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Conseil des aspects des droits de propriété  
intellectuelle qui touchent au commerce

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## PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD

### HONGRIE

Par une communication datée du 10 décembre 1999, la Hongrie a notifié la Loi n° LXXVI de 1999 sur le droit d'auteur (entrée en vigueur: 1<sup>er</sup> septembre 1999), afin de mettre à jour les notifications antérieures au titre de l'article 63:2 de l'Accord. Le présent document contient le texte<sup>1</sup> de la Loi. À la date d'entrée en vigueur de la Loi, comme le prévoit son article 110:1, les lois et réglementations ci-dessous, notifiées antérieurement, ont cessé de s'appliquer:

- la Loi n° III de 1969 sur le droit d'auteur, telle que modifiée;
- le Décret n° 9 de 1969 du Ministre de la culture sur la mise en œuvre de la Loi n° III de 1969, telle que modifiée;
- la deuxième phrase du paragraphe 2 de l'article 117 de la Loi n° I de 1996 sur la radiodiffusion et la télédiffusion.

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<sup>1</sup> En anglais seulement.

*Hungary*

## **Act LXXVI. of 1999 on Copyright**

*Unofficial translation  
by the Ministry of Justice  
and ARTISJUS*

## Act LXXVI. of 1999 on Copyright

Any copyright-related regulation is in need of permanent updating and has to keep abreast of technological development in order that it can exercise a substantial impact on the stimulation of intellectual creation and the preservation of the values of the national and universal culture; that it can create and maintain equilibrium between the interests of authors and other rightholders, as well as users and the public at large, taking in this connection account of the requirements of education, culture, scientific research and free access to information; and that it can provide for a comprehensive and efficient enforcement of the copyright and the related neighbouring rights. In consideration of these aspects, as well as in order to comply with the development and achievements of international legislation and to make the Hungarian copyright harmonize with the directives of the European Community, the National Assembly hereby codifies the following Act.

### PART ONE

#### GENERAL PROVISIONS

##### Chapter I

##### Preamble

##### The Object of Copyright Protection

##### Article 1

(1) This Act shall provide protection for literary, scientific and art 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:

- a) literary works (of fiction, trade, science, journalism etc.),
- b) speeches delivered in public,
- 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 operation systems,
- d) dramas, musico-dramatical works, ballets or pantomime,
- e) musical works with or without words,
- f) radio and television plays,
- g) cinematographic creations and other audiovisual works (hereinafter jointly referred to as cinematographic creations),
- h) drawings, paintings, sculpture, engravings, creations produced by lithography or in like manner, and designs thereof,
- i) artistic photographs,
- j) maps and other cartographic creations,
- k) architectural creations and designs thereof, and designs of building complexes and town planning projects,
- l) designs of engineering structures,
- m) applied art creations and designs thereof,
- n) costume and scenery designs,
- o) industrial art designs.

(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.

(4) The protection provided by this Act shall not cover legal provisions, public resolutions, authority announcements and documents, as well as standards and other like regulations.

(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.

(7) The expressions of folklore may not enjoy copyright protection. However, this may not prejudice copyright protection due to the author of a folk-art-inspired work of individual and original nature.

(8) Performers, producers of sound recordings, radio and television organizations and producers of motion pictures shall enjoy protection as specified by this Act.

## 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.

### **Article 3**

The provisions of the Civil Code shall apply to topics not covered by the provisions of this Act.

### **Authors' Right**

#### **Article 4**

(1) The copyright shall accrue to the person who has created the work (the author).

(2) Copyright protection shall be provided – without prejudice to the rights accruing to the author of the original work – for the alteration, adaptation or translation of an author's work, in case the work thus obtained is of individual, original character.

### **Joint Authorship**

#### **Article 5**

(1) The authors of a common work, the parts of which cannot be used independently, shall have the copyright accrue to them jointly and – in case of any doubt – in equal proportions, however, any of the joint authors may take action independently in the event of the infringement of the copyright.

(2) In case a common work is made up of parts which can be used independently (joint works), autonomous copyright shall accrue to the joint authors with regard to the respective individual parts. The authorization of all authors of the original common work is required if any part of the work

consisting of joint works and created jointly is wanted to be joined with a different work.

### Article 6

(1) In the case of a collective work, the copyright shall be transferred by legal succession to the natural or legal person or economic organization without legal entity at whose initiative and under whose instructions the work was created and who disclosed it to the public in his own name.

(2) As a collective work shall be rated a work if the contributions of the authors co-operating in the creation of the work are combined in the product of joint creation in a manner which makes the separate determination of the individual authors' rights impossible.

### Collection of Works

#### Article 7

(1) Copyright protection shall be due to a collection of works if the selection, arrangement or editing of its contents is of individual and original nature. The protection shall apply to the collection of works even if its parts or components do not or may not enjoy copyright protection.

(2) Regarding the whole of the collection of works the copyright shall accrue to the editor, however, this shall be without prejudice to the independent rights of the authors of the individual works selected for inclusion in the collection.

(3) The protection of a database rated as a collection of works – operated by computer devices or in any other manner – shall not extend to the data and other components making up its contents.

### **Works Disclosed Anonymously or Under a Pseudonym**

#### **Article 8**

When a work is disclosed anonymously or under a pseudonym, the author's rights shall be exercised, till the author becomes known, by who first disclosed the work.

### **The Origin of Authors' Rights; Authors' Rights and their Exploitation**

#### **Article 9**

(1) The entirety of authors' rights – moral rights and economic rights – shall accrue to the author from the time of the creation of the work.

(2) The author may not transfer his moral rights, these may not devolve on anyone else, and may not be renounced by the author.

(3) Subject to the exceptions in Paragraphs (4) to (6), the economic rights may not be transferred, may not devolve on anyone else, and may not be renounced.

(4) The economic rights shall pass by inheritance, and the author is free to dispose of them to that end for the case of his death.

(5) The persons coming in possession of economic rights by inheritance may dispose of them to each other's benefit.



(6) In the cases and under the conditions specified by this Act the economic rights may be assigned or may pass to (an)other person(s). Unless otherwise provided in the assignment contract, the acquirer of rights may dispose of the economic rights he has acquired.

## **Chapter Two**

### **Moral Rights**

#### **Disclosure of a Work**

##### **Article 10**

(1) The author shall decide whether his work may be disclosed.

(2) Before the disclosure of the work, any information on the substance of its contents may be provided for the public only subject to the author's consent.

(3) Unless otherwise provided, the conclusion of the licensing agreement shall imply the author's consent to the user providing information on the contents of the work for the public in a manner complying with the purpose of the use.

(4) As regards a work becoming known after the author's death, it shall be presumed – failing other declaration by the author or his legal successor or the introduction of evidence proving the contrary – that the author intended his work to be disclosed to the public.

##### **Article 11**

Referring to a sound reason, the author may withdraw his authorization to disclose his work or may prohibit the continued use of his work already disclosed; however, he is obliged to repair any damage having accrued till the

time of such declaration. This shall not prejudice the employer's right to exploit the work and shall not prevent, in the case of the assignment of the economic rights, the acquirer of rights from uses based on the economic rights.

### **Indication of the Author's Name**

#### **Article 12**

(1) The author shall have the right to have an indication on his work or in the communication on his work – subject to the scope and nature of the communication – referring to him as the author; reference shall be made to the author in the event of including part of his work in another work, and citing or reviewing his work. The author may exercise the right to have his name indicated subject to the nature of the use and in a manner complying with it.

(2) The name of the author of a work shall be indicated on the alteration, adaptation or translation which is based on the author's work.

(3) The author shall be entitled to have his work published without the indication of his name or under a pseudonym. The author may require that his work having been disclosed to the public with the indication of his name shall, in the case of a new authorized use, be further on used without the indication of his name.

(4) The author may require that his author's capacity shall not be called in doubt.

## **Protection of the Integrity of the Work**

### **Article 13**

The distortion, mutilation or any other alteration of the work of the author which prejudices the honour or reputation of the author shall be taken to infringe his moral right.

## **The Exercise of Moral Rights**

### **Article 14**

(1) After the author's death, action against the infringement of the moral rights specified in this Act can be taken within the term of protection (Article 31) by the person put in charge of the administration of the author's literary, scientific or artistic legacy by the author,

and if there is no such person or the one put in charge fails to take actions, it shall be the person having acquired the economic rights by virtue of inheritance.

(2) After the expiration of the term of protection the organization performing the collective administration of rights (Article 85 to 93) or the association representing authors' interests may take action, with reference to offence against the author's memory, against a behaviour which would be taken under the term of protection to infringe the author's right to have his name indicated on his work or in a communication related to his work.

## Article 15

The user may also take action for the protection of specific moral rights of the author if this is expressly consented to by the author in the licensing agreement.

## Chapter Three

### Economic Rights

#### General Provisions Relating to Economic Rights

## Article 16

(1) Under the copyright protection the author shall have the exclusive right to exploit his work in any tangible or intangible form and to grant licence for each and every use of his work. Unless otherwise provided by this Act, authorization may be obtained for the use of the work by a licensing agreement.

(2) The use of the title of the work, if it is unique, shall be subject to the author's authorization, too.

(3) The commercial utilization of any characteristic and original figure in the work and the authorization of such utilization shall be subject to the exclusive right of the author.

(4) Unless otherwise provided by this Act, remuneration shall be due to the author against the licence he has given for the use of his work, which remuneration – unless otherwise agreed – shall be in proportion to the revenue earned by the use of the work. The author may waive his claim to remuneration only by an express representation to that end. Should the law stipulate a specific

form for the licensing agreement to be valid, the waiver of the remuneration shall itself be valid in the specific form only.

