for the life of the author and for 70 years after his death, unless otherwise provided by this Act.”

1.9 What is the effective time -frame for application of the rights in the Law?

“Article 193

“(1) This Act applies to all works and performances of performers that were enjoying protection according to the Copyright Act (Official Gazette of the SFRY, No. 19/1978, 24/1986, 21/1990), at the time of its enactment.”

“[...]”

2. WPPT provisions

2.1 Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

“Definition

“Article 118

“(1) Performers are actors, singers, musicians, dancers, and other persons who, by acting, singing, dancing, reciting or in some other way, artistically perform copyright works, or works of folklore.

“(2) As performers within the meaning of the above paragraph, shall be deemed directors of theatrical presentations, conductors of orchestras, choir directors, sound editors, and variety and circus artists.”

2.1.2 Is “phonogram” defined in the Law?

“Producers of phonogram

“Article 128

“[...]

“(2) Phonogram is a fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in an audiovisual work.”

“[...]

2.1.3 Is “fixation” defined in the Law?

“Producers of phonogram

“Article 128

“[...]

“(3) Fixation is an embodiment of sounds or of representations thereof on a medium, from which they can be perceived, reproduced or communicated through a device.”

2.1.4 Is “producer of phonogram” defined in the Law?

“Producers of phonogram”

“Article 128”

“(1) Producer of phonogram is a person or legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds.

“[...]”

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Disclosure and publication”

“Article 3”

“[...]”

“(2) Publication, as used in this Act, shall mean that a sufficient quantity of already produced copies of a copyright work, or of a subject matter of a related right, was offered to the public or put into circulation, with the consent of the rightholder.”

“Right to remuneration for public communication of phonograms”

“Article 130”

“[...]”

“(3) For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them, shall be considered as if they had been published for commercial purposes.”

2.1.6 Is “broadcasting” defined in the Law?

“Right of broadcasting”

“Article 30”

“(1) The right of broadcasting is the exclusive right to communicate a work to the public by radio or television program signals, intended to the public, either by wireless means (including satellite), or by wire (including cable or microwave system).

“(2) Communication to the public by satellite, within the meaning of the foregoing paragraph, exists when under the control and responsibility of a broadcasting

organization program -carrying signals intended for the public are sent in an uninterrupted chain of communication to a satellite and down to the Earth.

“(3) If the program -carrying signals are encrypted, communication to the public by satellites shall be deemed to have occurred, within the meaning of the foregoing paragraph, on condition that the means for decrypting are provided to the public by the broadcasting organization, or with its consent.”

2.1.7 Is “Communication to the Public” defined in the Law?

“Economic rights

“Article 22

“[...]

“(2) Use of the work in non-material form (*communication to the public*) includes in particular the following rights:

1. the right of public performance (Article 26);
2. the right of public transmission (Article 27);
3. the right of public communication by phonograms and videograms (Article 28);
4. the right of public presentation (Article 29);
5. the right of broadcasting (Article 30);
6. the right of rebroadcasting (Article 31);
7. the right of secondary broadcasting (Article 32);
8. the right of making available to the public (Article 32.a).”

2.2 Is the concept of “National Treatment” contained in the Law?

“General provision

“Article 176

“(1) The provisions of this Act shall protect the authors and holders of related rights who are citizens of the Republic of Slovenia or have their corporate seat in the Republic of Slovenia.

“(2) Foreign natural persons or legal entities (foreigners) shall enjoy the same protection as persons mentioned in the foregoing paragraph, if international convention or this Act so provide, or in case that factual reciprocity exists.

“(3) Regardless of the provisions of this Chapter, foreigners shall enjoy the protection according to this Act:

1. with respect to moral rights - in any case;
2. with respect to *droit des suite* and the right to remuneration for private and other internal reproduction - only if actual reciprocity exists.

“(4) Reciprocity must be proved by the person basing his claim on it.”

“*Authors*

“*Article 177*

“(1) The protection under this Act shall enjoy the authors:

1. who are domiciled in the Republic of Slovenia;
2. with respect to their works published for the first time in the Republic of Slovenia or within 30 days of having been published in another country;
3. with respect to audiovisual works whose producer has his corporate seat or domicile in the Republic of Slovenia;
4. with respect to works of architecture and fine arts, which are as immovables or as a firm integral part of immovable property located on the territory of the Republic of Slovenia;

“(2) If the work was created by more authors, the provision of this Act shall protect all of them if at least one author meets one of the conditions enumerated in the foregoing paragraph.”

“*Performers*

“*Article 178*

“(1) The protection under this Act shall enjoy the performers:

1. who are domiciled in the Republic of Slovenia;
2. whose performances take place on the territory of the Republic of Slovenia;
3. whose performances are fixed on phonograms that are protected under this Act;
4. whose performances are incorporated, without having been fixed on phonograms, in radiobroadcasts that are protected under this Act.

“(2) If more performers take part in a performance, the provisions of this Act shall protect all of them if at least one performer is a citizen of the Republic of Slovenia or is domiciled in the Republic of Slovenia.”

“Producers of phonograms, film producers, and publishers

“Article 179

“(1) The protection under this Act shall enjoy the producers of phonograms and film producers if their phonogram or videogram was first fixed in the Republic of Slovenia.

“(2) The provisions of this Act shall also protect the publishers with respect to their related rights if their edition was first published in the Republic of Slovenia or within 30 days of having been published in another country.”

“Broadcasting organizations

“Article 180

“The protection under this Act shall enjoy the broadcasting organizations that transmit their broadcast from transmitters located on the territory of the Republic of Slovenia.”

“Comparison of terms of protection

“Article 181

“The terms of protection laid down in this Act shall apply to foreign holders of related rights that enjoy protection under this Act, however, they shall expire on the day when the protection expires in the country of which these holders are citizens, or where their corporate seats are located, and cannot exceed the terms set by this Act.”

“Communication to the public by satellite

“Article 182

“(1) The protection under this Act shall enjoy the authors and holders of related rights, whose work or subject matter of related rights is communicated to the public by satellite, when under the control and responsibility of a broadcasting organization the relevant program -carrying signals are sent from the territory of the Republic of Slovenia, into an uninterrupted chain of communication, to a satellite and down to the Earth.

“(2) The protection granted by this Act applies also when the condition from the foregoing paragraph is not fulfilled, however:

1. the uplink station from which program -carrying signals are transmitted is located in the Republic of Slovenia, or
2. the broadcasting organization which commissioned the communication to the public by satellite has its corporate seat in the Republic of Slovenia.”

“Stateless persons and refugees

“Article 183

“(1) Authors and holder of related rights that have no citizenship or whose citizenship cannot be determined, shall enjoy the same protection under this Act as the citizens of the Republic of Slovenia, if they are domiciled in it.

“(2) If they are not domiciled in the Republic of Slovenia or if their domicile cannot be determined, they shall enjoy the same protection as citizens of the Republic of Slovenia, if they have their residence in it.

“(3) If they have neither their domicile nor residence in the Republic of Slovenia, they shall enjoy the same protection as citizens of the state in which they do have their domicile or residence.

“(4) Provisions of this Article shall apply equally to authors and holders of related rights, having the status of a refugee under international treaties or laws of the Republic of Slovenia.”

2.3 Do performers have moral rights in the Law?

“Moral rights of performers

“Article 120

“(1) The exclusive right of performer to have their name or other designation mentioned in connection with the performances shall be enjoyed:

1. where the performances are given by solo performers - to such performers;
2. where performances are given by ensembles of performers - to such ensemble as a whole, to the artistic director, and to the soloists.

“(2) Performers have the exclusive right to object to any distortion and any other tampering with respect to their performance, as well as any use of their performance if such tampering or use could be prejudicial to their person.”

2.4 Do performers have economic rights in their unfixed performances, and if so, which ones?

“Economic rights of performers

Article 121

“Performers shall have the exclusive right:

“1. to broadcast or otherwise publicly communicate their performance, except where such performance is in itself a broadcast, or if it is a broadcast from a fixation;

“2. to fix their live performance;

[...]”

2.5 Do performers have a right of reproduction in the Law?

“Economic rights of performers

“Article 121

“Performers shall have the exclusive right :

“[...]

“3. to reproduce the fixation of their performance on phonograms or videograms;”

“[...]”

2.6 Do performers have a right of distribution in the Law?

“Economic rights of performers

“Article 121

“Performers shall have the exclusive right:”

“[...]

“4. to distribute the phonograms or videograms containing their performance;”

“[...]”

2.7 Do performers have a right of rental in the Law?

“Economic rights of performers

“Article 121

“Performers shall have the exclusive right:

[...]

5. to rent phonograms or videograms containing their performance;

[...]”

2.8 Do performers have a right of making available in the Law?

“Economic rights of performers

Article 121

“Performers shall have the exclusive right:

[...]

6. the making available to the public of fixations of their performances.”

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Rights of producers of phonograms

“Article 129

“The producer of phonograms shall have the exclusive right:

1. to reproduce his phonograms;”

[...]”

2.10 Do producers have a right of distribution in the Law?

“Rights of producers of phonograms”

“Article 129”

“The producer of phonograms shall have the exclusive right:

[...]

3. to distribute his phonograms;

[...]”

2.11 Do producers have a right of rental in the Law?

“Rights of producers of phonograms”

“Article 129”

“The producer of phonograms shall have the exclusive right:

[...]

4. to rent his phonograms;”

[...]”

2.12 Do producers have a right of making available in the Law?

“Rights of producers of phonograms”

“Article 129”

“The producer of phonograms shall have the exclusive right:

[...]

5. to make available to the public his phonograms.”

2.13 Do producers and/or performers have a right to remuneration for broadcasting and communication to the public of phonograms in the Law? d/or

“The right to remuneration in case of public communication of a phonogram

“Article 122

“A performer shall have the right to participate in the remuneration received by the producer of a phonogram for public communication of a phonogram in which his performance is fixed.”

“Right to remuneration for public communication of phonograms

“Article 130

“(1) If a phonogram published for commercial purposes or its copy is used for broadcasting or for any other communication to the public, the users shall pay the producer of phonograms a single equitable remuneration for each communication.

“(2) The producer of phonograms shall pay half the remuneration mentioned in the foregoing paragraph, to the performers whose performances are fixed on the phonograms used, unless different shares are determined by the contract between the producers of phonograms and the performers.

“(3) For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them, shall be considered as if they had been published for commercial purposes.” e

2.14 Are rights in the Law subject to any formalities?

Not found in the Law reviewed.

Rights in the Law are not subject to any formalities.

2.15 What is the term of protection for:

2.15.1 performers?

“Terms of protection

“Article 127

“Rights of a performer shall run for 50 years after the date of the performance. If the fixation of the performance was lawfully published or lawfully communicated to the public within this period, the rights of a performer shall run for 50 years from either the first publication or from the first communication, whichever occurred earlier.”

2.15.2 producers of phonograms?

“The term of protection

“Article 132

“The rights of the producer of phonograms shall last for 50 years after the fixation is made. If the phonogram is lawfully published during this period, the rights shall last 50 years from such first publication. If no such publication has taken place, but the phonogram has during this period been lawfully communicated to the public, the rights shall last 50 years from such first communication to the public.”

2.16 What is the effective time-frame for application of rights in the Law?

“Article 193

“(1) This Act applies to all works and performances of performers that were enjoying protection according to the Copyright Act (Official Gazette of the SFRY, No. 19/1978, 24/1986, 21/1990), at the time of its enactment.

“(2) This Act applies to phonograms of producers of phonograms, with respect to which the term of 20 years has not yet elapsed from the time of their first fixation to the enactment of this Act.

“(3) This Act applies to videograms, broadcasts and publishers’ editions, as subjects matters of related rights, which were first fixed, broadcast or lawfully published after its enactment.

“[...]”

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Limitations On Copyright

“General provision

“Article 46

“Limitations on copyright are permissible in cases mentioned in this Section, provided that the extent of such exploitation of copyright works is limited by the intended purpose, is compatible with fair practice, does not conflict with normal use of the work, and does not unreasonably prejudice the legitimate interests of the author.

“Subsection 1

“Legal Licenses

“Teaching and periodicals

“Article 47

“(1) Without the assignment of a respective economic right, but on payment of equitable remuneration, it shall be lawful:

1. to reproduce in readers and textbooks intended for teaching, parts of works, as well as single works of photography, fine arts, architecture, applied art, industrial design and cartography, provided these are already disclosed works of a number of authors;
2. to reproduce in periodical publications articles on current topics of general interest published in other periodicals, unless the author expressly prohibited it.

“(2) Provision of the foregoing paragraph apply accordingly to public communication of the works mentioned therein .

“(3) In cases stated in the foregoing paragraphs, the source and authorship of the work must be indicated, if the latter is indicated on the work used.”

Subsection 2

“Free Use

“Right to information

“Article 48

“(1) In order to have free access to information of public nature it shall be free:

1. to reproduce works, which are capable of being seen or heard as a part of a current event that is being reported on;
2. to prepare and reproduce abstracts of published newspaper and similar articles in the form of press reviews;
3. to reproduce public political speeches and public speeches made at hearings before state, religious or similar bodies;
4. to use the news of the day, which have the nature of a press release;

“(2) Provisions of the foregoing paragraph apply *mutatis mutandis* to public communications of the works mentioned therein.

“(3) In cases stated in the foregoing paragraphs, the source and authorship of the work must be indicated, if the latter is indicated on the work used.”

“Teaching

“Article 49

“(1) For the purpose of teaching it shall be permissible to:

1. publicly perform a disclosed work in the form of direct teaching;
2. publicly perform a disclosed work at school events with free admission, on condition that the performers receive no payment for their performance;
3. rebroadcast a radio or television school broadcast.

“(2) In cases stated in the foregoing paragraph, the source and authorship of the work must be indicated, if the latter is indicated on the work used.”

“Private and other internal reproduction

“Article 50

“(1) Taking into account the provisions of Article 37 of this Act, the reproduction of a disclosed work shall be free, if made in no more than three copies:

1. for the purpose of private use of a natural person, provided such copies are not available to the public, or
2. for the purpose of internal use of public archives, public libraries, and educational or scientific institutions, provided such reproductions are made from their own copy.

“(2) Reproduction according to the foregoing paragraph is not permitted with respect to written works to the extent of the whole book, with respect to graphic editions of musical works, databases, computer programs, and in the form of building of architectural structures, unless otherwise provided by this Act or by contract.

“(3) Regardless of the provisions of the foregoing paragraph, it shall be permissible, under the conditions of paragraph (1) of this Article:

1. to reproduce a written work to the extent of the whole book, if such work is out of print for a minimum of two years;
2. to reproduce a graphic edition of musical work by means of handwritten transcription.

“Quotations

“Article 51

“(1) It shall be permissible to make quotations of parts of a disclosed work and of single disclosed photographs, works of fine arts, architecture, applied art, industrial design and cartography, provided it is necessary for the purpose of illustration, argumentation or referral.

“(2) In cases stated in the foregoing paragraph, the source and authorship of the work must be indicated, if the latter is indicated on the work used.”

“Accessory works of secondary importance

“Article 52

“Such disclosed works that may be regarded as accessory works of secondary importance with regard to the actual purpose of some material object, may be used freely while exploiting such object.”

“Free transformations

“Article 53

“Transformation of a disclosed work is permissible:

1. if it is a private or other internal transformation, which is not intended for, and not available to the public;
2. if the work is transformed into a parody or caricature, provided this does not, or is not likely to, create confusion as to the source of the work;
3. if the transformation is dictated by the purpose of the permitted use;
4. if the transformation is done in connection with permitted use and the author's objection to such transformation is unreasonable or in bad faith.”

“Databases

“Article 53.a

“(1) A lawful user of a disclosed database or of a copy thereof may freely reproduce or alter that database, if this is necessary for the purposes of access to its contents and the normal use of that contents. Where the user is authorized only to a part of the database, this provision shall apply only to that part.

“(2) Any contractual provision contrary to the preceding paragraph shall be null and void.”

“Catalogues

“Article 54

“(1) Works which are displayed at publicly accessible exhibitions, auctions, fairs, or collections may be reproduced and distributed in catalogs published for this purpose by the organizers of such displays.

“(2) In cases stated in the foregoing paragraph, the source and authorship of the work must be indicated, if the latter is indicated on the work used.”

