

# **Law No. 9610 of 19 February 1998, on Copyright and Neighbouring Rights**

Consolidated with the Bill in Public Consultation since 14 June 2010<sup>1</sup>

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The sections of Law No. 9610 not modified by the Bill are based  
on the translation provided by the World Intellectual Property Organisation.<sup>3</sup>

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1 Available at: <http://www.cultura.gov.br/consultadireitoautoral/lei-961098-consolidada>.

2 Available at: <http://www.gpopai.usp.br/blogs/>

3 Available at: [http://www.wipo.int/clea/en/text\\_pdf.jsp?lang=EN&id=514](http://www.wipo.int/clea/en/text_pdf.jsp?lang=EN&id=514).

## Title I Introductory Provisions

1. This Law governs copyright, the term encompassing the rights of authors and neighbouring rights, and is guided by the balance between the constitutional provisions of copyright protection and the guarantee of the full enjoyment of cultural rights and other fundamental rights and by the promotion of national development.

*Sole paragraph.* The protection of copyright shall be applied in accordance with the principles and rules related to free enterprise, the protection of competition and consumer protection.

2. Foreigners resident outside the country shall enjoy the protection provided for in the agreements, conventions and treaties in force in Brazil.

*Sole paragraph.* The provisions of this Law shall be applicable to the nationals of and persons resident in countries that assure Brazilians or persons resident in Brazil of reciprocity in the protection of copyright or equivalent rights.

3. Copyright shall be considered movable property for the purposes of this Law.

3-A. The interpretation and application of this Law shall serve the purposes of encouraging artistic creation and cultural diversity and guaranteeing freedom of expression and access to culture, education, information and knowledge, in order to harmonize the interests of the owners of copyrights and the interests of society.

4. Legal Acts relating to copyright shall be interpreted restrictively, aiming at serving its purpose.

5. For the purposes of this Law,

I. "publication" means bringing a literary, artistic or scientific work to the notice of the public, with the consent of the author or other copyright owner, in whatever form or by whatever process;

II. "emission" means the wireless dissemination of sounds, of sounds and images or their representations by means of signals or radio waves or by any other electromagnetic process including the use of satellites;

II. "transmission" or "emission" means the dissemination of sounds or of sounds and images by means of radio waves or satellite signals, by wire, cable or other conductor, by optical means or by any other electromagnetic process;

III. "transmission" means the dissemination of sounds, of sounds and images or their representations by wire, cable or other electrical conductor; fibre, cable or other optical conductor, or any other analogous process;

~~III. "retransmission" means the simultaneous emission of one organization's transmission by another;~~

IV. "retransmission" means the simultaneous emission or transmission of one organization's transmission or emission by another;

IV. “distribution” means ~~making the original or copies of literary, artistic or scientific works, fixed performances and phonograms available to the public by sale, rental or any other transfer of ownership or possession;~~

V. “distribution” means offering the original or copies of literary, artistic or scientific works, fixed performances and phonograms to the public by sale, rental or any other transfer of ownership or possession;

VI. “communication to the public” means the act by which a work is made accessible to the public by any means or process that does not consist in the distribution of copies;

VII. “reproduction” means making one or more copies of a literary, artistic or scientific work or phonogram in any tangible form, including any permanent or temporary storage by electronic means or any other means of fixation that may be devised in the future;

VIII. “infringement” means unauthorized reproduction, **except in the cases which the Law exempts from authorization;**

IX. “work”:

(a) “work of joint authorship” means any work created jointly by two or more authors;

(b) “anonymous work” means any work that does not name the author, either according to his or her wish or because he or she is unknown;

(c) “pseudonymous work” means any work whose author conceals his or her identity behind an assumed name;

(d) “unpublished work” means any work that has not been published;

(e) “posthumous work” means any work published after the author’s death;

(f) “original work” means the initial creation;

(g) “derived work” means that which, while constituting a new intellectual creation, is the result of the transformation of an original work;

(h) “collective work” means a work created on the initiative, instructions and responsibility of a person, whether natural person or legal entity, who publishes it under his or her name or mark, and consisting of contributions by two or more authors whose work is merged into a self-contained creation;

(i) “audiovisual work” means **a work created by an author or the work of joint authorship** resulting from the fixing of images, with or without sound, whose purpose is to give, through their reproduction, an impression of movement, regardless of the processes used for capturing them, the medium initially or subsequently used for fixing them or the means used for disseminating the work;

X. “phonogram” means fixing sounds from a performance or other sounds, or a representation of sounds ~~other than in the form of a fixation incorporated in an audiovisual work;~~

XI. “publisher” means the person, whether natural person or legal entity, who granted the exclusive right to reproduce a work and is under the obligation to disclose it within the limits set by the publishing contract;

XII. “producer” means the person, whether natural person or legal entity, who takes the initiative and financial responsibility for the first fixing of a phonogram or audiovisual work, regardless of the nature of the medium used;

~~XIII. “broadcasting” means the wireless transmission, including transmission by satellite, of sounds or images and sounds, or representations thereof, for the purposes of reception by the public, and the transmission of encrypted signals where the means of decrypting the signals are supplied to the public by the broadcasting organization or with its consent;~~

XIII. “broadcasting” means the emission whose signal or radio-electric wave reception by the public occurs in a form that is free and without charge, except in the cases where the Law requires authorization;

XIV. “performers” means all actors, singers, musicians, dubbing voice actors, dancers and other persons who enact, sing, recite, declaim, interpret or otherwise perform literary or artistic works or traditional cultural expressions expressions of folklore.

XV. “licence” means the authorization granted to a certain person, for remuneration or not, to exercise certain rights to exploit or use the intellectual work on the terms and conditions set out in the grant, which is not characterized as a transfer of the ownership of the rights.

6. Works that are merely subsidized by the Union, the States, the Federal District or the municipalities shall not be in their domain.

6-A. In the contracts made under this Law, the contracting parties are obliged to observe, during their execution, as well as in their conclusion, the principles of probity and of good faith and cooperate to accomplish the social function of the contract and the fulfilment of its purpose and of the common expectations and those of each of the parties.

(1) In contracts performed over time or deferred, either party may request their revision or termination, on account of excessive financial burden, in case the other party derives extreme advantage because of extraordinary and unpredictable events.

(2) The contract is voidable in case the owner of copyrights, under urgent necessity or because of inexperience, has been obliged to a contribution that is manifestly disproportionate to the value of the contribution of the other party, provided that the transaction cannot be annulled if he or she is offered enough supplement or if the favoured party agrees with a reduction of its benefits.

## **Title II Intellectual Works**

### *Chapter I Works Protected*

7. The intellectual works that are protected are creations of the mind, whatever their mode of expression or the medium, tangible or intangible, known or susceptible of invention in the future, in which they are fixed, such as:

I. the texts of literary, artistic or scientific works;

II. lectures, addresses, sermons and other works of the same kind;

III. dramatic and dramatico-musical works;

IV. choreographic and mimed works whose stage performance is set down in writing or otherwise;

V. musical compositions with or without words;

VI. audiovisual works, with or without accompanying sounds, including cinematographic works;

VII. photographic works and other works produced by a process analogous to photography;

VII. drawings, paintings, engravings, sculptures, lithographs and works of kinetic art;

IX. illustrations, maps and other works of the same kind;

X. drafts, mock-ups and three-dimensional works relating to geography, engineering, topography, architecture, park and garden planning, stage scenery and science;

XI. adaptations, **arrangements, orchestrations**, translations and other transformations of original works, presented as new intellectual creations;

XII. computer programs;

XIII. collections or compilations, anthologies, encyclopedias, dictionaries, databases and other works which, by virtue of the selection, coordination or arrangement of the subject matter, constitute intellectual creations.

(1) Computer programs shall be the subject of specific provisions, due account being taken of the provisions of this Law that are applicable to them.

(2) The protection conferred under item XIII shall not extend to the information or material itself, and shall be understood to be without prejudice to any copyright in the data or elements incorporated in the works.

(3) In the field of science, protection shall be conferred on the literary or artistic form of the work, but shall not extend to its scientific or technical content, without prejudice however to the rights accorded to incorporeal property by virtue of other provisions.

8. The following shall be excluded from copyright protection within the meaning of this Law:

I. ideas, normative procedures, systems, methods or mathematical projects or concepts as such;

II. diagrams, plans or rules for performing mental acts, playing games or conducting business;

III. blank forms intended for completion with all kinds of scientific or other information, and the instructions appearing thereon;

IV. the texts of treaties or conventions, laws, decrees, regulations, judicial decisions and other official enactments;

V. information in common use such as that contained in calendars, diaries, registers or **informative or explanatory** legends;

VI. names and titles in isolation;

VII. the industrial or commercial exploitation of the ideas embodied in works;

VIII – **technical standards in themselves, except for their protection in specific legislation; and**

**IX – daily news that have the character of mere items of press information.**

9. A copy of a three-dimensional work made by the creator of the said work shall enjoy the same protection as the original.

10. The protection of an intellectual work shall extend to its title, provided that it is original and not liable to be confused with that of a work of the same nature disclosed earlier by another author.

*Sole paragraph.* The titles of periodical publications, including newspapers, shall be protected for a period of one year from the publication of the last issue, except in the case of annual publications, in which case the period shall be two years.

## *Chapter II* *Authorship of Intellectual Works*

11. The author of a literary, artistic or scientific work is the natural person who created it.

*Sole paragraph.* The protection conferred on the author may be conferred on legal entities in the cases provided for in this Law.

