

January 18, 2001
Translation from Ukrainian

Draft

LAW OF UKRAINE
"On Amendments to the Law of Ukraine
‘ON COPYRIGHT AND RELATED RIGHTS’"

No.1106

May 28, 1998

The Supreme Rada of Ukraine enacts the following:
To amend the Law Of Ukraine "On Copyright and Related Rights" ("Vidomosti Verkhovnoyi Rady Ukrayiny", 1994, No. 13, p. 64) by providing the following wording thereof:

Law of Ukraine
"ON COPYRIGHT AND RELATED RIGHTS"

This Law shall protect personal non-proprietary rights and proprietary rights of authors and their successors related to the creation and use of works of science, literature and art - copyright, and the rights of performers, phonogram and videogram producers and broadcasting organizations - related rights.

Section I. GENERAL PROVISIONS

Article 1. Definitions

For the purposes of this Law terms, shall have the following meaning:

author - an individual who created a work by his creative effort;

audiovisual work - a work fixed on a certain material medium (cinema film, recording tape or magnetic disk, CD, etc.) in the form of a series of consecutive images or analog or discrete signals reproducing (encoding) moving images (with and without a soundtrack), the perception of which is possible exclusively by means of any sort of a display (cinema screen, TV screen, etc.) on which moving images are reproduced visually with the help of certain technical means; the varieties of an audiovisual work are movies, TV films, video films, diapositive film strips, slide films, etc. that can be fiction, animation (cartoons), non-fiction or other;

database - aggregate data (facts, charts, graphs, figures, calculation results, etc., in the form of printed or facsimile materials), independent works or other materials which, according to their selection and composition, result from creative work and are organized by a system or method so that they are accessible individually and can be found and processed via a special retrieval system based on electronic (computer) and other means;

exclusive right - a proprietary right of a person holding copyright and (or) related rights with

respect to a work, performance, staging thereof, a broadcasting organization's transmission or a phonogram (videogram), entitling this person alone to use these objects of copyright and related rights, and entitling this person alone to permit or prohibit the use thereof by other persons during the term stipulated by this Law;

performer - an actor (theatre actor, cinema actor, etc.), singer, musician, dancer or other person who acts, sings, recites, declaims, plays a musical instrument, dances or otherwise performs works of literature or art, including folklore, circus, variety and puppet shows, pantomimes, etc., as well as a conductor of musical, musical drama or choreographic works;

videogram producer - an individual or a legal entity that initiated and assumed responsibility for the first video recording of a performance or of any moving images (with or without a soundtrack). When there is no evidence to the contrary, the individual or legal entity whose name is affixed to a videogram and (or) its package shall be deemed to be the videogram's producer ;

phonogram producer - an individual or a legal entity that initiated and assumed responsibility for the first sound recording of a performance or of other sounds. When there is no evidence to the contrary, the individual or legal entity whose name is affixed to a phonogram and (or) its package shall be deemed to be the phonogram's producer ;

videogram - first video recording on the appropriate material medium (magnetic tape, magnetic disk, CD, etc.) of an audiovisual work or a performance of any other work or any moving images (with or without a soundtrack). A videogram is the original material for producing copies thereof;

reproduction - production of one or more specimens of a work in any material form, including copying of videograms (phonograms), as well as recording of a work for temporary or permanent storage in electronic (including digital), optical or other computer-readable form;

author's name - an aggregate of words or marks identifying an author; author's last and first names; author's last name, first name and patronymic; author's initials; author's pseudonym; a mark (an aggregate of marks) adopted by the author, etc.;

recording (audio recording, video recording) - fixation of images and (or) sounds with the help of the appropriate technical equipment on a material medium specially designed for this purpose (including through digital presentation) that allows their perception, reproduction or notification via the appropriate technical device;

transfer for property lease - transfer of the right to use and (or) possess an original or a specimen of a work or a phonogram (videogram) during a specified term with the aim of deriving direct or indirect commercial benefit;

computer software - a set of instructions in the form of words, digits, codes, schemes, symbols or in any other form, expressed in a computer-readable form, that enable it to achieve certain goals or results (this notion covers both an operating system and an application expressed in output or object codes);

counterfeit specimen of a work - a specimen of a work produced and (or) distributed in violation of copyright and (or) related rights;

promulgation (disclosure to the public) of a work - an action that makes a work available to the public irrespective of the means whereby this is achieved (forms of promulgation are publication, public performance, public display, public demonstration, broadcast, etc.);

publication of a work - issuance into circulation of specimens of a work or a phonogram (videogram), manufactured by printing, electronic or other means, through their sale, transfer for property lease, home or commercial rental, granting access thereto through electronic information systems or by assigning the title thereto or the right to possess them by other methods. Publication of a work also means depositing the work's manuscript in an open-access depository with a possibility of obtaining a specimen (copy) of the work therefrom;

collective management organization (organization for collective management of proprietary rights) - a non-profit organization that manages on a collective basis the proprietary rights copyright and (or) related rights holders;

broadcasting organization - an air broadcasting organization or a cable broadcasting organization;

air broadcasting organization - a TV and radio organization broadcasting radio or television transmissions and programs (produced by this organization or by other organizations) by transmitting on the air with the help of radio waves (and laser beams, gamma-beams, etc.) in any frequency band (including via satellites);

cable broadcasting organization - a TV and radio organization broadcasting radio or television transmissions and programs (produced by this organization or by other organizations) through remote transmission of a signal over surface or underground (conductor, optical fiber or other) cables;

person - an individual or a legal entity;

piracy in the sphere of copyright and (or) related rights - production and (or) distribution for commercial purposes of specimens of works, phonograms (videograms) or broadcasting organizations' transmissions without permission (license) of the holder of copyright and (or) related rights;

derivative work - a work that is a creative remaking of other existing work without prejudicing the existing work's protection (annotation, adaptation, arrangement, version of a folklore item, other remaking of a work) or a creative translation thereof into another language (derivative works do not include the audiovisual works obtained by dubbing, soundtracking of other audiovisual works, or by adding subtitles in Ukrainian or other languages thereto);

specimen of a work - a copy of a work produced in any material form;

specimen of a phonogram (videogram) - a copy of a phonogram (videogram) on the

appropriate material medium produced directly or indirectly from the phonogram (videogram) and containing all sounds (images) or a portion of the sounds (images) fixed on the phonogram (videogram);

producer - a person that organizes or organizes and finances the creation of an audiovisual work;

pseudonym - a fictitious name selected by an author or a performer to identify his authorship;

public performance - presentation of works and their performances, broadcasting organizations' transmissions by declamation, playing, singing, dancing and other method both directly (live performance) and via any devices or processes (except for air or cable transmission) in places that are attended or can be attended by persons who do not belong to a regular family circle or close acquaintances of a family, regardless of whether they are present in one place at the same time or in various places at various times;

public demonstration of an audiovisual work, phonogram (videogram) - single or multiple public performances of an audiovisual work or a work recorded as a phonogram (videogram) in places that can be attended by persons who do not belong to a regular family circle or close acquaintances of such a family;

public display - any demonstration of the original or a specimen of a work, performance, phonogram (videogram), a broadcasting organization's transmission either directly or on a screen by means of a film, slide, television frame, etc. (except for air or cable transmissions) or via other devices or processes in places that are attended or can be attended by persons who do not belong to a regular family circle or close acquaintances of the displaying person's family, regardless of whether they are present in one place at the same time or in various places at various times (public display of an audiovisual work also means demonstration of individual frames of an audiovisual work without observance of their sequence);

broadcast (broadcast for general notice) - air transmission via radio waves (as well as laser beams and gamma-beams, etc.) including via satellites, or remote transmission by wires or any type of surface or underground (conductor, fiber optic or other) cable of works, their performances, their recordings in the form of phonograms (videograms), broadcasting organizations' programs, any sounds and (or) images, etc., where said transmission can be received by an unlimited number of persons in various places located at a distance from the place of transmission, at which the images or sounds cannot be received without said transmission;

reprographic reproduction - facsimile reproduction of any size (including enlarged or reduced) of the original of a written or other graphic work or a specimen thereof by photocopying or other similar methods, except for recording in electronic (including digital), optical or other computer-readable form,

course-of-duty work - a work created by an author in the course of his duty in accordance with his job or under an employment agreement (contract) between the author and the employer;

public domain - legal status of works, the copyright on which has expired, as well as of works in relation to which copyright does not exist;

work of architecture - a work of construction or landscape design art (drawings, sketches, models, erected buildings and facilities, parks, residential area layouts, etc.):

work of fine art - a sculpture, painting, drawing, engraving, lithograph, a work of artistic (including stage) design, etc.;

work of applied art - a work of art, including art crafts, hand-made or created by industrial means for daily use, or one applied to an object so used;

technical means of protection - technical devices with which audio and video recorders, radio and television receivers and other technical equipment for receiving and (or) copying protected (encoded) phonograms (videograms) and broadcasting organizations' transmissions can be provided, with the aim of creating a technological obstacle to the infringement of copyright and (or) related rights;

