

The Law of Ukraine

On Distribution of Copies of Audiovisual Works, Phonograms, Videograms, Computer Software, Databases

As amended by the Laws of Ukraine
N 2122-III of December 7, 2000,
Criminal Code of Ukraine
N 2341-III, April 5, 2001,
Law of Ukraine N 1098-IV of July 10, 2003
(This Law was stated in a new wording according to
Law of Ukraine N 1098-IV of July 10, 2003)

The present Law determines legal basis for distribution of copies of audiovisual works, phonograms, videograms, computer software, databases and is aimed at protection of interests of subjects of copyright and related rights and protection of consumers' rights.

Article 1. Application of the Law

The present law applies to relations arising in the process of distributing audiovisual works, phonograms, videograms, computer software, databases.

Article 2. Definition of Terms

The terms are used in the present Law as follows:

audiovisual work – a work recorded on a certain material carrier (video film, magnetic film or magnetic disk, a laser disk, etc) consisting of a sequence of related shots (images) or analog or digital signals, which impart (decode) an impression of motions (together with accompanying sounds or without them), that can be reproduced exclusively with the help of one or another type of a screen (motion-picture screen, television screen, etc), where impression of motions are visually reproduced with assistance of certain technical means. Audiovisual works include motion pictures, television movies, video movies, film strips, sliding movies, etc, which can be fiction, animated (cartoons), non-fiction and others;

database (compilation of data) – a set of works, data or any other independent information in a free form, including in electronic form. Selection and placement of its component parts as well as sorting are results of creative work, whose component parts may be accessed individually and may be found with the help of special search engines based upon electronic facilities (computer) or other facilities;

videogram – videotape recording on a material carrier (magnetic tape, magnetic disk, laser disk, etc) of performance or any impression of motions (with sound accompaniment or without it), except for motions in the form of recording, which is a component part of audiovisual works. Videogram is a source material for producing copies thereof;

reproduction of copies – production of one or more copies of audiovisual work, phonogram, videogram, computer software, database in any material form, as well as their recording for temporary or permanent storage in electronic (including digital), optical or other form, processed by a machine;

reproducer – a legal entity or a natural person, who ordered reproduction or performed reproduction independently with the help of equipment that is in their ownership, possession or use;

vinyl disk – a disk produced from synthetic materials with surface covered by spiraling grooves (tracks) with sound recording;

importer of copies – a Ukrainian subject of entrepreneurial activity, that has purchased (including acquisitions with payments in non-monetary form) copies of audiovisual works, phonograms, videograms, computer software, databases from a foreign subject of entrepreneurial activity with or without importing them to the customs territory of Ukraine;

exporter of copies – a Ukrainian subject of entrepreneurial activity, that has sold (and received either cash money or including sales with payments in non-monetary form) copies of audiovisual works, phonograms, videograms, computer software, databases to a foreign subject of entrepreneurial activity with or without exporting them outside the customs territory of Ukraine;

computer software – a set of instructions in the form of words, figures, codes, circuits, signs or in any other form produced in a form, which is fit for computer processing. The instructions shall put the computer into operation for achieving some certain objective or result (this concept shall cover operating systems, as well as application programs, reproduced in source or object codes);

control stamp – a special sign indicating observance of copyright and (or) related rights, and providing the right to distribute copies of audiovisual works, phonograms, videograms, computer software, databases. Control stamp is a self-gumming sign for one-time use; its external side shall have holographic protection;

control stamp labeling – sticking control stamps on the package of copies of audiovisual works, phonograms, videograms, computer software, databases;

copy of audiovisual work, computer software, database – a copy of audiovisual work, computer software or database on a respective material carrier, which has been reproduced directly or indirectly from this audiovisual work, computer software or database and includes all impression of motions or their parts (with sound accompaniment or without it) recorded in the audiovisual work, computer software or database;

copy of phonogram – a copy of phonogram on a respective material carrier, reproduced directly or indirectly from this phonogram and including all sounds or a part of them recorded in the phonogram;

copy of videogram – a copy of videogram on a respective material carrier, reproduced directly or indirectly from this videogram and including all impression of motions or a part of them (with sound accompaniment or without it) recorded in the videogram;

distribution of copies of audiovisual works, phonograms, videograms, computer software, databases – introduction into circulation of copies of audiovisual works, phonograms, videograms, computer software, databases via sale or other transfer of ownership rights;

subject of property copyright and (or) related rights – a legal entity or a natural person, that on a legal basis owns property copyright and (or) related rights to audiovisual works, phonograms, videograms, computer software, databases;

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

phonogram – a sound recording on a respective carrier (magnetic tape or magnetic disk, gramophone record, laser disk, etc) of any performance or other sounds, except for sounds in the form of recording, which are a part of audiovisual work. Phonogram is a source material for production of its copies.