12. In order to be identified as its author, the creator of a literary, artistic or scientific work may make use of his or her civil identity, in complete or shortened form, even reduced to his or her initials, or of a pseudonym or any other conventional sign.

13. In the absence of proof to the contrary, a person who in connection with the use of an intellectual work has indicated or stated his or her authorship in the customary manner by one of the means of identification referred to in the foregoing Article shall be considered the author of that work.

14. A person who adapts, translates, arranges or orchestrates a work that has passed into the public domain shall be entitled to copyright; that person may not however object to any other adaptation, arrangement, orchestration or translation unless it involves a copy of his or her own work.

15. Joint authorship of a work shall belong to the persons under whose names, pseudonyms or conventional signs it has been used.

(1) A person shall not be considered a joint author if he has merely assisted the author in producing the literary, artistic or scientific work by reviewing it or bringing it up to date or by supervising or directing its publication or presentation in whatever form.

(2) Any joint author whose contribution can be used separately shall enjoy all the faculties inherent in its creation as an individual work, provided that any use liable to prejudice the exploitation of the whole work is prohibited.

~~16. The joint authors of an audiovisual work shall be the author of the scenario or literary, musical or dramatico-musical subject matter and the director.~~

16. The joint authors of an audiovisual work shall be the principal director, the screenwriter and the authors of the literary subject matter and the musical or dramatico-musical composition created especially for the work.

*Sole paragraph.* Those persons who create the drawings used in an animated cartoon shall also be considered joint authors of an audiovisual work.

17. Individual contributions to collective works shall benefit from protection.

(1) Any of the contributors may invoke his or her moral rights to prohibit the mention or announcement of his or her name in connection with the collective work without prejudice to his or her right to the remuneration specified by contract.

(2) The economic rights in the collective work as a whole shall belong to the organizer.

(3) The contract concluded with the organizer shall specify the contribution by each participant, the time allowed for the supply or making of the said contribution, the remuneration and any other condition of its implementation.

(4) The author, whose contribution can be used separately, shall enjoy all the rights inherent in his or her creation as an individual work, being prohibited, however, from a use that may adversely affect the exploitation of the collective work.

### *Chapter III* *Registration of Intellectual Works*

18. The protection of the rights provided for in this Law shall be independent of registration.

~~19. Any author may register his work with the public body defined in the introduction and in paragraph (1) of Article 17 of Law No. 5988 of December 14, 1973.~~

19. Any author may register his or her work in the form of this Law.

*Sole paragraph.* The Federal Executive Authority shall determine the form and conditions for the registration of the work, detailing the agencies or entities responsible for that registration.

~~20. The registration services provided for in this Law shall be subject to payment of a fee, the amount and charging procedures of which shall be specified by the director of the Federal body entrusted with the registration of intellectual works.~~

20. The registration services provided for in this Law shall be subject to payment of a fee, the amount and charging procedures of which shall be specified by the by the Minister of Culture.

~~21. The registration services provided for in this Law shall be organized according to the provisions of paragraph (2) of Article 17 of Law No. 5988 of December 14, 1973. [Vetoed]~~

## **Title III Authors' Rights**

### *Chapter I Introductory Provisions*

22. The moral and economic rights in the work shall belong to the author who created it.

23. Unless otherwise agreed, the joint authors of an intellectual work shall exercise their rights by common consent.

### *Chapter II Moral Rights of the Author*

24. The moral rights of the author are understood to be the right:

I. to claim authorship of the work at any time;

II. to cause his or her name, pseudonym or conventional sign to appear or be announced as that of the author when the work is used;

III. to keep the work unpublished;

IV. to ensure the integrity of the work by objecting to any modification or any act liable in any way to have an adverse affect on the work or to be prejudicial to his or her reputation or honour as author;

V. to amend the work either before or after it has been used;

VI. to withdraw the work from circulation or to suspend any kind of use that has already been authorized where the circulation or the use of the work are liable to have an adverse affect on the reputation or image of the author;

VII. to have access to the sole or a rare copy of the work that is lawfully in a third party's possession with a view to preserving the memory thereof by means of a photographic or similar or an audiovisual process, in such a way that the least possible inconvenience is caused to its possessor who shall in any event be indemnified for any damage or prejudice suffered.

~~(1) On the author's death, the rights referred to under I to IV shall be transferred to his successors.~~

(1) On the author's death, the rights referred to under I , II, III, IV and VII shall be transferred to his or her successors.

~~(2) The State shall be under the obligation to defend the integrity and authorship of a work that has passed into the public domain.~~

(2) The Federal Entities, the bodies and entities referred to in the introduction of Art. 5 of Law No. 7347 of 24 July 1985, shall be under the obligation to defend the integrity and authorship of a work that has passed into the public domain.

~~(3) In the cases referred to in subparagraphs V and VI, third parties shall be granted prior indemnification where appropriate.~~

(3) In the cases referred to in subparagraphs V and VI, third parties shall be granted indemnification where appropriate.

~~25. The director shall exercise the moral rights in an audiovisual work.~~

25. The moral rights in an audiovisual work shall be exercised over the finished version of the work by the director in common agreement with his or her co-authors.

*Sole paragraph.* The rights set forth in subparagraphs I, II and VII of Art. 24 may be exercised individually by the co-authors over their respective portions.

26. The author may repudiate the authorship of an architectural work that has been altered without his or her consent in the course of its execution or after construction has been completed.

*Sole paragraph.* The owner of the building shall be liable for any damage done to the author where, after the above repudiation, the said owner attributes the project in question to the author.

27. Moral rights are inalienable and irrevocable.

### *Chapter III Economic Rights of the Author and Term Thereof*

28. The author has the exclusive right to use his or her literary, artistic or scientific work, to derive benefit from it and to dispose of it.

29. The express prior authorization of the author of a literary, artistic or scientific work shall be required for any kind of use, such as:

I. complete or partial reproduction;

II. publication;

III. adaptation, setting to music or any other transformation;

IV. translation into any language;

~~V. incorporation in a phonogram or in an audiovisual production;~~

V. incorporation in an audiovisual work;

VI. distribution where it is not provided for in a contract signed by the author with third parties for the use or exploitation of the work;

~~VII. distribution for the purposes of offering works or productions by cable, optic fibre, satellite, electromagnetic waves or any other system enabling the user to select a work or production and receive it at the time and place of his choice, provided that the access to the works or productions is made through any system requiring payment on the part of the user;~~

VII. making the work available to the public, by any means or process, in such a way that any person may access the work from a place and at a time individually chosen by him or her;

~~VIII. the direct or indirect use of the literary, artistic or scientific work in one of the following forms:~~

VIII. The communication to the public of a literary, artistic or scientific work by means of:

(a) performance, recitation or declamation;

(b) musical performance;

(c) use of loudspeaker or comparable systems;

~~(d) radio or television broadcasting;~~

(d) emission, transmission or radio or television broadcast;

~~(e) reception of a radio broadcast in places frequented by the public;~~

(e) reception of emission or transmission in places frequented by the public;

(f) provision of background music;

(g) audiovisual, cinematographic or equivalent presentation;

~~(h) use of man-made satellites;~~ [Vetoed]

~~(i) use of optical systems, telephone or other lines, cables of all kinds and such comparable means of communication as may be devised in the future;~~ [Vetoed]

(j) exhibition of works of three-dimensional and figurative art;

IX. incorporation in databases, storage in a computer, microfilming and any other means of archiving of that kind;

~~X. any other form of use that exists at present or might be devised in the future.~~

X. inclusion in a phonogram or audiovisual content that is not characterized as an audiovisual work;  
and

XI. any other form of use that exists at present or might be devised in the future.

*Sole paragraph.* In exercising the right provided for in subparagraph VII, the copyrights' owner may make the work available to the public in whatever form and place and for whatever time that he or she considers appropriate, either for a consideration or free of charge.

~~30. In the exercise of the right of reproduction, the owner of copyright may make the work available to the public in whatever form and place and for whatever time that he considers appropriate, either for a consideration or free of charge.~~

30. Regardless of the manner of reproduction, the number of copies made by any means or process shall be notified and checked, the person who reproduces the work being responsible for the keeping of such registers as will permit the author to verify the economic profits derived from exploitation.

(1) The exclusive right of reproduction shall not be applicable where the reproduction is temporary and done for the sole purposes of making the work, phonogram or performance perceptible by means of an electronic medium, or where it is transitory or incidental, provided that it is done in the course of the use of the work that has been duly authorized by the owner.

~~(2) Regardless of the manner of reproduction, the number of copies made shall be notified and checked, the person who reproduces the work being responsible for the keeping of such registers as will permit the author to verify the economic profits derived from exploitation.~~

(2) In the case the insertion is an ephemeral fixation of the work, phonogram or performance, made by a broadcaster, using its own means and for its own live emissions or retransmissions, the exclusive right of reproduction shall not apply.

30-A. When the distribution is made by the owner of the rights in the work or phonogram or with his or her consent, by means of sale, in any Member State of the World Trade Organization, the economic right of distribution of the object of sale is exhausted in that national territory.

*Sole paragraph.* The provisions set forth in the introduction of this Article are not applicable to the rental rights of computer programs and audiovisual works and to the resale right set forth in Article 38.

31. The various forms of use of literary, artistic or scientific works or phonograms shall be mutually independent, and any authorization granted by the author or by the producer, as the case may be, for one such use shall not constitute authorization of any other of the uses.