Institution – the central body of executive power in the sphere of intellectual property;

phonogram - the first sound recording on the appropriate material medium (magnetic tape or magnetic disk, gramophone record, CD, etc.) of a direct (live) performance of a work or other sounds. A phonogram is the original material for producing specimens (copies) thereof;

quotation - a relatively brief excerpt from a literary, scientific or any other published work that is used, with a compulsory reference to its author, by another person in his work in order to make his statements understandable or to refer to opinions of the other author in their original wording.

Article 2. Ukrainian Legislation on Copyright and Related Rights

The Ukrainian legislation on copyright and related rights shall be based on the Constitution of Ukraine and shall consist of the relevant rules of the Civil Code of Ukraine, this Law, the Laws of Ukraine "On Ownership", "On Cinematography", "On Television and Radio Broadcasting", "On Publishing", "On Distribution of Audiovisual Works and Phonograms", as well as on other legislative acts of Ukraine protecting personal non-proprietary rights and proprietary rights of copyright and related rights holders.

Article 3. The Scope of the Law

1. Copyright shall be applicable to:

a) the works specified in part one of Article 8 of this Law, and the objects of related rights specified in Article 35 of this Law, irrespective of the place of their first promulgation (or non-promulgated items that are physically located in Ukraine), the owner of copyright and (or) related rights to which is an individual - a citizen of Ukraine or a person that has his permanent residence in Ukraine, or a legal entity having its permanent seat located in Ukraine;

b) the works specified in part one of Article 8 of this Law and the objects of related rights specified in Article 35 of this Law that were first promulgated in Ukraine, or those that were first promulgated outside Ukraine, but were promulgated in Ukraine within 30 days thereafter;

c) transmissions of the broadcasting organizations that have their official seats located in Ukraine and broadcast via transmitters located in Ukraine;

d) works of architecture that are physically located in Ukraine;

e) other works and objects of related rights that are protected in accordance with the international agreements of Ukraine.

2. The provisions of this Law are aimed at protecting the personal non-proprietary rights and proprietary rights of:

a) the copyright holders specified in Article 7 of this Law and the related rights holders specified in part one of Article 36 of this Law who are Ukrainian citizens or have their permanent residence in Ukraine (for legal entities - have their permanent seats located in Ukraine), regardless of the territory in which their works or objects of related rights were first promulgated;

b) the copyright holders specified in Article 7 of this Law and the related rights holders specified in part one of Article 36 of this Law, irrespective of their citizenship and permanent residence (for legal entities - location of their permanent seats), whose works or objects of related rights were first promulgated in Ukraine, or as regards those that were not promulgated but are physically located in Ukraine;

c) the copyright holders specified in Article 7 of this Law and the related rights holders specified in part one of Article 36 of this Law, irrespective of their citizenship and permanent residence, whose works or objects of related rights were first promulgated in another country and were promulgated in Ukraine within 30 days thereafter.

3. The copyright and (or) related rights holders, irrespective of their citizenship, whose works or objects of related rights were first promulgated in another state, or as regards those that were not promulgated but are physically located in the other state, they shall be granted legal protection in accordance with the international agreements of Ukraine.

Article 4. The Powers of the Institution in the Sphere of Protection of Copyright and Related Rights

1. The Institution shall ensure the implementation of the State policy in the sphere of protection of copyright and related rights. The Institution is the successor to the liquidated Ukrainian State Agency for Copyright and Related Rights in respect of the legal relations arising out of this Law and the international agreements of Ukraine, and shall exercise the following functions:

monitor the application and observance of Ukraine's domestic legislation and international agreements in the sphere of copyright and related rights;

approve the registration of collective management organizations, supervise the activity of these organizations and provide them with methodological assistance;

act as an intermediary in negotiations and during settlement of disputes between collective management organizations and copyright and related rights holders;

draft standards and schedules concerning minimum remuneration and distribution thereof among the authors and holders of copyright and related rights, and submit them to the Cabinet of Ministers of Ukraine for approval;

provide reproducers, importers and exporters of phonogram (videogram) specimens with control stamps in accordance with the Law of Ukraine "On Distribution of Specimens of Audiovisual Works and Phonograms", and keep the Uniform Register of Control Stamp Recipients;

receive and consider applications for the State registration of copyrights to works of science, literature and art, as well as registration of the contracts relating to copyright with respect to works, and carry out their registration;

draw up and periodically publish catalogues of all State copyright registrations;

publish an official bulletin on protection of copyright and related rights;

develop and implement educational programs in the sphere of protection of copyright and related rights;

represent the interests of Ukraine in matters of protection of copyright and related rights before international organizations, pursuant to the effective legislation;

perform other functions pursuant to the Institution's Regulations, which shall be approved in compliance with the established procedure.

2. The Institution can contract to provide any person any information or other services in the sphere of protection of copyright and related rights, in compliance with the procedure determined by the Institution.

3. The Institution shall be entitled to request from collective management organizations the information it needs for the verification of compliance of their activity with their charters and this Law.

4. The Institution's activity shall be financed from the State budget of Ukraine.

Article 5. Application of the Rules of an International Agreement

If an effective international agreement, which was approved as binding by the Supreme Rada

of Ukraine, stipulates other rules than those set forth in the legislation of Ukraine on copyright and related rights, the rules of the international agreement shall be applied.

Article 6. Rights Of Foreign Persons And Stateless Persons

Foreign persons and stateless persons, according to international agreements or on the grounds of the principle of reciprocity, shall enjoy rights equal to those provided for by this Law to the persons of Ukraine.

Section II. COPYRIGHT

Article 7. Copyright Holders

1. Copyright holders are authors of the works specified in part one of Article 8 of this Law, their heirs and the persons to whom the authors or their heirs assigned their proprietary copyrights.

Article 8. Objects of Copyright

1. Objects of copyright shall be works in the domain of science, literature and art, namely:
 - 1) literary written works of fiction, journalistic, scientific, technical or other nature (books, brochures, articles, etc.);
 - 2) speeches, lectures, orations, sermons and other oral works;
 - 3) computer software;
 - 4) databases;
 - 5) musical works with or without lyrics;
 - 6) dramatic, musical drama works, pantomimes, choreographic and other works created for stage presentation and staging versions thereof;
 - 7) audiovisual works;
 - 8) works of fine art;
 - 9) works of architecture, city construction, garden and park design;
 - 10) photographic works, including works made by means similar to photography;
 - 11) works of applied art, including works of decorative weaving, ceramics, carving, art glass, casting, jewelry, etc., if these are not protected by a special law on industrial property;
 - 12) illustrations, maps, layouts, drawings, sketches, and plastic works relating to geography, geology, topography, engineering, architecture and other spheres of activity;

13) stage interpretations of the works specified in clause 1 of this part, and folklore versions that can be presented on stage;

14) derivative works;

15) collections of works, collections of folklore versions, encyclopedias and anthologies, collections of regular data, and other composite works, provided that they result from creative work involving selection and co-ordination or arrangement of the contents without prejudice to the copyright covering the integrated works;

16) texts of translations for dubbing, soundtracking and adding subtitles in Ukrainian and other languages to foreign audiovisual works;

17) other works.

2. Protection under this Law shall be granted to all works specified in part one of this Article, both promulgated and non-promulgated, finished and unfinished, irrespective of their purpose, genre, volume, goals (education, information, advertising, propaganda, leisure, etc.)

Article 9. Protection of Copyright with Respect to a Portion of a Work

The portion of a work that can be used independently, including the original title of a work, shall be considered a work and shall be protected pursuant to this Law.