Article 3. Terms for Distributing Copies of Audiovisual Works, Phonograms, Videograms, Computer Software, Databases

Distribution of copies of audiovisual works, phonograms, videograms, computer software, databases on Ukraine's territory, as well as their rent shall be permitted only on condition of their labeling with control stamps.

Article 4. The Right to Obtain Control Stamps

1. Importers, exporters and reproducers of copies of audiovisual works, phonograms, videograms, computer software, databases shall have the right to obtain control stamps.

2. The Institution shall issue control stamps. Any intermediary activity related to reception and distribution of control stamps shall be prohibited.

Article 5. The Procedure for Obtaining Control Stamps

1. In order to obtain control stamps, entities mentioned in part one of Article 4 of the present Law (hereinafter – applicants) shall submit to the Institution:

- a) an application according to the established form;
- b) a copy of the statutes, statutory agreement (in cases envisaged by the legislation) – for legal entities;
- c) a copy of the certificate on state registration of the subject of entrepreneurial activity;
- d) a copy of the certificate on inclusion into the Unified State Register of Enterprises and Organizations of Ukraine (for legal entities) or on assignment of the identification code (for private individuals);
- e) the list of names of copies of audiovisual works, phonograms, videograms, computer software, databases according to the established pattern specifying works registered on these copies (in the language used for the original of a respective copy);
- f) a copy of the state certificate for the right to distribute and run audiovisual works – movies;
- g) a copy of an agreement on transfer (alienation) of property rights of authors and (or) subjects of related rights or agreements on transfer of the right to use audiovisual works, phonograms, videograms, computer software, databases through their reproduction and distribution of copies, starting from the agreement, according to which property rights of authors and (or) subjects of related rights or rights to use are transferred to Ukrainian territory, or starting from the agreement, according to which property rights of authors and (or) subjects of related rights and the right to use are transferred from primary subjects of copyrights and (or) related rights (in case these rights arose on Ukraine's territory). The applicant shall submit copies of the above-mentioned agreements, as well as the original of the agreement, according to which the applicant is directly conferred property rights of authors and (or) subjects of related rights or the right to use audiovisual works, phonograms, videograms, computer software, databases. If agreements are concluded in a foreign language, their translations into Ukrainian shall be enclosed to the agreements. Translations should be verified according to the established procedure;
- h) a copy of the license for performing economic activity with introduction of holographic protection elements.

2. The application and copies of documents mentioned in part one of the present Article shall be verified: from legal entities – by a signature of the applicant's official and the company's seal, from natural persons – by personal signature of the applicant.

3. The original of the agreement, mentioned in clause “g” of part one of the present Article is returned to the applicant together with a written decision to issue or on refusal to issue control stamps.

It is prohibited to demand from the applicant documents and information not envisaged by part one of the present Article.

4. The applicant shall be responsible for authenticity of the documents submitted for obtaining control stamps.

5. The application for obtaining control stamps shall include: date of application; quantity of copies of audiovisual works, phonograms, videograms, computer software, databases, the right to reproduction and distribution of which has been transferred according to the agreements, quantity of control stamps the applicant needs for labeling copies.

6. The Institution shall give a written decision on issuance or refusal to issue control stamps within three working days from the date of receiving the application.

In case it is necessary to check the information mentioned in the documents submitted for obtaining control stamps, the deadline for reviewing the application may be extended, but not longer than for 10 working days and the applicant shall be sent a written notification thereon.

7. The reasons for passing the decision on refusal to issue control stamps shall include cases:

when the applicant submits incomplete set of documents mentioned in part one of the present Article;

when the applicant submits documents for obtaining control stamps and appearance of documents does not meet requirements of the present Law;

when the applicant submits documents for obtaining control stamps and the documents contain unauthentic information;

when the applicant does not adhere to the rights of subjects of copyright and (or) related rights.

The decision on refusal to issue control stamps may be appealed in court according to the procedure set forth by the law.

8. On the basis of the decision to issue control stamps, provided the applicant submits a copy of the payment order, which contains a note by a banking institution on remitting the amount equal to the cost of control stamps to the State Budget of Ukraine, the Institution shall ensure production and issuance of control stamps to the applicant within two working days.