32. Where a work of joint authorship is not divisible, none of the joint authors may publish it or authorize its publication without the consent of the others, except in a collection of his or her complete works, on pain of liability for loss and damages.

(1) In the event of disagreement, the joint authors shall decide by majority vote.

(2) Any dissenting joint author shall retain the right not to contribute to the cost of publication, on the understanding that he then renounces his or her share in the proceeds, and also the right to refuse to be named on the work.

(3) Each joint author may, independently and without the consent of the others, have the work registered and assert his or her own rights against third parties.

33. No one may reproduce a work that is not in the public domain, on the pretext of annotating it, commenting on it or improving it, without the consent of the author.

*Sole paragraph.* The comments or annotations may be published separately.

34. Correspondence whose publication is subject to the consent of the author may be submitted as documentary proof in connection with administrative or judicial proceedings.

35. Where the author has given the work its final form in a process of revision, his or her successors may not reproduce the earlier versions.

36. Unless otherwise agreed, the right to exploit writings published in the daily or periodical press, with the exception of signed articles and those containing a reserved rights notice, shall belong to the publisher, assuring the protection of individual participation in collective works set forth by Article 17.

*Sole paragraph.* The authorization to exploit signed articles for the purposes of publication in the daily and periodical press shall lapse on the expiry of a period representing the publication interval increased by 20 days and calculated as from the publication date, at the end of which period the author shall recover his or her rights.

37. Acquisition of the original of a work or of its copy, lawfully obtained by any means or process, shall not confer any of the author's economic rights on the acquirer, unless otherwise agreed between the parties and subject to the cases provided for in this Law.

~~38. The author has the irrevocable and inalienable right to collect a minimum of five per cent of any gain in value that may be achieved in each resale of an original work of art or manuscript that he has disposed of.~~

38. The author has the irrevocable and inalienable right to receive a minimum of three per cent of the verified sales price in commercial establishments, auctions or any other transactions where there is an intermediary or commercial agent for each resale of an original artwork or manuscript that he or she has disposed of.

*Sole paragraph.* Where the author does not collect his or her resale royalty at the time of the resale, the vendor shall be considered the depositary of the sum payable to him or her, except where the operation has been conducted by an auctioneer, in which case the latter is considered the depositary.

~~39. Unless otherwise provided in the marriage contract, the author's economic rights, with the exception of the revenue derived from their exploitation, shall remain his property.~~

39. Unless otherwise provided in the marriage contract or in written agreement between the

partners, the author's economic rights shall remain his or her property.

*Sole paragraph.* In the system of partial communion equivalent to marriage or stable relationship, the income derived from the exploitation of the economic rights shall also remain his or her property, unless otherwise provided in the marriage contract or in written agreement between the partners.

40. In the case of an anonymous or pseudonymous work, the exercise of the author's economic rights shall belong to the person who publishes it.

*Sole paragraph.* Where the author makes his or her identity known, he or she shall assume the exercise of the economic rights, subject to any rights acquired by third parties.

~~41. The author's economic rights shall be protected for a period of 70 years as from the first of January of the year following his death, subject to observance of the order of succession under civil law.~~

41. The author's economic rights shall be protected for all his or her life and for seventy more years as from the first of January of the year following his or her death, subject to observance of the order of succession under Civil Law.

*Sole paragraph.* The term of protection referred to in the introduction to this Article shall be applicable to posthumous works.

42. Where a literary, artistic or scientific work of joint authorship is indivisible, the term of protection provided for in the foregoing Article shall be calculated from the death of the last surviving joint author.

*Sole paragraph.* The rights of the joint author who dies without heir shall be added to the rights of the survivors.

43. The term of protection of the economic rights in anonymous or pseudonymous works shall be 70 years counted from the first of January of the year following that of first publication.

*Sole paragraph.* The provisions of Article 41 and its sole paragraph shall be applicable where the author makes his or her identity known before the expiry of the period referred to in the introduction to this Article.

~~44. The economic rights in audiovisual and photographic works shall be protected for a period of 70 years from the first of January of the year following that of their disclosure.~~

44. The economic rights in audiovisual, photographic and collective works shall be protected for a period of 70 years from the first of January of the year following its publication.

*Sole paragraph.* After expiry of the period of protection set forth by this Article, the use or exploitation by third parties of the audiovisual work or collective work can not be prevented by any copyright protection of parts that are divisible and which are also subject to separate commercial exploitation.

45. In addition to the works in respect of which the protection of the economic rights has expired,

the following shall pass into the public domain:

I. the works of authors deceased without heir;

~~II. the works of unknown authors, subject to the legal protection of ethnic and traditional lore.~~

II. the works of unknown authors, subject to the legal protection applicable to traditional cultural expressions.

*Sole paragraph.* The exercise of property rights to the material media in which intellectual works in the public domain are fixed does not include exclusive rights to their image or reproduction, ensuring access to the original, with appropriate safeguards and without prejudice to the possessor of the thing, so the State can ensure the society the enjoyment of intellectual creations.

## *Chapter IV Limitations on Copyright*

~~46. The following shall not constitute violation of copyright:~~

46. The use of protected works, without the express prior authorization of the owner and without requirement of remuneration by the user, shall not constitute violation of copyright in the following cases:

~~I. the reproduction:~~

~~(a) in the daily or periodical press of news or informative articles, from newspapers or magazines, with a mention of the name of the author, if they are signed, and of the publication from which they have been taken;~~

~~(b) in newspapers or magazines of speeches given at public meetings of any kind;~~

~~(c) of portraits or other forms of representation of a likeness, produced on commission, where the reproduction is done by the owner of the commissioned subject matter and the person represented or his heirs have no objection to it;~~

~~(d) of literary, artistic or scientific works for the exclusive use of the visually handicapped, provided that the reproduction is done without gainful intent, either in Braille or by means of another process using a medium designed for such users;~~

I. the reproduction, by any means or process, of any work legitimately acquired, provided that only one copy is made by the copier him or herself, for his or her private and non-commercial use;

~~II. the reproduction in one copy of short extracts from a work for the private use of the copier, provided that it is done by him and without gainful intent;~~

II. the reproduction, by any means or process, of any work legitimately acquired, with the purpose to ensure its portability or interoperability, for private and non-commercial use;

~~III. the quotation in books, newspapers, magazines or any other medium of communication of~~

passages from a work for the purposes of study, criticism or debate, to the extent justified by the purpose, provided that the author is named and the source of the quotation is given;

III. the reproduction in the press of news or informative articles, published in the daily or periodical press, provided that the name of the author, if signed, and of the publication from which they have been reproduced, are given;

~~IV. notes taken in the course of lessons given in teaching establishments by the persons for whom they are intended, provided that their complete or partial publication is prohibited without the express prior authorization of the person who gave the lessons;~~

IV. the use in the press of speeches given at public meetings of any kind or of any work, where it is justified by and to the extent necessary for fulfilling the duty to report on news events;

V. the use of literary, artistic or scientific works, phonograms and radio and television transmissions in commercial establishments for the sole purpose of demonstration to customers, provided that the said establishments market the materials or equipment that make such use possible;

~~VI. stage and musical performance, where carried out in the family circle or for exclusively teaching purposes in educational establishments, and where devoid of any profit-making purpose;~~

VI. the theatrical performance, recitation or declamation, audiovisual exhibition and musical performance, provided they have no gainful intent and the public can attend free of charge, and provided that they are held in the family circle or in educational establishments, where they are intended exclusively for students and teachers, the parents of the students and other persons belonging to the school community;

VII. the use of literary, artistic or scientific works as proof in judicial or administrative proceedings;

~~VIII. the reproduction in any work of short extracts from existing works, regardless of their nature, or of the whole work in the case of a work of three-dimensional art, on condition that the reproduction is not in itself the main subject matter of the new work and does not jeopardize the normal exploitation of the work reproduced or unjustifiably prejudice the author's legitimate interests;~~

VIII. the use, in any work, of short extracts from existing works, regardless of their nature, or of the whole work in the case of a work of visual art, provided that the use is not in itself the main subject matter of the new work, it does not conflict with the normal exploitation of the work reproduced and does not unreasonably prejudice the legitimate interests of the author;

IX. the reproduction, distribution, communication and making available to the public of works for the exclusive use of disabled persons, in every situation where the disability requires, for the enjoyment of the work by those persons, the use of any particular process or any adaptation of the protected work, and provided that there is no gainful intent in the reproduction or adaptation;

X. the reproduction and making available to the public for inclusion in a portfolio or curriculum vitae, to the extent justified by this purpose, provided that the person who wishes to disseminate the works by such means is one of the authors or the person portrayed therein;

XI. the use of portraits or other forms of representation of a likeness, produced on commission,

where the reproduction is done by the owner of the commissioned subject matter and the person represented or, if he or she is deceased or absent, his or her spouse, ancestors or descendants have no objection to it;

XII. the reproduction of lectures, conferences and classes by the persons for whom they are intended, provided that their publication is prohibited, regardless of gainful intent, without the express prior authorization of the person who gave them;

XIII. the reproduction necessary for conservation, preservation and archiving of any work, without commercial purpose, provided that it is made by libraries, archives, documentation centres, museums, film archives and other museum institutions, to the extent justified to meet their purposes;

XIV. the quotation in books, newspapers, magazines or any other medium of communication of passages from any work, for the purposes of study, criticism or debate, to the extent justified by the purpose, provided that the author is named and the source of the quotation is given;

XV. the theatrical performance, recitation or declamation, audiovisual exhibition and musical performance, provided they have no gainful intent, the public can attend free of charge and they are carried out to the extent justified by achieving the purpose and under the following assumptions:

a) for exclusively instructional intent;

b) with the purpose of cultural diffusion and increase of audience, opinion forming or discussion by film society associations, recognized as such;

c) strictly within edifices for religious service and exclusively in the course of liturgical activities, or

d) for the intent of rehabilitation or therapy, in medical inpatient units that provide this service at no charge, or in prisons, including those of socio-educational character.