Article 10. Objects Not Covered by Protection

1. The following items shall not be objects of copyright:

a) daily news or current events information that are regular press information;

b) works of folk art (folklore);

c) official documents of political, legislative and administrative nature (laws, decrees, resolutions, court awards, State standards, etc.), issued by government authorities within their powers, and official translations thereof into other languages;

d) State symbols of Ukraine, government awards; symbols and signs of government authorities, the Armed Forces of Ukraine and other military formations; symbols of territorial communities; symbols and signs of enterprises, institutions and organizations;

e) bank notes;

f) transportation schedules, TV and radio broadcast schedules and telephone directories.

Drafts of the official documents specified in clause c) of this part, prior to being officially introduced by the agencies that set standards and registered by the government authorities authorized to approve or issue these official documents, shall be considered as works and

protected pursuant to this Law.

Drafts of the official documents, symbols and signs specified in clauses d) and e) of this part shall be considered as works and protected pursuant to this Law.

2. Copyright shall not be extended to any ideas, theories, principles, methods, procedures, processes, systems, manners, concepts, discoveries, , etc., even if they are expressed, described, explained or illustrated in a work.

Article 11. Arising and Exercising of Copyright. Presumption of Authorship

1. The author of a work shall be the primary holder with whom copyright vests.

The person indicated as the author on the original or a specimen of a work shall be deemed the author (presumption of authorship), unless otherwise proven by court procedure.

This provision shall also apply when a work is published under a pseudonym identifying the author.

2. Copyright with respect to a work shall arise by virtue of the work's creation. No registration of a work or any other special formalization thereof, nor performance of any other formalities, shall be required prior to the onset and exercising of copyright.

3. In order to notify others about his rights, the person holding copyright (author of a work or any other person who was lawfully granted proprietary copyright to the work) can use the copyright protection sign. The sign shall consist of the following elements:

an encircled Latin letter C - ©

the copyright holder's name

the year of the first publication of the work.

The copyright protection sign shall be applied to the original and to every specimen of a work.

4. If a work was published anonymously or under a pseudonym (except when a pseudonym unequivocally identifies the author), the publisher of the work (its name must appear thereon) shall be considered the author's representative and shall have the right to protect the latter's rights. This provision shall remain effective until the author of the work discloses his name and declares his authorship.

5. A copyright holder, in order to certify its authorship (copyright) with respect to a promulgated or non-promulgated work, the fact and date of publication of the work, or to certify contracts relating to the author's right to a work at any time during the copyright protection term, may register the above in the official State registers.

The State registration of a copyright or of contracts relating to the author's right to a work shall be implemented by the Institution in compliance with the procedure approved by the Cabinet of Ministers of Ukraine. The Institution shall draw up and periodically issue catalogues of all State registrations.

The fees set by the Cabinet of Ministers of Ukraine shall be paid for the State registration of copyrights and of contracts relating to an author's right to a work.

The Institution shall issue a certificate concerning registration of copyright with respect to a work. The State fee shall be paid for the issuance of the certificate, and the relevant proceeds shall be transferred to the State budget of Ukraine. The amount of the State fee charged for the issuance of the certificate and the relevant payment procedure shall be stipulated by the legislation.

A person possessing the material object in which a work is expressed shall not impede copyright registration by the person holding the copyright.

Article 12. Copyright and Ownership Right to the Material Object in which a Work is Expressed

1. Copyright and ownership right to the material object in which a work is expressed shall not be inter-dependent. The alienation of the material object in which a work is expressed shall not mean the alienation of copyright and vice versa.

2. The owner of the material object, in which the original of a work of art or architecture is expressed, shall not be allowed to destroy the object without first offering it to the author at a price which shall not exceed the value of the materials used for the creation thereof. If it is impossible to preserve the object in which the original of a work is expressed, the owner of the material object in which the original of the work is expressed shall allow the author to make a copy of the work in the relevant form, and with respect to an architectural structure - to take a photographic picture thereof.

Article 13. Co-Authorship

1. Co-authors are persons whose joint creative effort resulted in a work.

Co-authors shall be joint holders of copyright with respect to a work created in co-authorship, irrespective of whether the work is a single inseparable item or includes independent parts.

Relations between co-authors shall be stipulated by an agreement made between them.

The right to publish or otherwise use a work as a whole shall be vested with all co-authors.

If a work was created in co-authorship and is a single inseparable item, neither co-author shall, without sufficient grounds, deny permission to the other authors to publish or otherwise use or alter the work.

In the event of a violation of a joint copyright, each co-author may prove his rights by court procedure.

2. If a work created in co-authorship consists of independent parts, each of the co-authors shall be entitled to use the part he created at his own discretion, unless otherwise stipulated in

an agreement between the co-authors.

3. Copyright to a recorded interview shall also be regarded as co-authorship. It shall be vested with the interviewee and the interviewer who recorded the interview.

A recording of an interview can be published only with the interviewee's consent.

4. Remuneration for the use of a work shall belong equally to co-authors, unless otherwise stipulated in an agreement.

Article 14. An Author's Personal Non-Proprietary Rights

The following personal non-proprietary rights shall be vested with an author:

- 1) to decide whether a work is to be promulgated, and to determine the method and time of the promulgation;
- 2) to require recognition of his authorship by properly indicating the author's name on specimens of a work and during any public use of the work, if practicable;
- 3) to prohibit the mentioning of his name during a public use of a work if the author wishes to remain anonymous;
- 4) to choose a pseudonym, and to indicate and to require indication of a pseudonym instead of his real name on specimens of a work and during any public use thereof;
- 5) to require preservation of the integrity of a work, and to counteract any twisting, rearrangement or other alteration of a work, or any other encroachment thereon that may prejudice the author's honor and reputation.

Article 15. An Author's Proprietary Rights

1. The proprietary rights of an author or other copyright holder shall include.

- a) the exclusive right to use a work;
- b) the exclusive right to allow or prohibit the use of a work by other persons.

The proprietary rights of an author or other copyright holder can be assigned (alienated) to another person in compliance with the provisions of Article 31 of this Law, whereupon this person shall become a copyright holder.

2. An author's or other copyright holder's exclusive right to use a work shall allow him to use the work in any form and in any way.
3. The exclusive right of a copyright holder to allow or prohibit the use of a work by other

persons shall entitle him to allow or prohibit:

- 1) reproduction of works;
- 2) public performance and broadcast of works;
- 3) public demonstration and public display;
- 4) any repeated promulgation of works, if carried out by an organization other than the one that carried out the first promulgation;
- 5) translations of works;
- 6) versions, adaptations, arrangements and other similar alterations to works;
- 7) inclusion of works as components into collections, anthologies, encyclopedias, etc.;
- 8) distribution of works by first sale or alienation by another method or by transferring for property lease or rental, and by other transfer prior to the first sale of specimens of a work;
- 9) transfer for property lease of the original or specimens of audiovisual works, computer software, databases, musical works as sheet music, as well as of works fixed on a phonogram (videogram) or in a computer-readable form;
- 10) import of specimens of a work.

This list is not exhaustive.

4. An author's exclusive rights to use works of architecture, city construction, garden and park art shall include the right to participate in practical implementation of the relevant work projects.

5. An author shall also be entitled to allow or prohibit the use of his work in other ways.

6. Except for the cases stipulated in Articles 21 through 25 of this Law, a holder of an author's proprietary rights may require payment of remuneration for any use of a work. The remuneration can be effected in the form of a one-time (lump sum) payment, deductions for each specimen sold or for each use of a work (royalty) or mixed payment methods.

The amount of, and the procedure for, paying an author's remuneration for the creation and use of a work shall be stipulated in an author's contract, as well as in the license agreements made between collective management organizations and users.

The Cabinet of Ministers of Ukraine may establish minimum author's remuneration rates, which shall be subject to indexation simultaneously with the indexation of the minimum wage.

7. The proprietary rights restrictions stipulated in Articles 21 through 25 of this Law shall be

effected, provided that they do not prejudice normal use of a work or unjustifiably limit the author's legitimate rights.

8. If specimens of a lawfully published work are legally put in civil circulation through their first sale in Ukraine, it shall be permissible to repeatedly introduce them into circulation through sale, bestowal, etc. without the consent of the author or of any other person holding the copyright and without payment of the author's remuneration. However, in this event the right to transfer for property lease or rental shall be preserved exclusively by the copyright holder.