(5) In the cases as specified by this Act, remuneration shall be due to the author for the use of his work even if he has no exclusive right to authorize the use. The law may exclude the right to waive such remuneration, and should such provision fail to obtain, the author may only waive the remuneration by an express representation to that end.

(6) A use shall be deemed unlawful in particular if no authorization has been given therefor by the statute or by the author in a contract, or if the user makes use of the work beyond the limitations of his authorization.

(7) Unless otherwise provided by this Act, the user is obliged to inform the author or his successor in title or the organization performing the collective administration of rights (Articles 85 to 93) on the manner and scope of the use.

## Article 17

As uses of the work shall be rated in particular:

- a) its reproduction (Article 18 and 19),
- b) its distribution (Article 23)
- c) its public performance (Articles 24 and 25)
- d) its communication to the public by broadcasting or in any other manner (Articles 26 and 27),
- e) retransmission of the broadcast work to the public with the involvement of another organization than the original one (Article 28),
- f) its alteration (Article 29),
- g) its exhibition (Article 69).

## **The Right of Reproduction**

### **Article 18**

(1) It shall be the author's exclusive right to reproduce his work and to grant authorization therefor. Reproduction shall be taken to mean:

- a) the direct or indirect fixation of the work in any manner on a tangible carrier, whether definitively or temporarily, and
- b) the making of one or several copies of the fixation.

(2) As reproduction of the work shall be rated in particular the fixation of the work in a mechanical, cinematographic or magnetic way and making copies of it by printing, the production of audio or video recording of the work, its fixation for purposes of communication to the public by broadcasting or by cable, the storage of the work in a digital form on electronic devices, and the production in a tangible form of the work transmitted by the computer network. In the case of architectural creations the primary and secondary construction of a creation laid down as a design shall likewise be rated as reproduction.

### **Article 19**

(1) The producer of a sound recording, the creator of a multimedia work, and the compiler of an electronic database may require that the repeated reproduction of already disclosed non-dramatic musical works and lyrics for music and parts of musico-dramatical works fixed on sound recordings and video recordings, in a multimedia work or an electronic database distributed on digital carriers, and the distribution by copies of such reproductions against the payment

of a fair and equitable fee shall be authorized for them too. The licensing agreement shall be concluded with the organization performing the collective administration of rights related to literary and musical works.

(2) The provision in Paragraph (1) shall not apply to the right of adaptation and the exercise of this right.

## Article 20

(1) A fair and equitable remuneration shall be due, on the private-purpose copying of their works, performances and sound recordings, to the authors of works, the performers of performances, and the producers of sound recordings broadcast in the programmes of radio and television organizations, included in the programmes of those communicating their own programmes to the public by cable, and released for distribution on video or audio carriers.

(2) The remuneration referred to in Paragraph (1) shall be determined by the organization performing the collective administration of rights related to literary and musical works. Before determining the said remuneration, other organizations likewise performing collective administration of rights for the affected authors as well as the organization performing the collective administration of rights of performers and producers of sound recordings shall be consulted. The producer of blank video and audio carriers, or the person obliged pursuant to the law to pay customs duties in the case of manufacture abroad, shall pay the remuneration to the organization performing the collective administration of rights related to literary and musical works within eight days from the date of the release for distribution or from the completion of the customs clearance in the case of manufacture abroad.

(3) The obligation to pay remuneration shall not apply to

a) putting into circulation for export purposes, furthermore

b) video and audio carriers applicable exclusively with devices (e.g., studio equipment, dictaphones) which are not used in their regular application for the private-purpose making of copies of works, performances of performers, or sound recordings.

(4) The amount of the royalties collected and reduced by the amount of expenditures shall be distributed by disbursing fifty per cent to the musical composers and authors, thirty per cent to the performers, and twenty per cent to the producers of sound recordings.

(5) In the case of video carriers the royalties collected, with the expenditures deducted from them, shall be distributed to the rightholders, and namely – unless differently agreed before March 31 of every year between the affected organizations performing collective administration of rights – thirteen per cent shall be due to the producers of movie pictures, twenty-two per cent to the cinematographic creators of movie pictures, four per cent to creators of fine arts, designs and authors of artistic photographs, sixteen per cent to script writers, twenty per cent to composers and lyricists, and twenty-five per cent to performers.

(6) The organization performing the collective administration of rights in literary and musical works shall remit the part of the royalties, due to authors and copyright rightholders, performers and producers of sound recordings who are not represented by the said organization regarding the distribution of royalties, to the organizations performing the collective administration of rights for the rightholders involved.



(7) The rightholders may enforce their claims to remuneration only by the agency of the organization performing the collective administration of their rights (Articles 85 to 93), and they may renounce the remuneration only with effect following the date of the distribution and to the extent of the amount due to them.

## Article 21

(1) The authors of the works and the publishers thereof in the form of book, as notes or in periodicals which are reproduced by photocopying or in like manner on paper or on like carrier (hereinafter jointly referred to as by reprography) shall be due to be paid fair and equitable remuneration on private-purpose copying. The remuneration shall be paid by the manufacturer of the device used for reprography or by the person obliged to pay customs duties in the case of a device manufactured abroad within the term defined in the third sentence of Article 20 (2). In addition, the person operating the reprographic device for a consideration is also obliged to pay remuneration. In both cases the remuneration shall be paid to the organization performing the collective administration of rights.

(2) The specification of the devices that may be used for reprography shall be determined by a special regulation.

(3) The remuneration referred to in Paragraph (1) shall be set by the organization performing the collective administration of rights. When determining the said remuneration, it shall take due account of, in particular, the manner of the use of the device and its output characteristics, as well as the place of the operation in the case of its use for a consideration.

(4) The obligation to pay remuneration shall not apply to the case where the device is put into circulation for export purposes.

(5) The remunerations collected, with the administration fees deducted from them, shall be distributed to the rightholders. Thirty per cent shall be due to the publishers of books and periodicals, which share shall be remitted to their respective trade organizations. Of the remaining seventy per cent sixty per cent shall be due to the authors of literary and musical works as well as music publishers and ten per cent to creators of fine arts and of artistic photographs. This latter share shall be remitted to the organization performing the collective administration of the rights of authors of fine art.

(6) The distribution proportions determined in Paragraph (5) shall be applied unless otherwise agreed between the affected organizations performing the collective administration of rights and the trade organizations of the rightholders concerned before March 31 of every year.

(7) The authors and publishers may enforce their claims to remuneration only via the organizations performing the collective administration of their rights and their trade organizations and may renounce the royalties due to them only following the date of distribution and to the extent of the amount due to them. If no special organizations for the collective administration of rights as provided by Article 86 (3) is established by the rightholders for enforcing their claims to remuneration pursuant to this Article, the collective administration of rights connected with the remunerations here involved shall be attended to by the organization performing the collective administration of rights related to literary and musical works. In this case the organization performing the collective

administration of rights shall on the tariffs request the opinion of the trade organizations of book and periodical publishers and music publishers.

## Article 22

(1) The commercial manufacturers of blank video and audio carriers as defined in Article 20 and of the type of devices as defined in Article 21 as well as the importers of such video and audio carriers or devices who are statutorily obliged to pay customs duties on such imports are obliged, before the tenth day of every calendar month, to inform the organization performing the collective administration of rights on the quantity put into circulation or imported and the types of the carriers and devices. The organization performing the collective administration of rights may request further information on the figures relating to the putting into circulation and on the sources of procurement; and it may request those operating reprographic devices for a consideration to provide further particulars necessary for determining the fair amount of remuneration.

(2) The failure to meet, and even the incomplete meeting of, the obligation to provide information or particulars and to supply data as required by the provision of Paragraph (1) a lump sum for covering the expenses of the organization performing the collective administration of rights is to be paid in addition to the remuneration due, which lump sum shall be of the same amount as the remuneration due to be paid.

## 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) The right of distribution through rental shall only cover the designs within the domains of architecture, applied arts and industrial designing.

(5) If the copy of the work has been put into circulation domestically by the rightholder or by another person expressly authorized therefor by the rightholder through sale or the transfer of title of ownership in any other manner, the right of distribution shall further on 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 a

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 a remuneration may be enforced only via the collective administration of rights and the rightholders may waive such remuneration only following the date of its distribution and to the extent of the amount due to them.

## **The Right of Public Performance**

### **Article 24**

(1) The author shall have the exclusive right to perform his work to the public and to authorize another person therefor. The making of the work perceptible to those present shall be taken to mean performance.

(2) As performance shall be rated in particular

a) the performance of the work to the public by a performer in person, including stage performance, concert, recital, reading out (“live performance”);

b) making the work perceptible by any technical device or manner, including the projection of a cinematographic creation, making the work communicated or distributed (as a copy) to the public become audible by loudspeaker or visible on a screen.

(3) A performance shall be taken to be public if it occurs in a place accessible to the public or in any other place where people other than the members of a family and their acquaintances gather or may gather.

## Article 25

(1) The author's authorization of the public performance of an already disclosed musical work or literary work shall be considered as granted if the remuneration determined by the organization administering authors' rights in musical and literary works collectively has been paid to this organization.

(2) In the event of the public performance of a musical work, remuneration shall be due to the lyricist only if the musical work falls under copyright protection.

(3) The provisions of Paragraphs (1) and (2) shall not apply to the performance of literary works written for dramatic purposes, musico-dramatical works, or scenes or overviews thereof.

(4) In the cases covered by Paragraphs (1) and (2) the planned use and the alteration of the current use have to be notified by the user in advance. The organization performing the collective administration of rights referred to in Paragraph (1) may inspect the use on the spot.

(5) The royalty due on a public performance realized by the performer's personal acting – except for the royalty due on the supply of music in a catering establishment – has to be paid within three days from the date of the performance. In other cases an advance payment of the royalty for at least a quarter of a year's period – or for the whole period if it is shorter than a quarter of a year and the operation of the establishment is of seasonal character – is required for obtaining the licence.

