

# THE LAW ON COPYRIGHT AND RELATED RIGHTS<sup>1</sup>

## I. SUBJECT-MATTER OF THE LAW

### Article 1

This Law shall regulate the rights of the authors of literary, scientific and artistic works (hereinafter: the copyright), right of performers, right of the first publisher of a free work, rights of producers of phonograms, videograms, broadcasts and databases, and rights of the editors of printed editions as rights related to the copyright (hereinafter: the related rights), the way of exercising the copyright and related rights and the judicial protection of such rights.

## II. COPYRIGHT

### 1. WORK OF AUTHORSHIP

#### Article 2

(1) A work of authorship is an author's original intellectual creation, expressed in a certain form, regardless of its artistic, scientific or some other value, its purpose, size, contents and way of manifestation, as well as the permissibility of public communication of its contents.

(2) The following shall be deemed works of authorship in particular:

- 1) Written works (e.g. books, brochures, articles, translations, computer programs in any form of their expression, including their preparatory design material and other);
- 2) Spoken works (lectures, speeches, orations, etc.);
- 3) Dramatic, dramatic-musical, choreographic and pantomime works, as well as works originating from folklore;
- 4) Works of music, with or without words;
- 5) Films (cinema and television);
- 6) Fine art works (paintings, drawings, sketches, graphics, sculptures, etc.);
- 7) Works of architecture, applied art and industrial design;
- 8) Cartographic works (geographic and topographic maps);
- 9) Drawings, sketches, dummies and photographs;
- 10) The direction of a theatre play.

#### Article 3

(1) An unfinished work of authorship, parts of a work of authorship, as well as the title of a work of authorship, shall be deemed a work of authorship, subject to meeting the requirements set out in Article 2, Paragraph 1, of this Law.

(2) Notwithstanding the provision of Paragraph 1 of this Article, the protection of a work of authorship shall also apply to the title of that work.

#### Article 4

(1) Modifications of works of authorship shall be deemed works of authorship, subject to the requirements referred to in Article 2, Paragraph 1, of this Law.

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(2) A work of modification shall be a work in which the characteristic elements of the modified (original) work (musical remixes, arrangements, adaptations and other) are recognizable.

(3) The protection of a copyright referred to in Paragraph 1 of this Article shall in no way limit the rights of the author of the original work.

#### Article 5

(1) A collection of the works of authorship, which in view of the selection and arrangement of its integral parts, meets the requirements referred to in Article 2, Paragraph 1, of this Law (an encyclopedia, collection of works, anthology, selected works, music collection, photograph collection, graphic map, exhibition and the like), shall also be deemed a work of authorship.

(2) A collection of folk literary and artistic creations, as well as a collection of documents, court decisions and similar materials, which in view of their selection and arrangement, meets the requirements referred to in Article 2, Paragraph 1, of this Law, shall also be deemed a work of authorship.

(3) A collection shall also be understood to mean a database, regardless of whether it is in a mechanically or otherwise legible form, which in view of the selection and arrangement of its integral parts, meets the requirements referred to in Article 2, Paragraph 1, of this Law.

(4) The protection of a collection shall in no way restrict the rights of authors of the works constituting an integral part of the collection.

#### Article 6

(1) The protection of copyright shall not apply to general ideas, procedures and methods of operations or mathematical concepts as such, as well as concepts, principles and instructions included in a work of authorship.

(2) The following shall not be deemed works of authorship:

- 1) Laws, decrees and other regulations;
- 2) Official materials of state bodies and bodies performing public functions;
- 3) Official translations of regulations and official materials of state bodies and bodies performing public functions;
- 4) Submissions and other documents presented in the administrative or court proceedings.

#### Article 7

(1) A work of authorship shall be deemed disclosed once it is communicated to the public for the first time by its author or a person duly authorized by him/her, in any way and anywhere in the world.

(2) A work of authorship has been communicated to the public if it has been made available to a larger number of persons not connected by family or other personal ties.

(3) A work of authorship shall be deemed published once the copies of it are released by its author or a person duly authorized by him/her, in a number, which in view of the kind and nature of the work, can satisfy the needs of the public.

(4) A work of fine arts shall also be deemed published when the original or at least a copy of that work is made accessible to the public on a permanent basis by its author or a person duly authorized by him/her.

## 2. COMMENCEMENT OF RIGHTS

### Article 8

Any author shall enjoy moral and pecuniary rights with regard to his/her work of authorship from the moment of its creation.

## 3. HOLDER OF COPYRIGHT

### Article 9

(1) An author is a natural person who has created a work of authorship (hereinafter: the work).