“Works located in generally accessible premises

“Article 55

“(1) Works permanently placed in parks, streets, squares, or other generally accessible premises may be used freely.

“(2) Works mentioned in the foregoing paragraph may not be reproduced in a three-dimensional form, used for the same purpose as the original work, or used for economic gain.

“(3) In cases stated in paragraph (1) of this Article, the source and authorship of the work must be indicated, if the latter is indicated on the work used.”

“Evidentiary procedure

“Article 56

“Use of a work in an arbitrary, judicial, administrative or any other proceeding before an agency of the State, to the extent necessary for evidentiary purposes, is free.

“Testing of equipment

“Article 57

“Workshops and shops that manufacture or sell phonograms, videograms, equipment for their reproduction or public communication and equipment for reception of broadcasts, may, in order to test their functioning at the time of manufacture or sale, freely reproduce and publicly communicate works, provided this is done only to the extent necessary for the purpose of testing.”

3.2. What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Protection of technological measures

“Article 166.a

“(1) It shall be deemed that a person infringes the exclusive rights granted by this Act, when it commits any anti-circumvention act for the purpose of the circumvention of effective technological measures, designed to protect the rights under this Act.

“(2) Technological measures as mentioned in the foregoing paragraph, mean any technology, computer program or other measure that are designed to, in the normal course of their operation, prevent or inhibit the infringement of rights under this Act. These measures shall be deemed effective, where the access to or use of a copyright work or subject matter of related rights is controlled through a protection process which achieves the protection goal in an operational and reliable manner and with the authorization of the right holders.

“(3) An anti-circumvention act as mentioned in the first paragraph of this Article, means any circumvention of effective technological measures. It means in addition the manufacture, importation for distribution, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of a technology, device or computer program, or the unauthorized provision of services, which:

1. are advertised or marketed for the purpose of circumvention of effective technological measures, or
2. have a significant commercial purpose or use only from the aspect of circumvention of effective technological measures, or
3. are primarily designed, produced, adapted or performed for the purpose of the circumvention of effective technological measures.

“(4) This Article shall apply *mutatis mutandis* also to any technology, device or computer program, by which electronic rights management information is removed or altered (Article 166).”

3.3. What obligations are in the Law for the protection of “rights management information?”

“Protection of rights management information

“Article 166

“(1) It shall be deemed that a person infringes the exclusive rights granted by this Act, when it commits any of the following acts by which it induces, enables, facilitates or conceals the infringement of the rights under this Act:

1. the removal or alteration of any electronic rights management information;

2. the reproduction, distribution, importation for distribution, rental or communication to the public of a copyright work or subject matter of related rights, where electronic rights-management information has been removed or altered without authority.

“(2) Rights-management information as mentioned in the foregoing paragraph, means any information provided by rightholders on the identification of the subject matter of rights, the author, the rightholder, the terms and conditions for use, and their relevant numbers and codes, when they are indicated on a copy of a copyright work or subject matter of related rights or when they appear in connection with their communication to the public.”

3.4. Generally, what measures for enforcement of rights are in the Law?

“Section 2

“Judicial Protection

“Claims

“Article 167

“(1) When the exclusive rights granted by this Act were infringed, the rightholder may claim:

1. that the infringer is prohibited from doing certain preparatory acts, the infringement itself, and future infringements;
2. that the infringer rectifies the situation caused by the infringement;
3. that the unlawfully made copies of the work and their packaging, of a performance, or of other objects of protection under this Act, be destroyed or altered;
4. that the stencils, negatives, plates, molds, or other means, which were instrumental to the infringement, be destroyed or altered;
5. that the devices, the sole or prevalent purpose of which is to make the infringements mentioned in this Act possible, and which are owned by the infringer, be destroyed or altered;
6. that the judgement be published in public media at the infringer's expense, to the extent and in such manner, as deemed appropriate by the court.

“(2) Provisions of items 2 and 3 of the foregoing paragraph shall not apply to architectural buildings, unless the destruction or alteration of a building is dictated by the circumstances of the case.

“(3) Instead of claims mentioned in items 3 or 4 of paragraph (1) of this Article, the rightholder may claim that the infringer or owners surrender to him the copies or means enumerated therein, against the reimbursement of the costs of their production.

“Punitive damages

“Article 168

“(1) If an economic right or other right of the author, recognized by this Act, was infringed intentionally or by gross negligence, the rightholder may claim the payment of agreed upon or customary royalty or remuneration for such use, increased by up to 200%, irrespective of whether he suffered actual pecuniary damage because of such infringement.

“(2) When deciding on the claim for the award of punitive damages and setting of their amount, the court shall take into account all circumstances of the case, and in particular, the degree of culpability of the infringer, the amount of agreed upon or customary remuneration, and the achievement of a general preventive purpose sought by the award of punitive damages.

“(3) In case that the actual damage is in excess of the amount of punitive damages mentioned in the foregoing paragraph, the rightholder has a right to claim the difference to full actual damages. Monetary satisfaction for non-material damage.”

“Monetary satisfaction for non-material damage

“Article 169

“Irrespective of any pecuniary damages recovered, or even if there is no material loss suffered, the court may award to an author or a performer equitable monetary satisfaction for the mental anguish and suffering endured as a consequence of the infringement of his moral rights, if the court finds that the circumstances of the case, and especially the degree of suffering and its duration so dictate.”

“Provisional measures

“Article 170

“(1) If the rightholder shows probable grounds for belief that his exclusive right under this Act is being infringed, the court may, on application of the rightholder, order provisional measures to secure his non-monetary claims, such as:

1. seizure, exclusion from circulation, and taking into custody of copies, means, equipment, and relevant documents;
2. interdiction of imminent infringements or of infringements already commenced;
3. other similar measures.

“(2) If there is a demonstrable risk that the provisional measures mentioned in the above paragraph may not be effective at a later time, the court may order and execute

such measures without prior notification and hearing of the other party. (*inaudita altera parte*)

“(3) The proceedings for the adoption of provisional measures are summary.

“(4) The provisions of the Code of Execution Procedures shall apply to the proceedings for the adoption of provisional measures, unless otherwise provided by this Act.”

“Preservation of evidence

“Article 171

“(1) If the rightholder shows probable grounds for belief that his exclusive right under this Act is being infringed, and that there is a demonstrable risk that evidence of such infringement will be destroyed or that it will be impossible to obtain such evidence at a later time, the court may, on application of the rightholder, take such evidence without prior notification and hearing of the other party. (*inaudita altera parte*)

“(2) The taking of evidence, according to the foregoing paragraph may include the inspection (of places, business records, inventory, databases, computer memory units, or other things etc.), examination and seizure of documents, examination of witnesses, and the appointment and examination of experts.

“(3) Court order with which the application for the preservation of evidence was granted, shall be served on the adverse party at the time when the actual taking of evidence begins or, when this is impossible, as soon as the service becomes possible. No appeal can be taken from such order.

“(4) The proceedings for the securing of evidence are summary.

“(5) The provisions of the Code of Civil Procedures shall apply to the proceedings for the preservation of evidence, unless otherwise provided by this Act.”

“Section 3

“Measures For The Enforcement Of Protection

“Duty to provide information

“Article 172

“(1) A rightholder may demand that persons, who are in any way connected with the infringement of rights recognized by this Act (manufacturers, printers, importers, suppliers, or possessors of copies or means with which the right was infringed), provide information and produced documents in connection with the infringement, immediately upon demand.

“(2) The duty mentioned in the foregoing paragraph shall not apply, when conditions exist that would allow a witness in any civil proceeding to refuse to testify or to answer to a particular question.

“(3) If the persons mentioned in the paragraph (1) of this Article fail to give the required information or produce the documents in their possession, they are liable for damages that may be caused by their failure to comply.”

“Register

“Article 174

“(1) To preserve the evidence or for other reasons, the holders of rights granted by this Act, may register their works or deposit the originals or reproductions of their works, phonograms, videograms, or subject matters of some other right with the organization authorized for this purpose.

“(2) Until proven otherwise, it shall be presumed that the rights in registered works exist and belong to the person designated in such register as their holder.

“(3) There shall be one public register for a given category of works for the whole state, and shall be kept by an organization specially authorized for that purpose by the Office.

“(4) In case of doubt whether a given work can be considered as a work of copyright, the organization mentioned in the foregoing paragraph shall give an opinion.

“(5) Provisions of this Article do not affect in any way the existence and protection of rights under this Act.

“Symbols and notices of reserved exclusive rights

“Article 175

“(1) Holders of exclusive authors' rights under this Act shall have the right to put a notice on the original or copies of their works, consisting of the symbol ©, accompanied by their name or firm name and year date of the first publication.

“(2) Holders of exclusive rights to phonograms under this Act, shall have the right to put a notice on the original or copies of their published phonograms or on their containers, consisting of the symbol P accompanied by their name or firm name and year date of the first publication.

“(3) Until proven otherwise, it shall be presumed that the exclusive rights in works or phonograms, that bear notices mentioned in this Article exist and belong to the person designated herein.

“(4) Provisions of this Article do not affect in any way the existence and protection of rights under this Act.”

3.5. How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

There is no definition of the liability of the Internet service providers in the Law.

3.6. Are there any provisions in the Law on temporary storage?

“Right of reproduction

“Article 23

“(1) The reproduction right is the exclusive right to fix the work in a material medium or in another copy directly or indirectly, temporarily or permanently, by any means and in any form, in whole or in part.

“(2) The work is reproduced in particular by graphic reproduction, three-dimensional reproduction, building or carrying out of an architectural structure, photographic reproduction, sound or visual fixation, and by saving in electronic form.”

3.7. Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

Not found in the Law reviewed.

There is no such provision in the Law.

UKRAINE

(Law reviewed: Law of Ukraine on Amendments to the Law of Ukraine “On Copyright and Related Rights” of July 11, 2001, No. 2627 -III)

1. WCT provisions

1.1 Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Article 8. Objects of Copyright

[...]

“3. The legal protection stipulated in this Law shall be extended only to the form of expression of a work, and shall not apply to any ideas, theories, principles, methods, procedures, processes, systems, manners, concepts, or discoveries, even if they are expressed, described, explained or illustrated in a work.”

1.2 Are computer programs protected in the Law as literary works?

“Article 8. Objects of Copyright

“1. Objects of copyright shall be works in the domain of science, literature and art, namely:

[...]

3) computer software;

[...]”

“Article 18. Copyright with Respect to Computer Software

“Computer software shall be protected as literary works. Such a protection shall cover computer software irrespective of the method or form of its expression.”

1.3 Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

database(data compilation) –an aggregate of works, data or any other independent information in unrestricted form, including in electronic form, in which the selection and placement of components and its organization result from creative work, and the components of which are accessible individually and can be found via a special retrieval system based on electronic (computer) or other means;

[...]

“Article 8. Objects of Copyright

“1. Objects of copyright shall be works in the domain of science, literature and art, namely:

[...]

4) databases;

[...]

“Article 19. Copyright with Respect to Collections and Other Composite Works

“1. The author of a collection or other composite works (compiler) shall hold the copyright with respect to his selection and placement of the works and (or) other data resulting from his creative effort (compiling).

[...]

1.4 Is there a right of distribution in the Law?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

distribution of objects of copyright and (or) related rights –any action whereby objects of copyright and (or) related rights are offered to the public directly or indirectly, including notification of the public of these objects in such a manner that it is representative can access these objects at any place and at any time at their own discretion;

[...]

“Article 15. Economic Rights of an Author

“1. The economic rights of an author (or other copyright holder) shall include:

[...]

b) the exclusive right to allow or prohibit the use of a work by other persons.

“[...]

“3. The exclusive right of an author (or other copyright holder) to allow or prohibit the use of a work by other persons shall entitle him to allow or prohibit:

[...]

8) distribution of works by first sale or alienation by another method or by transferring for property lease or rental, and by other transfer prior to the first sale of specimens of a work;

“[...]

1.5 Is there a right of rental in the Law, and if so, to which works does it apply?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

transfer for property lease – assignment of the right to use and (or) possess an original or a specimen of a work, phonogram or videogram during a certain term with the aim of deriving direct or indirect commercial benefit;

[...]

“Article 15. Economic Rights of an Author

“1. The economic rights of an author (or other copyright holder) shall include.

[...]

b) the exclusive right to allow or prohibit the use of a work by other persons;

“[...]

“3. The exclusive right of an author (or other copyright holder) to allow or prohibit the use of a work by other persons shall entitle him to allow or prohibit:

[...]

10) transfer for property lease and (or) commercial rental after the first sale, alienation by another method of the original or specimen of audiovisual works, computer software, databases, musical works as sheet music, as well as of works fixed on a phonogram or videogram or in a computer-readable form;

[...]”

1.6 Is there a right of communication to the public in the Law?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

public communication (making available to the public) – air transmission, with the consent of copyright and (or) related right holders, via radio waves (as well as laser beams, gamma rays, etc.) including via satellite, or remote transmission by wire or any type of surface or underground (underwater) (conductor, fiber optic or other) cable of works, performances, any sounds and (or) images, their recordings in phonograms and videograms, broadcast organization programs, etc., where said transmission can be received by an unlimited number of persons in various places located at a distance from the place of transmission at which the images or sounds cannot be received without said transmission;

[...]”

“Article 15. Economic Rights of an Author

“1. The economic rights of an author (or other copyright holder) shall include:

[...]

b) the exclusive right to allow or prohibit the use of a work by other persons;

[...]

“3. The exclusive right of an author (or other copyright holder) to allow or prohibit the use of a work by other persons shall entitle him to allow or prohibit:

- 1) reproduction of works;
- 2) public performance and public communication of works;

[...]”

1.7 Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law?

“Article 15. Economic Rights of an Author

“1. The economic rights of an author (or other copyright holder) shall include:

[...]

- b) the exclusive right to allow or prohibit the use of a work by other persons.

[...]

“3. The exclusive right of an author (or other copyright holder) to allow or prohibit the use of a work by other persons shall entitle him to allow or prohibit:

[...]

- 9) making available to the public of his works in such a manner that its representatives can access the works at any place and at any time at their own discretion;

[...]”

1.8 Are photographic works given the same duration of protection as other works in the Law?

“Article 8. Objects of Copyright

“1. Objects of copyright shall be works in the domain of science, literature and art, namely:

[...]

- 10) photographic works, including works made by methods similar to photography;

[...]”

“Article 28: Period of Validity of Copyright

- “1. Copyright to a work shall arise as a result of the fact of its being created, and shall start being effective on the day of creation of the work.
- “2. Copyright shall remain in effect throughout the author’s lifetime and for 70 years after his death, except in the cases stipulated in this Article.
- “3. With respect to works promulgated anonymously or under a pseudonym, the period of validity of copyright shall terminate 70 years after the promulgation of the work. If a pseudonym accepted by an author leaves no doubts as to the author’s identity, or if the author of a work, promulgated anonymously or under a pseudonym, is disclosed not later than 70 years after the promulgation of the work, the term stipulated in part two of this Article shall apply.
- “4. Copyright to works created in co-authorship shall remain in effect throughout the co-authors’ lifetimes and for 70 years after the death of the last co-author.
- “5. If an entire work is published (promulgated), not in its entirety, but in consecutive volumes, parts, issues, series, etc., the period of validity of its copyright shall be stipulated separately with respect to each published (promulgated) portion of the work.
- “6. The term of protection of copyright with respect to works of posthumously rehabilitated authors shall remain in effect for 70 years after their rehabilitation.
- “7. Copyright to a work that was first published within 30 years after the author’s death shall remain in effect for 70 years after the date of the lawful publication thereof.
- “8. Any person who promulgates an unpublished work for the first time after expiration of the term of protection of copyright with respect to the work, shall enjoy protection equal to the protection of the author’s economic rights. The term of protection of these rights shall be 25 years after the time when the work was first promulgated.
- “9. The term of protection of copyright prescribed in parts 2-7 of this Article shall expire on January 1 of the year that follows the year of occurrence of the legal facts stipulated in said parts.
- “10. The author’s personal non-economic rights stipulated in Article 14 of this Law shall be protected in perpetuity.”

1.9 What is the effective time -frame for application of the rights in the Law?

“Section VI.

Final Provisions

“[...]

“6. To establish that objects of copyright and related rights that are the subject matter of an international treaty, to which Ukraine has acceded and that has been approved as binding by the Verkhovna Rada of Ukraine, and that were created or first published prior to the day of entry into force of this Law, shall be protected under this Law from the day of its entry into force, if as of this day said objects have not fallen into public domain in the country of origin by reason of expiration of the term of their protection in this country.