XVI. the communication and making available to the public of protected intellectual works that aggregate the collections of libraries, archives, documentation centres, museums, film archives and other museum institutions, for purposes of research, investigation or study, by any means or process, within their facilities or through their closed computer networks;

XVII. the reproduction, without commercial purpose, of a literary work, phonogram or audiovisual work, whose latest publication is no longer available for sale from the entity responsible for its economic exploitation, in sufficient quantity to meet market demand, for which there is not a more recent publication available and there is no stock of the work or phonogram available for sale; and

XVIII. the reproduction and any other use of works of visual art for the purpose of publicity related to the public exhibition or sale of these works, to the extent required to promote the event, provided it is made with the authorization of the owner of the medium in which the work is embodied, precluding any other commercial use.

*Sole paragraph.* Apart from the cases expressly provided in this Article, the reproduction, distribution and communication to the public of protected works, without the express prior authorization of the owner and without requirement of remuneration by the user, shall also not

constitute violation of copyright when such use is:

I - for the purposes of education, instruction, information, research or for use as a creative resource; and

II - made to the extent required for achieving the purpose, without conflicting with the normal exploitation of the work used and without unreasonably prejudicing the legitimate interests of the authors.

47. Paraphrases and parodies shall be free where they are not actual reproductions of the original work and are not in any way derogatory to it.

~~48. Works permanently located in public places may be freely represented by painting, drawing, photography and audiovisual processes.~~

48. Works of visual art and architecture permanently perceivable in public places may be freely represented by any means or process, including by photography.

## *Chapter V Transfer of Authors' Rights*

~~49. Author's rights may be wholly or partly transferred to third parties by the author or by his successors, in a universal or individual transfer effected in person or through representatives with special powers, by licensing, concession, assignment or any other means recognized by law, subject to the limitations set forth below:~~

49. Author's rights may be wholly or partly transferred to third parties by the author or by his or her successors, for a defined term or finally, in a universal or individual transfer effected in person or through representatives with special powers, by the means recognized by Law, subject to the rules and specifications set forth below:

~~I. total transfer shall comprise all the author's rights with the exception of his moral rights and rights expressly excluded by the law;~~

I. total assignment shall comprise all the author's rights with the exception of his or her moral rights and rights expressly excluded by the Law;

~~H. the total and final assignment of rights may be effected only by contractual provision; [Vetoed]~~

III. in the absence of written contractual provision, the maximum period of transfer shall be five years;

IV. unless otherwise specified, assignment shall be valid only in the country in which the contract has been signed;

V. the assignment shall be valid only for the modes of exploitation existing on the date of the contract;

VI. in the absence of any mention of the mode of exploitation, the contract shall be interpreted

restrictively, and understood to be limited to the mode of exploitation that is indispensable for the fulfilment of the purpose of the contract.

49-A. The author or the owner of economic rights may grant to third parties, without such grant constituting a transfer of ownership rights, a licence to be governed by the stipulations of the contract and by the provisions set out in this Chapter, where applicable.

*Sole paragraph.* In the absence of express contractual stipulation to the contrary, the licence is presumed to be non-exclusive.

~~50. The total or partial assignment of the author's rights, which shall always be effected in writing, shall be presumed to be for a consideration.~~

50. The total or partial assignment of the author's rights, which shall always be effected by written contractual stipulation, shall be presumed to be for a consideration.

~~(1) The assignment may be entered as a marginal note to the registration referred to in Article 19 of this Law; or, if the work has not been registered, the instrument of assignment may be entered in the Register of Instruments and Documents.~~

(1) The assignment of the rights of the author shall be entered by the assignee as a marginal note to the registration referred to in Article 19 of this Law, when the work is registered, or, if it has not been registered, the instrument of assignment shall be entered in the Register of Instruments and Documents.

(2) The subject matter of the rights and the manner of their exercise in terms of duration, place and price shall constitute essential elements of the instrument of assignment.

(3) After the period set out in the instrument, the copyrights shall return to the economic control of the original owner or his or her successors, regardless of possible debt or other outstanding obligations between the contracting parties.

51. The term of the assignment of the author's rights in future works may not exceed five years, calculated as from the date of signing the contract.

*Sole paragraph.* Where the above term is unspecified or in excess of five years it shall be reduced to that duration, and the remuneration provided for shall where appropriate be reduced accordingly.

52. The omission of the name of the author or of a joint author on the disclosure of the work shall not constitute a presumption of anonymity or of assignment of the rights of the person concerned.

## Chapter VI

### *Works Produced on Commission or Resulting from an Employment Relationship*

52-A. Unless otherwise agreed, the exercise of the author's economic rights to the following works shall belong to the employer, public entity or constituent, exclusively for the purposes that constitute the object of the contract or its activities:

I. works created in fulfilment of official duties or employment contracts;

II. works created in fulfilment of commission contracts, including for the purposes of Articles 54 and 55 of this Law;

(1) The author shall retain his or her economic rights with respect to other modes of use of the work, so that he or she can exploit them freely.

(2) The freedom given to the author to exploit his or her work in accordance with this Article shall not cause unreasonable prejudice to the employer, public entity or constituent in the exploitation of the work.

(3) The compensation for the work or commission is exhausted with the salary or wages agreed upon, unless otherwise specified.

(4) In case the exploitation of a work, which is the subject matter of a commission contract, does not begin within the initial period set forth in the contract, all his or her economic rights shall be returned to the author under the following conditions:

I. when the consideration is conditioned on participation in the economic exploitation of the work, in which case the author is not required to repay the amounts received as an advance for this mode of remuneration;

II. when the consideration is not conditioned on participation in the economic exploitation of the work, provided that the author repays the amounts received under this mode of remuneration;

(5) For the purposes of paragraph (4), in case no period for the economic exploitation of the work is set forth in the contract, the author shall recover all his or her economic rights within one year from the delivery of the work, subject to the refund criteria set forth in subparagraphs I and II of paragraph (4).

(6) Contracts of commission shall be always effected in writing.

(7) The author shall have the right to publish in his or her complete works the commissioned work, one year after the beginning of its commercialization by the commissioning party, unless otherwise agreed.

(8) If no time limit is set for the delivery of the work, it is understood that the author may deliver it at his or her own convenience.

(9) Contract terms that restrict the exercise of the moral rights by the author of the commissioned work shall automatically be void, subject to the provisions of Article 24 paragraph (3).

(10) The provisions of this Article shall not apply:

I. to the radio employees, authors and performers whose professional practice is governed by Laws 6533 of 24 May 1978 and 6615 of 16 December 1978, who are entitled to royalties for copyrights and neighbouring rights from each publication, performance or exhibition of the work and who are prohibited from assigning or promising to assign copyrights and neighbouring rights which are resulting from their services or employment relationship;

II. to the relationships in respect of the economic use of the articles published by the press which are regulated by Article 36 of this Law;

III. to the relationships arising from a contract or employment of teachers and researchers from an institution whose purpose is education or research;

IV. when the creation clearly exceeds the fulfilment of its function or the stipulated task, or when future uses of the work are made that had not been foreseen in the contract;

V. to the professionals governed by Law 5194 of 24 December 1966;

VI. to the productions of audiovisual works that are not advertising.

## *Chapter VII* *Non-Voluntary Licences*

52-B. The President of the Republic, upon application by interested parties legitimized under paragraph (3) of this Article, may grant a non-voluntary and non-exclusive licence for translation, reproduction, distribution, editing and exhibition of literary, artistic or scientific works, provided that such licence necessarily meets the interests of science, culture, education or the fundamental right of access to information in the following cases:

I. When a work, which has already been made available to the public for more than five years, is no longer commercially available in sufficient quantity to meet the needs of the public;

II. When the owners, or some of them, unreasonably refuse or hinder the exploitation of the work, or exercise the rights over it in an abusive manner;

III. When, because of the impossibility to identify or locate its author or copyright owner, it is not possible to obtain authorization for the exploitation of a work, which presumably has not entered into the public domain; or

IV. When the author or the owner of the right of reproduction, unreasonably refuses or hinders the licensing provided for in Article 88-A.

(1) In case of visual arts, only the provisions set forth in subparagraphs II and III shall be applied.

(2) All cases of non-voluntary licences set forth in this Article shall be subject to payment of remuneration to the author or owner of the work, arbitrated by the Government in regular procedure that meets the requirements of due process, is set out in the form of regulation and subject to the terms and conditions that adequately ensure the moral and economic interests protected by this Law, taking into consideration the public interest at issue.

(3) The licence referred to in this Article may only be applied for by a party that has a legitimate interest and the technical and economic capacity to carry out the efficient exploitation of the work, which shall be addressed to the national market.

(4) Where the owner of the rights can be determined, the applicant shall prove that he or she previously requested from the owner a voluntary licence to exploit the work, but was unreasonably

refused or hindered in obtaining it, especially when the price of the consideration was not in accordance with custom and practice of the market.