(6) In case the user fails to meet its obligation of notification required by the provision of Paragraph (4) and in consequence of this the organization performing the collective administration of rights gets knowledge of the use only by conducting its inspection, a flatrate amount covering the organization's inspection costs has to be paid in addition to the royalty due to be paid. The flatrate amount shall be of the same size as is that of the royalty due.

## **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 device shall be taken to mean broadcasting.

(2) Satellite broadcasting shall be taken to be covered by the broadcasting of the work in case the programme broadcast can directly be received by the public. The programme broadcast by satellite 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 rated an 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 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 licence. Each and every use of the recording is subject to the payment of remuneration.

(7) The communication to the public of an own 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.

### Article 27

As regards the authorization of the broadcasting of already disclosed works and of their uses as provided for in Article 26 – except for the use of literary works designed for the stage and of musico-dramatical works or scenes and overviews thereof – as well as the determination of the royalties to be paid for the said uses, the organization performing the collective administration of the rights related to literary and musical works acting on behalf of the literary authors, composers and lyricists shall conclude licensing agreements with users.

### Article 28

(1) The author shall have the exclusive right to rebroadcast his work communicated to the public by broadcasting and to authorize another person therefor.

(2) In case the works broadcast or cable-transmitted in the programme of the radio or television organization or of the entity communicating its own programme by cable to the public are simultaneously and in an unaltered manner retransmitted by cable to the public via an organization other than the original one, the authorization of the author shall be considered as granted if the organization executing the simultaneous retransmission has paid the determined

remuneration to the organization performing the collective administration of rights in literary and musical works.

(3) The rightholders may enforce their claim to remuneration only via collective administration and may waive such remuneration only following the date of its distribution and to the extent of the amount due to them.

(4) The collected remunerations, with the expenditures deducted from them, shall be distributed to the rightholders, and – unless otherwise agreed between the affected organizations performing collective administration of rights before March 31 of every year – thirteen per cent shall be due to the film producers, twenty per cent to the cinematographic creators of movie pictures, three per cent to creators of works of fine arts, designs and authors of artistic photographs, fifteen per cent to script writers, nineteen per cent to composers and lyricists, and thirty per cent to performers.

(5) The organization performing collective administration of the rights in literary and musical works shall remit the part of the collected royalties due to performers as well as to the authors and copyright rightholders of the genres of works which are not represented by the said organization regarding the distribution to the organizations performing collective administration of the rights of the persons referred to.

(6) The royalties due on the retransmission of the works broadcast in the programme of, or communicated by cable or in any other manner by, the Hungarian public radio and television organization shall be paid from the Programme Providing Fund, and this payment shall be the responsibility of the administrator of the Fund.

## **The Right of Alteration**

### **Article 29**

The author shall have the exclusive right to alter his work or to authorize another person therefor. The translation of the work, its dramatic or musical adaptation, its adaptation for a cinematographic production, the adaptation of the cinematographic creation, and any other alteration of the work as a result of which another work is derived from the original one shall be taken to mean alteration.

## **Work Created Under Employment or Other Service Relations**

### **Article 30**

(1) Unless otherwise agreed, the delivery of the work to the employer shall imply the transfer of the economic rights upon the employer as successor in title to the author, if the creation of the work is the author's job duty.

(2) The economic rights acquired pursuant to the provision of Paragraph (1) shall be transferred upon the successor in title to the employer if there has occurred such succession in title.

(3) The author shall be entitled to an appropriate remuneration if the employer authorizes another person to use the work or transfers to another person the economic rights relating to the work.

(4) The author shall continue, even in the case of the acquisition of rights by the employer, to be entitled to the remuneration which is due to him even after the transfer of the right of use pursuant to this Act.

(5) If the creation of the work is the author's job duty, the delivery of the work to the employer shall be considered as an act of consent to the disclosure of the work to the public. In the case of the author's declaration aimed at withdrawing his work (Article 13) the employer is obliged to make no mention of the author's name. The author's name shall likewise be left unmentioned, at the author's request, if availing himself of his employer's rights the employer makes alterations in the work without the author's agreement.

(6) The legal representations made with regard to the work created by way of fulfilment of the author's job duty shall be laid down in writing.

(7) The provisions relating to a work created as job duty shall be applied *mutatis mutandis* if the work has been created by a person employed as public or civil servant, a person belonging to the professional staff of the armed forces and police forces and being in active service, or a co-operative member employed under legal relations similar to those of employment relations.

## **The Term of Protection**

### **Article 31**

(1) The authors' rights shall enjoy protection during the lifetime of the author and for seventy years following his death.

(2) The seventy years' term of protection shall be counted from the first day of the year following the death of the author and, in the case of joint authors, from the first day of the year following the death of the joint author dying last.

(3) In case the person of the author is unknown, the term of protection shall be seventy years and shall be counted from the first day of the year following the first disclosure of the work. However, should the author become known during this period of time, the term of protection shall be counted as in Paragraph (2).

(4) In the case of a work disclosed to the public in several parts, the year of the first disclosure shall be counted part by part.

(5) The term of protection of a collective work shall be seventy years counted from the first day of the year following the first disclosure of the work.

(6) The term of protection of a cinematographic creation shall be counted from the first day of the year following the death of the author thereof dying last.

(7) In case the term of protection shall be counted from a date other than the first day of the year following the death of the author, the author dying last, or the joint author, and the work is not disclosed to the public within the seventy years' period following its creation, no copyright protection shall further on be due to the work.

## Article 32

Copyright protection of a scope consistent with the author's economic rights shall be due to the person who, following the expiration of the term of

protection or the period of time determined in Article 31 (7), discloses according to the law a work previously not disclosed to the public. The term of such protection shall be twenty-five years from the first day of the year following the first disclosure.

## **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 use 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 use shall not be interpreted in an extensive manner.

(4) For purposes of the provisions of this chapter the use 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 citation 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 a work in another work to an extent which goes beyond the scope of citation shall be taken to mean borrowing.

(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 handwriting or typing.

(3) Having a work copied by someone else with computer or on 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 files to be used for scientific purpose or for the supply of a public library, or

c) it is made of a limited part of a published work or of an article in a newspaper or periodical.

(5) Specific parts of a work published as a book as well as newspaper and periodical articles may be reproduced for educational purposes in a number corresponding to the number of pupils in a class or for purposes of exam in public and higher education in a number necessary for the said purpose.

(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.

### Article 36

(1) Communications containing facts and news may freely be borrowed, with the indication of the source. The contents of public negotiations and speeches may freely be used, however, the use of educational, scientific, popular and entertainment lectures as well as the publication of speeches in a collective work are subject to the author's authorization.

(2) Any art, photographic, architectural, applied art or industrial design creation may freely be used as décor in a television programme. In this case it is not necessary to indicate the author's name.

(3) The use in a television programme of works made for purposes of décor or costume is subject to the authorization of the author and the indication of his name.

### Article 37

(1) Related to daily events, specific works may be included in the political news programme or other timely programmes of the broadcasting organization to the extent justified by the given occasion. In such cases the indication of the author's name shall not be required.

(2) Art, photographic, architectural, applied art and industrial design creations displayed in public exhibition may be presented by dailies and periodicals, as well as the news programmes and other timely programmes of the broadcasting organizations.

(3) A programme informing on or presenting an event related to a specific point of time and including minor parts of specific works only within this framework shall be considered as timely.

### Article 38

(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 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 performance shall be taken to mean remuneration.

(3) A dancing party held at a 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.

#### Article 39

The public libraries may freely lend out copies of a work. This provision shall not apply to software and to database operated by computer devices.

#### Article 40

The copies reproduced within the scope of free uses shall not be distributable without the author's authorization, except for lending between libraries.

#### Article 41

(1) The non-commercial reproduction and distribution of a work shall be considered to be within the scope of free uses if they are exclusively designed to satisfy the needs of disabled persons and are implemented accordingly.

(2) In court, public administration and other authority proceedings a work may be used for purposes of evidence, in a manner and to the extent consistent with this type of use.

## **Chapter Five**

### **Licensing Agreements**

#### **General Provisions for the Licensing Agreements**

##### **Article 42**

(1) On the basis of a licensing agreement the author authorizes the use of his work and the user is obliged to pay a remuneration therefor.

(2) The parties may freely agree on the contents of the licensing agreement; by mutual consent they may waive the observance of the provisions relating to the licensing agreement if this is not prohibited by this Act or other provision of law.

(3) If the contents of the licensing agreement cannot be interpreted unambiguously, the interpretation most favourable for the author shall be accepted.

##### **Article 43**

(1) The licensing agreement shall provide exclusive right to use only by an express stipulation to that end. In case an exclusive authorization obtains, only the acquirer of right may exploit the work, the author may not grant further authorizations for the use of the work, and even he himself remains entitled to use his work only if this is stipulated in the contract.

(2) The authorization provided for non-exclusive use prior to the conclusion of the contract in which exclusive use is authorized shall remain valid unless otherwise provided by the contract concluded between the author and the user acquiring non-exclusive right of use.

(3) The authorization of use may be limited to a specific domain, period of time, manner of use and extent of use.

(4) Unless otherwise provided by statute or contract, the authorization of use shall cover the territory of the Republic of Hungary and its term shall be in compliance with the period customary in contracts concluded on the use of works similar to the subject-matter of the contract.

(5) If the contract does not provide for the manners of use which the authorization is intended to apply to or does not provide for the authorized extent of use, the authorization shall be limited to the manner and extent of use indispensably necessary for the implementation of the objectives of the contract.

#### Article 44

(1) The stipulation of the licensing agreement whereby the author authorizes the use of an indefinite number of works he is to create in the future shall be taken to be null and void.