(2) An author shall be understood to mean a person whose name, pseudonym or mark is stated on copies of the work or is referred to on the occasion of publication of the work, until proven to the contrary. Exceptionally, legal or natural person whose title and/or name is in the usual way displayed on the film work shall be considered as the producer of that work, until proven to the contrary.

(3) The author of the work shall be the holder of copyright.

(4) Besides the author, the holder of copyright may also be a person who is not an author who has acquired the copyright in accordance with this Law.

### Article 10

(1) A co-author is a natural person who has created a work on the basis of creative work with another person.

(2) Co-authors shall be joint holders of the copyright on a work of authorship, unless otherwise provided by this Law or a contract governing their mutual relations.

(3) The consent of all co-authors shall be necessary for the exercise of a copyright and its assignment. A co-author may not withhold his/her consent contrary to the principle of good faith and fair dealing, or do anything that is harmful or could be harmful to the interests of other co-authors.

(4) Each co-author shall be authorized to file an action for the protection of right with respect to the co-authored work, in which case he/she may file claims only in his/her own name and for his/her own behalf.

(5) Co-authors shall share the economic benefit from exploiting a co-authored work in proportion to the actual contribution made by each of them to the creation of such work, unless otherwise agreed on among them.

### Article 11

(1) The scriptwriter, director and chief cameraman shall be regarded as co-authors of a film.

(2) If music makes up an essential component of a film (musical film) and it has been composed for that film, then also the composer shall be regarded as a co-author of that film.

(3) In a cartoon and/or animated film, or in a film where drawings or animation are its essential elements, the main film-animator shall also be deemed to be the coauthor of the film.

### Article 12

- (1) If two or more authors combine their works for the sake of joint exploitation, each author shall reserve his/her right on his/her work.
- (2) The relations between the authors of combined works shall be determined by contract.

#### Article 13

(1) The copyright on a work of authorship, the author of which is unknown (an anonymous work or a work under pseudonym), shall be held by the following:

- 1) If published, by its publisher;
  - 2) If disclosed, but not published, by the person who has disclosed it.
- (2) If proved that persons referred to in Paragraph 1 of this Article have not acquired the permission to publish and/or disclose the work from its author or his/her successor, Paragraph 1 of this Article shall not apply.
- (3) Once the identity of the author of a work referred to in Paragraph 1 of this Article is established, the rights of the publisher and/or the person who has disclosed it shall be terminated

### *4. CONTENT OF THE COPYRIGHT*

#### **4.1. Author's Moral Rights**

##### 4.1.1. Right of Authorship

###### Article 14

Any author shall have the exclusive right to be recognized as the author of his work.

##### 4.1.2 Right to be Named

###### Article 15

Any author shall have the exclusive right to his/her name, pseudonym or mark being put on each copy of his work or be quoted at each public communication of that work, unless that is technically impossible or unfeasible in regard to the concrete form of the public communication of the work.

##### 4.1.3. Right of Disclosure

###### Article 16

- (1) Any author shall have the exclusive right to disclose his/her work and set the way in which it is to be disclosed.
- (2) Pending the disclosure of a work, only its author shall have the exclusive right to give information in public about the contents of his/her work or to describe it.

##### 4.1.4. Right of Protection of the Work's Integrity

###### Article 17

Any author shall have the exclusive right to protect the integrity of his/her work, particularly by the following actions:

- 1) Opposing the alterations to his/her work by unauthorized persons;
- 2) Opposing the communication of his/her work to the public in an altered or incomplete form, taking into account the concrete technical form of communication of the work and good business practices.
- 3) Giving permission for his work to be modified.

#### 4.1.5. Right to Oppose Unbecoming Exploitation of the Work

##### Article 18

Any author shall have the exclusive right to oppose the exploitation of his/her work in a manner that is posing or could pose a threat to his honour or reputation.

## **4.2. Author's Pecuniary Rights**

##### Article 19

(1) Any author shall have the right to commercial exploitation of his/her work, as well as of a work resulting from the modification of his/her work.

(2) Any author shall be entitled to remuneration for the exploitation of his work by another person, unless otherwise provided by this Law or a contract.

#### 4.2.1. Right to Affix or Reproduce

##### Article 20

(1) The author shall have the exclusive right to authorize or prohibit fixation or reproduction of his work in total or partially, in any tangible or intangible, permanent or temporary, direct or indirect manner.

(2) Besides the acts referred to in Paragraph 1 of this Article, the reproduction of the works of architecture shall also be understood to mean the construction of buildings in accordance with drawings and/or designs.