In case the applicant does not submit a copy of the payment order, which contains a note by a banking institution on transferring the amount equal to the cost of control stamps to the State Budget of Ukraine within one calendar month from the date of submitting the application, the Institution shall cancel the decision on issuance of control stamps and shall send a written notification to the applicant thereon.

9. Information about the applicant, applying for control stamps for the first time and with respect to whom a decision has been passed on issuance of control stamps, shall be entered by the Institution to the Unified Register of Recipients of Control Stamps (hereinafter – the Register) specifying: number of the application for control stamps, quantity of the issued control stamps, their numbers, series and date of issuance; as well for legal entities – full name, legal and mailing addresses, number and date of issuing the certificate on state registration of the subject of entrepreneurial activity – legal entity, code of the Unified State Register of Enterprises and Organizations of Ukraine; for natural persons – last name, name and patronymic, home address, number and date of issuing the certificate on state registration of the subject of entrepreneurial activity – natural person, identification code. The decision on issuance of control stamps shall specify the date of entering the information about the applicant to the Register and their registration number.

In case of further applications of the applicant to the Institution with respect to obtaining control stamps, documents mentioned in clause “b”, “c”, “d”, “h” of part one of the present Article shall not be required.

In case amendments are introduced to the above-mentioned documents, the applicant shall submit these documents to the Institution.

The procedure for keeping the Register and providing information on issuance of control stamps shall be determined by the Cabinet of Ministers of Ukraine.

Article 6. Series of Control Stamps and the Procedure for Manufacture Thereof

Each control stamp shall have its own series and number.

The following series of control stamps are established:

“A” – for copies of phonograms in the form of magnetic carriers and vinyl disks;

“B” - for copies of audiovisual works and videograms in the form of magnetic carriers and movie film;

“K” – for copies of audiovisual works, phonograms, videograms, computer software, databases in the form of optical carriers.

Control stamps are manufactured upon request of the Institution pursuant to the procedure determined by the legislation.

Each control stamp shall include the information identifying it with a respective copy of audiovisual work, phonogram, videogram, computer software, database.

Article 7. Payment for Obtaining Control Stamps

For each control stamp the applicant shall pay a sum equal to 1% of tax-free minimum personal income.

It is prohibited to impose on and collect from applicants any other payments for issuance and use of control stamps.

Funds received from sale of control stamps are transferred to the special fund of the State Budget of Ukraine and are used for target purposes for production of control stamps and implementation of measures for ensuring their issuance.

Article 8. Labeling with Control Stamps

1. Labeling of copies of audiovisual works, phonograms, videograms, computer software, databases with control stamps shall be performed by exporters, importers and reproducers of these copies before their distribution.

2. Imported copies of audiovisual works, phonograms, videograms, computer software, databases shall be labeled with control stamps after customs clearance on Ukrainian territory.

Copies of audiovisual works, phonograms, videograms, computer software, databases subject to export shall be labeled before their customs clearance for transportation over Ukraine's customs border or transfer to a foreign counteragent at the customs territory of Ukraine.

3. Each package of a copy of audiovisual works, phonograms, videograms, computer software, databases shall be labeled with one control stamp.

If a package, being an integral part of several different as to their content copies of audiovisual works, phonograms, videograms, computer software, databases or placed on several carriers parts of one audiovisual work, phonogram, videogram, computer software, database, it shall be labeled with one control stamp.

4. Purchase of a copy of audiovisual work, phonogram, videogram, computer software, database labeled with a control stamp shall not be considered as acquisition of rights to public performance, public show, public broadcasting, property lease, home or commercial run of the audiovisual work, phonogram, videogram, computer software, database recorded on this copy.

5. The following shall not be subject to labeling with control stamps:

1) copies, which include abstracts from audiovisual work, phonogram, videogram, demo versions of computer software and databases or abstracts from several audiovisual works, phonograms, videograms, in case recording was performed for advertising these audiovisual works, phonograms, videograms, computer software, databases and which shall be distributed for free;

2) works with audio or video recording of events of personal nature (family celebrations, etc), if such recording was performed in order to distribute them among the participants of these events;

3) copies of audiovisual works, phonograms, videograms, computer software, databases, which are transited through Ukraine's customs border;