(2) No authorization of a manner of use still unknown at the conclusion of the contract may be granted. However, the method of the use evolving following the conclusion of the contract is not to be considered a manner of use still unknown at the conclusion of the contract if what is merely involved is that a manner of use known earlier will be possible to be applied more efficiently, in

more favourable conditions or in a better quality as a result of the improvement of methods.

#### Article 45

(1) Unless otherwise provided by this Act, the licensing agreement shall be drawn up in a written form.

(2) The drawing up of the contract in a written form shall not be obligatory if the contract is designed for publication in a daily or periodical.

#### Article 46

(1) The user may confer the authorization or may grant sub-licence to a third person for the use of the work only subject to the author's express consent thereto.

(2) The authorization of use shall, without the author's consent, be transferred to the successor in title in case the economic organization authorized for the use is wound up or the affected organizational unit of it is withdrawn from it.

(3) In case the user confers its rights or grants sub-licence without the author's consent or the authorization of use is transferred without the author's consent, the user and the acquirer of rights shall be jointly and severally responsible for the fulfilment of the licensing agreement.

#### Article 47

(1) The authorization of use shall cover the alteration of the work only on express stipulation to that end.

(2) The authorization of reproduction shall permit the user to fix the work in video or sound recording or to copy it by computer or onto an electronic data carrier only on express stipulation to that end.

(3) The authorization of the distribution of the work shall permit the user to import copies of the work for purposes of putting them into circulation only on express stipulation to that end.

(4) The authorization of the reproduction of the work shall, in case of doubt, cover the distribution of the reproduced copies of the work. This shall not imply, however, the importation into the country of copies of the work for purposes for putting them into circulation.

#### Article 48

According to the general provisions of civil law the court may alter the licensing agreement even if such a contract infringes the author's substantive lawful interest in having an equitable share in the income on use for the reason that because of the considerable increase in the demand for the use of the work following the conclusion of the contract the difference in value between the services respectively provided by the parties becomes strikingly big.

## Article 49

(1) The user is obliged to make a statement on the acceptance of a work delivered to him under a contract relating to a work to be created in the future within two months from the date of the delivery of the work to him. If the user returns the work to the author for corrections to be made in it, the term shall be counted from the date of the delivery of the corrected work. If no statement is made by the user within the term available to him for that purpose, the work shall be considered as accepted.

(2) In case the contract was concluded on a work to be created in the future, the user shall be entitled to repeatedly return the finished work, with reference to justified grounds and by setting appropriate deadlines, to the author for purposes of correction.

(3) In case the author refuses to make corrections without reasonable grounds, or fails to make the corrections by the deadline set, the user may rescind from the contract without the payment of remuneration.

(4) In case the work proves unsuitable for use even after the correction, only a reduced remuneration shall be paid to the author.

## Article 50

If the author authorizes the use of his work, he is obliged to perform on it the alterations not affecting its essence but indispensably or obviously necessary for the use. Should he refuse or be unable to meet this obligation, the user may perform the alterations without his consent.



## Article 51

(1) The author may unilaterally terminate the contract containing the authorization of exclusive use if

a) the user fails to commence the use of the work within the period determined in the contract or – in the absence of a stipulated period – within the period reasonably to be expected in the given situation; or

b) the user exercises his rights acquired by the contract in a manner obviously inappropriate for the implementation of the goals of the contract or in a manner other than consistent with the intended purpose.

(2) If the contract for use is concluded with an indefinite term or for a period longer than five years, the author may exercise his right of termination referred to in Paragraph (1) only after two years have passed from the date of the conclusion of the contract.

(3) The author may exercise his right of termination only after he has set a deadline to the user for the fulfilment of the terms and conditions of the contract and that deadline has expired with no result achieved.

(4) The author may not in advance waive his right of termination referred to in Paragraph (1); such waiver may be excluded by contract only for a five years' period following the conclusion of the contract or the delivery of the work if this occurs at a later date than is that of the conclusion of the contract.

(5) Instead of termination of the contract, the author may terminate the exclusivity of the authorization with a simultaneous proportional reduction of the fee to be paid to him for the use.

## Article 52

(1) If the contract for use relating to works to be created in the future is concluded so that the future works are referred to only by their genre or character, either party may terminate the contract with a six months' notice after the lapse of five years and thereafter repeatedly after the lapse of five years' terms.

(2) The author may not in advance waive his right of termination referred to in Paragraph (1).

## Article 53

(1) The author may terminate the licensing agreement if, with reference to any reasonable grounds, he withdraws his authorization to disclose his work to the public or forbids the further use of his work having been disclosed.

(2) The exercise of the right of termination is subject to the author providing a security for making up for the damage having arisen till the time of the announcement of the denunciation.

(3) If following the termination of the licensing agreement as provided by Paragraph (1) the author wants again to consent to disclosing his work to the public or to its continued use, the previous user shall have the right of first refusal in respect of the licence.

(4) The rules governing the right of first refusal regarding sale of goods shall apply to the right of first refusal in respect of the licence.

## Article 54

The licensing agreement shall cease to have effect with the lapse of the time determined in the contract, with the emergence of the circumstances referred to in the contract, as well as after the expiration of the term of protection.

## Article 55

The provisions relating to licensing agreements shall apply, *mutatis mutandis*, to contracts aimed at assigning the author's economic rights and to licensing the use of performers' performances.

## Publishing Agreement

### Article 56

(1) Under a publishing agreement, the author shall be obliged to make his work available to the publisher, and the publisher shall be entitled to publish it and put it into circulation, and shall be obliged to pay remuneration to the author.

(2) The right of publishing shall – in case of any doubt – relate to the publication of the work in Hungarian. The right of publishing exercised under the contract shall be exclusive, except in the case of works made for collections as well as dailies and periodicals.

### Article 57

(1) The inclusion of pictures in the publication of literary works shall be subject to the author's consent.

(2) In case the author has consented to the inclusion of pictures (illustrations) in the publication of his work, he may refuse his consent to the use of specific pictures only with reference to highly reasonable grounds.

## PART TWO

### PROVISIONS RELATING TO SPECIFIC GENRES

#### Chapter Six

#### Software Program Creation

#### Article 58

(1) The provision of Article 1, Paragraph (6), shall apply also to the idea, principle, concept, procedure, method of operation or mathematical operation on which the software interface is based.

(2) The provision of Article 4, Paragraph (2), shall apply also to the adaptation of the original program language to a different program language.

(3) The economic rights relating to software shall be assignable.

(4) The provisions of Article 30, Paragraphs (3) and (4), shall not apply to the software created by the author as a job duty.

#### Article 59

(1) Unless otherwise agreed, the author's exclusive right shall not cover reproduction, alteration, adaptation, translation and any other modification of the software – including the correction of mistakes – as well as the reproduction of

the product of these acts in so far as these acts of use are carried out by the person authorized to acquire the software in compliance with the intended purpose of the software.

(2) No provision in the licensing agreement shall prohibit the user from making a back-up copy of the software if it is necessary for the use.

(3) The person entitled to use a copy of the software shall be entitled, without the author's authorization, to observe and study the operation of the software and to make a trial use thereof in the processes of its loading, display on the monitor, running, transmission or storage in order that he can get to know the idea or principle serving as a basis for any of the software components.

#### **Article 60**

(1) No authorization of the author shall be required for the reproduction or translation of the code which is indispensable for the acquisition of the information necessary to know for the combined operation of the independently created software with another software supposing that

a) these acts of use are performed by the authorized user or another person entitled to use the copy of the software or a person put in charge of performing these acts by the persons referred to in this Item;

b) the information necessary to know for the combined operation has not been easy of access to the persons referred to in Item a);

c) these acts of use are limited to those parts of the software which are necessary for permitting combined operation.

(2) The information obtained through application of the provision of Paragraph (1) shall not be

a) used for a purpose other than the combined operation of the independently created software;

b) communicated to another person unless this is required for the combined operation with the independently created software;

c) used for the development, production and putting into circulation of another software essentially similar as regards its form of expression or for other acts resulting in the infringement of the copyright.

(3) The provision of Article 33, Paragraph (2), shall apply, mutatis mutandis, to the operations falling under the provisions of Paragraphs (1) and (2).

(4) Paragraph (2) of Article 34 and Paragraph (1) of Article 38 shall be inapplicable to the software. The term defined in Article 49, Paragraph (1), shall be four months in the case of software.

(5) In case copies of the software are procured through commercial distribution, it is not obligatory to lay down in writing a contract relating to the use of the software.

## Chapter Seven

### Database

#### Article 61

(1) The economic rights covering databases shall be transferable.

(2) The provisions of Article 30, Paragraphs (3) and (4), shall not apply to the database created by the author as a job duty.

## Article 62

(1) The performance of acts necessary for accessing the contents of the database and using the contents thereof in accordance with the intended purpose by a person authorized to use the database shall not be subject to the author's authorization.

(2) In case right has been obtained only for the use of a specific part of the database, the provision of Paragraph (1) shall apply to that specific part of the database.

(3) The provision of Article 33, Paragraph (2), shall apply, *mutatis mutandis*, to the acts falling under the provisions of Paragraphs (1) and (2).

## Chapter Eight

### Works Ordered for Publicity Purposes

## Article 63

(1) The economic rights related to a work ordered for publicity purposes shall be transferable to the user.

(2) The mode of use, its extent, the scope of territory, the term, the specification of the carrier of the advertisement, as well as the remuneration due to the author shall be particularly essential issues when a contract on the assignment of economic rights is concluded.

(3) Such works shall not fall within the scope of the collective administration of rights.