(3) Reproduction of the works shall exist regardless of the number of their copies, technique by which they are multiplied or the durability of the copy.

(4) If the work of authorship is a computer program, reproduction shall also be understood to mean the storage of the program, wholly or partially, in the computer memory and running the program in the computer.

#### 4.2.2. The Right to Place in Circulation Copies of the Work.

##### Article 21

(1) The author shall have the exclusive right to prohibit anybody from placing copies of his work on the market or to permit him/her to do so.

(2) Placing copies of a work on the market shall also include the following:

1) Offering copies of the work for the purposes of placing it in circulation;

2) Storing copies of the work for the purposes of placing it in circulation;

3) Importing copies of the work.

(3) The right of an author to place copies of the work on the market shall not affect any owner of a copy of the work who has legally acquired in the Republic of Serbia that copy from the author or the author's legal successor

(the exhaustion of right). The owner of the copy of a work, who has legally obtained it from its author or his legal successor, may freely dispose of the copy of the work.

#### 4.2.3. The Right to Rent Copies of the Work

##### Article 22

(1) The author shall have the exclusive right to give permission or prohibit renting copies of his/her work. For the purposes of this Law, "renting" means making copies of the work available for use to other persons for a limited period of time and for direct or indirect pecuniary benefit.

(2) If an author licenses his/her right referred to in Paragraph 1 of this Article to a producer of phonograms and/or videograms, he/she shall retain the right to obtain an equitable remuneration for the rental of the work (work recorded on a video cassette, audio cassette, compact disc and the like).

(3) The author may not waive the right to remuneration referred to in Paragraph 2 of this Article.

#### Article 23

The author shall not enjoy the right referred to in Article 22, Paragraph 1, of this Law, if any of the following is involved:

- 1) A built work of architecture;
- 2) A work of applied art materialized in the form of an industrial or artisan product;
- 3) A work that came into being or was reproduced for the purpose of being rented as the exclusive form of the exploited work agreed upon between the author and owner of a copy of the work.

#### 4.2.4. The Right to Lend Computer Program

##### Article 24

The author of the computer program shall have the exclusive right to give permission or prohibit lending of copies of his work. For the purposes of this Law, “lending” means making copies of the work available for use to someone by the institutions accessible to the public, without direct or indirect pecuniary benefit.

#### 4.2. 5. The Right to Perform

##### Article 25

(1) The author shall have the exclusive right to permit or prohibit performance of his/her work.

(2) For the purposes of Paragraph 1 of this Article, performance shall be understood to mean public communication of non-stage works (speech, music) live to the audience.

#### 4.2.6. The Right to Present

##### Article 26

(1) The author shall have the exclusive right to give permission or prohibit presentations of his/her work.

(2) For the purposes of Paragraph 1 of this Article, presentation shall be understood to mean public communication of stage works (dramatic, dramatic-musical, choreographic, pantomimic) live to the audience.

#### 4.2.7. The Right to Transmit Performance or Presentation

##### Article 27

(1) The author shall have the exclusive right to give permission or prohibit transmitting of the performance or presentation of his/her work.

(2) For the purposes of Paragraph 1 of this Article, transmission shall be understood to mean the simultaneous public communication of a work that is being performed or presented to the audience present outside the premises on which the work is being performed or presented live, with the means of technical devices, such as a loudspeaker or a screen and a loudspeaker.

#### 4.2.8. The Right to Broadcast

##### Article 28

(1) The author shall have the exclusive right to give permission or prohibit broadcasting of his/her work.

(2) For the purposes of Paragraph 1 of this Article, broadcasting shall be understood to mean public communication of a work by wire or wireless transmission of radio or television programme signals intended for public reception (radio broadcasting and cable broadcasting).

(3) The wireless and wire broadcasting are two different ways of exploiting a work and they make up the subject-matter of two different copyright authorizations, except in the following cases:

1) If the re-broadcasting of a work by wire is a technically essential condition for the reception of a broadcast;

2) If the re-broadcasting by wire of a work that is broadcast wireless supplies less than a hundred receivers with signal on a non-commercial basis.

(4) For the purposes of Paragraph 2 of this Article, special broadcasting operation shall also be deemed to exist when signals intended for public reception are transmitted in an uninterrupted communication chain to a satellite and back to the ground, under the control of a broadcaster (hereinafter: the broadcasting organization), which shall be responsible therefore.