(5) Except for legitimate reasons, recognized as such by decision of the Ministry of Culture, the licensee shall comply with the time limit for the beginning of the exploitation of the work, to be determined in the licence grant, under penalty of forfeiture of the licence obtained.

(6) The licensee shall have all powers to act in defence of the work.

(7) Granting of the licence shall be prohibited in cases where there is a conflict with the exercise of the author's moral rights.

(8) The provisions of this Chapter do not apply to computer programs.

52-C. The Executive Authority, subject to the provisions of this Law, shall determine, by regulation, the procedure and the conditions for the granting of and the rates for the non-voluntary licence provided for in Article 52-B, in compliance with the principles of due process.

(1) The application for a non-voluntary licence shall be addressed to the Ministry of Culture and be accompanied by the documents required under the regulation.

(2) The Ministry of Culture, in the form of regulation, shall give the author or owner of the work the opportunity to make use of his or her right to full defence and adversary proceedings.

(3) If there is no need for complementary measures or after the implementation of those, the Ministry of Culture will prepare non-binding technical advice and refer it, together with the administrative process regarding the application, for appraisal to the President of the Republic.

(4) Upon the decision to grant the non-voluntary licence, a reconsideration request may be proposed only to the effect of devolution, upon which, within fifteen days from receipt of such request, the final decision shall be pronounced.

(5) The act of granting the non-voluntary licence shall lay down at least the following conditions, among others provided by regulation:

I - the duration of the licence;

II - the possibility of extension, and

III - the remuneration to be paid to the author or owner of the work by the licensee.

(6) The regulation shall establish the form of collection and allocation of the money paid by the licensee as compensation in case of a non-voluntary licence provided for in subparagraph III of Article 52-B.

(7) The assignment, transfer or substitution of a non-voluntary licence is prohibited.

(8) The remuneration obligations of the licensee toward the author or owner shall cease when the work enters into the public domain.

52-D. During the period in which the non-voluntary licence is in force, it may be revoked if:

I - the licensee fails to comply with the conditions which apply, or

II - there is an interruption in the payment of the remuneration to the author or owner of the work.

*Sole paragraph.* The revocation of the licence can be ex officio or upon request of the author or owner of the work or by the Public Prosecutor, as defined by regulation.

## Title IV Use of Intellectual Works and Phonograms

### *Chapter I Publication*

~~53. Under a publishing contract the publisher, by undertaking to reproduce and disseminate a literary, artistic or scientific work, acquires the exclusive right to publish and exploit it for a period and on conditions agreed with the author.~~

53. Under a publishing contract the publisher, by undertaking to reproduce and disseminate a literary, artistic or scientific work, is authorized, on an exclusive basis and in attendance on the legitimate interests of the author, to publish and exploit it for a period and on conditions agreed with the author.

(1) The publishing contract may not contain any clause on the assignment of the economic rights of the author.

~~*Sole paragraph.* The publisher shall mention on each copy of the work~~

(2) The publisher shall mention on each copy of the work:

I. the title of the work and its author's name;

II. in the case of a translation, the original title of the work and the name of the translator;

III. the year of publication;

IV. the name or identifying mark of the publisher.

(3) The author may request termination of the contract when the editor, after notification by the author, impedes the circulation of the work to the detriment of the legitimate interests of the author.

54. Under the same contract, the author may undertake to create the literary, artistic or scientific work whose publication and dissemination is incumbent on the publisher.

55. If the author dies before the work is completed or becomes incapable of completing it, the publisher may:

I. consider the contract terminated, even if he or she has received a substantial part of the work;

II. publish the work, if it is self-contained, against proportional payment of the remuneration;

III. have the work completed by another person with the consent of the author's successors and subject to the mention of that fact in the publication.

*Sole paragraph.* Partial publication shall be prohibited if the author has stated his or her desire that the work be published only complete or if his or her successors so decide.

56. The contract shall be presumed to relate to one edition only, unless expressly stated otherwise.

*Sole paragraph.* If the contract is silent on the subject, every edition shall be deemed to consist of 3,000 copies.

57. The amount of remuneration shall be set according to custom and practice if the author has not had it expressly stated in the contract.

58. Where the originals delivered do not conform to the arrangements made and the publisher does not refuse them within a period of 30 days from the date of receipt, the changes made by the author shall be presumed to have been accepted.

59. Whatever the contractual conditions may be, the publisher is obliged to allow the author to inspect those parts of the account books that concern him or her, and also to inform him or her of the state of progress of the edition.

60. The publisher shall be responsible for setting the selling price, but may not so raise it as to impede the dissemination of the work.

61. Where the author's remuneration is determined by sales of the work, the publisher shall submit statements to him or her every month, except where a different frequency has been agreed upon.

62. The work shall be published within two years of the conclusion of the contract except where a different period has been specified.

*Sole paragraph.* Where the work is not published within the legal or agreed period, the contract may be rescinded and the publisher shall be liable for any prejudice caused.

63. For as long as the editions with which the publisher has been entrusted are not out of print, the author may not dispose of his or her work, the burden of proof in that case being on the publisher.

(1) Throughout the term of the publishing contract, the publisher is entitled to demand the withdrawal from circulation of any edition of the same work produced by another.

(2) An edition shall be deemed out of print where the number of copies that the publisher has in stock falls below 10 per cent of the total number of copies of the edition.

64. Only after a year has elapsed since the edition was placed on the market may the publisher remainder the balance of the copies, after having informed the author that, during a period of 30 days, he or she has priority for the acquisition of the said copies at the remainder price.

65. Where an edition is out of print and the publisher, having the right to publish it does not, the author may serve formal notice on him or her to do so within a certain time, on pain of being deprived of his or her rights and without prejudice to damages.

66. The author has the right to make such corrections and amendments to his or her works in successive editions as may seem appropriate to him.

*Sole paragraph.* The publisher may oppose amendments that prejudice his or her interests, offend his or her reputation or increase his or her liability.

67. Where, given the nature of the work, it is necessary to bring it up to date in new editions, the publisher may, if the author refuses to do so, entrust another person with doing so, on condition that the fact is mentioned in the edition.

67-A. The rules governing the edition set forth in this Chapter apply to all protected works that are likely to be published in books, newspapers, magazines or other periodicals, such as translations, photographs, drawings, cartoons and caricatures.

67-B. The provisions set forth in Article 53 of this Law and other Articles of this Chapter shall apply to the publishing contracts for musical works, as appropriate.

## *Chapter II Communication to the Public*

~~68. Stage works, musical compositions with or without words and phonograms may not be used in public presentations or performances without the express prior authorization of the author or owner of rights.~~

68. Stage works, musical compositions with or without words, phonograms and audiovisual works may not be used in public presentations, exhibitions and performances without the express prior authorization of the author or owner of rights.

~~(1) "Public presentation" means the use of stage works in the categories of drama, tragedy, comedy, opera, operetta, ballet, mime or any other comparable genre, with or without musical accompaniment, with the participation of paid or unpaid performers in places frequented by the public or by means of broadcasting or another form of transmission, or cinematographic presentation.~~

(1) "Public presentation" means the use of stage works in the categories of drama, tragedy, comedy, opera, operetta, ballet, mime or any other comparable genre, with or without musical accompaniment, with the participation of paid or unpaid performers in places frequented by the public or by means of broadcasting, transmission and emission.

~~(2) "Public performance" means the use of musical or dramatico-musical compositions with the participation of paid or unpaid performers or the use of phonograms and audiovisual works in places frequented by the public, by means of any process including broadcasting or transmission of another kind, or cinematographic presentation.~~

(2) "Public performance" means the use of musical or dramatico-musical compositions with the

participation of paid or unpaid performers or the use of phonograms in places frequented by the public, by means of any process including broadcasting, transmission or emission of any kind, or cinematographic presentation.

(3) "Public exhibitions" means the use of audiovisual works in places frequented by the public by any process, including broadcasting, transmission or emission of any kind, and the cinematographic presentation.

~~(3) The expression "places frequented by the public" means theatres, cinemas, dance or concert halls, discotheques, bars, clubs or societies of any kind, stores, commercial and industrial establishments, sports grounds, circuses, fairs, restaurants, hotels, motels, nursing homes, hospitals, public entities under direct or indirect management and foundation and State control, means of passenger-carrying land, sea, river or air transport, or any place in which literary, artistic or scientific works are presented, performed or transmitted.~~

(4) The expression "places frequented by the public" means theatres, cinemas, dance or concert halls, discotheques, bars, clubs or societies of any kind, stores, commercial and industrial establishments, sports grounds, circuses, fairs, restaurants, hotels, motels, nursing homes, hospitals, public entities under direct or indirect management and foundation and State control, means of passenger-carrying land, sea, river or air transport, or any place in which literary, artistic or scientific works are presented, performed, exhibited or received by means of transmission or emission.

~~(4) Before any public performance, the show organizer shall submit proof of payment of the copyright royalties to the central office referred to in Article 99.~~

(5) Before any public performance or exhibition, the user shall submit to the entity responsible for the collection of royalties relating to public performance or exhibition proof of payment of the copyright royalties.

~~(5) Where remuneration is determined by public attendance, the show organizer may agree with the central office to make the payment after the public performance has taken place.~~

(6) Where remuneration is determined by public attendance, the user may agree with the entity responsible for the collection of royalties relating to public performance or exhibition to make the payment after the public performance or exhibition has taken place.