(4) In the case of the use of pre-existing works for publicity purposes the author and the user may agree that the work shall be considered – exclusively from the aspect of the application of the provisions of Paragraphs (1) to (3) and of the use related to the domain of publicity – as a work commissioned for publicity purposes. This agreement shall become effective for the organization performing the collective administration of rights (Articles 85 to 93) only if the organization is informed of this by the author in writing.

## **Chapter Nine**

### **Cinematographic Creations and Other Audiovisual Works**

#### **General Provisions**

##### **Article 64**

(1) A cinematographic creation shall be taken to mean a work which is expressed by motion pictures arranged in a predetermined order and accompanied or not by sound, irrespective of what carrier the work has been fixed on. The feature film produced for movie projection, the television film, the publicity and documentary film as well as cartoons and educational films shall in particular be rated as cinematographic creations.

(2) The authors of the literary and musical works prepared for a motion picture, the director of the motion picture, and all other persons having made creative contributions to the production of the whole of the motion picture shall be taken to be the authors of the cinematographic creation. This provision shall not prejudice the statutory rights of the authors of other works used in producing the cinematographic creation.



(3) The natural or legal person or the unincorporated economic organization who or which on their own behalf initiates and organizes the creation of the film and provides therefor the necessary financial and other conditions shall be taken to be the producer of the film (hereinafter referred to as the producer).

### Article 65

(1) A cinematographic creation shall be considered as completed if its final version is accepted as such by the authors and the producer. The final version may not thereafter be unilaterally altered by either party.

(2) The alteration of a completed film by addition, omission or replacement or in any other form shall be subject to the authorization of the authors and the producer.

(3) Unless otherwise agreed between the authors, the director shall represent the other authors in the exercise of the rights provided in Paragraphs (1) and (2).

(4) Except for the rights provided in Paragraphs (1) and (2), the producer may take action towards the protection of the moral rights of the authors.

(5) The cinematographic creations shall not be subject to the general provisions relating to works created as job duty (Article 30).

## Synchronization Agreement

### Article 66

(1) Unless otherwise stipulated, pursuant to the contract concluded on the production of a cinematographic creation (hereinafter referred to as synchronization agreement) the author – except the composer of a musical work with or without text – shall assign to the producer the right of the use of the cinematographic creation and of the authorization of its use.

(2) The assignment of the right of use shall not extend to the economic rights provided in Articles 20, 23 (6) and 28.

(3) Regarding each manner of use, remuneration shall be due to the author separately. The support made available to the producer for the creation of the film shall be considered as income related to the use. It is the producer's obligation to pay the remuneration.

(4) The producer may exercise the rights due to him under the contract jointly with another natural or legal person, whether Hungarian or foreign.

(5) The producer is obliged, at least once a year, to report in writing to the author on the incomes related to the use of the cinematographic creation by modes of use.

(6) Should the producer fail to start the work of adaptation to the screen within four years from the acceptance of the work, or if such work is started but is not completed within a reasonable deadline, the author may unilaterally terminate the agreement and may raise claim to the payment of a proportional

remuneration. Any advance payment disbursed to the author shall be considered as due to him, and the author may freely dispose of his work.

(7) If the contract is concluded on a work to be created in the future for purposes of a cinematographic creation, the producer is obliged to notify the author in writing within six months from the delivery of the work whether he accepts it or requests it to be corrected. In case the work is returned to the author for corrections an appropriate deadline is to be set for performing those corrections. The producer is obliged to make it known whether he accepts the corrected work within three months from the delivery to him of the corrected work. Should the producer fail to meet his obligation to make a statement on the acceptance of the work or of the corrected work, the work shall be considered as accepted.

(8) Within ten years from the completion of the production of the film the author may not enter into another contract on the production of a new film unless this is consented to by the producer. This limitation shall also extend to characteristic figures in a cartoon or puppet film and – in case it is agreed between the parties – to another work of the author with the same topic as is that of the work created and utilized for the production of the film.

## **Chapter Ten**

### **Creations of Fine Art, Artistic Photography, Architecture, Applied Art and Industrial Design and Designs of Engineering Structures**

#### **Moral Rights**

##### **Article 67**

(1) The alteration without the author's consent of the design of an architectural creation or engineering structure which influences the appearance or the intended ordinary use shall be taken to be an unauthorized alteration of the work.

(2) The designer shall have the right to determine where and how his name and the date of designing should be indicated on the building or engineering structure. However, the exercise of this right shall be subject to the requirement that no unjustified and disproportionate infringement of the rights and lawful interests of the owner, the user or the operator shall thereby be caused.

(3) The author's name has to be indicated on a view if this is intended to present a specific fine art, architectural, applied art or industrial design creation or engineering structure. The author's name has likewise to be indicated if such creations are used for presentation in scientific and educational lectures as well as for school education purposes (Article 33, Paragraph (4)).

(4) In the case of further uses in an unaltered form of the design of an architectural or technological creation and the further uses of standard designs only the name of the author of the original design has to be indicated.

(5) The provision of Article 34, Paragraph (1), shall not be applicable to the use of fine art, artistic photographic and applied art creations.

(6) The user of the work shall tolerate the presentation of the work and the taking of shots thereof by persons authorized thereto if this is without prejudice to his equitable interests.

### **The Cases of Free Use**

#### **Article 68**

(1) Of a fine art, architectural and applied art creation erected with a permanent character outdoors in a public place a view may be made and used without the authorization of the author and paying remuneration to him.

(2) For purposes of scientific or educational lectures (Article 33, Paragraph (4)) as well as instruction, the picture of a fine art, architectural, applied art and industrial creation, furthermore artistic photographs may be used without the authorization of the author and paying remuneration to him.

### **The Right of Exhibition**

#### **Article 69**

(1) The owner of a fine art, artistic photographic or applied art creation is obliged to make the work temporarily available to the author in order that he can exercise his author's right, if such action is without prejudice to the owner's equitable interest.

(2) The exhibition of fine art, artistic photographic, architectural and applied art creations shall be subject to the author's authorization. The exhibition

of a work forming part of a public collection shall not be subject to the author's consent and no remuneration shall therefor be due to the author.

(3) The author's name shall be indicated in the case of the exhibition of the work.

## **Droit de Suite**

### **Article 70**

(1) The transfer of the right of ownership of an original fine art or applied art creation through a business entity engaged in commercial activities shall be subject to royalty payment. This provision shall be applied only following the first case of the transfer by the author of the right of ownership of the creation.

(2) For the purposes of Paragraph (1), as original fine art and applied art creations shall be rated paintings, drawings, reproduced pictorial graphics and applied art creations bearing a serial number and the author's sign-manual, as well as sculpture and gobelins.

(3) The royalty must be paid by the buyer; it is five per cent of the purchase price considered without the general turnover tax. The business entity engaged in the commercial activity is in charge of collecting and remitting the royalty.

(4) Museums and museum-type public collections are exempt from the obligation to pay royalty.

(5) The royalty shall be transferred to the organization performing the collective administration of authors' rights in fine art and industrial art creations.

The organization performing the collective administration of rights shall disburse the collected royalties to the author of the creation or his legal successor.

(6) The business entity referred to in Paragraph (1) is obliged to transfer the royalties to the organization performing the collective administration of rights every quarter-year, before the 20th day of the month following the quarter under consideration. The following information shall accompany the transfer: the name of the author – or the fact that the name of the author is not indicated on the work –, the title of the work, the technique of its creation, and the amount of the royalty due by the work.

## Other Provisions

### Article 71

As regards industrial design and interior design creations intended for industrial production purposes:

a) the right to have the name indicated may be provided by statute or contract by derogation of the provisions of this Act;

b) the user shall have the right of exclusive use and alteration within the scope covered by the contract, however, the designer shall be consulted before the execution of any alteration;

c) the contract shall include a provision on whether the user may use the creation with or without limitation of time.

### Article 72

As regards portraits made to order, the exercise of the author's right shall be subject to the consent of the portrayed person, too.

## **PART THREE**

### **NEIGHBOURING RIGHTS**

#### **Chapter Eleven**

#### **The Protection of the Neighbouring Rights**

#### **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;
- c) the reproduction of his fixed performance;
- d) the distribution of his fixed performance;
- 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) In the case of an ensemble of performers, the performers may exercise their rights referred to in Paragraph (1) via their representative.

(3) In case the performer has consented to his performance being fixed in a cinematographic creation, by this consent – unless otherwise stipulated – he transfers upon the producer of the film the economic rights referred to in Paragraph (1) (Article 63, Paragraph (3)). This provision shall not prejudice the



performers' claim to remuneration pursuant to Articles 20 and 28. Paragraph (6) of Article 23 shall also apply to performers, *mutatis mutandis*.

#### Article 74

(1) Unless otherwise provided by this Act, remuneration shall be due to the performer for the uses mentioned in Article 73, Paragraph (1).

(2) The provisions of Article 27 shall be applicable *mutatis mutandis*, also in the case of performers and the organizations performing the collective administration of their rights (Articles 85 to 93) regarding the remuneration of a fixation of a performance made for broadcasting or communication to the public as well as regarding the exercise of the consent required by subparagraph (1) e of Article 73.

#### Article 75

(1) In the case of the uses referred to in Article 73, Paragraph (1), the performer 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 honour or reputation of the performer shall be taken to infringe his moral right.

## **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;
- b) distributed;
- 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).

### **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.

(3) The rightholders may enforce their claim to remuneration only through the organizations performing the collective administration of their rights (Articles 85 to 93) and they may renounce the remuneration only with effect following the date of the distribution and to the extent of the amount due to them.

### Article 78

(1) The public lending and rental of the released copies of a sound recording shall be subject to the authorization – in addition to that of the author of the work embodied in the sound recording – of the phonogram producer and – in the case of the sound recording of a performance – to that of the performer(s).