4) copies of audiovisual works, phonograms, videograms, computer software, databases, if they were produced upon an order of a legal entity or a natural person (hereinafter – client), subject of entrepreneurial activity, that independently performs reproduction on the equipment, which is in their ownership, possession or use (hereinafter – producer) and transfer of the copies manufactured by the producer to the client shall be performed adhering to the following requirements:

the order shall be performed on the basis of a contractor's agreement from primary materials, their component parts or raw materials, which belong to the client or were fully paid for by the client;

matrixes and other primary materials, including those transferred through electronic devices, which are used for production of copies of audiovisual works, phonograms, videograms, computer software, databases, – are property

of the client regardless whether such matrixes or other primary materials were transferred by the client or manufactured by the producer within the framework of the order;

manufactured on order copies of audiovisual works, phonograms, videograms, computer software, databases are transferred by the producer to the client in full volume and shall not be used by the producer for sale as goods of their own production;

property rights of subjects of copyright and related rights to audiovisual works, phonograms, videograms, computer software, databases shall belong to the client and not be transferred to the producer;

property right to copies of audiovisual works, phonograms, videograms, computer software, databases shall belong to the client, that shall be responsible for observance of copyright and related rights to the above-mentioned objects of property right;

manufactured on order copies of audiovisual works, phonograms, videograms, computer software, databases, if there are sufficient legal grounds (foreign economic contracts, agreements, etc), shall be exported outside Ukraine's customs territory without their distribution in Ukraine;

export from Ukraine's customs territory of copies of audiovisual works, phonograms, videograms, computer software, databases manufactured according to the contractor's agreement, shall be performed directly by the producer without transfer of the rights to ownership, possession to third parties (except for temporary transfer of such rights to transporting-expeditor organizations for transportation);

5) copies of computer software and databases, which are an integral part of printed periodicals including demo versions of these databases and software, provided there is an obligatory reference to the right of the owner;

6) copies of computer software and databases, which are an integral part of equipment, produced on or imported to Ukraine's customs territory.

Article 9. Storage and Transportation of Copies of Audiovisual Works, Phonograms, Videograms, Computer Software, Databases not Labeled with Control Stamps within Ukraine's Territory

Only reproducers or importers may store copies of audiovisual works, phonograms, videograms, computer software, databases not labeled with control stamps.

Copies of audiovisual works, phonograms, videograms, computer software, databases not labeled with control stamps may be transported through the territory of Ukraine, if such copies are delivered for storage thereof in warehouses belonging to entities mentioned in part one of Article 4 of the present Law, and if such copies are not subject to labeling with control stamps according to part five of Article 8 of the present Law.

It is prohibited to transport copies of audiovisual works, phonograms, videograms, computer software, databases not labeled with control stamps within the territory of Ukraine for other purposes.

Article 10. Retail Sale of Copies of Audiovisual Works, Phonograms, Videograms, Computer Software, Databases

Only specialized retail outlets shall be permitted to perform retail sale of copies of audiovisual works, phonograms, videograms, computer software, databases. The Cabinet of Ministers of Ukraine shall establish requirements as to such specialized retail outlets selling copies of audiovisual works, phonograms, videograms, computer software, databases, as well as rules of such trade.

Retail sale of copies of audiovisual works, phonograms, videograms, computer software, databases not labeled with control stamps shall be prohibited.

Article 11. Liability for Violation of the Present Law

Persons guilty of illegal manufacture, counterfeit, use or sale of illegally produced, obtained or counterfeit control stamps for the purpose of labeling copies of audiovisual works, phonograms, videograms, computer software, databases shall bear criminal and administrative responsibility in accordance with the law.

Entities guilty of illegal distribution of copies of audiovisual works, phonograms, videograms, computer software, databases shall be brought to civil, administrative and criminal account in accordance with the law.

Article 12. Control over Implementation of the Present Law

The Institution shall exercise control over implementation of the present Law through scheduled and non-scheduled examinations of entities engaged in distribution of copies of audiovisual works, phonograms, videograms, computer software, databases by state inspectors in the field of intellectual property. Control shall be exercised according to the procedure set forth by the Cabinet of Ministers of Ukraine.

In case of revealing distribution of copies of audiovisual works, phonograms, videograms, computer software, databases not labeled with control stamps or labeled with control stamps with series and (or) numbers not corresponding to the data entered to the Unified Register of Recipients of Control Stamps or they contain information, which does not correspond with the name of a respective copy, state inspectors in the field of intellectual property shall confiscate such copies.

President of Ukraine

L. Kuchma

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