Article 16. Copyright with Respect to Course-of-Duty Works

1. Personal non-proprietary copyright with respect to a course-of-duty work shall be vested with the author thereof.

2. The exclusive proprietary right to a course-of-duty work shall be vested with the employer, unless otherwise stipulated by an employment agreement (contract).

3. The amount of the author's remuneration for the creation and use of a course-of-duty work, as well as the relevant payment procedure, shall be stipulated in the employment agreement (contract) or in another civil law contract between the author and the employer.

Article 17. Copyright with Respect to an Audiovisual Work

1. The authors of an audiovisual work shall be:

a) the director;

b) the author of the script and (or) texts or dialogues;

c) the author of a musical work with or without lyrics, specially created for the audiovisual work;

d) the art director;

e) the cameraman.

One and the same individual can carry out two or more of the author's functions indicated in this part.

2. The author's proprietary right to an audiovisual work or a broadcast can be vested with the producer or with the legal entity which produced the audiovisual work or broadcast.

3. Unless otherwise stipulated by a contract for the creation of an audiovisual work, authors who contributed, or undertook an obligation to contribute to the creation of the audiovisual work and who assigned the proprietary rights to an organization that produces the audiovisual

work, or to a producer, shall not have a right to object to the performance of the work, reproduction, distribution and public promulgation thereof, nor to the subtitling or dubbing of its text, with the exception of the right to carry out separate public promulgation of the musical works incorporated into the audiovisual work. All authors shall preserve the right to receive remuneration for each public performance and promulgation of an audiovisual work and transfer thereof for property lease or rental of its specimens; such remuneration shall be distributed and paid out by collective management organizations .

4. The authors whose works were incorporated in an audiovisual work (both those that existed before and those created in the process of working on the audiovisual work) shall preserve the copyright with respect to each of their works, and can use it independently irrespective of the entire audiovisual work, unless otherwise stipulated in a contract with the organization that produces the audiovisual work, or with the producer.

Article 18. Copyright with Respect to Computer Software

Computer software shall be protected as literary work. Such protection shall cover computer software irrespective of the method or form of its expression.

Article 19. Copyright with Respect to Collections And Other Composite Works

1. The author of a collection or other composite work (compiler) shall hold the copyright with respect to his selection and placement of the materials resulting from his creative effort (compiling).

The compiler of a collection shall hold the copyright provided that he observes the rights of the authors of each of the works incorporated in the composite work.

The authors of the works incorporated in a composite work shall be entitled to use their works independently of the composite work, unless otherwise stipulated by the author's contract with the collection compiler.

The collection compiler's copyright shall not hinder other persons' independent selection or placement of the same materials for creating their own works.

2. The publishers of encyclopedias, encyclopedic dictionaries, periodic collections, collections of scientific works, newspapers, magazines and other periodicals shall hold the exclusive rights to use such publications in their entirety. The publisher shall be entitled to indicate his name or to require indication thereof in the publications with respect to any use of such publications.

The authors of the works incorporated in such publications shall preserve the exclusive rights to use their works irrespective of the entire publication, unless otherwise stipulated by an author's contract.

Article 20. Copyright of Translators and Authors of Other Derivative Works

1. Translators and authors of other derivative works shall hold a copyright with respect to their translation, adaptation, arrangement or other re-making.

The translator and the authors of other derivative works shall hold the copyright with respect to their work provided that they observe the rights of the author whose work was translated, adapted, arranged or otherwise remade.

2. The copyright of translators and authors of other derivative works shall not hinder other persons' translations and remaking of the same works.

Article 21. Free Use of a Work with the Indication of the Author's Name

The following shall be permitted without the consent of the author or other copyright holder, and without payment of the author's remuneration but with mandatory indication of the author's name and of the source of borrowing:

1) to use quotations (brief excerpts) from published works to the extent justified by the intended purpose, including quotations from newspaper and magazine articles in the form of press reviews, if this is required by the critical, polemic, scientific or informational nature of the work incorporating the quotations; to freely use quotations in the form of brief excerpts from performances and works incorporated in a phonogram (videogram) or a broadcasting program;

2) to use literary works and works of art to the extent justified by the intended purpose, such as illustrations in publications, broadcasts, sound recordings or video recordings of educational nature;

3) to reproduce in the press, to carry out public performance or broadcast of previously published newspaper or magazine articles on current economic, political, religious and other issues, or previously broadcast works of the same nature, when the right to carry out such a reproduction, broadcast or other public communication has not been specially prohibited by the author;

4) to reproduce, in order to highlight current events by means of photography or cinematography, to carry out broadcasting or other public communication of the works seen or heard in the course of such events to the extent justified by the informational purpose;

5) to reproduce in catalogues the works displayed at exhibitions, auctions, fairs and collections that are open for public access;

6) to issue works for the blind, published in Braille characters;

7) to reproduce works for court and administrative proceedings, to the extent justified by this purpose;

8) to carry out public performance of musical works during official and religious ceremonies, as well as funerals, to the extent justified by the nature of such ceremonies;

9) to reproduce for informational purposes in newspapers and other periodicals, to broadcast or to carry out other public notification of publicly delivered speeches, addresses, reports and other similar works, to the extent justified by the intended purpose;

10) to reproduce a work for the purposes and under the conditions stipulated in Articles 22 through 25 of this Law.

This list of freely usable works is exhaustive.

Article 22. Free Reprographic Reproduction by Libraries and Archives of Specimens of a Work

It shall be permissible for libraries and archives, the activity of which is not aimed, directly or indirectly, at earning profit, to reprographically reproduce, without the consent of the author or other copyright holder, and without payment of the author's remuneration, one specimen of a work, subject to the following:

1) when a reproduced work is a separately published article or other small works or excerpts from written works (except for computer software and databases), with or without illustrations, and when the reproduction is made upon an individual's requests, provided that:

a) the library or archive has sufficient reason to believe that such a specimen will be used for the purpose of education, training or private research;

b) reproduction of the work is a single and not a regular event;

c) no collective license was issued by a collective management organization, which would stipulate terms and conditions for producing such specimens;

2) when reproduction is made to preserve or replace a lost, damaged or unusable specimen of the library or archive, or to renew a lost, damaged or unusable specimen from the storage of a similar library or archive, and it is impossible to obtain such a specimen by other means, and when reproduction of the work is a single and not a regular event.

Article 23. Free Reproduction of Specimens of a Work for Educational Purposes

The following shall be permitted without the consent of the author or other copyright holder, and without payment of the author's remuneration:

1) to reproduce excerpts from published written works, audiovisual works and phonograms (videograms) such as illustrations for educational purposes, provided that the extent of the reproduction is consistent with the indicated purpose;

2) for educational institutions to reprographically reproduce for classroom lessons published articles and other small works and excerpts from written works, with or without illustrations, provided that:

a) the extent of the reproduction is consistent with the indicated purpose;

b) reproduction of the work is a single and not a regular event;

c) no collective license was granted by a collective management organization, which would stipulate terms and conditions of the reproduction.

Article 24. Free Copying, Modification and Decompilation of Computer Software

1. A person lawfully possessing a specimen of computer software shall be entitled to do the following without the consent of the author or other person holding the copyright with respect to the software, and without payment of the author's remuneration:

1) to change (modify) computer software with the aim of ensuring its operation when it is used with the user's technical equipment, and performing the actions related to the operation of the computer software in accordance with its purpose, in particular, to record and store in computer memory and to correct evident errors, unless otherwise stipulated by an agreement with the person holding the copyright;

2) to produce one copy of computer software, provided that the copy is made only for archival purposes or to replace a lawfully acquired specimen in case the original computer software is lost, damaged, destroyed or becomes unusable. In this case, the copy of the computer software shall not be used for purposes other than those specified in this clause and clause 1 of this part, and shall be destroyed if possession of a specimen of the computer software ceases to be lawful;

3) to decompile computer software (to transform its object code into output text) with the aim of obtaining the information required for the achievement of its compatibility with independently developed computer software, subject to the following conditions:

a) the person in question previously had no other sources of access to the information necessary for the achievement of compatibility;

b) said actions are performed only with respect to the computer software portions that are necessary for the achievement of compatibility;

c) information obtained upon decompilation shall be used only to effect its compatibility with other software, and shall not be transferred to other persons, except when this is necessary for the achievement of compatibility with other software, and shall not be used for the development of computer software that looks similar to the decompiled computer software, or for any other copyright-infringing action;

4) to inspect, study and modify the functioning of a computer program in an effort to understand the ideas and principles that make up its basis, on the condition that this is done in order to facilitate some action such as loading, display, functioning, transfer, or storing in memory (saving) computer programs;

2. The enforcement of the provisions of this Article shall not prejudice the use of computer software nor restrict the legitimate interests of the author and (or) of another person holding

the copyright with respect to the computer software.