“[...]

“8. In Article 2 of the Law of Ukraine “On Ukraine’s Accession to the Berne Convention on Protection of Works of Literature and Art (Paris Act of 24 July 1971, as amended on 2 October 1979)” (*Vidomosti Verkhovnoyi Rady Ukrayiny* , 1995, No. 21, p. 155), to delete the words “notifying that said Conventions shall not apply to works that, as of the date of entry into force of this Convention for Ukraine, have already fallen into the public domain in its territory.

“9. The Ministry of Foreign Affairs of Ukraine shall notify the General Director of the World Intellectual Property Organization of the fact that Article 18 of the Berne Convention for the Protection of Literary and Artistic Works (Paris Act of 24 July 1979), after the date of entry into force of this Law, is in full effect in the territory of Ukraine.

“[...]

2. WPPT Provisions

2.1 Definitions

2.1.1 Is “performer” or “performers” defined in the Law?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

performer – an actor (theatre actor, cinema actor, etc.), singer, musician, dancer or other person who acts, sings, recites, declaims, plays a musical instrument, dances or otherwise performs works of literature, art or folklore works, circus, variety

and puppet shows, pantomimes, etc., as well as a conductor of musical and musical drama works;

[...]"

2.1.2 Is "phonogram" defined in the Law?

"Article 1. Definitions"

"For the purposes of this Law, the terms shall have the following meaning:

[...]

phonogram – sound recording on the appropriate material medium (magnetic tape or magnetic disk, gramophone record, CD, etc.) of a performance or any sounds, except for the sounds in the form of a recording that is part of an audiovisual work. A phonogram is the original material for producing specimens (copies) thereof;

[...]"

2.1.3 Is "fixation" defined in the Law?

"Article 1. Definitions"

"For the purposes of this Law, the terms shall have the following meaning:

[...]

recording (audio recording, video recording) – fixation of sounds and (or) moving images with the help of special technical means (including through digital presentation) on the appropriate material medium that allows their perception, reproduction or notification via the appropriate device;

[...]"

2.1.4 Is "producer of a phonogram" defined in the Law?

"Article 1. Definitions"

"For the purposes of this Law, the terms shall have the following meaning:

[...]

producer of a phonogram – an individual or a legal entity that initiated and is responsible for the first sound recording of a performance or any sounds;

[...]"

2.1.5 Is “publication of a fixed performance or phonogram” defined in the Law?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

publication of a work, phonogram, videogram – issuance into circulation, upon the consent of the author or other copyright and (or) related rightsholder, of specimens of a work, phonogram, videogram manufactured by printing, electronic or other means, in an amount that can satisfy, given the nature of the work, phonogram or videogram, the reasonable needs of the public, through their sale, transfer for property lease, home or commercial rental, granting access to them through electronic information systems in such a manner that any person can obtain it at any place and at any time at the person’s own discretion, or by assigning the title thereto or the right to possess them by other methods. Publication of a work, phonogram, videogram also means depositing a manuscript of a work, phonogram, or videogram in an open access depository with the possibility of obtaining a specimen (copy) of the work, phonogram, videogram therefrom;

[...]”

2.1.6 Is “broadcasting” defined in the Law?

Not found in the Law reviewed.

2.1.7 Is “communication to the public” defined in the Law?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

public communication (making available to the public) – air transmission, with the consent of copyright and (or) related rightsholders, via radio waves (as well as laser beams, gamma rays, etc.) including via satellite, or remote transmission by wire or any type of surface or underground (underwater) (conductor, fiberoptic or other) cable of works, performances, any sounds and (or) images, their recordings in phonograms and videograms, broadcast organization programs, etc., where said transmission can be received by an unlimited number of persons in various places located at a distance from the place of transmission at which the images or sounds cannot be received without said transmission;

[...]”

2.2 Istheconceptof“nationaltreatment”containedintheLaw?

“Article6.RightsofForeignPersonsandStatelessPersons

“Foreignpersonsandstatelesspersons,accordingtointernationalagreementsoronthe groundsoftheprincipleofreciprocity,shallenjoyrightsequaltothoseofthepersonsof UkrainestipulatedinthisLaw.”

2.3 Dopperformershavemoralrightsinthelaw?

“Article38.Performers’PersonalNon-EconomicRights,andRightstotheNameThat CanBeVestedwiththeProducersofPhonograms,VideogramsandBroadcast Organizations

“1. Theperformerofaworkshallholdthefollowingpersonalnon-economicrights:

- a) torequirerecognitionthathetheperformerofthework;
- b) torequirethathisnameorpseudonymbeindicatedorannouncedin connectionwitheachofhisappearances,recordingsorperformances(whenever possible);
- c) torequireprovisionof theproperrecordingqualityofhisperformanceand therighttocounteractanymanglingordistortionthereoforotheressential amendmentstheretothatcanprejudicehishonorandreputation.

“[...]”

2.4 Dopperformershaveeconomicrightsintheirunfixedperformances,andifso,which ones?

“Article39.Performers’EconomicRights

“1. Performers’economicrightsshallbetheirexclusiverighttopermitorprohibit otherpersonstakingthefollowingactions:

- a) publiccommunicationoftheirunfixed performances(livebroadcast);
- b) fixationinphonogramsorvideogramsoftheirperformancesathavenot beenfixedbefore;

“[...]”

2.5 Do performers have a right of reproduction in the Law?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

reproduction—manufacturing of one or more specimens of a work, videogram, phonogram in any material form, as well as recording them for temporary or permanent storage in electronic (including digital), optical or other computer-readable form;

[...]”

“Article 39. Performers’ Economic Rights

“1. Performers’ economic rights shall be their exclusive right to permit or prohibit other persons taking the following actions:

[...]

c) reproduction (direct and (or) indirect) of their performances that were fixed without their consent in a phonogram or videogram, or with their consent, if the reproduction is carried out for a purpose other than the one to which they granted their consent;

[...]”

2.6 Do performers have a right of distribution in the Law?

“Article 39. Performers’ Economic Rights

“1. Performers’ economic rights shall be their exclusive right to permit or prohibit other persons taking the following actions:

[...]

d) distribution of their performances fixed on a phonogram or videogram through first sale or other title transfer in the case when during the first fixation of a performance they did not authorize the manufacturer of a phonogram (manufacturer of a videogram) to subsequently reproduce it;

[...]”

2.7 Do performers have a right of rental in the Law?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

transfer for property lease – assignment of the right to use and (or) possess an original or a specimen of a work, phonogram or videogram during a certain term with the aim of deriving direct or indirect commercial benefit;

[...]”

“Article 39. Performers’ Economic Rights

“1. Performers’ economic rights shall be their exclusive right to permit or prohibit other persons taking the following actions:

[...]

e) commercial rental or property lease of their performances fixed on a phonogram or videogram, if, during the fixation, they did not grant their consent to the commercial rental and property lease, even after the performances have been distributed by or with the approval of the phonogram (videogram) producer;

“[...]

“4. If the performer, during the first fixation of a performance, expressly permits further reproduction thereof by the producer of a phonogram or the producer of a videogram, the performer shall be deemed to have assigned to the producer of the phonogram or the producer of the videogram the exclusive right to distribute the phonograms, videograms and specimens thereof by first sale or other transfer for ownership or possession, as well as by property lease, commercial rental and other transfer. The performer shall retain the right to receive a fair remuneration for said types of use of his performance through collective management organizations or by another method.”

2.8 Do performers have a right of making available of fixed performances in the Law?

“Article 39. Performers’ Economic Rights

“1. Performers’ economic rights shall be their exclusive right to permit or prohibit other persons taking the following actions:

[...]

f) distribution of their performances fixed on phonograms or videograms via any means of communication in a manner whereby any person can access them

from any place and at any time at their own discretion, if, during the fixation of the performance, they did not grant consent to such a type of distribution.

“[...]”

2.9 Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

reproduction—manufacturing of one or more specimens of a work, videogram, phonogram in any material form, as well as recording them for temporary or permanent storage in electronic (including digital), optical or other computer-readable form;

[...]”

“Article 40. Economic Rights of Producers of Phonograms And Producers of Videograms

“1. The economic rights of producers of phonograms and producers of videograms shall include their exclusive right to use their phonograms, videograms and the exclusive right to permit or prohibit other persons from taking the following actions:

a) reproduction (direct and (or) indirect) of their phonograms and videograms in any form and by any method;

[...]”

2.10 Do producers have a right of distribution in the Law?

“Article 40. Economic Rights of Producers of Phonograms And Producers of Videograms

“1. The economic rights of producers of phonograms and producers of videograms shall include their exclusive right to use their phonograms, videograms and the exclusive right to permit or prohibit other persons from taking the following actions:

[...]

“b) distribution among the public of phonograms, videograms and specimens thereof through first sale or other title transfer;

[...]”

2.11 Do producers have a right of rental in the Law?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

transfer for property lease – assignment of the right to use and (or) possess an original or a specimen of a work, phonogram or videogram during a certain term with the aim of deriving direct or indirect commercial benefit;

[...]”

“Article 40. Economic Rights of Producers of Phonograms and Producers of Videograms

“1. The economic rights of producers of phonograms and producers of videograms shall include their exclusive right to use their phonograms, videograms and the exclusive right to permit or prohibit other persons from taking the following actions:

[...]

c) commercial rental of phonograms, videograms and specimens thereof, even after they have been distributed by a producer of a phonogram or videogram or with their permission;

“[...]

“3. If phonograms, videograms or specimens thereof are lawfully put into civil circulation by the producer of a phonogram (videogram) or with his consent through first sale thereof in Ukraine, further distribution thereof by sale, bestowal, etc., shall be permitted without the consent of the producer of the phonogram (videogram) or his successor and without payment of remuneration to him. In this case, however, the right to transfer such specimens of phonograms (videograms) for property lease or commercial rental shall be reserved exclusively by the producer of the phonogram (videogram).”

2.12 Do producers have a right of making available of phonograms in the Law?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

public communication (making available to the public) – air transmission, with the consent of copyright and (or) related rightsholders, via radio waves (as well as laser beams, gamma rays, etc.) including via satellite, or remote transmission by

wires or any type of surface or underground (underwater) (conductor, fiberoptic or other) cable of works, performances, any sounds and (or) images, their recordings in phonograms and videograms, broadcast or organization programs, etc., where said transmission can be received by an unlimited number of persons in various places located at a distance from the place of transmission at which the images or sounds cannot be received without said transmission;

[...]"

"Article 40. Economic Rights of Producers of Phonograms and Producers of Videograms"

"1. The economic rights of producers of phonograms and producers of videograms shall include their exclusive right to use their phonograms, videograms and the exclusive right to permit or prohibit other persons from taking the following actions:

[...]

d) public communication of phonograms, videograms and specimens thereof via any means of communication in a manner whereby any person can access them from any place and at any time at their own discretion;

[...]"

2.13 Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

"Article 43. The Use of Phonograms and Videograms Published for a Commercial Purpose"

"1. The following direct or indirect commercial use of phonograms and videograms and specimens thereof shall be allowed without the consent of the manufacturers of phonograms (videograms), the phonograms (videograms) of which were published for commercial use, or of the performers whose performances are fixed on these phonograms (videograms), but with payment of remuneration:

a) public performance of a phonogram or a specimen thereof for public demonstration of a videogram or a specimen thereof;

b) broadcast of a performance fixed on a phonogram or videogram and specimen thereof;

c) wire (cable) broadcast of a performance fixed on a phonogram or videogram and specimen thereof.

"2. The collection of remuneration for the use of phonograms (videograms) indicated in part one of this Article and the supervision of their lawful uses shall be effected by the authorized collective management organizations specified by the Institution. The collected money shall be distributed among the collective management organizations

that are registered with the Institution on the basis of contracts that shall be made by and between authorized organizations and all collective management organizations. The remuneration received from the authorized organization shall be distributed by the appropriate collective management organization in the following proportions : performers – 50 percent, manufacturers of phonograms (videograms) – 50 percent.

“3. The amount of the remuneration for the use of phonograms (videograms) indicated in part one of this Article, the procedure and conditions for paying the remuneration shall be prescribed by the Cabinet of Ministers of Ukraine.

“4. Persons using phonograms, videograms or specimens thereof shall provide the organizations specified in part two of this Article with the exact information concerning the use thereof that is necessary for the collection and distribution of the remuneration.”

2.14 Are rights in the Law subject to any formalities?

“Article 37. Arising and Exercise of Related Rights

“1. The primary related right holders shall be the performer, the producer of a phonogram, the producer of a videogram, and the broadcaster organization.

“2. A related right shall arise by virtue of the performance of a work, the manufacturing of a phonogram, the manufacturing of a videogram, and the promulgation of a broadcaster organization’s transmission.

“3. No formalities will be required for the arising and exercise of related rights.

“[...]”

2.15 What is the term of protection for:

2.15.1 performers?

“Article 44. Period of Validity for Related Rights

“1. A performer’s economic rights shall be protected for 50 years from the date of the first recording of a performance.

A performer’s personal non-economic rights, stipulated in part one of Article 38 of this Law, shall be protected in perpetuity.

“[...]”

2.15.2 producers of phonograms?

“Article 44. Period of Validity for Related Rights

“[...]

“2. The rights of the producers of phonograms and videograms shall be protected for 50 years from the first publication of a phonogram (videogram), or from the first sound or video recording thereof if the phonogram (videogram) is not published within said term.

“[...]

2.16 What is the effective time -frame for application of rights in the Law?

“Section VI.

Final Provisions

“1. This Law shall take effect on the day of its publication, and shall apply to the legal relations that arise after it has taken effect.

“[...]

“5. To establish that this Law shall apply to performances and phonograms created or first published prior to the day of entry into force of this Law, if, as of this day, 50 years have not elapsed since their first recording or publication.

“6. To establish that objects of copyright and related rights that are the subject matter of an international treaty, to which Ukraine has acceded and that has been approved as binding by the Verkhovna Rada of Ukraine, and that were created or first published prior to the day of entry into force of this Law, shall be protected under this Law from the day of its entry into force, if as of this day said objects have not fallen into public domain in the country of origin by reason of expiration of the term of their protection in this country.

“[...]

“10. To add the following sentence to paragraph two of the Law of Ukraine “On The Accession To The Convention For The Protection Of Producers Of Phonograms Against Unauthorized Duplication Of Their Phonograms of 29 October 1971” (Vidomosti Verkhovnoyi Rady Ukrayiny, 1999, No. 32, p. 265):

‘With the aim of meeting the requirements set forth in said Convention, to apply, on a mutual basis, the national treatment of protection of related rights stipulated in the Law of Ukraine “On Copyright And Related Rights” to phonogram producers from the states - parties to the Convention and their phonograms, if the term of protection of these phonograms has not expired in the country of origin.’

“[...]

3. Common provisions

3.1 What limitations and exceptions are in the Law?

“Article 15. Economic Rights of an Author

“[...]

“6. The economic rights restrictions stipulated in Articles 21 through 25 of this Law shall be effected, provided that they do not prejudice use of a work or unjustifiably limit the author’s legitimate interests.

“[...]”

“Article 21. Free Use of a Work with the Indication of the Author’s Name

“The following shall be permitted without the consent of the author (or other copyright holder), but with mandatory indication of the author’s name and of the source of borrowing:

- 1) to use quotations (brief excerpts) from published works to the extent justified by the intended purpose, including quotations from newspaper and magazine articles in the form of press reviews, if this is required by the critical, polemic, scientific or informational nature of the work incorporating the quotations; to freely use quotations in the form of brief excerpts from performances and works incorporated in a program (videogram) or a broadcast program;
- 2) to use literary works and works of art to the extent justified by the intended purpose as illustrations in publications, broadcasts, sound recordings or video recordings of an educational nature;
- 3) to reproduce in the press, to carry out public performance or broadcast of previously published newspaper or magazine articles on current economic, political, religious and social issues, or broadcast works of the same nature, when the right to carry out such a reproduction, broadcast or other public communication has not been specially prohibited by the author;
- 4) to reproduce, in order to highlight current events by means of photography or cinematography, to carry out broadcasting or other public communication of the works seen or heard in the course of such events to the extent justified by the informational purpose;
- 5) to reproduce in catalogues works displayed at exhibitions, auctions, fairs and collections that are open to the public;
- 6) to issue works for the blind, published in Braille characters;
- 7) to reproduce works for court and administrative proceedings, to the extent justified by this purpose;

- 8) to carry out the public performance of musical works during official and religious ceremonies, as well as funerals, to the extent justified by the nature of such ceremonies;
- 9) to reproduce for informational purposes in newspapers and other periodicals, to transmit by air or otherwise broadcast publicly delivered speeches, addresses, reports and other similar works, to the extent justified by the intended purpose;
- 10) to reproduce a work for the purposes and under the conditions stipulated in Articles 22 through 25 of this Law.