~~(6) Immediately after the public performance or transmission, the show organizer shall submit to the central office a full list of the works and phonograms used, including the names of the authors, performers and producers in each case.~~

(7) Immediately after the public presentation, exhibition or performance, the user shall submit to the entity responsible for the collection of royalties relating to public performance or exhibition a full list of the works and phonograms used, including the names of the authors, performers and producers in each case.

~~(7) Film production companies and broadcasting organizations shall keep at the disposal of interested parties authentic copies of contracts, arrangements or agreements, whether individual or collective, authorizing and governing the remuneration for the public performance of the musical works and phonograms incorporated in their programs or in their audiovisual works.~~

(8) The companies responsible for the presentation, exhibition, broadcasting, emission or transmission of works and phonograms shall keep at the immediate disposal of interested parties authentic copies of contracts, arrangements or agreements, whether individual or collective, authorizing and governing the remuneration for public presentation, performance or exhibition of the works and phonograms used in their programs or in their audiovisual works.

69. The author shall, in accordance with local practice, impose a period for the presentation or performance on the show organizer unless one has been previously stipulated by agreement.

70. The author has the right to oppose a presentation or a performance that has not been sufficiently rehearsed, and also to attend the show, for which purpose he shall have free access, during the performances, to the premises in which they take place.

71. The author of the work may not alter the substance thereof without the consent of the show organizer who causes it to be performed.

72. The show organizer may not communicate the work to a person having no connection with the presentation or the performance without the author's permission.

73. The main performers and also the orchestra conductors or choir leaders, having been selected by common consent by the author and the producer, may not be replaced by the latter without the author's consent.

74. The author of a stage work who authorizes the translation and adaptation thereof may set a time limit for its use in public performance.

*Sole paragraph.* After the expiry of the time limit referred to in this Article, the translator or adapter may not object to the use of another authorized translation or adaptation, except where it is a copy of his or her own work.

75. Where the performance of a stage work produced as a cooperative venture has been authorized, none of the joint authors may withdraw his or her authorization in such a way as to cause the suspension of the theatre run agreed by contract.

76. The portion of the proceeds from the shows that is reserved for the author and the performer is unattachable.

### *Chapter III* *Use of a Work of Three-Dimensional Art*

77. Unless otherwise agreed, the author of a work of three-dimensional art, on disposing of the object in which it is embodied transfers to the acquirer the right to display it but not to reproduce it.

78. Authorization to reproduce a work of three-dimensional art by whatever process shall be set down in writing and presumed to be granted for a consideration.

## *Chapter IV*

### *Use of a Photographic Work*

79. The author of a photographic work has the right to reproduce it and to offer it for sale, with due regard to the restrictions applicable to the display, reproduction and sale of portraits, and without prejudice to the author's rights in the work photographed in the case of a protected work of three-dimensional art.

(1) Any photograph shall legibly mention the name of its author when used by third parties.

(2) Any reproduction of a photographic work that is not perfectly true to the original is prohibited unless previously authorized by the author.

## *Chapter V*

### *Use of a Phonogram*

80. On publishing a phonogram, the producer shall mention on each copy

I. the title of the work incorporated in the phonogram and the name of its author;

II. the name or pseudonym of the performer;

III. the year of publication;

IV. the name or identification mark of the producer.

## *Chapter VI*

### *Use of an Audiovisual Work*

81. The authorization given by the author and performer of a literary, artistic or scientific work for the production of an audiovisual work shall, unless otherwise provided, constitute authorization for its commercial exploitation **by the producer**.

(1) The exclusive character of the authorization shall be written into a specific clause, and shall lapse on the expiry of a period of 10 years following the conclusion of the contract.

(2) The producer shall mention on each copy of the audiovisual work:

I. the title of the audiovisual work;

II. the name or pseudonym of the director and other joint authors;

III. the title of the work adapted and the name of its author where appropriate;

IV. the names of the performers;

V. the year of publication;

VI. the name or identification mark of the producer; and

VII. the names of the dubbing voice actors where appropriate.

82. The audiovisual production contract shall specify:

I. the remuneration payable by the producer to the joint authors of the work and to the performers, and also the date, place and manner of payment;

II. the period allowed for the completion of the work;

III. the responsibility of the producer towards the joint authors and the performers in the case of a joint production.

83. Any person participating in the production of an audiovisual work who temporarily interrupts or finally discontinues his or her contribution may not object to that contribution being used in the work or to a third party taking his place, without prejudice to the rights that belong to him or her in relation to the part already completed.

84. Where the remuneration of the joint authors of an audiovisual work is determined by the proceeds from its commercial exploitation, the producer shall submit statements to them every six months, except where different intervals have been agreed upon.

85. Unless otherwise provided, the joint authors of an audiovisual work may use in a different genre the part of the work that constitutes their personal contribution.

*Sole paragraph.* If the producer does not complete the audiovisual work in the agreed time or does not start exploiting it within two years of its completion, the use referred to in this Article shall be free.

~~86. The royalties for musical and dramatico-musical works and phonograms incorporated in audiovisual works shall be payable to the owners of the corresponding rights by those responsible for the premises or establishments referred to in paragraph (3) of Article 68 of this Law who present them, or by the television organizations that broadcast them.~~

86. The royalties for the public exhibition of audiovisual works and for the public performance of pre-existing musical and dramatico-musical works and phonograms incorporated in audiovisual works shall be payable to the owners of the corresponding rights by those responsible for the premises or establishments referred to in paragraph (4) of Article 68 of this Law who present them, or by the media companies that transmit or emit them.

*Sole paragraph.* Without prejudice to the provisions of Article 81, the monetary proceeds from each public exhibition of an audiovisual work shall be shared between its authors, performers and producers as agreed between them or their associations.

86-A. Those responsible for movie theatres shall deduct fifty percent of the total amount of royalties provided for in the introduction of Article 86 to be paid to the distributors of audiovisual works.

## *Chapter VII*

### *Use of Databases*

87. The owner of the economic rights in a database shall enjoy the exclusive right to authorize or prohibit the following in relation to the form of expression of the structure of that database:

- I. complete or partial reproduction by any means or process;
- II. translation, adaptation, rearrangement and any other modification;
- III. distribution of the original or copies of the database, or communication of the database to the public;
- IV. reproduction, distribution or communication to the public of the results of the operations referred to in item II of this Article.

## *Chapter VIII*

### *Use of a Collective Work*

88. On the publication of a collective work, the organizer shall mention on each copy:

- I. the title of the work;
- II. the list of all participants, in alphabetical order, except where another order has been agreed upon;
- III. the year of publication;
- IV. the name or identification mark of the organizer.

*Sole paragraph.* A participant wishing to avail himself of the provisions of paragraph (1) of Article 17 shall advise the organizer accordingly in writing, by the date on which he submits his or her contribution.

## *Chapter IX*

### *Reprography*

88-A. The total or partial reproduction of literary, artistic and scientific works, made by photocopy or similar process, for commercial or profit-making purposes, shall observe the following provisions:

- I. The reproduction set forth in the introduction shall be subject to payment of a consideration to the owners of the copyrights to the reproduced works, except where those make the work available to the public free of charge, in accordance with the provisions of the sole paragraph of Article 29;
- II. The establishments that offer reprographic reproduction services upon payment for the service rendered shall obtain prior authorization from the authors or owners of the protected works or from the collective management association representing them;

(1) Those responsible for the establishments referred to in subparagraph II of the introduction shall keep a register of reproductions, which shall contain the identification and number of pages reproduced from each work, in order to provide such information regularly to the authors, so as will enable them to review and control the economic gain derived from reproductions;

(2) The collection and distribution of the remuneration referred to in this Chapter shall be made by the collective management entities constituted for this purpose which shall unify the collection, whether by delegating the collecting to one of them or by constituting a collecting entity with its own legal personality, subject to the provisions of Title VI of this Law.

(3) The publisher shall receive from the establishments referred to in subparagraph II of the introduction the pecuniary proceeds resulting from the reprographic reproduction of literary, artistic and scientific works and share them with the authors in the form agreed between them or their associations, and the portion destined to the authors shall not be less than fifty percent of the amount collected;

(4) Upon prior notice to the entity to which they are affiliated, the owners of the copyrights may personally perform the acts referred to in this article.

## **Title V Neighbouring Rights**

### *Chapter I Introductory Provisions*

~~89. The provisions on authors' rights shall apply, mutatis mutandis, to the rights of performers, producers of phonograms and broadcasting organizations.~~

89. The provisions on authors' rights, including those referring to limitations, shall apply, mutatis mutandis, to the rights of performers, producers of phonograms and broadcasting organizations.

*Sole paragraph.* The protection under this Law of the rights referred to in this Article shall leave intact and in no way affect the guarantees afforded to the authors of literary, artistic or scientific works.

### *Chapter II Rights of Performers*

90. A performer enjoys the exclusive right to authorize, for a consideration or free of charge, or to prohibit :

I. the fixing of his or her performances;

~~II. the reproduction, public performance and rental of his fixed performances;~~

II. the reproduction, public performance or public exhibition and rental of his or her fixed performances;

III. the broadcasting of his or her fixed or unfixed performances;

IV. the making available to the public of his or her performances in such a way that any person may have access to them at the time and in the place of that person's choosing;

V. any other form of use of his or her performances.

(1) Where two or more performers take part in a performance, their rights shall be exercised by the leader of the group.

(2) The protection of performers shall extend to the reproduction of their voices and likenesses where they are associated with their performances.