Article 25. Free Reproduction of Works for Personal Purposes

1. It shall be permissible to reproduce exclusively for personal purposes or for a regular family circle and for close acquaintances of this family, without the consent of the author or other holder of the author's proprietary rights, and without payment of the author's remuneration, works previously promulgated in a lawful way, except for the following:

- a) works of architecture in the form of buildings and facilities;
- b) computer software, except for the cases stipulated in Article 24 of this Law;
- c) to reprographically reproduce books, sheet music and original works of fine art, except for the cases stipulated in Articles 22 and 23 of this Law;
- d) works fixed in specimens of phonograms (videograms).

2. It shall be permissible to reproduce works and performances fixed in phonograms (videograms) and in specimens thereof, in home conditions and exclusively for personal purposes or for a regular family circle and close acquaintances of this family, without the consent of the author(s) and the producers of the phonograms (videograms), by paying the author's remuneration. The specifics of payment of the author's remuneration in this case are stipulated in Article 42 of this Law.

Article 26. The Right to Have Access to a Work of Fine Art

Upon transferring a work of fine art or the object, in which this work is expressed, to the ownership of another person, the author shall be entitled to demand access to such work for the purpose of using it for reproduction (preparation of specimens, slides, post cards, revisions, etc.) provided that this does not unjustifiably prejudice the legitimate rights and interests of the owner of the work of fine art. The owner may not deny the author access to the work without sufficient grounds. However, the owner of the work may not be asked to deliver the work to the author.

Article 27. The Right to Follow

The author of a work of fine art (and in the event of his death - his heirs) shall enjoy, during the term stipulated in Article 28 of this Law with respect to the original works of fine art sold by the author, the inalienable right to receive five percent of the price of every next sale of the work via an auction, gallery, showroom, shop, etc., that follows the first sale thereof by the author of the work (the right to follow).

The collection and payment of the remuneration resulting from the exercise of the right to follow shall be implemented by the author personally, through the author's agent or through collective management organizations.

Article 28. Period of Validity of Copyright

1. The right of the author of a work shall arise at the time of creation of the work by the author.
2. Copyright shall remain effective throughout the author's lifetime and for 70 years after his death, except for the cases stipulated in this Article.
3. With respect to works that were promulgated anonymously or under a pseudonym, the period of validity of copyright shall terminate 70 years after the promulgation of the work. If a pseudonym accepted by an author leaves no doubts as to the author's identity, or if the author of a work, promulgated anonymously or under a pseudonym, is disclosed not later than 70 years after the promulgation of the work, the term stipulated in part two of this Article shall apply.
4. The copyright with respect to works created in co-authorship shall remain effective throughout the co-authors' lifetimes and for 70 years after the death of the last co-author.
5. If an entire work is published (promulgated) not in its entirety, but in consecutive volumes, parts, issues, series, etc., the period of validity of its copyright shall be stipulated separately with respect to each published (promulgated) portion of the work.
6. The term of protection of copyright with respect to works of posthumously rehabilitated authors shall remain effective for 70 years after their rehabilitation.
7. The copyright with respect to a work that was first published within 30 years after the author's death shall remain effective for 70 years after the date of lawful publication thereof.
8. Copyright term termination shall take effect on January 1 of the year that follows the year of occurrence of the legal facts that caused the copyright term termination.
9. An author's personal non-proprietary rights stipulated in Article 14 of this Law shall be protected in perpetuity.

Article 29. Inheriting Copyright

1. The proprietary rights of authors and other copyright holders shall be inheritable. An author's personal non-proprietary rights shall not be inheritable.
2. Heirs shall have the right to protect the authorship of a work and to counteract twisting, rearrangement or other alteration of a work, as well as any other encroachment thereon that may prejudice the author's honor and reputation.

Article 30. Works Falling Into the Public Domain

1. The expiration of the period of validity of copyright with respect to works means their falling into the public domain.

Works that have never been protected in Ukraine shall also be considered as being in the

public domain.

2. Works that fell into the public domain can be used freely by any person without payment of the author's remuneration subject to observance of the author's personal non-proprietary rights as stipulated in Article 14 of this Law.

3. Resolutions of the Cabinet of Ministers of Ukraine may stipulate special deductions to the funds of artist unions of Ukraine for the use in Ukraine of works that have fallen into the public domain.

Article 31. Assignment (Alienation) of Proprietary Rights of Copyright Holders

1. A copyright holder can assign his proprietary rights specified in Article 15 of this Law to any other person, either fully for the entire copyright term or partially - for a shorter term. Assignment of copyright shall be formalized by an author's contract.

The exclusive proprietary rights of copyright holders that are assigned under a contract shall be stipulated therein. The proprietary rights, which are not specified in the contract as being alienated, shall be deemed not assigned.

2. A proprietary right of an author can be assigned to another person in compliance with the procedure stipulated by law following liquidation of the legal entity that is the copyright holder.

3. An author's personal non-proprietary rights cannot be assigned (alienated) to other persons.

Article 32. Assignment of the Right to Use a Work

1. The author and another person holding a copyright shall have the exclusive right to grant to other persons permission to use a work, by any single method or by all known methods, on the basis of a license which shall be formalized by an author's contract.

A work shall be used by any person exclusively on the basis of a license, except for the cases stipulated in Articles 21 through 25 of this Law.

2. A license authorizing the use of a work, which is issued by the person holding the copyright (licensor) to another person (licensee), can be exclusive or non-exclusive.

An exclusive license shall be used to assign the right to use a work, subject to the terms and conditions stipulated by a license contract, to one licensee only. In this case, the licensor shall preserve the right to use this work only to the extent of the rights that are not assigned, and shall not have the right to issue a license authorizing the use of this work by other persons.

A non-exclusive license shall authorize the licensee to use a work and shall not deprive the licensor and other possible licensees of this right.

3. The right to issue, under license contracts, non-exclusive licenses authorizing the use of works shall be vested with the collective management organizations that were authorized by

the copyright holders to manage their proprietary authors' rights.

4. A licensee shall have the right to issue to other persons sublicenses authorizing the use of a work on the basis of a sublicense contract only in the cases stipulated by the concluded license contract. The licensee shall be liable to the licensor for the actions of sublicensees, unless otherwise stipulated in the license contract.

Article 33. Contracts Authorizing the Use of Works

1. Contracts concerning assignment of rights to use works shall be made in writing. A contract concerning the use (publication) of a work in periodicals (newspapers, magazines, etc.) can be made orally.

2. A contract concerning assignment of rights to use works shall be deemed concluded if the parties reach an agreement with respect to all of its terms and conditions (contract term, the method of using a work, the territory covered by the assigned right, the amount and procedure for paying the author's remuneration, etc.).

The author's remuneration shall be stipulated in the contract as percentages of the income derived from the use of a work, or as a fixed amount, or otherwise. The author's remuneration rates shall not be lower than the minimum rates established by the Cabinet of Ministers of Ukraine.

If a contract does not stipulate the term for which rights are assigned, the contract can be cancelled by the author or other copyright holder upon expiration of five years after conclusion thereof, if the user receives a relevant written notice six months prior to the cancellation of the contract.

If a contract does not stipulate the territory within which such a right is effective, the right assigned under the contract shall be effective within the entire territory of Ukraine.

3. Rights that did not exist at the time of conclusion of the contract cannot be the subject matter of a contract concerning assignment of rights to use a work.

4. The appropriate agencies and artist unions can draft model author's contracts.

5. The author's contract can contain terms and conditions that are not stipulated by the model contract. The contract conditions deteriorating the author's (his legal successor's) situation as compared to the situation established by the effective legislation shall be invalid.