This list of freely usable works is exhaustive.”

“Article 22. Free Reprographic Reproduction by Libraries and Archives of Specimens of a Work

“It shall be permissible for libraries and archives, the activity of which is not aimed, directly or indirectly, at earning profit, to reprographically reproduce, without the consent of the author or other copyright holder, one specimen of a work, subject to the following:

- 1) when reproduced work is a separately published article and other small works or excerpts from written works (except for computer software and databases), with or without illustrations, and when the reproduction is made upon individuals' requests, provided that:
 - a) a library or archive has sufficient reason to believe that such a specimen will be used for the purpose of education, training or private research;
 - b) reproduction of the work is a single, not a regular, event;
 - c) there are no restrictions on the part of collective management organizations concerning the terms and conditions for producing such specimens.
- 2) when reproduction is made to preserve or replace a lost, damaged or unusable specimen of the library or archive, or to renew a lost, damaged or unusable specimen from the storage of a similar library or archive, and it is impossible to obtain such a specimen by other means, and when reproduction of the work is a single, not a regular, event.”

“Article 23. Free Reproduction of Specimens of a Work for Training

“The following shall be permitted without the consent of the author or other copyright holder:

- 1) to reproduce excerpts from published written works or audiovisual works as illustrations for training, provided that the extent of the reproduction is consistent with said purpose;
- 2) for educational institutions to reprographically reproduce for classroom lessons published articles and other small works and excerpts from written works, with or without illustrations, provided that:
 - a) the extent of the reproduction is consistent with said purpose;
 - b) reproduction of the work is a single, not a regular, event;
 - c) there are no restrictions on the part of collective management organizations concerning the terms and conditions for the reproduction.

“Article 24. Free Copying, Modification and Decompilation of Computer Software

“1. A person lawfully possessing a specimen of computer software shall be entitled to do the following without the consent of the author or other person holding the copyright with respect to the software:

- 1) to change (modify) the computer software with the aim of ensuring its operation when it is used with the user's technical equipment, and performing the actions related to the operation of the computer software in accordance with its purpose, in particular, to record and store in computer memory and to correct evident errors, unless otherwise stipulated by an agreement with the author or other person holding the copyright;
- 2) to manufacture one copy of computer software, provided that the copy is made only for archival purposes or to replace a lawfully acquired specimen in case the original computer software is lost, destroyed or becomes unusable. In this case, the copy of the computer software shall not be used for purposes other than those specified in this clause and clause 1 of this part, and shall be destroyed if possession of a specimen of the computer software ceases to be lawful;
- 3) to decompile computer software (to transform its object code into output text) with the aim of obtaining the information required for the achievement of its interaction with independently developed computer software, subject to the following conditions:
 - a) this person previously had no other sources of access to the information necessary for the achievement of the interaction;
 - b) said actions are performed only with respect to those computer software portions that are necessary for the achievement of the interaction;

c) the information obtained upon decompilation shall be used only to achieve its interaction with other software, and shall not be transferred to other persons, except when this is necessary for the achievement of compatibility with other software, and shall not be used for the development of computer software that looks similar to the decompiled computer software, or for any other copyright-infringing action.

4) to observe, study and modify the functioning of computer software to understand the underlying ideas and principles, provided that this is done in the course of performing any actions such as loading, display, functioning, transfer, or storing in memory (saving) the computer software.

“2. The enforcement of the provisions of this Article shall not prejudice the use of computer software nor restrict the legitimate interests of the author and (or) of other person holding the copyright with respect to the computer software.”

“Article 25. Free Reproduction of Works for Personal Purposes

“1. It shall be permissible to reproduce exclusively for personal purposes or for a regular family circle without the consent of the author (or other copyright holder) and without payment of the author’s remuneration, works previously promulgated in a lawful way, except for the following:

- a) works of architecture in the form of buildings and facilities;
- b) computer software, except in the cases stipulated in Article 24 of this Law;
- c) to reprographically reproduce books, sheet music and original works of fine art, except in the cases stipulated in Articles 22 and 23 of this Law;
- d) works, performances of which have been fixed on phonograms or videograms, and specimens thereof.

“2. It shall be permissible to reproduce works and performances fixed on phonograms, videograms and specimens thereof, in home conditions and exclusively for personal purposes or for a regular family circle and close acquaintances of this family, without the consent of the author(s), performers, manufacturers of the phonograms, or manufacturers of the videograms, by paying remuneration. The specifics of the payment of the remuneration in this case are stipulated in Article 42 of this Law.”

“Article 42. Restriction of the Economic Rights of Performers, Phonogram and Videogram Producers and Broadcast Organizations

“1. It shall be permissible to use performances, phonograms, videograms or broadcast programs, and to fix, reproduce and present them for general notice, without the consent of the performers, phonogram, videogram producers and broadcast organizations, in the cases stipulated in Articles 21 through 25 of this Law concerning restriction of the

economic rights of the authors of literary, art and scientific works, if the following conditions are met:

- a) said objects are reproduced solely for training purposes or scientific research;
- b) the right to carry out reproduction, stipulated in subclause (a) of this part, shall not apply to the export of reproduced specimens of phonograms, videograms, broadcast programs outside the customs territory of Ukraine;
- c) related rightsholders shall preserve the right to receive a fair remuneration based on the quantity of reproduced specimens.

The use of objects of related rights without the consent of the related rightsholders, as stipulated in this part, shall be possible only if the personal non-economic rights of copyright and related rightsholders, stipulated in Articles 14 and 38 of this Law, are observed.

“2. It shall be permissible to reproduce the work and performances fixed on phonograms, and videograms and their specimens in home conditions and exclusively for personal purposes without the consent of the author(s), performers and producers of phonograms (videograms), but paying remuneration to them in the manner stipulated in part four of this Article.

“3. The use of objects of related rights stipulated in parts one and two of this Article without the consent of related rightsholders shall not prejudice the normal use of performances, phonograms, videograms and broadcast programs nor affect the legitimate interests of the performers, producers of phonograms, videograms and broadcast programs or other copyright and (or) related rightsholders.

“4. The remuneration of producers of phonograms and videograms and other persons holding copyright and (or) related rights with respect to the reproductions stipulated in part two of this Article shall be paid as deductions (interest) from (on) the value of equipment and (or) material media by the producers and (or) importers of the equipment and material media, with the use of which it is possible to carry out the reproduction of works fixed on phonograms and videograms exclusively for personal purposes in home conditions, except for:

- a) professional equipment and (or) material media not designed for use in home conditions;
- b) equipment and material media that are exported outside the customs territory of Ukraine;
- c) equipment and material media that are imported by an individual into the customs territory of Ukraine exclusively for personal purposes and without a commercial purpose.

“5. The amount of deductions (interest), indicated in parts two and four of this Article, to be paid by the manufacturers and (or) importers of the equipment and material media, shall be determined by the Cabinet of Ministers of Ukraine. This

money shall be remitted by the manufacturers and importers of the equipment and (or) material media to the collective management organizations specified by the Institution (hereinafter – “authorized organizations”). The collected money shall be distributed among the collective management organizations registered with the Institution on the basis of contracts that authorized organizations shall enter into with all collective management organizations. The importers shall remit this money to an authorized organization when they import goods into the custom territory of Ukraine, and to the manufacturers, at the end of each month after the sale of equipment and material media.

“6. The Institution and the authorized organizations specified by the Institution for the collection of money shall be entitled to require from manufacturers and importers information concerning the manufacturing, import and realization (sale) of the equipment and material media indicated in part four of this Article.

“7. The collected money specified in part two and four of this Article shall be distributed between the authors, performers, producers of phonograms and videograms. This money shall be distributed in the following proportions, unless otherwise stipulated in the contracts between the collective management organizations: authors – 50 percent, performers – 25 percent and producers of phonograms (videograms) – 25 percent.”

3.2 What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

technical means of protection – technical devices and (or) technological means designed to create technological obstacles to the infringement of copyright and (or) related rights during reception and (or) duplication of protected (encoded) recordings in phonograms (videograms) and broadcast organization transmissions, or to control access to the use of objects of copyright and related rights;

[...]”

“Article 50. Infringement of Copyright and Related Rights

“Copyright and (or) related rights infringements that give grounds for seeking remedies shall be:

[...]

f) any actions for the intentional circumvention of technical means of protection of copyright and (or) related rights, in particular the production, distribution, importation for distribution and use of means of circumvention;

[...]”

“Article 5 2. Civil Law Remedies for the protection of Copyright and Related Rights

“1. Persons holding copyright and related rights shall have the right to seek protection of their copyright and (or) related rights by lodging claims in compliance with the established procedure with a court of law and other bodies, pursuant to their powers.

“In the case of violation, by any person, of the copyright and (or) related rights stipulated in Article 50 of this Law, of non-observance of the conditions for using works and (or) objects of related rights stipulated by contract, for the use of works and objects of related rights in circumvention of technical means of protection or by the forging of rights-management information and (or) documents, or for the creation of a threat of unlawful use of objects of copyright and (or) related rights, and for other infringements of personal non-economic and economic rights of the persons holding copyright and (or) related rights, persons holding copyright and (or) related rights shall have the right:

- a) to require the recognition and renewal of their rights;
- b) to lodge claims with a court of law (arbitrazh court) requiring renewal of the infringed rights and (or) the termination of actions infringing copyright and (or) related rights or posing a threat of their violation;
- c) to lodge claims requiring reimbursement of moral (non-economic) losses;
- d) to lodge claims requiring reimbursement of losses (material damage), including lost profit, or collection of the income derived by the infringer as a result of his violation of copyright and (or) related rights, or payment of compensation;
- e) to require the termination of preparations for an infringement of copyright and (or) related rights, including the suspension of customs procedures, if there is a suspicion that counterfeit specimens of works, phonograms, videograms or means of circumvention might be allowed into or from the customs territory of Ukraine, in compliance with the procedure stipulated in the Customs Code of Ukraine;
- f) to participate in the inspection of the production premises, storage facilities, technological processes and business operations relating to the production of specimens of works, phonograms and videograms with respect to which there are grounds to suspect violation or threat of violation of copyright and (or) related rights, in compliance with the procedure established by the Cabinet of Ministers of Ukraine;
- g) to require, including by court procedure, the publication in the mass media of information about infringements of copyright and (or) related rights and of court judgments with respect to infringements;
- h) to require the provision, by the persons infringing the claimant's copyright and (or) related rights, of information about third parties involved in the manufacture and distribution of counterfeit specimens of works and objects of related rights or means of circumvention, and the relevant distribution channels;

i) to require other measures envisioned by legislation, concerning the protection of copy right and related rights.

“2. A court of law shall have the right to issue a resolution or award concerning:

a) the reimbursement of moral (non -economic) damages resulting from an infringement of copy right and (or) related rights, specifying the amount of the reimbursement;

b) the reimbursement of damages resulting from an infringement of copy right and (or) related rights;

c) collection from the infringer of copy right and (or) related rights of income derived from the infringement;

d) the payment of compensation, to be prescribed by the court in an amount from 10 to 50,000 minimum salaries, in lieu of damage reimbursement or income collection;

e) a prohibition on the publication of works, their performance or staging, the issuance of specimens of phonograms, videograms, their broadcasts, termination of their distribution, removal into protective custody (confiscation) of counterfeit specimens of works, phonograms, videograms or broadcast programs, as well as equipment and materials for the production and reproduction thereof, concerning publication in the press of the information about the infringement, etc., if, in the course of court proceedings, the fact of copy right and (or) related rights infringement, or the fact of actions posing a threat of infringement of these rights, is proven ;

f) to require the provision, by the persons infringing the claimant's copy right and (or) related rights, of information about third parties involved in the manufacture and distribution of counterfeit specimens of works and objects of related rights, or means of circumvention, and the distribution channels.

“When determining damages to be reimbursed to a person whose rights have been infringed, and when reimbursing moral (non -economic) damages, the court shall proceed from the merit of an infringement, the economic and moral damages suffered by the person holding the copy right and (or) related rights, and the estimated income that could have been derived by this person. The damages suffered by a person whose rights have been infringed may also include this person's court expenses and attorney fees.

“When determining compensation to be paid in lieu of damage reimbursement or income collection, the court shall determine, within the scope stipulated in clause “d” of this part, a compensation amount, taking into account the extent of the infringement and (or) the defendant's intentions.

“3. A court may resolve to impose upon an infringer a fine at the rate of 10 percent of the amount awarded to the claimant by the court. The fine shall be transferred to the State budget of Ukraine in compliance with the established procedure.

“4. A court may resolve to remove into protective custody (confiscate) all counterfeit specimens of works, phonograms, videograms or broadcast programs with respect to which it has been established that they were reproduced or distributed in contravention of copyright and (or) related rights, as well as means of circumvention. This shall also apply to all clichés, matrices, moulds, originals, magnetic tapes, photonegatives and other items used for the reproduction of specimens of works, phonograms, videograms, broadcast programs or means of circumvention, as well as the materials and equipment used for their reproduction and for the production of means of circumvention.

“Pursuant to a court resolution, counterfeit specimens of works (including computer software and databases), phonograms, videograms and broadcast programs that have been removed into protective custody, can be transferred to the copyright and (or) related rights holder whose rights have been infringed, at the holder's request. If this person does not request the transfer, the counterfeit specimens shall be destroyed, and the materials and equipment used for the reproduction of the counterfeit specimens shall be alienated and the relevant proceeds remitted to the State budget of Ukraine.”

“Article 53. Claim Preservation Measures in Proceedings Concerning Infringements of Copyright and Related Rights

“1. Prior to completing the consideration of a case on its merits, a judge shall have the right to issue, *suas sponte*, an order prohibiting the performance by a defendant with respect to whom there are sufficient grounds to believe that he is an infringer of copyright and (or) related rights, of certain actions, until the court issues its resolution or order, namely: production, reproduction, sale, transfer for property lease, rental, importation into the customs territory of Ukraine and other uses stipulated in this Law, as well as transportation, storage or possession for the purpose of introducing into civil circulation, of specimens of works, including computer software and databases, as well as recorded performances, phonograms, videograms, broadcast programs that are believed to be counterfeits, as well as means of circumvention.

“2. If there is sufficient evidence of such an infringement of copyright and (or) related rights, which results in criminal liability pursuant to the law, the inquiry body, the investigation body or the court shall take measures to ensure search for and the levying of an attachment on:

- a) specimens of works (including computer software and databases), recorded performances, phonograms, videograms and broadcast programs that are believed to be counterfeits, as well as means of circumvention;
- b) materials and equipment for the production and reproduction thereof;
- c) documents, invoices and other items that can serve as evidence of unlawful actions.

“3. If a defendant in proceedings concerning an infringement of copyright and (or) related rights denies access to the required information, or does not arrange for the submission thereof within an acceptable term, or if he hinders court procedures, and also with the aim of preserving the appropriate evidence of the alleged violation, especially when any delay can result in irreparable damage to the person holding the copyright and (or) related rights, or when there is an apparent risk that the evidence will be destroyed, the court or judges shall have the right to impose *suas sponte* on the applicant’s application, interim measures until a claim is lodged or until proceedings are initiated with the participation of the other party (defendant) by:

- a) issuing an order authorizing inspection of the premises in which the events, relating to an infringement of copyright and (or) related rights, are allegedly occurring;
- b) levying attachment on and removing into protective custody all specimens of works (including computers software and databases), recorded performances, phonograms, videograms and broadcast programs believed to be counterfeits and of means of circumvention, as well as materials and equipment used for the production and reproduction thereof ;
- c) levying attachment on and removing into protective custody invoices and other documents that can serve as evidence of actions infringing or creating a threat of infringement of (or certifying an intention to infringe) copyright and (or) related rights.