91. Broadcasting organizations may fix the performances of performers who have authorized such fixation with a view to their use in a certain number of broadcasts; fixations made in that way may be preserved in public archives.

*Sole paragraph.* The subsequent re-use of a fixation in Brazil or abroad shall be lawful only with the written authorization of the owners of the intellectual property embodied in the program, and additional remuneration shall be payable to the owners for each new use.

92. Performers shall enjoy the moral right to the integrity and their authorship of their performances, including after the assignment of the economic rights, provided that the abridgement, condensing, editing or dubbing of the work in which they have taken part may be undertaken on the responsibility of the producer, but must not alter the nature of the performer's performance.

*Sole paragraph.* The death of any of the participants in an audiovisual work, whether completed or not, shall not prevent the presentation and commercial exploitation of the said work, and shall not require additional authorization to be obtained; the remuneration accruing to the deceased under the contract and the Law shall be incorporated in his or her estate or paid to his or her successors.

### *Chapter III* *Rights of Phonogram Producers*

93. A phonogram producer has the exclusive right to authorize or prohibit, either for a consideration or free of charge,:

I. the direct or indirect, total or partial reproduction of his or her phonograms;

II. the distribution by sale or rental of copies of phonograms so reproduced;

III. the communication of his or her phonograms to the public by public performance, including broadcasting;

IV. [Vetoed]

V. any other form of use of his or her phonograms that exists at present or might be devised in the future.

94. The phonogram producer shall be entitled to receive the proceeds from the public performance of phonograms from the users referred to in Article 68 of this Law and share them with the performers in the manner agreed upon with them or with their associations.

94-A. The producer responsible for the first fixation of an audiovisual work shall be entitled to receive a remuneration for the public exhibition referred to in Article 68, in accordance with the conditions agreed with the authors and performers of the audiovisual work or their associations.

#### *Chapter IV* *Rights of Broadcasting Organizations*

95. Broadcasting organizations shall have the exclusive right to authorize or prohibit the retransmission, fixation and reproduction of their broadcasts, and the communication of those broadcasts to the public by television in places frequented by the said public, without prejudice to the rights of the owners of the intellectual property embodied in the programs.

#### *Chapter V* *Term of Neighbouring Rights*

~~96. The term of protection of neighbouring rights shall be 70 years from the first of January of the year following fixation for phonograms, transmission for the broadcasts of broadcasting organizations and public performance in other cases.~~

96. The term of protection of neighbouring rights shall be 70 years from the first of January of the year following fixation for phonograms; emission for broadcasting organizations; and public performance, exhibition or presentation for the other cases.

### **Title VI** **Associations of Owners of Authors' Rights and Neighbouring Rights**

97. Authors and the owners of neighbouring rights may form non-profit-making associations for the exercise and defence of their rights.

- (1) Membership of more than one association for the collective administration of rights of the same kind is prohibited.
- (2) Any owner of copyright or neighbouring rights may at any time change associations, subject to written notification of the fact to the original association.
- (3) Associations with headquarters abroad shall be represented in Brazil by national associations set up as provided in this Law.

(4) The associations may allocate up to twenty percent of the amount collected by them for the benefit of their members, either directly or through other entities, to promote and foster the production of works, for capacity building and training and for other activities with cultural, social

and welfare purposes.

~~98. By the act of affiliation, the members mandate the associations to perform all such acts as may be necessary for the judicial or extrajudicial defence of their copyright, and for the collection of royalties.~~

~~*Sole paragraph.* The owners of copyright may perform the acts referred to in this Article in person subject to prior notification of the association to which they belong.~~

98. By the act of affiliation, the members mandate the collective copyright management associations referred to in Article 97 to perform all such acts as may be necessary for the judicial or extrajudicial defence of their copyrights, and for the collection of royalties resulting from such rights.

(1) The owners of copyrights may perform the acts referred to in this Article in person subject to prior notification of the association to which they belong.

(2) The exercise of the collection activity referred to in the introduction shall only be permitted to the associations which obtain registration with the Ministry of Culture, in accordance with the provisions of Article 98-A.

98-A. The exercise of the collection activity referred to in Article 98 shall depend on prior registration with the Ministry of Culture, as provided by regulation, whose administrative proceeding shall observe the following:

I. the by-laws of the applicant shall comply with the requirements set forth in legislation for its incorporation;

II. documentary proof that the applicant meets the conditions of representativeness in order to ensure the effective and transparent administration of the rights entrusted to it in a significant part of the national territory, which shall be demonstrated by the following documents and information:

a. the registrations of the works and the copyright owners they represent;

b. contracts and agreements with users of works from its repertoire;

c. by-laws and amendments thereto;

d. minutes of the ordinary and extraordinary meetings;

e. reciprocal representation agreements with similar institutions abroad, where they exist;

f. an annual report of its activities, where applicable;

g. annual financial statements, where applicable; and

h. an annual report of external audit of its accounts, where its preparation is demanded by the majority of its members or by a trade union or professional association, in accordance with the provisions of Article 100.

III. other information deemed relevant by the Ministry of Culture, set out in the form of regulation, such as demonstrating compliance with international contractual obligations that might give rise to questions to the Brazilian State under the international agreements to which it is party.

(1) The documents and information referred to in subparagraphs II and III of this Article shall be presented annually to the Ministry of Culture.

(2) The registration referred to in paragraph (2) of Article 98 shall be annulled when found to have been made unlawfully, or may be terminated administratively by the Ministry of Culture when found that the association does not properly meet the provisions set forth in this Article, always providing for adversary proceedings and full defence.

(3) The absence of an association that is mandated for a certain category of copyrights owners as a result of the application of paragraph (2) of this Article shall not exempt the users from the obligations set forth in Article 68, which they shall be required to pay during the period between the rejection of a registration application, the annulment or the termination of a registration and the obtainment of a new registration or the incorporation of a successor entity pursuant to the provisions of Article 98.

(4) The collective copyrights management associations that, as of the first of January 2010, have been legally constituted and are collecting and distributing royalties for works and phonograms shall be considered, for all effects, registered to carry out the economic activity of collection, and shall comply with the provisions of this article.

98-B. The collective copyrights management associations, in the performance of their duties, shall:

I. Make public and transparent, through their own websites, the system for calculation of and the criteria for the collection and distribution of the royalty proceeds collected;

II. Make public and transparent, through their own websites, the by-laws, the regulations for collection and distribution and the minutes of their decision-making meetings;

III. Seek operational efficiency, by reducing their administrative costs and the time period for distributing the proceeds to the copyrights owners.

98-C. The collective copyrights management associations shall keep updated and available to their members the documents and information set forth in subparagraphs II and III of Article 98-A.

98-D. The collective copyrights management associations shall render account for the amounts due, on a regular basis and directly, to their members.

~~99. The associations shall jointly maintain a single central office for the collection and distribution of the royalties generated by the public performance of musical works with or without words and phonograms, including performance by broadcasting and transmission by any means and by the presentation of audiovisual works.~~

99. The associations that consist of copyrights owners of musical and dramatico-musical works and phonograms shall jointly maintain a single central office for the collection and distribution of the royalties derived from their public performance, subject to the provisions of Article 99-A.

(1) The central office organized under the provisions of this Article shall not have any profit-making purpose and shall be directed and managed by the associations of which it is composed.

(2) The central office and the associations referred to in this Title shall act in their own names in court and elsewhere, and shall substitute themselves for their members.

(3) The central office may only collect funds by means of bank payments.

~~(4) The central office may employ inspectors, who shall be prohibited from accepting cash payments from show organizers on whatever ground.~~

(4) The central office may employ inspectors, who shall be prohibited from accepting cash payments from a user on whatever ground.

(5) Failure to observe the provisions of the foregoing subparagraph shall cause the offender to be disqualified from his or her position as inspector, without prejudice to such civil and criminal sanctions as may be applicable.

(6) The central office shall observe the provisions of Article 98-B and present to the Ministry of Culture, as applicable, the documents set forth in Article 98-A.

99-A. The associations that consist of copyrights owners of audiovisual works and the central office referred to in Article 99 shall unify the collection of the royalties resulting from the public exhibition and performance, including by any means of broadcasting, transmission or emission, where such collection is made from the same user, whether by delegating the collecting to one of them or by constituting a collecting entity with its own legal personality.

(1) Until the unified collection set forth in this Article is established, the collection and distribution of royalties for musical and dramatico-musical works and phonograms related to audiovisual exhibition shall be made by the central office set forth in Article 99, whether such works are created especially for the audiovisual works or are pre-existing to them.

(2) The organization of the unified collection referred to in the introduction of this Article shall be made by mutual agreement between the collective copyrights management associations and the central office, including with regard to the definition of the criteria for the division of the proceeds collected among the associations and the central office.

(3) The authors and owners of neighbouring rights to musical works created especially for audiovisual works, considered co-authors of an audiovisual work under the provisions of the introduction of Article 16, may entrust the exercise of their rights to a collective management association for music rights or to a collective management association for audiovisual works.

(4) The time limit for the organization and establishment of the unified collection set forth in this Article, in accordance with provisions of paragraph 2 above, shall be six months from the date on which this Law enters into force.

(5) When the time limit set forth in paragraph 4 has passed without the unified collection having been organized or the parties having reached an agreement, the Ministry of Culture, in the form of regulation, may take administrative action to resolve the conflict, with the aim of applying the provisions set forth in this Article, and without prejudice to the assessment by the Brazilian

## Antitrust System.

~~100. A trade union or professional association representing at least one-third of the members of an author's association, may, once a year and subject to eight days' advance notice, have the accuracy of the statements of account distributed to its members verified by an auditor.~~

100. A trade union or professional association representing no less than five percent of the members of a collective copyrights management association, may, once a year and subject to eight days' advance notice, have the accuracy of the statements of account given by this author's association to its members verified by an auditor.