6. Under an author's contract of request, an author may undertake to create a work in the future and to transfer it to the customer. The contract can stipulate payment of an advance to the author by the customer as a portion of the author's remuneration.

7. Contract terms and conditions that restrict an author's right to create future works on a subject indicated in a contract or in the indicated sphere shall be invalid.

8. All rights concerning the use of a work, which are not assigned under the contract, shall be

preserved by the author or other copyright holder.

Article 34. Liability for Default under an Author's Contract

1. A party that fails to perform or improperly performs its obligations under an author's contract shall reimburse to the other party all damages, including lost profit.
2. If an author does not transfer a work to a customer in accordance with the terms and conditions set forth in a contract of request, he shall reimburse to the customer the damages, including lost profit.
3. Disputes concerning liability for default under an author's contract shall be resolved by court procedure.

Section III. RELATED RIGHTS

Article 35. Objects of Related Rights

Objects of related rights, irrespective of destination, contents, evaluation, method and form of expression, shall be:

- a) performances of literary, drama, musical, musical drama, choreographic, folklore and other works;
- b) recordings of performances of works in the form of phonograms or videograms;
- c) recordings of any sounds in the form of phonograms and recordings of any moving images, with and without a soundtrack, in the form of videograms;
- d) broadcasting organizations' broadcasts (programs).

Article 36. Related Rights Holders

1. Related rights holders shall be:

- a) performers of works;
- b) producers of phonograms and videograms;
- c) broadcasting organizations.

2. Performers shall exercise their rights subject to their observance of the rights of the authors of the works performed, and of other copyright holders. Producers of phonograms and videograms shall observe the rights of copyright holders and performers. Broadcasting organizations shall observe the rights of copyright holders, performers and producers of phonograms and videograms.

Article 37. Arising and Exercising of Related Rights

1. The primary related rights holders shall be the performer, producer of a phonogram (videogram) and broadcasting organization.

2. A related right shall arise by virtue of the performance of a work, production of a phonogram (videogram) and promulgation of a broadcasting organization's transmission.

3. No formalities will be required for the arising and exercising of related rights. In order to give notification of his related rights, the producer of a phonogram (videogram) and the performer can use the related rights protection sign on all specimens of phonograms (videograms) or packages thereof. This sign shall consist of the following elements:

the encircled Latin letter P, - (P);

the name of the person holding related rights;

the year of the first publication of a phonogram (videogram).

The producer of a phonogram or videogram is deemed to be a person indicated on its specimen as the person who holds exclusive proprietary rights (presumption of a person holding related rights), unless the contrary is proven by court procedure.

Article 38. Performers' Personal Non-Proprietary Rights, and the Rights to the Name That Can Be Vested With the Producers of Phonograms, Videograms and Broadcasting Organizations

1. The performer of a work shall hold the following personal non-proprietary rights:

a) to require recognition that he is the performer of the work;

b) to require that his name or pseudonym be indicated or announced in connection with each of his appearances, recordings or performances (whenever possible);

c) to require provision of the proper recording quality of his performance and the right to counteract any twisting or distortion thereof or other essential amendments thereto that can prejudice his honor and reputation.

2. The phonogram (videogram) producer shall be entitled to affix his name to the recording medium (box, label, covers, etc.) indicating also the authors, performers and titles of works, and to require that he be mentioned when a phonogram (videogram) is used.

3. The broadcasting organization shall be entitled to require that its name be mentioned in connection with the recording, reproduction, and distribution of its transmission and with subsequent broadcasts thereof by another broadcasting organization.

Article 39. Performers' Proprietary Rights

1. Performers' proprietary rights shall be their exclusive rights to permit or prohibit other persons taking the following actions:

a) public promulgation of their performances;

b) fixation on a material medium of their performances that have not been fixed before;

c) reproduction and (or) distribution by first sale or other transfer for ownership or possession, or by property lease or rental of the phonograms (videograms) on which their performances are fixed, regardless of the first sale or other transfer for ownership or possession.

2. The performers' exclusive rights can be assigned (alienated) to other persons on the basis of a contract stipulating the method of using the performances, the remuneration amount and the procedure for paying the remuneration, the contract term and the performances usage term, etc.

3. If a performance is used in an audiovisual work, the performer shall be deemed to assign to the organization producing the audiovisual work or to the producer all proprietary rights with respect to the performance, unless otherwise stipulated by the contract.

4. If the performer, during the first fixation of a performance, expressly permits further reproduction thereof by a phonogram (videogram) producer, the performer shall be deemed to have assigned to the phonogram (videogram) producer the right to distribute it by first sale or other transfer for ownership or possession, as well as by property lease, rental and other transfer. The performer shall retain the right to receive remuneration for the above usage of the performance through collective management organizations.

Article 40. Proprietary Rights of Phonogram and Videogram Producers

1. Phonogram (videogram) producers' proprietary rights shall include their exclusive right to use their phonograms (videograms) and the exclusive right to permit or prohibit implementation by other persons of the following actions:

a) reproduction of a phonogram (videogram);

b) remaking of a phonogram (videogram);

c) import of a phonogram (videogram);

d) distribution of specimens of a phonogram (videogram) by first sale;

e) distribution of specimens of a phonogram (videogram) by property lease, rental and other transfer irrespective of the first sale;

f) other alienation of specimens of a phonogram (videogram).

2. The proprietary rights of phonogram (videogram) producers can be assigned to other persons on the basis of a contract stipulating the method of using a phonogram (videogram), remuneration amount and the procedure for paying the remuneration, contract term, the term of using a phonogram (videogram), etc.

The phonogram (videogram) producer's proprietary rights can also be assigned (alienated) to another person in compliance with the procedure established by the law following liquidation of a legal entity that is a related rights holder.

3. If specimens of a phonogram (videogram) are lawfully put into civil circulation by their rights holder by the first sale thereof in Ukraine, further distribution thereof by sale, bestowal, etc., shall be permitted without the consent of the phonogram (videogram) producer or his successor, and without payment of remuneration to him. In this case, however, the right to transfer specimens of phonograms (videograms) for property lease or rental shall be preserved exclusively by the rights holder.

Article 41. Proprietary Rights of Broadcasting Organizations

1. The proprietary rights of broadcasting organizations shall include their exclusive right to use their programs in any manner and their exclusive right to permit or prohibit other persons taking the following actions:

- a) public promulgation of their programs by broadcasting and rebroadcasting;
- b) fixation of their programs on a material medium and reproduction thereof;
- c) public demonstration of their programs in places where admittance is paid.

Broadcasting organizations shall also be entitled to prohibit dissemination, in Ukraine or from Ukraine, of signals carrying their programs by any person not authorized to handle this satellite signal.

2. Broadcasting organizations shall be entitled to receive remuneration for any use of their broadcasts (broadcast programs).

3. If a broadcast program was lawfully put into civil circulation by the rights holder by the first sale thereof in Ukraine, further dissemination thereof by sale shall be permitted without the consent of the right holder and without payment of remuneration to him. In this case, however, the right to transfer the broadcast for property lease or rental shall be retained by the rights holder alone.

Article 42. Restriction of the Proprietary Rights of Performers, Phonogram and Videogram Producers and Broadcasting Organizations

1. It shall be permissible to use phonograms (videograms), performances and broadcast programs, to fix, and to reproduce and broadcast them for the general public, without the consent of the performers, phonogram (videogram) producers and broadcasting organizations and without payment of remuneration in the cases stipulated in Articles 21 through 25 of this Law concerning the restriction of the proprietary rights of the authors of literary, art and scientific works.

The use of objects of related rights without the consent of their related rights holders and without payment of remuneration to them, as stipulated in this part, shall be possible only if the personal non-proprietary rights of copyright and related rights holders, stipulated in Articles 14 and 38 of this Law, are observed.

2. It shall be permissible to reproduce the works fixed in phonograms (videograms) and their specimens in home conditions and exclusively for personal purposes without the consent of the author(s) and phonogram (videogram) producers, but paying remuneration to them. Such a reproduction shall not prejudice normal exploitation of the phonograms (videograms) nor affect the legitimate interests of phonogram (videogram) producers or other copyright and (or) related rights holders.