“An application for the use of interim measures shall be considered only with the applicant’s participation within two days from the day of its submission.

“The court order concerning the application of the interim measures shall be executed immediately, with the applicant’s participation, by the government enforcement service body.

“Prior to the issuance of a judgement concerning the application of the interim measures indicated in paragraph one of this part, the court shall have the right to require provision by the applicant of a justification that he is a holder of copyright and (or) related rights and that these rights have been infringed or will inevitably be infringed, and shall issue to the applicant a court judgement setting a pledge or an equivalent security sufficient for the prevention of abuse of an interim measure. The pledge shall consist of a deposit of money by the applicant or other persons in the deposit account of the court, or the transfer of other material valuables. The amount of the pledge (security) shall be set by the court based on the circumstances of the case; however, it shall not be less than 100 minimum tax -free incomes, nor shall it exceed the amount of the damage claimed.

“In the case of the application of the interim measures specified in paragraph one of this part, the defendant shall have the right to demand their alteration or cancellation, and the applicant shall lodge a claim with the court requiring protection of the infringed copyright and related rights not later than 15 calendar days from the day of application of an interim measure.

“The pledge shall be returned fully to the applicant if the court rejects the claim or grants the claim fully or in part. Otherwise, the pledge shall be used for the

implementation of the resolution concerning reimbursement to the defendant of the damages resulting from the application of the interim measures.

“Upon cancellation of the interim measures stipulated in paragraph one of this part, or if the proceedings reveal that no infringement was committed or there is no threat of an infringement of copyright and (or) related rights, the court shall have the right to issue, at the defendant’s request, a judgment concerning proper reimbursement by the claimant to the defendant of any damages resulting from these measures.”

3.3 What obligations are in the Law for the protection of “rights management information?”

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

rights management information – information, including in electronic (digital) form, that identifies an object of copyright and (or) related rights and the author or another person holding the copyright and (or) related rights to this object, or the information concerning the conditions of using an object of copyright and (or) related rights or any figures or codes in which such information is represented, when any of these elements of the information is attached to or incorporated into a specimen of an object of copyright and (or) related rights or appears in connection with its being presented for general notice;

[...]”

“Article 50. Infringement of Copyright and Related Rights

“Copyright and (or) related rights infringements that give grounds for seeking remedies shall be:

[...]

g) forging, altering or eliminating rights management information, in particular rights management information in electronic form, without the permission of the copyright and (or) related rights holders or the person implementing such management;

h) the distribution, importation into the customs territory of Ukraine for distribution purposes, and broadcast of objects of copyright and (or) related rights from which rights management information, in particular that in electronic form, has been eliminated or altered without the permission of the copyright and (or) related rights holders.”

“Article 52. Civil Law Remedies for the protection of Copyright and Related Rights

“1. Persons holding copyright and related rights shall have the right to seek protection of their copyright and (or) related rights by lodging claims in compliance with the established procedure with a court of law and other bodies, pursuant to their powers.

“In the case of violation, by any person, of the copyright and (or) related rights stipulated in Article 50 of this Law, of non-observance of the conditions for using works and (or) objects of related rights stipulated by contract, for the use of works and objects of related rights in circumvention of technical means of protection or by the forging of rights-management information and (or) documents, or for the creation of a threat of unlawful use of objects of copyright and (or) related rights, and for other infringements of personal non-economic and economic rights of the persons holding copyright and (or) related rights, persons holding copyright and (or) related rights shall have the right:

- a) to require the recognition and renewal of their rights;
- b) to lodge claims with a court of law (arbitrazh court) requiring renewal of the infringed rights and (or) the termination of actions infringing copyright and (or) related rights or posing a threat of their violation;
- c) to lodge claims requiring reimbursement of moral (non-economic) losses;
- d) to lodge claims requiring reimbursement of losses (material damage), including lost profit, or collection of the income derived by the infringer as a result of this violation of copyright and (or) related rights, or payment of compensation;
- e) to require the termination of preparations for an infringement of copyright and (or) related rights, including the suspension of customs procedures, if there is a suspicion that counterfeit specimens of works, phonograms, videograms or means of circumvention might be allowed into or from the customs territory of Ukraine, in compliance with the procedure stipulated in the Customs Code of Ukraine;
- f) to participate in the inspection of the production premises, storage facilities, technological processes and business operations relating to the production of specimens of works, phonograms and videograms with respect to which there are grounds to suspect violation or threat of violation of copyright and (or) related rights, in compliance with the procedure established by the Cabinet of Ministers of Ukraine;
- g) to require, including by court procedure, the publication in the mass media of information about infringements of copyright and (or) related rights and of court judgments with respect to infringements;
- h) to require the provision, by the persons infringing the claimant's copyright and (or) related rights, of information about third parties involved in the manufacture and distribution of counterfeit specimens of works and objects of related rights or means of circumvention, and the relevant distribution channels;

i) to require other measures envisioned by legislation, concerning the protection of copyright and related rights.

“2. A court of law shall have the right to issue a resolution or award concerning:

a) the reimbursement of moral (non-economic) damages resulting from an infringement of copyright and (or) related rights, specifying the amount of the reimbursement;

b) the reimbursement of damages resulting from an infringement of copyright and (or) related rights;

c) collection from the infringer of copyright and (or) related rights of income derived from the infringement;

d) the payment of compensation, to be prescribed by the court in an amount from 10 to 50,000 minimum salaries, in lieu of damage reimbursement or income collection;

e) a prohibition on the publication of works, their performance or staging, the issuance of specimens of phonograms, videograms, their broadcasts, termination of their distribution, removal into protective custody (confiscation) of counterfeit specimens of works, phonograms, videograms or broadcast programs, as well as equipment and materials for the production and reproduction thereof, concerning publication in the press of the information about the infringement, etc., if, in the course of court proceedings, the fact of copyright and (or) related rights infringement, or the fact of actions posing a threat of infringement of these rights, is proven;

f) to require the provision, by the persons infringing the claimant's copyright and (or) related rights, of information about third parties involved in the manufacture and distribution of counterfeit specimens of works and objects of related rights, or means of circumvention, and the distribution channels.

“When determining damages to be reimbursed to a person whose rights have been infringed, and when reimbursing moral (non-economic) damages, the court shall proceed from the merits of an infringement, the economic and moral damages suffered by the person holding the copyright and (or) related rights, and the estimated income that could have been derived by this person. The damages suffered by a person whose rights have been infringed may also include this person's court expenses and attorney fees.

“When determining compensation to be paid in lieu of damage reimbursement or income collection, the court shall determine, within the scope stipulated in clause “d” of this part, a compensation amount, taking into account the extent of the infringement and (or) the defendant's intentions.

“3. A court may resolve to impose upon an infringer a fine at the rate of 10 percent of the amount awarded to the claimant by the court. Fines shall be transferred to the State budget of Ukraine in compliance with the established procedure.

“4. A court may resolve to remove into protective custody (confiscate) all counterfeit specimens of works, phonograms, videograms or broadcast programs with respect to which it has been established that they were produced or distributed in contravention of copyright and (or) related rights, as well as means of circumvention. This shall also apply to all clichés, matrices, moulds, originals, magnetic tapes, photonegatives and other items used for the reproduction of specimens of works, phonograms, videograms, broadcast programs or means of circumvention, as well as the materials and equipment used for their reproduction and for the production of means of circumvention.

“Pursuant to a court resolution, counterfeit specimens of works (including computer software and databases), phonograms, videograms and broadcast programs that have been removed into protective custody, can be transferred to the copyright and (or) related rights holder whose rights have been infringed, at the holder's request. If this person does not request the transfer, the counterfeit specimens shall be destroyed, and the materials and equipment used for the reproduction of the counterfeit specimens shall be alienated and the relevant proceeds remitted to the State budget of Ukraine.”

“Article 53. Claim Preservation Measures in Proceedings Concerning Infringements of Copyright and Related Rights

“1. Prior to completing the consideration of a case on its merits, a judge shall have the right to issue, *suas sponte*, an order prohibiting the performance by a defendant with respect to whom there are sufficient grounds to believe that he is an infringer of copyright and (or) related rights, of certain actions, until the court issues its resolution or order, namely: production, reproduction, sale, transfer for property lease, rental, importation into the customs territory of Ukraine and other uses stipulated in this Law, as well as transportation, storage or possession for the purpose of introducing into civil circulation, of specimens of works, including computer software and databases, as well as recorded performances, phonograms, videograms, broadcast programs that are believed to be counterfeits, as well as means of circumvention.

“2. If there is sufficient evidence of such an infringement of copyright and (or) related rights, which results in criminal liability pursuant to the law, the inquiry body, the investigation body or the court shall take measures to ensure a search for and the levying of an attachment on:

- a) specimens of works (including computer software and databases), recorded performances, phonograms, videograms and broadcast programs that are believed to be counterfeits, as well as means of circumvention;
- b) materials and equipment for the production and reproduction thereof;
- c) documents, invoices and other items that can serve as evidence of unlawful actions.

“3. If a defendant in proceedings concerning an infringement of copyright and (or) related rights denies access to the required information, or does not arrange for the submission thereof within an acceptable term, or if he hinders court procedures, and also with the aim of preserving the appropriate evidence of the alleged violation, especially when any delay can result in irreparable damage to the person holding the

copyright and (or) related rights, or when there is an apparent risk that the evidence will be destroyed, the court or judges shall have the right to impose *suas sponte* on the applicant's application, interim measures until a claim is lodged or until proceedings are initiated with the participation of the other party (defendant) by:

- a) issuing an order authorizing inspection of the premises in which the events, relating to an infringement of copyright and (or) related rights, are allegedly occurring;
- b) levying attachment on and removing into protective custody all specimens of works (including computer software and databases), recorded performances, phonograms, videograms and broadcast programs believed to be counterfeits and of means of circumvention, as well as materials and equipment used for the production and reproduction thereof ;
- c) levying attachment on and removing into protective custody invoices and other documents that can serve as evidence of actions infringing or creating a threat of infringement of (or certifying an intention to infringe) copyright and (or) related rights.

“An application for the use of interim measures shall be considered only with the applicant's participation within two days from the day of its submission.

“The court order concerning the application of the interim measures shall be executed immediately, with the applicant's participation, by the government enforcement service body.

“Prior to the issuance of a judgement concerning the application of the interim measures indicated in paragraph one of this part, the court shall have the right to require provision by the applicant of a justification that he is a holder of copyright and (or) related rights and that these rights have been infringed or will inevitably be infringed, and shall issue to the applicant a court judgement setting a pledge or an equivalent security sufficient for the prevention of a use of an interim measure. The pledge shall consist of a deposit of money by the applicant or other persons in the deposit account of the court, or the transfer of other material valuables. The amount of the pledge (security) shall be set by the court based on the circumstances of the case; however, it shall not be less than 100 minimum tax -free incomes, nor shall it exceed the amount of the damage claimed.

“In the case of the application of the interim measures specified in paragraph one of this part, the defendant shall have the right to demand their alteration or cancellation, and the applicant shall lodge a claim with the court requiring protection of the infringed copyright and related rights not later than 15 calendar days from the day of application of an interim measure.

“The pledge shall be returned fully to the applicant if the court rejects the claim or grants the claim fully or in part. Otherwise, the pledge shall be used for the implementation of the resolution concerning reimbursement to the defendant of the damage resulting from the application of the interim measures.

“Upon cancellation of the interim measures stipulated in paragraph one of this part, or if the proceedings reveal that no infringement was committed or there is no threat of an infringement of copyright and (or) related rights, the court shall have the right to issue, at the defendant’s request, a judgement concerning proper reimbursement by the claimant to the defendant of any damages resulting from these measures.”

3.4 Generally, what measures for enforcement of rights are in the Law?

“Article 51. The Procedure for Protecting Copyright and Related Rights

“The protection of personal non-economic and economic rights of copyright and (or) related rightsholders shall be effected in compliance with the procedure prescribed by administrative, civil and criminal legislation.”

“Article 52: Civil Law Remedies for the protection of Copyright and Related Rights

“1. Persons holding copyright and related rights shall have the right to seek protection of their copyright and (or) related rights by lodging claims in compliance with the established procedure with a court of law and other bodies, pursuant to their powers.

“In the case of violation, by any person, of the copyright and (or) related rights stipulated in Article 50 of this Law, of non-observance of the conditions for using works and (or) objects of related rights stipulated by contract, for the use of works and objects of related rights in circumvention of technical means of protection or by the forging of rights-management information and (or) documents, or for the creation of a threat of unlawful use of objects of copyright and (or) related rights, and for other infringements of personal non-economic and economic rights of the persons holding copyright and (or) related rights, persons holding copyright and (or) related rights shall have the right:

- a) to require the recognition and renewal of their rights;
- b) to lodge claims with a court of law (arbitrazh court) requiring renewal of the infringed rights and (or) the termination of actions infringing copyright and (or) related rights or posing a threat of their violation;
- c) to lodge claims requiring reimbursement of moral (non-economic) losses;
- d) to lodge claims requiring reimbursement of losses (material damage), including lost profit, or collection of the income derived by the infringer as a result of this violation of copyright and (or) related rights, or payment of compensation;
- e) to require the termination of preparations for an infringement of copyright and (or) related rights, including the suspension of customs procedures, if there is a suspicion that counterfeit specimens of works, phonograms, videograms or means of circumvention might be allowed into or from the customs territory of Ukraine, in compliance with the procedure stipulated in the Customs Code of Ukraine;

f) to participate in the inspection of the production premises, storage facilities, technological processes and business operations relating to the production of specimens of works, phonograms and videograms with respect to which there are grounds to suspect violation or threat of violation of copyright and (or) related rights, in compliance with the procedure established by the Cabinet of Ministers of Ukraine;

g) to require, including by court procedure, the publication in the mass media of information about infringements of copyright and (or) related rights and of court judgments with respect to infringements;

h) to require the provision, by the persons infringing the claimant's copyright and (or) related rights, of information about third parties involved in the manufacture and distribution of counterfeit specimens of works and objects of related rights or means of circumvention, and the relevant distribution channels;

i) to require other measures envisioned by legislation, concerning the protection of copyright and related rights.

“2. A court of law shall have the right to issue a resolution or award concerning:

a) the reimbursement of moral (non-economic) damages resulting from an infringement of copyright and (or) related rights, specifying the amount of the reimbursement;

b) the reimbursement of damages resulting from an infringement of copyright and (or) related rights;

c) collection from the infringer of copyright and (or) related rights of income derived from the infringement;

d) the payment of compensation, to be prescribed by the court in an amount from 10 to 50,000 minimum salaries, in lieu of damages, reimbursement or income collection;

e) a prohibition on the publication of works, their performance or staging, the issuance of specimens of phonograms, videograms, their broadcasts, termination of their distribution, removal into protective custody (confiscation) of counterfeit specimens of works, phonograms, videograms or broadcast programs, as well as equipment and materials for the production and reproduction thereof, concerning publication in the press of the information about the infringement, etc., if, in the course of court proceedings, the fact of copyright and (or) related rights infringement, or the fact of actions posing a threat of infringement of these rights, is proven;

f) to require the provision, by the persons infringing the claimant's copyright and (or) related rights, of information about third parties involved in the manufacture and distribution of counterfeit specimens of works and objects of related rights, or means of circumvention, and the distribution channels.

“When determining the amount to be reimbursed to a person whose rights have been infringed, and when reimbursing moral (non-economic) damages, the court shall proceed from the merits of an infringement, the economic and moral damages suffered by the person holding the copyright and (or) economic rights, and the estimated income that could have been derived by this person. The damages suffered by a person whose rights have been infringed may also include this person’s court expenses and attorney fees.

“When determining compensation to be paid in lieu of damage reimbursement or income collection, the court shall determine, within the scope stipulated in clause “d” of this part, a compensation amount, taking into account the extent of the infringement and (or) the defendant’s intentions.

“3. A court may resolve to impose upon an infringer a fine at the rate of 10 percent of the amount awarded to the claimant by the court. The fine shall be transferred to the State budget of Ukraine in compliance with the established procedure.