(2) The use determined in Paragraph (1) shall be subject to the payment of remuneration, which shall be distributed on an equal basis between those entitled, unless otherwise agreed between them. The authors and the performers may enforce their claim to remuneration via the organizations performing the collective administration of their rights (Articles 85 to 93) and may renounce such remuneration only following the date of its distribution and to the extent of the amount due to them.

### Article 79

The producer of the sound recording shall have the right to have his name indicated on the copies of the sound recording.

## **The Protection of Radio and Television Organizations**

### **Article 80**

(1) Unless otherwise provided by statute, it shall be subject to the radio or television organization's authorization that its programme can be

a) broadcast or communicated to the public by other radio or television organizations or by entities concerned with communication by cable to the public;

b) fixed;

c) reproduced after fixation, if the fixation was made without its authorization, or the fixation was made pursuant to Article 83, Paragraph (2), and the reproduction is made for a different purpose than to which Article 83, Paragraph (2) relates.

(2) Unless otherwise provided by statute, the television organization's authorization shall be required for its programme to be communicated to the public in a room where the programme is accessible to the public for the payment of an entrance-fee.

(3) The uses referred to in Paragraphs (1) and (2) shall be subject to the payment of remuneration, unless otherwise provided by statute.

(4) In the case of communication by cable of an own programme to the public, [Art. 26 Paragraph (7)], Paragraphs (1) to (3) shall be enforced as applicable.

### Article 81

In the case of the uses referred to in Article 80, the radio or television organization and the organization communicating by cable its own programme to the public shall have the right to have its name indicated.

## The Protection of Film Producers

### Article 82

(1) The consent of the film producer [Article 64, Paragraph (3)] shall be required for the film to be

- a) reproduced;
- b) distributed, including lending to the public;
- 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 uses referred to in Paragraph (1) shall be subject to the payment of remuneration.

(3) The protection provided pursuant to Article 2 of this Act shall apply, *mutatis mutandis*, to the producer of the film.

## The Relationship Between Authors' Rights and Neighbouring Rights

### Article 83

(1) The protection of the rights dealt with by this Chapter may not prejudice the protection of authors' rights in literary, scientific and art creations.

(2) No authorization of the rightholders under neighbouring rights shall be required in cases where the author's authorization shall not be required for the use of statutorily copyrighted creations. When, under this Act, a remuneration is due to the rightholders under neighbouring rights for the use, the provisions in subparagraph (4) and in the first sentence of subparagraph (5) of Article 16 on the proportional quantity of the remuneration shall also apply to the rightholders under neighbouring rights.

## **The Term of Protection**

### **Article 84**

(1) The rights covered by the provisions of this Chapter shall be under protection for the following periods of time:

a) rights in sound recordings and in the performances fixed therein, for fifty years from the end of the year in which the sound recording was first put into circulation or, if the sound recording was not put into circulation, from the end of the year in which the sound recording was made;

b) rights in unfixed performances, for fifty years from the end of the year in which the performance was held;

c) rights in a broadcast programme or in an own programme communicated by cable to the public, for fifty years from the end of the year in which the broadcasting or the communication occurred;

d) rights in films, for fifty years from the end of the year in which the film was released for distribution or – if the film was not released during that time – for fifty years from the end of the year in which the production of the film was completed.

(2) In case the communication to the public had occurred previous to the release for distribution, the terms referred to in Paragraph (1) shall be counted by replacing the year of the first release for distribution by the year of the first communication to the public.

**PART FOUR**  
**THE COLLECTIVE ADMINISTRATION OF RIGHTS**  
**AND THE CONSEQUENCES OF THE INFRINGEMENT OF RIGHTS**

**Chapter Twelve**  
**The Collective Administration of Authors' Rights and Neighbouring Rights**

**The Collective Administration of Rights**

**Article 85**

The collective administration of rights shall mean the exercise of authors' rights and neighbouring rights related to authorial works, productions of performers, sound recordings, and programmes broadcast or transmitted by cable as well as films which are individually non-exercisable due to the character or circumstances of utilization and therefore exercised through organizations of rightholders established to this end whether it is legally prescribed or based on the resolution of rightholders.

**Registration of the Organizations Concerned with the Collective**  
**Administration of Rights**

**Article 86**

(1) The minister or the head of the organization of national competence appointed by the Government (hereinafter referred to as the Minister) shall keep

records of the organizations performing collective administration of rights under statutes on authors' rights and neighbouring rights. Only societies (pursuant to Articles 61 to 64 of the Civil Code) may be registered as organizations performing collective administration of rights.

(2) Only one society may be registered nation-wide for the collective administration of authors' rights and neighbouring rights related to each of the following types of work and product:

- a) literary works and musical compositions,
- b) other works of the fine art,
- c) film productions,
- d) performances,
- e) sound recordings.

(3) To enforce rightholders' right of autonomy and increase efficiency in the administration of rights, the categorization contained in Paragraph 2 may be disregarded, and societies established for the collective administration of rights but not contained in Paragraph 2 may also be registered, however, only one society may be registered for the administration of the same right of the same group of rightholders.

## Article 87

(1) The type of right administration provided by the society shall be indicated in the register. The disbursement of royalties to other organizations and agreements with other organizations shall not be effective for the registered society and the rightholders with respect to the actual right administration activity



and shall not exempt from the legal consequences of the infringement of the copyright.

(2) The entry with respect to the right administration activity performed by the registered society may be amended by the Minister under agreement between the registered societies in case the conditions of registration continue prevailing with all affected societies following the amendment of the right administration activities in accordance with the said agreement.

### Article 88

(1) The records on the societies for the collective administration of rights is open to the registration of a society

a) which may be joined by all those concerned who so wish and authorize the society to perform the collective administration of their rights and who prove eligible for admission according to the criteria laid down in the statutes,

b) which includes as members or is intended to be joined as members by a substantial part of the resident rightholders who are affected by the collective administration of rights the type of which is specified by the society,

c) which has a staff in reliance on which it has the appropriate expertise and experience necessary for the collective administration of rights and the maintenance of international contacts,

d) which is equipped for data processing related to the collective administration of rights,

e) which has entered into reciprocal representation agreements with organizations concerned with the collective administration of the rights of foreign rightholders and are of importance from the aspect of domestic and international

utilizations, or which possesses a mutual letter of intent on the conclusion of such agreements,

f) the statutes of which include that the society

1. shall endeavour to collectively administer the rights and protect the interests of the affected rightholders, in particular exercising and enforcing economic rights related to the collective administration of rights in its own name before the court and other authorities,

2. shall keep records of the collectively administered Hungarian and foreign works, neighbouring rights related performances, as well as rightholders,

3. shall perform the collective administration of rights not as a business activity and shall use revenues from complementary activities, if any, only for the reduction of its expenditures,

4. shall cover the expenses of its operation from the administration costs deducted by this title from the collected royalties and – if so provided by the statutes – from the membership fees it collects,

5. shall distribute its revenues from collective administration reduced by the administration costs among the rightholders according to its rules of distribution, irrespective of whether they are or are not members of the organization.

(2) When establishing whether a substantial part of the rightholders are members of the society or wish to join it, both the rightholders' number and their share in royalties are to be taken into account.

(3) The society shall be considered as equipped for processing the data related to the collective administration of rights if it is able to conduct the registration of rightholders, collectively administered works, neighbouring rights related performances, and different types of utilization in a manner which allows the distribution and disbursement of royalties to the rightholders.

(4) If several societies request to be registered for the administration of the same rights of the same group of rightholders and each of them meets the criteria for registration, the society best complying with the criteria in their totality shall be registered.

### Article 89

(1) The procedure of the registration of societies for the collective administration of authors' rights and neighbouring rights shall commence upon the receipt of relevant applications.

(2) The documents certifying the fulfilment of registration criteria as detailed in Article 88, Paragraph (1), shall accompany the application. The documents may contain the personal particulars of only those rightholders who are members or wish to be members of the society and consent to making their personal particulars public.

(3) The Minister shall publish the registration in the official gazette Magyar Közlöny. The Minister shall insert an announcement containing the names of the registered societies and their collective right administration activities in Magyar Közlöny.

(4) The regulations relating to the registration of the societies collectively administering authors' rights and neighbouring rights shall be determined in detail by the Minister – or the Minister supervising the organization of national competence – in a decree.

## **General Provisions of the Collective Administration of Rights**

### **Article 90**

(1) The society collectively administering authors' rights and neighbouring rights shall regularly determine royalties and other conditions of use, to equally apply to all users without unjustified distinction, for each mode of use within the scope of the administration of rights the society is entitled to exercise according to the registry.

(2) The determination of royalties and other conditions is subject to the Minister's approval. Prior to giving his approval, the Minister shall consult the major users and their representative organizations. Persons liable to payment under Article 21 of this Act and their representative organizations shall qualify as such users and organizations regarding the remuneration under Article 21. The application of royalties and other conditions and their publishing in the official gazette Magyar Közlöny is subject to the existence of such approval. However, this requirement shall not exclude or affect the enforcement of other legal statutes with regard to royalties and other conditions.

(3) Following the Minister's approval, the society administering rights shall publish the royalties and other conditions of use in Magyar Közlöny in its own name.

(4) The royalties shall apply to each user without unjustified distinction.

### **Article 91**

(1) In case a society registered according to Articles 86 to 89 for the collective administering rights authorizes use for, or enforces a royalty claim

against, a user, the user shall be entitled to the use of the works or performances under neighbouring rights of the same genre produced by rightholders covered by the society' collective administration of rights and falling under the collective administration of rights, provided the user pays the royalties related to the works and performances involved on the same conditions.