3. The remuneration to phonogram (videogram) producers and other persons holding copyright and (or) related rights with respect to these recordings shall be paid as deductions (interest) by the producers and the importers of equipment and material media, with the use of which it is possible to carry out the reproduction of the works fixed in phonograms (videograms) exclusively for personal purposes in home conditions, except for:

- a) professional equipment not designed for use in home conditions;
- b) equipment that has technical means of protection against violation of copyright and (or) related rights;
- c) equipment and material media that are exported outside the customs territory of Ukraine;
- d) equipment and material media that are imported by an individual into the customs territory of Ukraine exclusively for personal purposes and without a commercial purpose.

4. The amount of the deductions (interest) to be paid by the producers and importers of equipment and material media as the remuneration for the reproductions indicated in part two of this Article shall be determined by the Cabinet of Ministers of Ukraine. This money shall be remitted by the producers and importers of equipment and material media to the collective management organization specified by the Institution on the basis of contracts which they shall enter into with these organizations. The importers shall remit this money when they import goods into the customs territory of Ukraine, and the producers - at the end of each month after sale of the equipment and material media.

5. The Institution and the collective management organizations specified by the Institution for collection of money shall be entitled to require from producers and importers information concerning the production, import and realization (sale) of the equipment and material media indicated in this Article.

6. The money so collected shall be distributed in the proportions determined by the Cabinet of Ministers of Ukraine among the phonogram (videogram) producers, performers and authors or other copyright holders with respect to the works reproduced in home conditions for personal purposes.

Article 43. The Use of Phonograms (Videograms) Published for a Commercial Purpose

1. The following commercial use of phonograms (videograms) shall be allowed without the consent of producers of phonograms (videograms) published for a commercial purpose, as well as of performers whose performances are recorded on these phonograms (videograms), but with payment of remuneration:

- a) public performance of a phonogram (videogram);
- b) promulgation of a phonogram (videogram);
- c) broadcast of a phonogram (videogram) by wires (cable).

2. The collection, distribution and payment of the remuneration for the use of phonograms (videograms), as indicated in part one of this Article, shall be effected by a collective management organization pursuant to a contract between these organizations.

3. The remuneration amount and the relevant payment conditions shall be stipulated in a contract between the user of a phonogram (videogram) or an association of such users and the organization specified in part two of this Article.

The remuneration amounts shall be established with respect to every type of use of a phonogram (videogram).

4. Users of phonograms (videograms) shall provide the organization specified in part two of this Article with the exact information, concerning the use of the phonograms (videograms), necessary for the collection and distribution of the remuneration.

Article 44. The Period of Validity of Related Rights

1. The performers' proprietary rights shall be protected for 50 years after the date of the first recording of a performance.

The performers' personal non-proprietary rights stipulated in part one of Article 38 of this Law shall be protected in perpetuity.

2. The phonogram and videogram producers' rights shall be protected for 50 years after the first publication of a phonogram (videogram) or the first sound or video recording.

3. Broadcasting organizations shall enjoy the rights granted under this Law for 50 years after the first public promulgation of the broadcast.

4. The period of protection of related rights shall expire on January 1 of the year that follows the year in which the protection term stipulated in this Article expires.

5. Performers' heirs and the successors of phonogram (videogram) producers and broadcasting organizations shall inherit the right to permit or prohibit the use of performances, phonograms (videograms) and public promulgation, as well as the right to receive remuneration within the term stipulated in this Article.

Section IV. MANAGEMENT OF THE PROPRIETARY RIGHTS OF COPYRIGHT AND (OR) RELATED RIGHTS HOLDERS

Article 45. The Methods of Managing Proprietary Rights of Copyright and (or) Related Rights Holders

Copyright and (or) related rights holders can manage their rights:

- a) personally;
- b) through an agent;
- c) through a collective management organization.

Article 46. Managing Proprietary Rights Through a Representative

A copyright and (or) related rights holder can entrust an agent to manage his proprietary rights on the basis of an agency contract concluded with him. While managing the proprietary rights this person shall act within the powers assigned to him by the copyright and (or) related rights holder.

Article 47. Securing Collective Management of Proprietary Rights

1. Copyright and (or) related rights holders can entrust the management of their proprietary rights to collective management organizations.
2. The collective management of the proprietary rights of copyright and related rights holders shall be effected exclusively with respect to the works and performances which were previously promulgated.
3. Collective management organizations shall be set up by copyright and (or) related rights holders.
4. It shall be permissible to set up separate organizations managing certain categories of proprietary rights of certain categories of copyright and (or) related rights holders, or organizations managing various proprietary rights in the interest of various categories of copyright and (or) related rights holders.
5. Persons who use works, performances, broadcasts and phonograms (videograms) shall provide collective management organizations with a precise list of the works, performances, phonograms (videograms) and broadcasts used, together with information on profits derived. They shall pay remuneration to the collective management organizations within a stipulated term in the stipulated amount.
6. Copyright and (or) related rights holders can also entrust the management of their proprietary rights, on a collective basis, to the respective state organizations (enterprises), the charters of which permit them to exercise such functions.

Article 48. The Activity of Collective Management Organizations

1. The activity of a collective management organization shall be carried out after its registration in accordance with the law and upon the Institution's approval. The Institution shall publish in its official bulletin the information concerning registration of a collective management organization.

A collective management organization shall operate on the basis of a charter, which shall be approved in compliance with the established procedure, and within the powers received from copyright and (or) related rights holders.

2. A collective management organization shall not have the right to carry out commercial activity or to use in any manner the objects of copyright and (or) related rights entrusted to them for management. The restrictions envisaged by the anti-monopoly legislation shall not apply to the activity of such organizations.

3. The powers to exercise collective management of proprietary rights shall be assigned to collective management organizations by the authors and other copyright and (or) related rights holders on the basis of written contracts.

4. A collective management organization can manage in Ukraine the proprietary rights of foreign copyright and (or) related rights holders on the basis of agreements for mutual representation of interests with similar foreign organizations.

A collective management organization can entrust, on the basis of an agreement for mutual representation of interests with a similar foreign organization, the management abroad on a collective basis of the proprietary rights of Ukrainian copyright and (or) related rights holders.

5. On the basis of powers received, a collective management organization shall enter into license contracts with users of objects of copyright and related rights.

Claims of copyright and related rights holders against users, concerning observance of the terms and conditions of license contracts, shall be considered by the organization that manages the proprietary rights on the collective basis and that is party to the respective license contract.

The license contracts shall allow the use, in the manners stipulated therein, of objects of copyright and related rights, and shall be entered into on behalf of all persons holding copyright and (or) related rights, including those persons who did not assign to an organization the powers pursuant to part three of this Article and who do not object to the collective management of their proprietary rights by the collective management organizations.

6. A collective management organization can require submission, by users of objects of copyright and related rights, of documents containing precise information on the given use, necessary for the collection and distribution of remuneration.

7. A collective management organization shall provide the Institution with the following information:

- a) amendments to the organization's charter;
- b) conclusion by the organization of bilateral or multilateral agreements with foreign collective management organizations;
- c) resolutions of the general meetings of the organization members;
- d) its annual balance sheet, annual account and audit results;
- e) names of the persons authorized to represent the organization.

Upon the Institution's request, the organization shall also provide other information that is necessary to verify the compliance of its activity with this Law.

Article 49. Functions of Collective Management Organizations

1. A collective management organization shall perform the following functions on behalf of copyright and (or) related rights holders on the basis of powers granted by them:

- a) coordinate the remuneration amount with the users when a license is issued;
- b) issue non-exclusive licenses authorizing use of rights that are managed by the organization;
- c) coordinate with users the remuneration amount when the organization collects the remuneration without issuing a license;
- d) collect the remunerations stipulated in licenses and (or) the remunerations for the use of works without issuing a license;
- e) distribute and pay out collected remuneration to the copyright and (or) related rights holders it represents,
- f) perform any legal actions necessary for protection of the rights managed by the organization.

2. Collective management organizations shall be entitled to keep on their accounts any amounts of unclaimed remuneration received from users. Three years after the moment of distribution of the remuneration the unclaimed remuneration amounts can be used for regular payments or for other purposes stipulated in their charters in the interests of copyright and (or) related rights holders.