“4. A court may resolve to remove into protective custody (confiscate) all counterfeit specimens of works, phonograms, videograms or broadcast programs with respect to which it has been established that they were reproduced or distributed in contravention of copyright and (or) economic rights, as well as means of circumvention. This shall also apply to all clichés, matrices, moulds, originals, magnetic tapes, photonegatives and other items used for the reproduction of specimens of works, phonograms, videograms or broadcast programs or means of circumvention, as well as the materials and equipment used for their reproduction and for the production of means of circumvention. ms,

“Pursuant to a court resolution, counterfeit specimens of works (including computer software and databases), phonograms, videograms and broadcast programs that have been removed into protective custody, can be transferred to the copyright and (or) related right holder whose rights have been infringed, at the holder’s request. If this person does not request the transfer, the counterfeit specimens shall be destroyed, and the materials and equipment used for the reproduction of the counterfeit specimens shall be alienated and the relevant proceeds remitted to the State budget of Ukraine.”

“Article 53: Claim Preservation Measures in Proceedings Concerning Infringements of Copyright and Related Rights

“1. Prior to completing the consideration of a case on its merits, a judge shall have the right to issue, *suas sponte*, an order prohibiting the performance by a defendant with respect to whom there are sufficient grounds to believe that he is an infringer of copyright and (or) related rights, of certain actions, until the court issues its resolution or order, namely: production, reproduction, sale, transfer for property lease, rental, importation into the customs territory of Ukraine and other uses stipulated in this Law, as well as transportation, storage or possession for the purpose of introducing into civil circulation, of specimens of works, including computer software and databases, as well as recorded performances, phonograms, videograms, broadcast programs that are believed to be counterfeits, as well as means of circumvention.

“2. If there is sufficient evidence of such an infringement of copyright and (or) related rights, which results in criminal liability pursuant to the law, the inquiry body, the

investigation body or the court shall take measures to ensure search for and the levying of an attachment on:

- a) specimens of works (including computer software and databases), recorded performances, phonograms, videograms and broadcast programs that are believed to be counterfeits, as well as means of circumvention;
- b) materials and equipment for the production and reproduction thereof;
- c) documents, invoices and other items that can serve as evidence of unlawful actions.

“3. If a defendant in proceedings concerning an infringement of copyright and (or) related rights denies access to the required information, or does not arrange for the submission thereof within an acceptable term, or if he hinders court procedures, and also with the aim of preserving the appropriate evidence of the alleged violation, especially when any delay can result in irreparable damage to the person holding the copyright and (or) related rights, or when there is an apparent risk that the evidence will be destroyed, the court or judges shall have the right to impose *suas sponte* on the applicant’s application, interim measures until a claim is lodged or until proceedings are initiated with the participation of the other party (defendant) by:

- a) issuing an order authorizing inspection of the premises in which the events, relating to an infringement of copyright and (or) related rights, are allegedly occurring;
- b) levying attachment on and removing into protective custody all specimens of works (including computer software and databases), recorded performances, phonograms, videograms and broadcast programs believed to be counterfeits and of means of circumvention, as well as materials and equipment used for the production and reproduction thereof ;
- c) levying attachment on and removing into protective custody invoices and other documents that can serve as evidence of actions infringing or creating a threat of infringement of (or certifying an intention to infringe) copyright and (or) related rights.

“An application for the use of interim measures shall be considered only with the applicant’s participation within two days from the day of its submission.

“The court order concerning the application of the interim measures shall be executed immediately, with the applicant’s participation, by the government enforcement service body.

“Prior to the issuance of a judgment concerning the application of the interim measures indicated in paragraph one of this part, the court shall have the right to require provision by the applicant of a justification that he is a holder of copyright and (or) related rights and that these rights have been infringed or will inevitably be infringed, and shall issue to the applicant a court judgment setting a pledge or an equivalent security sufficient for the prevention of abuse of an interim measure. The pledge shall consist of a deposit of money by the applicant or other persons in the deposit account of

the court, or the transfer of other material valuables. The amount of the pledge (security) shall be set by the court based on the circumstances of the case; however, it shall not be less than 100 minimum tax -free incomes, nor shall it exceed the amount of the damage claimed.

“In the case of the application of the interim measures specified in paragraph one of this part, the defendant shall have the right to demand their alteration or cancellation, and the applicant shall lodge a claim with the court requiring protection of the infringed copyright and related rights not later than 15 calendar days from the day of application of an interim measure.

“The pledge shall be returned fully to the applicant if the court rejects the claim or grants the claim fully or in part. Otherwise, the pledge shall be used for the implementation of the resolution concerning reimbursement to the defendant of the damage resulting from the application of the interim measures.

“Upon cancellation of the interim measures stipulated in paragraph one of this part, or if the proceedings reveal that no infringement was committed or there is no threat of an infringement of copyright and (or) related rights, the court shall have the right to issue, at the defendant’s request, a judgement concerning proper reimbursement by the claimant to the defendant of any damages resulting from these measures.”

3.5 How does the law define the liability of the Internet service providers?

Not found in the Law reviewed.

3.6 Are there any provisions in the Law on temporary storage?

“Article 1. Definitions

“For the purposes of this Law, the terms shall have the following meaning:

[...]

reproduction – manufacturing of one or more specimens of a work, videogram, phonogram in any material form, as well as recording them for temporary or permanent storage in electronic (including digital), optical or other computer readable form;

[...]”

3.7 Are there any explicit provisions to ensure that the anti -circumvention provisions do not restrict the operation of limitations/exception to rights provided in the Law?

Not found in the Law reviewed.

UNITED STATES OF AMERICA

(Law Reviewed: 17 USA 101 *et seq.*, as amended up to, and including, ...)

1. WCT provisions

1.1. Does the scope of copyright protection in the Law extend only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts?

“Section 102. - Subject Matter of Copyright: In General

“[...]

“(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”

“[...]

1.2. Are computer programs protected in the Law as literary works?

“Section 101. - Definitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

“[...]

‘Literary works’ are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

“[...]

‘A computer program’ is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result

“[...]

“Section 102. -Subject Matter of Copyright: In General

“(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

(1) literary works...

[...]

1.3. Are compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, protected in the Law?

“Section 101. -Definitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

[...]

A ‘compilation’ is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term ‘compilation’ includes collective works.

“[...]

“Section 103. -Subject Matter of Copyright: Compilations and derivative works

“(a) The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

“(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.”

1.4. IstherearightofdistributionintheLaw?

“Section106.- Exclusiverightsincopyrightedworks

“Subjecttosections107through121,theownerofcopyrightunderthistitlehasthe exclusiverightstodoandtoauthorizeanyofthefollowing:

[...]

(3) todistributecopiesorphonorecordsofthecopyrightedworktothepublic bysaleorothertransferofownership,orbyrental,lease,orlending;”

[...]”

1.5. IstherearightofrentalintheLaw,an difso,towhichworksdoesitapply?

“Section101.- Definitions

“Exceptasotherwiseprovidedinthistitle,asusedinthistitle,thefollowingtermsand theirvariantformsmeanthefollowing:

[...]

‘Copies’arematerialobjects,otherthanphonorecords,inwhichaworkisfixed byanymethodnowknownorlaterdeveloped,andfromwhichtheworkcanbe perceived,reproduced,orotherwisecommunicated,eitherdirectlyorwiththead ofamachineordevice.Theterm‘copies’includesthematerialobject,otherthan aphonorecord,inwhichtheworkisfirstfixed;

[...]

‘Phonorecords’arematerialobjectsinwhichsounds,otherthanthose accompanyingamotionpictureorotheraudiovisualwork,arefixedbyany methodnowknownorlaterdeveloped,an dfromwhichthesounds canbe perceived,reproduced,orotherwisecommunicated,eitherdirectlyorwiththead ofamachineordevice.Theterm‘phonorecords’includesthematerialobjectin whichthesoundsarefirstfixed;

[...]”

“Section106.- Excl usiverightsincopyrightedworks

“Subjecttosections107through121,theownerofcopyrightunderthistitlehasthe exclusiverightstodoandtoauthorizeanyofthefollowing:

[...]

(3) todistributecopiesorphonorecordsofthecopyrightedwork tothepublic bysaleorothertransferofownership,orbyrental,lease,orlending;

[...]"

1.6. IstherearightofcommunicationtothepublicintheLaw?

“Section101.- Definitions

“Exceptasotherwiseprovidedinthistitle,asusedinthistitle,thefollowingtermsand theirvariantformsmeanthefollowing:

[...]

Toperformordisplayawork“publicly”means:

- (1) toperformordisplayitataplaceopentothepublicoratanyplace whereasubstantialnumberofpersonsoutsideofanormalcircleofafamily anditssocialacquaintancesisgathered;or
- (2) totransmitorotherwisecommunicateaperformanceordisplayofthe worktoaplacespecifiedbyclause(1)ortothepublic,bymeansofany deviceorprocess,whetherthemembers ofthepubliccapableofreceiving theperformanceordisplayreceiveitinthesameplaceorinseparateplaces andatthesametimeoratdifferenttimes.

[...]"

“Section106.- Exclusiverightsincopyrightedworks

“Subjecttosections107through121,thewownerofcopyrightunderthistitlehas the exclusiverightstodoandtoauthorizeanyofthefollowing:

[...]

- (4) inthecaseofliterary,musical,dramatic,andchoreographicworks, pantomimes,andmotionpicturesandotheraudiovisualworks,to performthe copyrightedworkpublicly;
- (5) inthecaseofliterary,musical,dramatic,andchoreographicworks, pantomimes,andpictorial,graphic,orsculpturalworks,includingtheindividual imagesofamotionpictureorotheraudiovisualwork,to displaythecopyrighted workpublicly;and
- (6) inthecaseofsoundrecordings,topperformthecopyrightedworkpublicly bymeansofadigitalaudiotransmission.”

1.7. Is a right of making available to the public of works in such a way that members of the public might access these works from a place and at a time individually chosen by them, contained in the Law? fthe

“Section 101.- Definitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

[...]

To perform or display a work ‘publicly’ means:

- (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
- (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

[...]”

“Section 106.- Exclusive rights in copyrighted works

“Subject to sections 107 through 121, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

[...]

- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.”

1.8. Are photographic works given the same duration of protection as other works in the Law?

“Section 101.- Definitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

[...]

‘Pictorial, graphic, and sculptural works’ include two dimensional and three dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

[...]”

“Section 302.- Duration of Copyright: Works created on or after January 1, 1978

“(a) In General.

Copyright in a work created on or after January 1, 1978, subsists from its creation and, except as provided by the following subsections, endures for a term consisting of the life of the author and 70 years after the author’s death.

“[...]”

1.9. What is the effective time -frame for application of the rights in the Law?

“Berne Convention criteria

“Section 104.- Subject Matter Of Copyright: National Origin

“(a) Unpublished Works.

The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

“(b) Published Works.

The works specified by sections 102 and 103, when published, are subject to protection under this title if:

- (1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, or is a stateless person, wherever that person may be domiciled; or
- (2) the work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party; or
- (3) the work is a sound recording that was first fixed in a treaty party; or
- (4) the work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or
- (5) the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or
- (6) the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

For purposes of paragraph (2), a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be.

“(c) Effect of Berne Convention.

No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto.

“(d) Effect of Phonograms Treaties.

Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the

adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.”

“104A. -*Copyright In Restored Works*

“(a) Automatic Protection and Term.

(1) Term.

(A) Copyright subsists, in accordance with this section, in restored works, and vests automatically on the date of restoration.

(B) Any work in which copyright is restored under this section shall subsist for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.

(2) Exception.

Any work in which the copyright was ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof, is not a restored work.

“(b) Ownership of Restored Copyright.

A restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work.

“(c) Filing of Notice of Intent to Enforce Restored Copyright Against Reliance Parties.

On or after the date of restoration, any person who owns a copyright in a restored work or an exclusive right therein may file with the Copyright Office a notice of intent to enforce that person’s copyright or exclusive right or may serve such a notice directly on a reliance party. Acceptance of a notice by the Copyright Office is effective as to any reliance parties but shall not create a presumption of the validity of any of the facts stated therein. Service on a reliance party is effective as to that reliance party and any other reliance parties with actual knowledge of such service and of the contents of that notice.

“(d) Remedies for Infringement of Restored Copyrights.

(1) Enforcement of copyright in restored works in the absence of a reliance party.

As against any party who is not a reliance party, the remedies provided in chapter 5 of this title shall be available on or after the date of restoration of a restored copyright with respect to an act of infringement of the restored copyright that is commenced on or after the date of restoration.

(2) Enforcement of copyright in restored works as against reliance parties.

As against a reliance party, except to the extent provided in paragraphs (3) and (4), the remedies provided in chapter 5 of this title shall be available, with respect to an act of infringement of a restored copyright, on or after the date of restoration of the restored copyright if the requirements of either of the following subparagraphs are met:

(A) (i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) files with the Copyright Office, during the 24-month period beginning on the date of restoration, a notice of intent to enforce the restored copyright; and

(ii) (I) the act of infringement commenced after the end of the 12-month period beginning on the date of publication of the notice in the Federal Register;

(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after publication of the notice of intent in the Federal Register.

(B) (i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) serves upon a reliance party a notice of intent to enforce a restored copyright; and

(ii) (I) the act of infringement commenced after the end of the 12-month period beginning on the date the notice of intent is received;

(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for the infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after receipt of the notice of intent.

In the event that notice is provided under both subparagraphs (A) and (B), the 12-month period referred to in such subparagraphs shall run from the earlier of publication or service of notice.

(3) Existing derivative works.

(A) In the case of a derivative work that is based upon a restored work and is created

(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the restored work is an eligible country on such date, or

(ii) before the date on which the source country of the restored work becomes an eligible country, if that country is not an eligible country on such date of enactment, a reliance party may continue to exploit that derivative work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.

(B) In the absence of an agreement between the parties, the amount of such compensation shall be determined by a action in United States district court, and shall reflect any harm to the actual or potential market for or value of the restored work from the reliance party's continued exploitation of the work, as well as compensation for the relative contributions of expression of the author of the restored work and the reliance party to the derivative work.

(4) Commencement of infringement for reliance parties.

“For purposes of section 412, in the case of reliance parties, infringement shall be deemed to have commenced before registration when acts which would have constituted infringement had the restored work been subject to copyright were recommenced before the date of restoration.

“(e) Notices of Intent To Enforce a Restored Copyright.

(1) Notices of intent filed with the copyright office.

(A) (i) A notice of intent filed with the Copyright Office to enforce a restored copyright shall be signed by the owner of the restored copyright or the owner of an exclusive right therein, who files the notice under subsection (d)(2)(A)(i) (hereafter in this paragraph referred to as the “owner”), or by the owner's agent, shall identify the title of the restored work, and shall include an English translation of the title and any other alternative titles known to the owner by which the restored work may be identified, and an address and telephone number at which the owner may be contacted. If the notice is signed by an agent, the agency relationship must have been constituted in a writing signed by the owner before the filing of the notice. The Copyright Office may specifically require in regulations other information to be included in the notice, but failure to provide such

other information shall not invalidate the notice or be a basis for refusal to list the restored work in the Federal Register.

(ii) If a work in which copyright is restored has no formal title, it shall be described in the notice of intent in details sufficient to identify it.

(iii) Minor errors or omissions may be corrected by further notice at any time after the notice of intent is filed. Notices of corrections for such minor errors or omissions shall be accepted after the period established in subsection (d)(2)(A)(i). Notices shall be published in the Federal Register pursuant to subparagraph (B).

(B) (i) The Register of Copyrights shall publish in the Federal Register, commencing not later than 4 months after the date of restoration for a particular nation and every 4 months thereafter for a period of 2 years, lists identifying restored works and the ownership thereof if a notice of intent to enforce a restored copyright has been filed.

ii) Not less than 1 list containing all notices of intent to enforce shall be maintained in the Public Information Office of the Copyright Office and shall be available for public inspection and copying during regular business hours pursuant to sections 705 and 708.

(C) The Register of Copyrights is authorized to fix reasonable fees based on the costs of receipt, processing, recording, and publication of notices of intent to enforce a restored copyright and corrections thereto.

(D) (i) Not later than 90 days before the date the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, the Copyright Office shall issue and publish in the Federal Register regulations governing the filing under this subsection of notices of intent to enforce a restored copyright.

(ii) Such regulations shall permit owners of restored copyrights to file simultaneously for registration of the restored copyright.

(2) Notices of intent served on a reliance party. -

(A) Notices of intent to enforce a restored copyright may be served on a reliance party at any time after the date of restoration of the restored copyright.