(2) The provisions of Paragraph (1) shall not apply if a rightholder covered by the society' collective administration of rights objects beforehand in a written statement to the authorization under the collective administration of rights of the use of his works or performances under neighbouring rights. The society performing the collective administration of rights shall proceed in accordance with the written statement if this has been submitted more than three months before the end of the calendar year and requested to be in effect not earlier than the first day of the following year. However, the rightholder may not object to such authorization of the use if the collective administration of rights is ruled by law.

## Article 92

(1) The societies exercising collective administration of rights pursuant to registration under Articles 86 to 89 shall enforce claims falling within the collective administration of rights before the Court as their own claims and in their own names.

(2) The royalty claims enforced through the collective administration of rights and the royalties paid or collected shall be at the disposal of the society performing the collective administration of rights pursuant to registration under Articles 86 to 89 until their distribution among the rightholders.

(3) In case the collective administration of rights – except for the authorization of mechanical reproduction (Article 19) – is required by statute, it shall be presumed, until the contrary is proved, that protection is provided for the works and the performances under the neighbouring rights used.

(4) The organization performing the collective administration of rights shall, within the scope of the administration of rights it is in charge of, issue a written statement on whether protection is provided for the work or the performance under neighbouring rights specifically referred to by the user.

(5) The organization performing the collective administration of rights may require in its tariffs as a criterion of eligibility for use that the user should provide particulars about the works and the performances under neighbouring rights used. This provision shall be applicable only to live performances (Item (a) of Paragraph (2) of Article 24) in the case of public performances.

## **The Supervision of the Collective Administration of Rights**

### **Article 93**

(1) Under his obligation to supervise the collective administration of rights pursuant to Article 17 of Act II of 1989 on the Right of Association the Minister shall control whether the conditions of registration applying to the societies for the collective administration of rights are continuously observed and whether the provisions of the statutes, distribution rules and other internal regulations do not contradict the provisions of this Act and other copyright regulations in force.

(2) The society exercising collective administration of rights pursuant to registration under Articles 86 to 89 shall make the following documents available to the Minister to enable him to perform supervision:

- a) its statutes,
- b) its organizational and operational rules,
- c) its distribution rules,
- d) the list of its members who have consented to publishing their names for such purposes,
- e) the list of its members participating in its administrative and representative organizations,
- f) its annual report,
- g) its agreements on reciprocal representation concluded with foreign societies performing collective administration of rights.

(3) Should the Minister find while exercising supervision that the conditions of registration are not met or the regulations referred to in Paragraph 1 are infringed, he shall

a) summon in writing the administrative and representative organization of the society performing collective administration of rights to fully observe the conditions of registration and restore operation in accordance with the copyright legislation and shall set an appropriate deadline therefor;

b) contact the Prosecutor's Office for the enforcement of the measures that may be taken within the scope of the supervision of the society aimed at the observance of legality;

c) cancel the registration of the society performing collective administration of rights from the registry and shall publish this action in the official gazette Magyar Közlöny, should the deadline referred to in (a) have passed with no result achieved or the measure aimed at restoring the observance of legality have remained or appears to remain ineffective.

## Chapter Thirteen

### The Consequences of the Infringement of Authors' Rights

#### 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 infringer 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 or at the cost of the infringer of the state of things as it existed prior to the infringement of right 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 measure shall be taken as needed if the applicant gives evidence of the work being under copyright protection and of he 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 his 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.

## **Protection Against the Circumvention of Technological Measures**

### **Article 95**

(1) The consequences of the infringement of the copyright shall apply to all acts – including the production and distribution of devices and the provision of services – which enable or facilitate an unlawful circumvention of effective technological measures designed to provide protection for the copyright and which have no particular aim or no major economic significance other than the mere circumvention of the technological measure. This provision shall be applicable only if the person performing the acts referred to knows, or with the care expected to obtain in the given situation has reasonable grounds to know, that the acts unlawfully enable or facilitate the circumvention of the effective technological measure designed to provide protection for the copyright.

(2) For purposes of the provision of Paragraph (1), technological measures shall mean all devices, products, components, procedures and methods which are designed to prevent or hinder the infringement of the copyright. A technological measure shall be considered effective if as a result of its execution the work becomes accessible to the user through performing such actions – with the authorization of the author – as require the application of the procedure or the supply of the code necessary therefor.

## **The Protection of the Rights Management Data**

### **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 right 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 grounds 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 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 the 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 license 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 Neighbouring Rights**

### **Article 99**

The provisions of Articles 94 to 97 shall apply, mutatis mutandis, to cases of the infringement of the provisions of Chapter XI and to the protection of the technological measures and rights management data provided for in that Chapter.

## **PART FIVE**

### **MISCELLANEOUS AND FINAL PROVISIONS**

#### **Chapter Fourteen**

#### **Payment of Contribution After the Expiration of the Term of Protection**

### **Article 100**

(1) After the expiration of the term of protection of the author's economic rights, a contribution must be paid at the transfer, through a business entity

engaged in commercial activity, of the right of ownership of original fine art and applied art creations.

(2) The provisions of Article 70 shall apply, *mutatis mutandis*, to the determination of the scope of original fine art and applied art creations, the person obliged to pay the contribution, the size, collection and transfer of the contribution, as well as the cases of exemption from the payment of the contribution, with the understanding that the organization performing the collective administration of rights shall use the contributions remitted to it for purposes of supporting the creative activity and the social welfare of performers.

(3) The organization performing the collective administration of rights shall be obliged to record and administer under a separate head the amount collected as contributions.

(4) The organization performing the collective administration of rights shall annually inform the public on the amount of the contribution, and on the uses thereof by means of the official gazette of the ministry (organization of national competence) headed by the minister referred to in Article 86.

## Chapter Fifteen

### Organizations Co-operating in the Settlement of Copyright Related Legal

#### Disputes

#### Body of Experts in Copyright

#### Article 101

(1) Concerning specific issues arising in copyright related legal disputes the courts of justice and other authorities may consult the body of experts

attached to the Hungarian Patent Office requesting them to give their opinions. The members of the body shall be appointed for a five years' term by the minister of justice in agreement with the minister of national cultural heritage.

(2) The Body shall set up a three- or five-member panel to formulate its advisory opinion by majority.

(3) Upon request, the Body may give advisory opinions also in extra-judicial procedures on issues connected with the exercise of the right of use.

(4) The detailed rules of the body's organization and operations shall be established by a special statute.

### **Arbitration Board**

#### **Article 102**

In case no agreement on remuneration and other terms and conditions of uses is reached between the user and the rightholders or the organization performing the collective administration of their rights in connection with the simultaneous and unaltered retransmission to the public of the broadcast work with the involvement of another organization than the original one, either party may contact the arbitration board set up pursuant to Article 103.

#### **Article 103**

(1) The provisions of Chapter II of Act LXXI of 1994 on Arbitration shall apply to the setting up of the arbitration board on the understanding that the members of the arbitration board shall be appointed from among the members of the Body of Experts in Copyright (Article 101).

(2) The Arbitration Board shall operate within the Body of Experts in Copyright.

#### Article 104

(1) The proceedings of the Arbitration Board shall be aimed at promoting the establishment of an agreement between the parties. The proceedings of the Board shall not prejudice the applicability of the provisions of Article 90, Paragraph (2).

(2) In case no agreement is established between the parties, the Arbitration Board shall draft a proposal concerning the contents of the agreement which it makes known to the parties in writing.

(3) The parties may accept the agreement expressly or tacitly. If no objection is made by the parties to the Arbitration Board with regard to the proposal for agreement within three months from the date of its delivery, a case of tacit understanding obtains.

(4) In case the Arbitration Board has proceeded by infringing the provisions of Article 105, the party having sustained injury may bring an action before the Court against the agreement established by the decision of the Arbitration Board within three months from its entry into force.

#### Article 105

(1) Equal treatment shall be given to the parties during the proceedings of the Arbitration Board and either party shall have the possibility to present his

position. The Arbitration Board may not oblige the parties to get involved in the proceedings and carry out acts of proceedings unless the parties have agreed thereto. As regards other matters, the Arbitration Board shall itself establish its rules of proceedings – within the frameworks of the statutes referred to in Paragraph (2) – and determine its tariffs.

(2) The statutes of the Arbitration Board shall be elaborated by the Body of Experts in Copyright and approved by the minister of justice. Prior to the approval, the minister supervising the Hungarian Patent Office and the minister of national cultural heritage have to be consulted as regards their opinions.

## Chapter Sixteen

### Final Provisions

#### Other Rightholders Under the Authors' Right

##### Article 106

(1) Wherever author is mentioned in this Act, the successor in title of the author and other rightholders under the copyright shall be understood to be, *mutatis mutandis*, included.

(2) In case the legacy of a deceased person includes copyright, the notary public shall notify on the institution of the execution of the will the organization performing the collective administration of rights related to the works of the deceased person. If the affected organization performing the collective administration of rights cannot be identified or the works do not fall within the scope of collective administration of rights, the notification shall be addressed to the organization performing the collective administration of rights related to literary and musical works.



(3) In appropriate consideration of the provision of Paragraph (2), the notary public shall send a copy of the abridged certificate of inheritance and the Court a copy of the abridged definitive judgement to the affected organization performing the collective administration of rights notifying it of the transfer to the heir of the copyright forming part of the legacy.

(4) The rules relating to certificates of inheritance and definitive judgements shall apply to the abridged certificate of inheritance and abridged definitive judgement on the understanding that they may only include particulars of the transfer to the heir of the copyright forming part of the legacy.

(5) The abridged certificate of inheritance and abridged definitive judgement referred to in Paragraph (3) shall include, over and above what is ruled by the provision of Paragraph (4), the indication "abridged" as well as the purpose for which they can be used.

(6) The provision of Paragraph (5) shall be taken as a basis for proceedings also when the certificate would not include any other provision than what is ruled by Paragraph (4).