Section V. PROTECTION OF COPYRIGHT AND RELATED RIGHTS

Article 50. Infringement of Copyright and Related Rights

1. The copyright and (or) related rights infringements that give grounds for seeking remedies, shall be:

a) actions by any person that infringe the personal non-proprietary rights of copyright and (or) related rights holders stipulated in Articles 14 and 38 of this Law, and their proprietary rights stipulated in Articles 15, 39, 40 and 41 of this Law, subject to the proprietary rights restrictions stipulated in Articles 21 through 25, and 42 and 43 of this Law;

b) piracy in the sphere of copyright and (or) related rights - production (reproduction) and distribution of counterfeit specimens of works (including computer software and databases), phonograms (videograms) and broadcasting organizations' programs;

c) plagiarism - promulgation (publication), in full or in part, of another person's work under the name of the person who is not the author of this work;

d) import into the customs territory of Ukraine, without permission of the persons holding copyright and (or) related rights, of specimens of works (including computer software and databases), phonograms, videograms and broadcast programs.

Article 51. The Procedure for Protecting Copyright and Related Rights

The protection of personal non-proprietary and proprietary rights of copyright and (or) related rights holders shall be effected in compliance with the procedure established by the administrative, civil and criminal law.

Article 52. Civil Law Remedies for Protection of Copyright and Related Rights

1. If a work, phonogram (videogram) or broadcast program is used by any person without a contract with the copyright and (or) related rights holder, in case of non-observance of the conditions of using works and objects of copyright and (or) related rights stipulated by a contract, and in case of other infringements of personal non-proprietary and proprietary rights, the person holding copyright and (or) related rights can lodge a claim with the court requiring renewal of the infringed rights, reimbursement of damages, publication in the press concerning the infringement, etc.

2. The court (arbitrazh court) shall have the right to issue an order or a decision concerning reimbursement of the damages resulting from the infringement of copyright and (or) related rights, as well as prohibition of issuance of a work, performance or staging, phonogram (videogram) thereof, or of their promulgation, concerning termination of their distribution, removal into protective custody (confiscation) of counterfeit specimens of a work, phonogram (videogram) or a broadcast program and the equipment and materials for production and reproduction thereof, concerning publication in the press of the information about the infringement, etc., as stipulated in Article 54 of this Law, if in the course of the court proceedings the fact of copyright and (or) related rights infringement is proven.

3. The court (arbitrazh court) may resolve to destroy or alienate all counterfeit specimens of the work, phonogram (videogram) or broadcast program with respect to which it has been

established that they were produced or distributed in contravention of the exclusive rights of the copyright and (or) related rights holders. This shall also apply to all cliches, matrixes, moulds, originals, magnet tapes, photo negatives and other items use for the reproduction of specimens of the work, phonogram (videogram), broadcast program and the materials and equipment used for their reproduction.

Pursuant to a court order, counterfeit specimens of works (including computer software and databases), phonograms (videograms) and broadcast programs that have been removed into protective custody (confiscated), can be transferred to the copyright and (or) related rights holder upon the holder's request. If this person does not request the transfer, the counterfeit specimens shall be destroyed, and the materials and equipment used for the reproduction of the counterfeit specimens shall be sold and the relevant proceeds shall be remitted to the State budget of Ukraine.

4. Counterfeit specimens of works and phonograms (videograms) purchased by third parties in good faith shall not be confiscated.

Article 53. Preservation Measures for a Claim in Proceedings Concerning Infringements of Copyright and Related Rights

1. Prior to considering a case on the merits, a court or judge on his own shall have the right to issue an order prohibiting performance by the defendant or of a person, with respect to which there are sufficient grounds to believe that this person is infringing on copyright and (or) related rights, of certain actions (production, reproduction, sale, transfer for property lease, rental, import and other use stipulated in this Law, as well as transportation, storage or possession for the purpose of issuing into civil circulation, of the specimens of works (including computer software and databases), recorded performances, phonograms (videograms) and broadcast programs that are believed to be counterfeits).

A court or judge shall also have the right to issue an order authorizing inspection of the premises in which the events, relating to an infringement of copyright and (or) related rights, presumably occur, as well as levying attachment and removal into protective custody of all specimens of works (including computer software and databases), recorded performances, phonograms (videograms) and broadcast programs that are believed to be counterfeits, as well as the materials and equipment for the production and reproduction thereof.

2. If there is sufficient evidence of such an infringement of copyright and (or) related rights, which is considered a crime and which results in criminal liability pursuant to law, the inquiry body, the investigation body or the court shall take measures to ensure the search for and levying attachment on:

1) the specimens of works (including computer software and databases), recorded performances, phonograms (videograms) and broadcast programs that are believed to be counterfeits;

2) the materials and equipment for the production and reproduction thereof;

3) the documents, invoices and other items that can serve as evidence of actions resulting in

criminal liability pursuant to law.

Article 54. Remedies for Protection of Copyright and Related Rights

1. Copyright and related rights holders shall be entitled to require the following from infringers of their rights:

- 1) recognition of their rights;
- 2) restitution of the status quo that existed before the infringement and termination of the actions that resulted in the infringement or that create a threat of potential infringement;
- 3) reimbursement of damages, including lost profit;
- 4) collection of the income obtained by the infringer as a result of infringing on copyright and (or) related rights, instead of reimbursement of damages;
- 5) payment of compensation, to be determined by the court, in the amount from 10 to 50,000 minimum tax-free incomes, instead of reimbursement of damages or income collection;
- 6) reimbursement of non-proprietary (non-property) damage;
- 7) taking other measures, as stipulated by legislative acts, relating to the protection of copyright and (or) related rights.

While determining the amount of damages (clause 3 of part one of this Article), the court shall proceed from the merits of an infringement, property and moral damage caused to the person holding the copyright and (or) related rights, and from the estimated income that could have been derived by this person. Damages may include the amounts paid by the person, the rights of which were infringed, for court proceedings, including attorney's fees.

When determining the compensation (clause 5 of part one of this Article), the court shall determine a specific compensation amount within the scope set forth in said clause, taking into account the substance of the infringement.

2. If the infringer does not obey the court's order concerning termination of the actions that infringe copyright and (or) related rights or create a threat of potential infringement thereof, a fine can be imposed upon the infringer, within the term established by the court, in the amount of 10 percent of the amount awarded to the claimant by the court. The fines shall be transferred to the relevant budgets in compliance with the established procedure.

Section VI. FINAL PROVISIONS

1. This Law shall take effect on the day of its publication, and shall apply to those legal relations that arise after it has taken effect.

2. Within two months, the Cabinet of Ministers of Ukraine shall submit to the Supreme Rada of Ukraine its proposals concerning amendments to the laws of Ukraine in connection with

the adoption of this Law, and shall bring its normative-legal acts into conformity with this Law.

3. The laws now effective in Ukraine shall apply until the legislation of Ukraine is brought into conformity with this Law, unless such laws conflict with this Law.

4. The term of protection of the rights stipulated in Article 28 of this Law shall apply in cases when the 50-year period of validity of copyright after the author's death has not expired prior to the entry into force of this Law.

5. The Resolution of the Supreme Rada of Ukraine of 23 December 1993 "On the Procedure for Putting into Force the Law of Ukraine 'On Copyright and Related Rights'" ("Vidomosti Verkhovnoyi Rady Ukrayiny", 1994, No. 13, p. 65) shall lose effect.

6. In Article 2 of the Law of Ukraine "On Ukraine's Accession to the Bern Convention on Protection of Works of Literature and Art (Paris Act of 24 July 1971, as amended on 2 October 1979)" (Vidomosti Verkhovnoyi Rady Ukrayiny, 1995, No. 21, p. 155), to delete the words "notifying that said Convention shall not apply to the works which, as of the date of entry into force of this Convention for Ukraine, already fell into public domain in its territory".

The Ministry of Foreign Affairs of Ukraine shall notify the General Director of the World Intellectual Property Organization of the fact that Ukraine recognizes the effect of the Berne Convention on Protection of Works of Literature and Art (Paris Act of 24 July 1971, as amended on 2 October 1979) also with respect to those works which, as of the date of entry into force of this Convention for Ukraine, had already fallen into the public domain in its territory.

President of Ukraine

L. KUCHMA

Kyiv
18 January 2001
No. 2243-III

Head of the Supreme Rada of Ukraine

[signature]

I. Plushch

Kyiv
18 January 2001
No. 2243-III