(B) Notices of intent to enforce a restored copyright served on a reliance party shall be signed by the owner or the owner's agent, shall

identify the restored work and the work in which the restored work is used, if any, in details sufficient to identify them, and shall include an English translation of the title, any other alternative titles known to the owner by which the work may be identified, the use or uses to which the owner objects, and an address and telephone number at which the reliance party may contact the owner. If the notice is signed by an agent, the agency relationship must have been constituted in writing and signed by the owner before service of the notice.

(3) Effect of material false statements.

Any material false statement knowingly made with respect to any restored copyright identified in any notice of intent shall make void all claims and assertions made with respect to such restored copyright.

“(f) Immunity From Warranty and Related Liability.

(1) In general. Any person who warrants, promises, or guarantees that a work does not violate an exclusive right granted in section 106 shall not be liable for legal, equitable, arbitral, or administrative relief if the warranty, promise, or guarantee is breached by virtue of the restoration of copyright under this section, if such warranty, promise, or guarantee is made before January 1, 1995.

(2) Performances. No person shall be required to perform any act if such performance is made infringing by virtue of the restoration of copyright under the provisions of this section, if the obligation to perform was undertaken before January 1, 1995.

“(g) Proclamation of Copyright Restoration. Whenever the President finds that a particular foreign nation extends, to works by authors who are national or domiciliaries of the United States, restored copyright protection on substantially the same basis as provided under this section, the President may by proclamation extend restored protection provided under this section to any work -

(1) of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation; or

(2) which was first published in that nation.

The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under such a proclamation.

“(h) Definitions. For purposes of this section and section 109(a):

(1) The term “date of adherence or proclamation” means the earlier of the date on which a foreign nation which, as of the date the WTO Agreement enters into force with respect to the United States, is not a nation adhering to the Berne Convention or a WTO member country, becomes:

- (A) a nation adhering to the Berne Convention;
 - (B) a WTO member country;
 - (C) a nation adhering to the WIPO Copyright Treaty;
 - (D) a nation adhering to the WIPO Performances and Phonograms Treaty; or
 - (E) subject to a Presidential proclamation under subsection (g).
- (2) The “date of restoration” of a restored copyright is -
- (A) January 1, 1996, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date, or
 - (B) the date of adherence or proclamation, in the case of any other source country of the restored work.
- (3) The term “eligible country” means a nation, other than the United States, that:
- (A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;
 - (B) on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention;
 - (C) adheres to the WIPO Copyright Treaty;
 - (D) adheres to the WIPO Performances and Phonograms Treaty; or
 - (E) after such date of enactment becomes subject to a proclamation under subsection (g).
- (4) The term “reliance party” means any person who -
- (A) with respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated section 106 if the restored work had been subject to copyright protection, and who, after the source country becomes an eligible country, continues to engage in such acts;
 - (B) before the source country of a particular work becomes an eligible country, makes or acquires 1 or more copies or phonorecords of that work; or
 - (C) as the result of the sale or other disposition of a derivative work covered under subsection (d)(3), or significant assets of a person

described in subparagraph (A) or (B), is a successor, assignee, or licensee of that person.

- (5) The term “restored copyright” means copyright in a restored work under this section.
- (6) The term “restored work” means an original work of authorship that:
- (A) is protected under subsection (a);
 - (B) is not in the public domain in its source country through expiration of term of protection;
 - (C) is in the public domain in the United States due to:
 - (i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;
 - (ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or
 - (iii) lack of national eligibility; and
 - (D) has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country.
- (7) The term “rightholder” means the person -
- (A) who, with respect to a sound recording, first fixes a sound recording with authorization, or
 - (B) who has acquired rights from the person described in subparagraph (A) by means of any conveyance or by operation of law.
- (8) The “source country” of a restored work is -
- (A) a nation other than the United States;
 - (B) in the case of an unpublished work:
 - (i) the eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than one author or rightholder, of which the majority of foreign authors or rightholders are nationals or domiciliaries; or

- (ii) if the majority of authors or right holders are not foreign, then the nation other than the United States which has the most significant contacts with the work; and
- (C) in the case of a published work -
 - (i) the eligible country in which the work is first published, or
 - (ii) if the restored work is published on the same day in 2 or more eligible countries, the eligible country which has the most significant contacts with the work.”

2. WPPT provisions

2.1. Definitions:

2.1.1 Is “performer” or “performers” defined in the Law?

Not found in the Law reviewed.

2.1.2 Is “phonogram” defined in the Law?

“Section 101.- De finitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

[...]

‘Phonorecords’ are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term ‘phonorecords’ includes the material object in which the sounds are first fixed.

[...]

‘Sound recordings’ are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

[...]”

2.1.3 Is ‘fixation’ defined in the Law?

“Section 101.- Definitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

[...]

A work is ‘fixed’ in an intangible medium of expression when it embodies in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is ‘fixed’ for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

[...]”

2.1.4 Is “producer of a phonogram” defined in the Law?

Not found in the Law reviewed.

2.1.5 Is “publication of a fixed performance or a phonogram” defined in the Law?

“Section 101.- Definitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

[...]

‘Publication’ is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

[...]”

2.1.6 Is “broadcasting” defined in the Law?

Not found in the Law reviewed.

2.1.7 Is “communication to the public” defined in the Law?

“Section 101.- Definitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

[...]

To perform or display a work “publicly” means:

- (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
- (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

[...]

2.2. Is the concept of “national treatment” contained in the Law?

“Section 104.- Subject matter of Copyright: National origin

“(a) Unpublished Works.

The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

“(b) Published Works.

The works specified by sections 102 and 103, when published, are subject to protection under this title if:

- (1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, or is a stateless person, wherever that person may be domiciled; or
- (2) the work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party; or
- (3) the work is a sound recording that was first fixed in a treaty party; or
- (4) the work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or

(5) the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or

(6) the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

For purposes of paragraph (2), a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be.

“(c) Effect of Berne Convention.

“No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto.

“(d) Effect of Phonograms Treaties.

“Notwithstanding the provisions of subsection (b), now or hereafter, no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.”

2.3. Do performers have moral rights in the Law?

Not found in the Law reviewed.

2.4. Do performers have economic rights in their unfixed performances, and if so, which ones?

“Section 1101.- Unauthorized fixation and trafficking in sound recordings and music videos

“(a) Unauthorized Acts.

“Anyone who, without the consent of the performer or performers involved:

- (1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation,
- (2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance, or
- (3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixation occurred in the United States, shall be subject to the remedies provided in sections 502 through 505, to the same extent as an infringer of copyright.

“(b) Definition.

“As used in this section, the term “trafficking” means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent to transport, transfer, or dispose of.

“(c) Applicability.

“This section shall apply to any actor acts that occur on or after the date of the enactment of the Uruguay Round Agreements Act.

“(d) State Law Not Preempted.

“Nothing in this section may be construed to annul or limit any rights or remedies under the common law or statutes of any State.”

2.5. Do performers have a right of reproduction in the Law?

Not found in the Law reviewed.

2.6. Do performers have a right of distribution in the Law?

Not found in the Law reviewed.

2.7. Do performers have a right of rental in the Law?

Not found in the Law reviewed.

2.8. Do performers have a right of making available of fixed performances in the Law?

Not found in the Law reviewed.

2.9. Do producers of phonograms (“producers”) have a right of reproduction in the Law?

“Section 101.- Definitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

[...]

‘Sound recordings’ are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

[...]”

“Section 106.- Exclusive rights in copyrighted works

“Subject to sections 107 through 121, the owner of copyright under this title has the exclusive right to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords...

[...]”

“Section 114.- Scope of exclusive rights in sound recordings

“(a) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), (3) and (6) of section 106, and do not include any right of performance under section 106(4).

“(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords or copies that directly or indirectly capture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality. The exclusive rights of the owner of

copyright in a sound recording under clauses (1) and (2) of section 106 do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording. The exclusive rights of the owner of copyright in a sound recording under clauses (1), (2), and (3) of section 106 do not apply to sound recordings included in educational television and radio programs (as defined in section 397 of title 47) distributed or transmitted by or through public broadcasting entities (as defined by section 118(g)): Provided, That copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.

“(c) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).”

2.10. Do producers have a right of distribution in the Law?

“Section 101.- Definitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

[...]

‘Sound recordings’ are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

[...]”

“Section 106.- Exclusive rights in copyrighted works

“Subject to sections 107 through 121, the owner of copyright under this title has the exclusive right to do and to authorize any of the following:

[...]

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

[...]”

“Section 114.- Scope of exclusive rights in sound recordings

“(a) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), (3) and (6) of section 106, and do not include any right of performance under section 106(4).

“(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords or copies that directly or indirectly recapture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality. The exclusive rights of the owner of copyright in a sound recording under clauses (1) and (2) of section 106 do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording. The exclusive rights of the owner of copyright in a sound recording under clauses (1), (2), and (3) of section 106 do not apply to sound recordings included in educational television and radio programs (as defined in section 397 of title 47) distributed or transmitted by or through public broadcasting entities (as defined by section 118(g)): Provided, That copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.

“(c) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).”

2.11. Do producers have a right of rental in the Law?

“Section 101.- Definitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

[...]

‘Sound recordings’ are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

[...]”

“Section 106.- Exclusive rights in copyrighted works

“Subject to sections 107 through 121, the owner of copyright under this title has the exclusive right to do and to authorize any of the following:

[...]

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

[...]”

“Section 114.- Scope of exclusive rights in sound recordings

“(a) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), (3) and (6) of section 106, and do not include any right of performance under section 106(4).

“(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords or copies that directly or indirectly recapture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality. The exclusive rights of the owner of copyright in a sound recording under clauses (1) and (2) of section 106 do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording. The exclusive rights of the owner of copyright in a sound recording under clauses (1), (2), and (3) of section 106 do not apply to sound recordings included in educational television and radio programs (as defined in section 397 of title 47) distributed or transmitted by or through public broadcasting entities (as defined by section 118(g)): Provided, That copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.

“(c) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).”

2.12. Do producers have a right of making available of phonograms in the Law?

“Section 101.- Definitions

“Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

[...]

To perform or display a work “publicly” means:

- (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
- (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

[...]”

“Section 106.- Exclusiverightsincopyrightedworks

“Subject to sections 107 through 121, the owner of copyright under this title has the exclusive right to do and to authorize any of the following:

[...]

- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.”

2.13. Do producers and/or performers have a right to remuneration for broadcasting and/or communication to the public of phonograms in the Law?

“Section 106.- Exclusiverightsincopyrightedworks

“Subject to sections 107 through 121, the owner of copyright under this title has the exclusive right to do and to authorize any of the following:

[...]

- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.”

2.14. Are rights in the Law subject to any formalities?

“Section 401.- Notice of Copyright: Visually perceptible copies

“(a) General Provisions.

Whenever a work protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section may be placed on publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device.

“[...]”

“Section 407.- Deposit of copies or phonorecords for Library of Congress

“(a) Except as provided by subsection (c), and subject to the provisions of subsection (e), the owner of copyright or of the exclusive right of publication in a work published in the United States shall deposit, within three months after the date of such publication.

“(c) The Register of Copyrights may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories. Such regulations shall provide either for complete exemption from the deposit requirements of this section, or for alternative forms of deposit aimed at providing a satisfactory archival record of a work without imposing practical or financial hardship on the depositor.”

“Section 408.- Copyright registration in general

“(a) Registration Permissive.

“At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Copyright Office the deposits specified by this section, together with the application and fees specified by sections 409 and 708. Such registration is not a condition of copyright protection.

“[...]”

“Section 412.- Registration as prerequisite to certain remedies for infringement

“In any action under this title, other than an action brought for a violation of the rights of the author under section 106A(a) or an action instituted under section 411(b), no award of statutory damages or of attorney’s fees, as provided by sections 504 and 505, shall be made for:

- (1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or
- (2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work.”

2.15. What is the term of protection for:

2.15.1 Performers?

Not found in the Law reviewed.

2.15.2 Producers of phonograms?

“Section 302.- Duration of Copyright: Works created on or after January 1, 1978

“(a) In General.

“Copyright in a work created on or after January 1, 1978, subsists from its creation and, except as provided by the following subsections, endures for a term consisting of the life of the author and 70 years after the author’s death.”

“[...]

2.16. What is the effective time -frame for application of rights in the Law?

Performers: Not found in the Law reviewed.

Producers:

“Berne Convention criteria.

“Section 104.- Subject Matter of Copyright: National Origin

“(a) Unpublished Works.

“The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

“(b) Published Works.

The works specified by sections 102 and 103, when published, are subject to protection under this title if:

- (1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, or is a stateless person, wherever that person may be domiciled; or
- (2) the work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party; or
- (3) the work is a sound recording that was first fixed in a treaty party; or
- (4) the work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or
- (5) the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or
- (6) the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

For purposes of paragraph (2), a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be.

“(c) Effect of Berne Convention.

“No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto.

“(d) Effect of Phonograms Treaties.

“Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.

“104A. - *Copyright In Restored Works*

“(a) Automatic Protection and Term.

(1) Term.

(A) Copyright subsists, in accordance with this section, in restored works, and vests automatically on the date of restoration.

(B) Any work in which copyright is restored under this section shall subsist for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.

(2) Exception.

Any work in which the copyright was ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof, is not a restored work.

“(b) Ownership of Restored Copyright.

“A restored work vests initially in the author or initial right holder of the work as determined by the law of the source country of the work.

“(c) Filing of Notice of Intent to Enforce Restored Copyright Against Reliance Parties.

“On or after the date of restoration, any person who owns a copyright in a restored work or an exclusive right therein may file with the Copyright Office a notice of intent to enforce that person’s copyright or exclusive right or may serve such a notice directly on a reliance party. Acceptance of a notice by the Copyright Office is effective as to any reliance parties but shall not create a presumption of the validity of any of the facts stated therein. Service on a reliance party is effective as to that reliance party and any other reliance parties with actual knowledge of such service and of the contents of the notice. at

“(d) Remedies for Infringement of Restored Copyrights.

(1) Enforcement of copyright in restored works in the absence of a reliance party.

As against any party who is not a reliance party, the remedies provided in chapter 5 of this title shall be available on or after the date of restoration of a restored copyright with respect to an act of infringement of the restored copyright that is commenced on or after the date of restoration.

(2) Enforcement of copyright in restored works as against reliance parties.

As against a reliance party, except to the extent provided in paragraphs (3) and (4), the remedies provided in chapter 5 of this title shall be available, with respect to an act of infringement of a restored copyright, on or after the date of restoration of the restored copyright if the requirements of either of the following subparagraphs are met:

- (A) (i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) files with the Copyright Office, during the 24-month period beginning on the date of restoration, a notice of intent to enforce the restored copyright; and
- (ii) (I) the act of infringement commenced after the end of the 12-month period beginning on the date of publication of the notice in the Federal Register;
- (II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for infringement occurring after the end of that 12-month period; or
- (III) copies or phonorecords of a work in which copyright has been restored under this section are made after publication of the notice of intent in the Federal Register.
- (B) (i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) serves upon a reliance party a notice of intent to enforce a restored copyright; and
- (ii) (I) the act of infringement commenced after the end of the 12-month period beginning on the date the notice of intent is received;
- (II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for the infringement occurring after the end of that 12-month period; or
- (III) copies or phonorecords of a work in which copyright has been restored under this section are made after receipt of the notice of intent.

In the event that notice is provided under both subparagraphs (A) and (B), the 12-month period referred to in such subparagraphs shall run from the earlier of publication or service of notice.

(3) Existing derivative works.

(A) In the case of a derivative work that is based upon a restored work and is created:

- (i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the restored work is an eligible country on such date, or
- (ii) before the date on which the source country of the restored work becomes an eligible country, if that country is not an eligible country on such date of enactment, a reliance party may continue to exploit that derivative work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.

(B) In the absence of an agreement between the parties, the amount of such compensation shall be determined by an action in United States district court, and shall reflect any harm to the actual or potential market for or value of the restored work from the reliance party's continued exploitation of the work, as well as compensation for the relative contributions of expression of the author of the restored work and the reliance party to the derivative work.

(4) Commencement of infringement for reliance parties.

For purposes of section 412, in the case of reliance parties, infringement shall be deemed to have commenced before registration when acts which would have constituted infringement had the restored work been subject to copyright were commenced before the date of restoration.