(7) The affected organization for the collective administration of rights is obliged to keep records on the heirs and to provide therefrom data to the users in consideration of the legal rules relating to the protection of personal particulars.

(8) The provisions of Paragraphs (1) to (7) shall apply, *mutatis mutandis*, to performers and to the rights of performers.

**Provisions Relating to the Entry Into Force of the Act and Determining the  
Transitory Provisions**

**Article 107**

(1) This Act shall enter into force on September 1, 1999; its provisions shall apply to the contracts for use concluded after its entry into force.

(2) The provisions of Article 21 of this Act and the provisions in Article 22 related to the devices used for reprography shall apply after the September 1, 2000.

(3) The provisions established by Paragraphs (1) and (2) of Article 111 shall apply to the proceedings of execution instituted following the entry into force of this Act.

**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 neighbouring 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 rated 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 towards 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 neighbouring 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 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.

#### Provisions Losing Their Effect

#### Article 110

(1) Simultaneously with the entry into force of this Act, the following Acts and Decrees shall lose effect:

a) Act III of 1969 on Copyright and Law-Decree 27 of 1978, Articles 13 to 19 and Article 29 of Act VII of 1994, Act LXXII of 1994, Article 151 and Item (e) of Article 161 of Act I of 1996, and Items (b) and (c) of Article 120 of Act XI of 1997;

b) The second sentence of Paragraph (2) of Article 117, Paragraph (4) of Article 139, Article 151 and subparagraph e) of Article 161 of Act I of 1996 on radio and television broadcasting;

c) Government Decree 146/1996. (IX. 19.) on the collective administration of copyright and neighbouring rights and Government Decree 239/1997. (XII. 18.) amending it;

d) Decree 9/1969. (XII. 29.) MM on the implementation of the Copyright Act and the Decrees 4/1978. (XII. 7.) KM and 15/1982. (IX. 20.) MM modifying and amending it, as well as Decree 15/1983. (VII. 12.) MM, Decree 18/1988. (VIII. 24.) MM, Decree 6/1992. (IV. 8.) MKM, Article 2 of Decree 12/1992. (VII. 29.) MKM, Subparagraph a) Paragraph 2 of Article 33 of Decree 8/1994. (IV. 26.) MKM, Decree 24/1994. (XII. 28.) MKM.

e) Decree 1/1970. (III. 20.) MM on the terms and conditions of contracts for publishing and on royalties, and the decrees amending it, namely Decree 2/1980. (IX. 15.) MM, Decree 13/1982. (X. 18.) MM, Decree 21/1984. (XII. 28.) MM, Decree 14/1985. (XII. 22.) MM, Decree 15/1987. (VIII. 9.), and Decree 19/1996. (XII. 26.) MKM;

f) Decree 2/1970. (III. 20.) MM on the terms and conditions of the contracts for the use of dramatic works, and Decree 7/1992. (IV. 8.) MKM amending it;

g) Decree 3/1970. (III. 20.) MM on the contracts for the composition of musical works and their first public performance;

h) Decree 5/1970. (VI. 12.) MM on the terms and conditions of the contracts for use by the Hungarian Radio and Television and on royalties, and the decrees amending it, namely Decree 15/1985. (XII. 28.) MM, Decree 16/1988. (VIII. 11.) MM, Decree 13/1992. (VIII. 26.) MKM, and Decree 23/1994. (XII. 26.) MKM;

i) Decree 4/1988. (II. 12.) MM amending the provisions relating to remuneration under the various contracts for use;

j) Decree 6/1970. (VI. 24.) MM on the terms and conditions of the contracts for the use of applied graphic works and on royalties;

k) Decree 7/1970. (VI. 24.) MM on the terms and conditions of the contracts for the use of small sculpture, medals and plaques and on royalties;

l) Decree 8/1970. (VI. 24.) MM on the terms and conditions of the contracts for the use of artistic photographs and on royalties;

m) Decree 9/1970. (VI. 25.) MM on the terms and conditions of the contracts for the use of applied art and industrial design creations and on royalties, and Decree 14/1989. (V. 13.) MM amending it;

n) Decree 10/1970. (VI. 25.) MM on the terms and conditions of the contracts for the use of scenic graphic creations and on royalties;

o) Non-numbered Paragraphs 4 to 9 of Article 11 of Decree 16/1982. (XII. 29.) MM on the implementation of Decree 83/1982. (XII. 29.) MT on the regulation of various issues relating to fine arts and applied art;

p) Decree 12/1970. (VI. 30.) MM on the terms and conditions of the contracts for the adaptation to the screen and on royalties, and Decree 2/1983. (III. 23.) MM amending it;

r) Decree 6/1972. (VIII. 19.) on the terms and conditions of the contracts for the publication of musical works, other contracts connected with the publication of musical works, and on remunerations due to authors and on other activities.

### **Provisions Amended**

#### **Article 111**

(1) The following subtitle and Article 184/A shall be inserted in Act (Vht.) LIII of 1994 on judicial execution:

**“Execution of the decision passed in a lawsuit instituted by reason of the infringement of intellectual property rights**

Article 184/A (1) In case the decision of the Court passed in lawsuits on acts of infringement of the patent, infringement of the protection of a registered design, infringement of the protection relating to the topography of a microelectronic semiconductor product, fraudulent imitation of trademark, infringement of the protection of an industrial design, infringement of the provisions on the prohibition of unfair competition, or infringement of the copyright, in its executory deed the Court summons the obligor to voluntarily

execute the decision with the deadline set at the end of a three days' period. In case the act involved relates to the transfer or delivery of movable effects, the Court summons the obligor to execute the decision with immediate effect.

(2) The executor shall forward the executory deed, with no delay upon its receipt, to the solicitor of the execution, simultaneously summoning him to make with no delay an advance payment of the costs of the proceeding of execution. In the case of the execution of a temporary measure, the executor shall be entitled to receive by advance payment, at the beginning of the proceeding, the amount of the full cost of execution and of the disbursements and fees liable to arise or a lump-sum expected to cover the latter.

(3) Upon receipt of the advance payment, the executor shall with no delay deliver the executory deed to the obligor on the spot and shall summon him to perform the execution. Should the obligor not act immediately upon the executor's summons, the executor shall control on the spot the occurrence of the execution at the expiry of the deadline for the execution.

(4) Should the execution fail to be performed, the executor shall submit with no delay the minutes drawn up on the control on the spot to the Court having ruled the execution, which shall with special promptness take decision pursuant to Articles 174 to 177 on the method of execution.

(5) The court can impose a fine up to 500.000 Hungarian Forints on the obligor during the execution of the decisions passed in the lawsuits defined in Paragraph 1. based on Subparagraph c) of Article 174. In case of non-payment, the amount of the fine increases by the double of the prime rate from the date of the time of performance on.



(6) In case the execution provided under this title implies the surrender, delivery or distraint of specific movable effects, upon delivery of the executory deed the executor shall distraint upon the movable effects and make arrangement for their forwarding to the person named in the decision. In case the obligor refuses to surrender or deliver the movable effects or prevents their distraint, the executor shall carry out the execution with the direct involvement of the police.

(7) In case the Court rules the sale of the effects and materials distrained upon pursuant to the rules of judicial execution, the executor shall act according to the rules governing the auction of movable effects on the understanding that no evidence shall be admissible regarding the return of the movable effects to the obligor as provided by Paragraphs (1) and (2) of Article 135.

(8) In case the decision passed in the lawsuit referred to in Paragraph (1) rules exclusively money payment, the decision shall be executed according to the rules relating to the execution of pecuniary claims.”

(2) Paragraph (4) of Article 190 of Vht. shall be replaced by the following provision:

“(4) Upon receipt of the decision ruling the insurance measure the executor shall without delay summon the solicitor of execution to make an advance payment at short notice and upon receipt of the advance payment he shall without delay initiate the execution of the insurance measure. In the case of the execution of an insurance measure, the executor shall be entitled to receive by advance payment, at the beginning of the proceeding, the amount of the full cost of execution and of the disbursements and fees liable to arise or a lump-sum expected to cover the latter.”

(3) The following sentence shall be inserted, as second sentence, in Paragraph (7) of Article 75 of Act I of 1996 on radio and television broadcasting:

“This provision shall not prejudice the application of copyright statutes, except for the entitlements due under the neighbouring rights to the Hungarian Radio Organization, the Hungarian Television Organization and the Duna Television Organization.”

(4) The following Paragraph (7) shall be added to Article 78 of Act I of 1996 on radio and television broadcasting:

“(7) In the case of the supply of programmes as determined in Paragraph (1) of Article 117, the administrator of the Fund, instead of the operator, shall pay from the Fund the remunerations due on the basis of copyright statutes.”

## Authorizations

### Article 112

(1) The Government shall be authorized to determine – taking into account the opinion of the representative organisations concerned - by a decree the range of the devices used for purposes of reprography.

(2) The Government shall be authorized to determine by a decree the detailed rules of the organization and operation of the Body of Experts in Copyright.

(3) The minister of national cultural heritage shall be authorized to determine by a decree the detailed rules governing the records on the societies

concerned with the collective administration of authors' rights and neighbouring rights.

## **Approximation of the Legislation of the European Communities**

### **Article 113**

This Act contains provisions harmonizing with Article 3 of Act I of 1994 promulgating the Europe Agreement on the establishment of an association between the Republic of Hungary and the European Communities and their Member States signed in Brussels on December 16, 1991, and compatible with the following legal rules of the European Communities:

- a) Council Directive 91/250/EEC on the legal protection of computer programs;
  - b) Council Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
  - c) Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission;
  - d) Council Directive 93/98/EEC harmonizing the term of protection of copyright and certain related rights;
  - e) Directive 96/9/EC of the European Parliament and of the Council on the legal protection of databases.
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