100-A. The directors, managers, superintendents or administrators of the collective copyrights management associations and of the central office, in case of wilful misconduct or negligence, shall be jointly liable with their personal assets for the default of the obligations due to its members.

100-B. Any complaints from users or copyrights owners about abuses committed by the collective copyrights management associations or by the central office, particularly those relating to the formulas for calculating and the criteria for collecting and distributing royalties that guide the collection activities, may be forwarded to the bodies of the Brazilian Consumer Protection System and of the Brazilian Antitrust System, as appropriate, without prejudice to administrative action by the Ministry of Culture, in the form of regulation, to resolve conflicts related to copyrights.

## **Title VII** **Sanctions for copyright Infringement**

### *Chapter I* *Introductory Provision*

~~101. The civil sanctions provided for in the following Chapter shall be applicable without prejudice to criminal sanctions.~~

101. The civil sanctions provided for in the following Chapter shall be applicable without prejudice to criminal sanctions.

### *Chapter II* *Civil Sanctions*

~~102. Any owner of rights whose work is fraudulently reproduced, disclosed or used in any other way may apply for the seizure of the copies or originals made or the stoppage of the disclosure, without prejudice to whatever indemnification may be applicable.~~

102. Any owner of rights whose work is fraudulently reproduced, disclosed or used in any other way may apply for the search and seizure of the copies made or the stoppage of the disclosure, without prejudice to whatever indemnification may be applicable.

103. Any person who publishes a literary, artistic or scientific work without the authorization of the owner of the copyright shall forfeit to the latter the copies that are seized and shall pay him the price of those that have been sold.

*Sole paragraph.* Where the number of copies constituting the fraudulent edition is unknown, the offender shall pay the value of **up to** 3,000 copies in addition to the copies seized.

104. Any person who, for the purposes of sale or the securing of direct or indirect gains, advantages or profits for himself or for another, sells, displays for sale, receives and conceals, acquires, distributes, keeps on deposit or uses a fraudulently reproduced work or phonogram shall be jointly liable with the infringer in terms of the foregoing Articles; if the reproduction has been carried out abroad, the importer and the distributor shall answer for the infringement.

~~105. The transmission and retransmission by any means or process and the communication to the public of literary, artistic and scientific works, performances and phonograms carried out in violation of the rights of the owners shall be immediately discontinued or interrupted by the competent judicial authority, without prejudice to a daily coercive fine for non-observance and such other indemnities as may be applicable, and without regard to the applicable criminal sanctions. Where the offender is found guilty of recidivism in the infringement of the rights of owners of authors' rights or neighbouring rights, the amount of the fine may be doubled.~~

105. The emission, transmission and retransmission by any means or process and the communication to the public of literary, artistic and scientific works, performances and phonograms carried out in violation of the rights of the owners may be immediately discontinued or interrupted by the competent judicial authority, without prejudice to a daily fine for non-observance and such other indemnities as may be applicable, and without regard to the applicable criminal sanctions. Where the offender is found guilty of recidivism in the infringement of the rights of owners of authors' rights or neighbouring rights, the amount of the fine may be doubled.

106. The sentence may include the obligation to destroy all unlawful copies and originals, and also the blocks, moulds, negatives and other material used to commit the infringement; and it may provide for the seizure of machines, equipment and materials used for the purpose, including their destruction where they can only serve unlawful purposes.

107. Without regard to the seizure of the equipment used, any person shall be liable to damages in an amount not less than that resulting from application of the provisions of Article 103 and its sole paragraph who:

- I. alters, removes, modifies or in any way disables technical devices that have been incorporated in copies of protected works and productions to prevent or restrict reproduction;
- II. alters, removes or in any way spoils the encrypted signals intended to restrict the communication to the public of protected works, productions or broadcasts or to prevent the copying thereof;
- III. without authorization removes or alters any rights management information;
- IV. without authorization distributes, imports for distribution, broadcasts, communicates or makes available to the public works, performances, copies of performances fixed on phonograms and broadcasts in the knowledge that the rights management information, the encrypted signals and the technical devices have been removed or altered without authorization.

**(1) Without prejudice to other penalties set forth in Law, the same sanction shall be applied to any person who by any means:**

(a) hinders or prevents the uses permitted by Articles 46, 47 and 48 of this Law; or

(b) hinders or prevents the free use of the works, broadcast emissions and phonograms which are in the public domain.

(2) The provision set forth in the introduction of this Article shall not apply where the acts set forth in subparagraphs I, II and IV related to the encrypted signals and technical devices are performed to permit the uses set forth in Articles 46, 47 and 48 of this Law or where the term of the economic rights to the work, performance, phonogram or emission has expired.

(3) The encrypted signals and technical devices referred to in subparagraphs I, II and IV shall have limited effect in time, in accordance with the term of the economic rights to the work, performance, phonogram or emission.

108. Any person who, in the use of an intellectual work by any means fails to mention or announce as such the name, pseudonym or conventional mark of the author and performer, apart from having to answer for the moral prejudice, shall be bound to disclose their identity,

I. in the case of a broadcasting organization, at the same times as those at which the infringement was committed, for three consecutive days;

II. in the case of a graphic or phonographic publication, by the inclusion of an erratum in the copies not yet distributed, without prejudice to the conspicuous publication of a notice on three consecutive occasions in a major journal at the place of residence of the author, the performer and the publisher or producer;

III. in the case of any other form of use, in the press according to the procedure referred to in the foregoing subparagraph.

~~109. Any public performance carried out in violation of the provisions of Articles 68, 97, 98 and 99 of this Law shall make the offenders liable to a fine corresponding to 20 times the amount that should originally have been paid.~~

109. Any public presentation, performance or exhibition carried out in violation of the Articles 68, 97, 98, 99 and 99-A of this Law shall make the offenders liable to a fine corresponding to up to 20 times the amount that should originally have been paid.

110. Owners, directors, managers, impresarios and renters shall be jointly liable with the organizers of shows for copyright violations committed in the course of shows and recitals held on the premises or in their establishments referred to in Article 68.

110-A. The copyrights owner or his or her representative, who, in exercising his or her rights in an abusive manner, violates the economic order, shall be subject, where applicable, to the sanctions set forth in Law 8884 of 11 June 1994, without prejudice to other applicable sanctions.

110-B. The offer, by the copyrights owner or by a person in his or her service, of direct or indirect material gain, advantage, profit or benefit to owners, directors, employees of, or third parties rendering services to, broadcasting or subscription television companies, with the intent of artificially increasing or decreasing the frequency of the public performance or exhibition of

specific works or phonograms shall be characterized as a violation of the economic order, in accordance with Law number 8884 of 1994.

110-C. Failure to comply with the provisions of paragraph 6 of Article 99 shall subject directors, managers, superintendents or administrators of collective copyrights management associations or of the central office to a fine of up to 50 thousand Reais, applied by the Ministry of Culture through regular administrative process, providing for adversary proceedings and full defence, as required by regulation.

*Sole Paragraph.* The fine referred to in the introduction shall vest in the National Fund for Culture.

### *Chapter III Statute-Barring*

111. [Vetoed]

111-A. The civil action for violation of copyright shall prescribe in five years from the date of violation of the right.

*Sole paragraph.* In case of continued violation of the rights of a certain author by the same infringer or group of infringers, the prescription shall count as from the last act of violation.

## **Title VIII Final and Transitional Provisions**

112. A work that has passed into the public domain on the expiry of the term of protection provided for in paragraph (2) of Article 42 of Law No. 5988 of 14 December 1973, may not be granted an extension of the term of protection of the economic rights under Article 41 of this Law.

113. Phonograms, books and audiovisual works shall bear a seal or any other identifying mark, which the producer, distributor or importer shall be responsible for affixing, without additional cost to the consumer, in order to attest compliance with the legal provisions in force, as provided in the regulations.

113-A. The Executive Authority shall determine, in regulation, the conditions of the manifestation by the Ministry of Culture, in the renewal process of the public concessions granted to broadcasting organizations, concerning the performance of the payments of copyright royalties by these organizations.

113-B. As long as the registration services set forth by Article 19 of this Law have not been organized by the Federal Executive Authority, the author of an intellectual work may register it, depending on its nature:

I. with the National Library Foundation;

II. with the Music School of the Federal University of Rio de Janeiro;

III. with the School of Fine Arts of the Federal University of Rio de Janeiro; or

IV. with the Federal Council of Engineering, Architecture and Agronomy.

(1) If the work is of such nature that it can be registered with more than one of these bodies, it shall be registered with the one which has higher affinity.

(2) The provision of this Article is not applicable to the registration of computer software.

114. This Law shall enter into force 120 days after its publication, except for the other periods specified in this Law.

115. Articles 649 to 673 and 1346 to 1362 of the Civil Code and Laws numbers 4944 of 6 April 1966; 5988 of 14 December 1973, ~~with the exception of Article 17 and its paragraphs (1) and (2);~~ 6800 of 25 June 1980; 7123 of 12 September 1983; 9045 of 18 May 1995, and other provisions contrary to this Law are repealed. Laws numbers 6533 of 24 May 1978 and 6615 of 16 December 1978 remain in force.