“(e) Notices of Intent To Enforce a Restored Copyright.

(1) Notices of intent filed with the copyright office.

- (A) (i) A notice of intent filed with the Copyright Office to enforce a restored copyright shall be signed by the owner of the restored copyright or the owner of an exclusive right therein, who files the notice under subsection (d)(2)(A)(i) (hereafter in this paragraph referred to as the “owner”), or by the owner's agent, shall identify the title of the restored work, and shall include an English translation of the title and any other alternative titles known to the owner by which the restored work may be identified, and an address and telephone number at which the owner may be contacted. If the notice is signed by an agent, the agency relationship must have been constituted in a writing signed by the owner before the filing of the notice. The Copyright Office may specifically require in regulations other information to be included in the notice, but failure to provide such

other information shall not invalidate the notice or be a basis for refusal to list the restored work in the Federal Register.

(ii) If a work in which copyright is restored has no formal title, it shall be described in the notice of intent in details sufficient to identify it.

(iii) Minor errors or omissions may be corrected by further notice at any time after the notice of intent is filed. Notices of corrections for such minor errors or omissions shall be accepted after the period established in subsection (d)(2)(A)(i). Notices shall be published in the Federal Register pursuant to subparagraph (B).

(B) (i) The Register of Copyrights shall publish in the Federal Register, commencing not later than 4 months after the date of restoration for a particular nation and every 4 months thereafter for a period of 2 years, lists identifying restored works and the ownership thereof if a notice of intent to enforce a restored copyright has been filed.

ii) Not less than 1 list containing all notices of intent to enforce shall be maintained in the Public Information Office of the Copyright Office and shall be available for public inspection and copying during regular business hours pursuant to sections 705 and 708.

(C) The Register of Copyrights is authorized to fix reasonable fees based on the costs of receipt, processing, recording, and publication of notices of intent to enforce a restored copyright and corrections thereto.

(D) (i) Not later than 90 days before the date the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, the Copyright Office shall issue and publish in the Federal Register regulations governing the filing under this subsection of notices of intent to enforce a restored copyright.

(ii) Such regulations shall permit owners of restored copyrights to file simultaneously for registration of the restored copyright.

(2) Notices of intent served on a reliance party.

(A) Notices of intent to enforce a restored copyright may be served on a reliance party at any time after the date of restoration of the restored copyright.

(B) Notices of intent to enforce a restored copyright served on a reliance party shall be signed by the owner or the owner's agent, shall identify the restored work and the work in which the restored work is used, if any, in details sufficient to identify them, and shall include an English translation of the title, any other alternative titles known to the owner by which the work may be identified, the use or uses to which the owner objects, and an address and telephone number at which the reliance party may contact the

owner. If the notice is signed by an agent, the agency relationship must have been constituted in writing and signed by the owner before service of the notice.

(3) Effect of material false statements.

Any material false statement knowingly made with respect to any restored copyright identified in any notice of intent shall make void all claims and assertions made with respect to such restored copyright.

“(f) Immunity From Warranty and Related Liability.

(1) In general. Any person who warrants, promises, or guarantees that a work does not violate an exclusive right granted in section 106 shall not be liable for legal, equitable, arbitral, or administrative relief if the warranty, promise, or guarantee is breached by virtue of the restoration of copyright under this section, if such warranty, promise, or guarantee is made before January 1, 1995.

(2) Performances. No person shall be required to perform any act if such performance is made infringing by virtue of the restoration of copyright under the provisions of this section, if the obligation to perform was undertaken before January 1, 1995.

“(g) Proclamation of Copyright Restoration. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States, restored copyright protection on substantially the same basis as provided under this section, the President may by proclamation extend restored protection provided under this section to any work:

- (1) of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation; or
- (2) which was first published in that nation.

The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under such a proclamation.

“(h) Definitions. For purposes of this section and section 109(a):

(1) The term “date of adherence or proclamation” means the earlier of the date on which a foreign nation which, as of the date the WTO Agreement enters into force with respect to the United States, is not a nation adhering to the Berne Convention or a WTO member country, becomes:

- (A) a nation adhering to the Berne Convention;
- (B) a WTO member country;
- (C) a nation adhering to the WIPO Copyright Treaty;
- (D) a nation adhering to the WIPO Performances and Phonograms Treaty; or

- (E) subject to a Presidential proclamation under subsection (g).
- (2) The “date of restoration” of a restored copyright is:
- (A) January 1, 1996, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date, or
- (B) the date of adherence or proclamation, in the case of any other source country of the restored work.
- (3) The term “eligible country” means a nation, other than the United States, that:
- (A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;
- (B) on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention;
- (C) adheres to the WIPO Copyright Treaty;
- (D) adheres to the WIPO Performances and Phonograms Treaty; or
- (E) after such date of enactment becomes subject to a proclamation under subsection (g).
- (4) The term “reliance party” means any person who:
- (A) with respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated section 106 if the restored work had been subject to copyright protection, and who, after the source country becomes an eligible country, continues to engage in such acts;
- (B) before the source country of a particular work becomes an eligible country, makes or acquires 1 or more copies or phonorecords of that work; or
- (C) as the result of the sale or other disposition of a derivative work covered under subsection (d)(3), or significant asset of a person described in subparagraph (A) or (B), is a successor, assignee, or licensee of that person.
- (5) The term “restored copyright” means copyright in a restored work under this section.

- (6) The term “restored work” means an original work of authorship that:
- (A) is protected under subsection (a);
 - (B) is not in the public domain in its source country through expiration of term of protection;
 - (C) is in the public domain in the United States due to:
 - (i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;
 - (ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or
 - (iii) lack of national eligibility; and
 - (D) has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country.
- (7) The term “rightholder” means the person:
- (A) who, with respect to a sound recording, first fixes a sound recording with authorization, or
 - (B) who has acquired rights from the person described in subparagraph (A) by means of any conveyance or by operation of law.
- (8) The “source country” of a restored work is:
- (A) a nation other than the United States;
 - (B) in the case of an unpublished work:
 - (i) the eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than 1 author or rightholder, of which the majority of foreign authors or rightholders are nationals or domiciliaries; or
 - (ii) if the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and
 - (C) in the case of a published work:
 - (i) the eligible country in which the work is first published, or

(ii) if the restored work is published on the same day in 2 or more eligible countries, the eligible country which has the most significant contacts with the work.”

3. Common provisions

3.1. What limitations and exceptions are in the Law?

“Section 107.- Limitations on exclusive rights: Fair use

“Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

“The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”

“Section 108.- Limitations on exclusive rights: Reproduction by libraries and archives

“(a) Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if:

- (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
- (2) the collections of the library or archives are:
 - (i) open to the public, or

(ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.”

“Section 109.- Limitation on exclusive rights: Effect of transfer of particular copy or phonorecord

“(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord. Notwithstanding the preceding sentence, copies or phonorecords of works subject to restored copyright under section 104A that are manufactured before the date of restoration of copyright, with respect to reliance parties, before publication or service of notice under section 104A(e), may be sold or otherwise disposed of without the authorization of the owner of the restored copyright for purposes of direct or indirect commercial advantage only during the 12-month period beginning on:

- (1) the date of the publication in the Federal Register of the notice of intent filed with the Copyright Office under section 104A(d)(2)(A), or
- (2) the date of the receipt of actual notice served under section 104A(d)(2)(B), “whichever occurs first.

“[...]

“Section 110.- Limitation on exclusive rights: Exemption of certain performances and displays

“Notwithstanding the provisions of section 106, the following are not infringements of copyright:

- (1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made; [...]

[...]

“Section 111.- Limitations on exclusive rights: Secondary transmissions

“(a) Certain Secondary Transmissions Exempted.

These secondary transmissions of a performance or display of a work embodied in a primary transmission is not an infringement of copyright if:

- (1) these secondary transmissions are not made by a cable system, and consist entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of a signal transmitted by a broadcast station licensed by the Federal Communications Commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear these secondary transmissions; or [...]

“[...]”

“Section 112.- Limitations on exclusive rights: Ephemeral recordings

“(a) (1) Notwithstanding the provisions of section 106, and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a license, including a statutory license under section 114(f), or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114(a), or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission and that makes a broadcast transmission of a performance of a sound recording in a digital format on a non-subscription basis, to make no more than one copy or phonorecord of a particular transmission program embodying the performance or display, if [...]

“[...]”

“Section 117.- Limitations on exclusive rights: Computer programs

“(a) Making of Additional Copy or Adaptation by Owner of Copy.

“Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

- (1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or
- (2) that such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

“(b) Lease, Sale, or Other Transfer of Additional Copy or Adaptation.

“Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner...

“[...]”

“Section 119.- Limitations on exclusive rights: Secondary transmission of superstations and network stations for private home viewing

“(a) Secondary Transmissions by Satellite Carriers.

(1) Superstations and pbs satellite feed.

Subject to the provisions of paragraphs (3), (4), and (6) of this subsection and section 114(d), secondary transmissions of a primary transmission made by a superstation or by the Public Broadcasting Service satellite feed and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing. In the case of the Public Broadcasting Service satellite feed, the statutory license shall be effective until January 1, 2002.

(2) Network stations. [...]

“[...]”

“Section 120.- Scope of exclusive rights in architectural works

“(a) Pictorial Representations Permitted.

“The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

“(b) Alterations to and Destruction of Buildings.

“Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the

architectural work, make or authorize the making of alteration to such building, and destroy or authorize the destruction of such building.”

“Section 121.- Limitation on exclusive rights: reproduction for blind or other people with disabilities

“(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, non-dramatic literary work if such copies or phonorecords are reproduced or distributed in specialized format exclusively for use by blind or other persons with disabilities.

“[...]

“Section 122.- Limitation on exclusive rights; secondary transmissions by satellite carriers within local markets

“(a) Secondary transmissions of Television Broadcast Stations by Satellite Carriers.

“A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station into the station’s local market shall be subject to statutory licensing under this section if:

- (1) this secondary transmission is made by a satellite carrier to the public;
- (2) with regard to secondary transmissions, the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals; and
- (3) the satellite carrier makes a direct or indirect charge for these secondary transmissions to:
 - (A) each subscriber receiving these secondary transmissions; or
 - (B) a distributor that has contracted with the satellite carrier for direct or indirect delivery of these secondary transmissions to the public.

“[...]

3.2. What legal protection, and what legal remedies, does the law provide against the circumvention of effective technological measures of protection?

“Section 1201.- Circumvention of Copyright protection systems

“(a) Violations Regarding Circumvention of Technological Measures.

- (1) (A) No person shall circumvent a technological measure that effectively controls access to a work protected under this title. The prohibition

contained in the preceding sentences shall take effect at the end of the 2 -year period beginning on the date of the enactment of this chapter.

(B) The prohibition contained in subparagraph (A) shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3 -year period, adversely affected by virtue of such prohibition in their ability to make non-infringing uses of that particular class of works under this title, as determined under subparagraph (C)...

“[...]”

3.3. What obligations are in the Law for the protection of “rights management information?”

“Section 1202.- Integrity of Copyright management information

“(a) False Copyright Management Information.

“No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement:

- (1) provide copyright management information that is false, or
- (2) distribute or import for distribution copyright management information that is false.

“(b) Removal or Alteration of Copyright Management Information.

“No person shall, without the authority of the copyright owner or the law:

- (1) intentionally remove or alter any copyright management information,
- (2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or
- (3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

“(c) Definition.

“As used in this section, the term ‘copyright management information’ means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work:

- (1) The title and other information identifying the work, including the information set forth on a notice of copyright.
- (2) The name of, and other identifying information about, the author of a work.
- (3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright.
- (4) With the exception of public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work.
- (5) With the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work.
- (6) Terms and conditions for use of the work.
- (7) Identifying numbers or symbols referring to such information or links to such information.
- (8) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

“(d) Law Enforcement, Intelligence, and Other Government Activities.

“This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term ‘information security’ means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

“[...].”

3.4. Generally, what measures for enforcement of rights are in the Law?

“Section 502.- Remedies for infringement: Injunctions

“(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

“(b) Any such injunction may be served anywhere in the United States on the person enjoined; it shall be operative throughout the United States and shall be enforceable, by

proceedings in contempt or otherwise, by any United States court having jurisdiction of that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all the papers in the case on file in such clerk's office.

"[...]"

"Section 503.- Remedies for infringement: Impounding and disposition of infringing articles"

"(a) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable, of all copies or phonorecords claimed to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

"(b) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all copies or phonorecords found to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced."

"Section 504.- Remedies for infringement: Damages and profits"

"(a) In General.

"Except as otherwise provided by this title, an infringer of copyright is liable for either:

- (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or
- (2) statutory damages, as provided by subsection (c).

"(b) Actual Damages and Profits.

"The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

"(c) Statutory Damages.

- (1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which anyone infringer

liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owners sustain the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was:

(i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or

(ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

“(d) Additional Damages in Certain Cases.

“In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities were exempt under section 110(5) did not have reasonable ground to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of two times the amount of the license fee that the proprietor of the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years.”

“Section 505. - Remedies for infringement: Costs and attorney’s fees

“In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney’s fee to the prevailing party as part of the costs.

“Section 506.- Criminal offenses

“(a) Criminal Infringement.

“Any person who infringes a copyright willfully either:

- (1) for purposes of commercial advantage or private financial gain, or
- (2) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000, shall be punished as provided under section 2319 of title 18, United States Code. For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement.

“(b) Forfeiture and Destruction.

“When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords.

“(c) Fraudulent Copyright Notice.

“Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than \$2,500.

“(d) Fraudulent Removal of Copyright Notice.

“Any person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than \$2,500.

“(e) False Representation.

“Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

“(f) Rights of Attribution and Integrity.

“Nothing in this section applies to infringement of the rights conferred by section 106A(a).”

3.5. How does the law define the liability of the Internet service providers?

“Section 512.- Limitations on liability relating to material online

“(a) Transitory Digital Network Communications.

“A service providers shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider’s transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if:

- (1) the transmission of the material was initiated by or at the direction of a person other than the service provider;
- (2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;
- (3) the service provider does not select the recipients of the material except as an automatic response to the request of another person;
- (4) no copy of the material is made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and
- (5) the material is transmitted through the system or network without modification of its content.

“(b) System Caching.

(1) Limitation on liability.

A service providers shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which:

- (A) the material is made available online by a person other than the service provider;
- (B) the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person; and

(C) the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A), if the conditions set forth in paragraph (2) are met.

(2) Conditions.

The conditions referred to in paragraph (1) are that:

(A) the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which the material was transmitted from the person described in paragraph (1)(A);

(B) the service provider described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;

(C) the service provider does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology:

(i) does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;

(ii) is consistent with generally accepted industry standard communications protocols; and

(iii) does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had gained access to the material directly from that person;

(D) if the person described in paragraph (1)(A) has in effect a condition that a person must meet prior to having access to the material, such as a condition based on payment of a fee or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have met those conditions and only in accordance with those conditions; and

(E) if the person described in paragraph (1)(A) makes that material available online without the authorization of the copyright owner of the material, the service provider responds expeditiously to remove, or disable access to, the material that is claimed to be infringing upon notification of claimed infringement as described in subsection (c)(3), except that this subparagraph applies only if:

(i) the material has previously been removed from the originating site or access to it has been disabled, or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled; and

(ii) the party giving the notification includes in the notification a statement confirming that the material has been removed from the originating site or access to it has been disabled or that a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled.”

“[...]”

3.6 Are there any provisions in the Law on temporary storage?

Not found in the Law reviewed.

3.7 Are there any explicit provisions to ensure that the anti-circumvention provisions do not restrict the operation of limitations/exceptions to rights provided in the Law?

“Section 1201.- Circumvention of Copyright protection systems

“[...]”

(C) During the 2 -year period described in subparagraph (A), and during each succeeding 3 -year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding for purposes of subparagraph (B) of whether persons who are users of copyrighted works are, or are likely to be in the succeeding 3 -year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works. In conducting such rulemaking, the Librarian shall examine:

(i) the availability for use of copyrighted works;

(ii) the availability for use of works for non-profit archival, preservation, and educational purposes;

- (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;
- (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and
- (v) such other factors as the Librarian considers appropriate.

(D) The Librarian shall publish any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that non-infringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3-year period.

(E) Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as a defense in any action to enforce any provision of this title other than this paragraph.”

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