(5) If the program signals are coded, transmission via satellite shall be deemed to exist on condition that the signal decoding devices are accessible to the public through a broadcasting organization referred to in Paragraph 4 of this Article or through a third party duly authorized by the broadcasting organization.

#### 4.2.9 The Right of Re-Broadcasting

##### Article 29.

(1) The author has the exclusive right to forbid or allow some other person that the copyright protected work broadcasted in radio diffusion should be simultaneously communicated to the public in the unchanged shape and as a whole:

1) when the communication to the public is performed by another broadcasting organization, and not the one that has originally broadcasted the work;

2) when the communication to the public is performed by the cable or micro wave system or when the work is originally broadcasted from another country (cable re-broadcasting).

(2) In the case of cable rebroadcasting or works, the right of the author is realized only through the collective management organization for copyright and related rights.

(3) The provision of the paragraph 2 of this article is not applied in the case of cable re-broadcasting if it concerns the emissions belonging to the broadcasting organizations, regardless whether those are the original rights of the broadcasting organizations or the rights transferred to them by the other holders of rights.

#### 4.2.10 The Right to Public Communication, including the Interactive Communication of the Work to the Public

##### Article 30

The author shall have the exclusive right to give permission or prohibit communication of his/ her work to the public by wire or wireless means including the making available

in such a way that member of the public may individually access the work from a place and at a time he/she chooses.

#### 4.2.11 The Right to Adapt, Arrange or Alter the Work in Some Other Manner

##### Article 31

The author shall have the exclusive right to prohibit or permit adaptation, arrangement or other alterations of his/her work.

#### 4.2.12 The Right to Communicate a Broadcasted Work to the Public

##### Article 32

The author shall have the exclusive right to give permission or prohibit communication of his/her work that is being broadcasted, or re-broadcasted, simultaneously to audience at public places, such as means of public transport, restaurants, waiting rooms and the like, with the means of such devices as radio receivers or television sets.

#### 4.2.13 The Right to Communicate a Work from a Sound or Picture Carrier to the Public

##### Article 33

The author shall have the exclusive right to give permission or prohibit communication to the public of his/her work recorded on a sound carrier or picture carrier (a record, compact disc, audio cassette, video cassette, film tape, optic disc, slide) with the means of technical devices for the reproduction of sound and/or picture.

### **4.3. Author's Rights in Relation to the Owner of a Work of Authorship**

#### 4.3.1. Right of Access to a Copy of the Work

##### Article 34

(1) Any author shall have the right to request an owner of a copy of his work to allow him/her access to that copy, if so is necessary for the reproduction of that work and if that is not a threat to justified interests of the owner or the person keeping the work in his/her possession.

(2) The owner of a work or the person keeping it in his/her possession referred to in Paragraph 1 of this Article, shall not have to hand over a copy of the work to the author.

#### 4.3.2. Droit de Suite

##### Article 35

(1) If an owner of an original copy of a work of fine arts or an original copy of manuscript of a literary, scientific or musical work sells that copy, and/or manuscript to other person, the author of the work shall have the right to be notified of that fact and to claim remuneration amounting to 3% of the sale price.

(2) The author may not waive or dispose of the right referred to in Paragraph 1 of this Article.

(3) The right referred to in Paragraph 1 of this Article shall be inheritable.

(4) The right referred to in Paragraph 1 of this Article shall not exist if related to works from the area of architecture and cinematography works, as well as if related to works whose original copy, and/or manuscript is a subject-matter of the sale transaction between natural persons acting in their private capacity.



#### Article 36

(1) The seller and a gallery keeper or an organizer of a public auction for the original work, and/or manuscript shall be jointly and severally liable for the obligations referred to in Article 35 of this Law.

(2) The notification obligation is due on the 15<sup>th</sup> day after the sale is completed, and consists of the following information: sale price, name and the address of the seller and the buyer. The obligation to pay remuneration is due on the 30<sup>th</sup> day after the sale is completed, and the amount of the remuneration is to be calculated on the basis of net selling price.

(3) If there is a reasonable doubt related to correctness and completeness of the notification referred to in Paragraph 2 of this Article, the author shall have the right to request the gallery keeper or organizer of a public auction to present the appropriate documentation to him. If determined that notification contains incorrect or incomplete data, the costs incurred in connection with presentation of documents shall be borne by the art gallery keeper or organizer of the public auction.

#### 4.3.3. Right to Prohibit the Exhibition of the Original Copy of a Work of Fine Arts

##### Article 37

(1) The owner of the original version of a painting, sculpture and photograph shall have the right to exhibit such item, regardless of whether it has been disclosed, unless expressly prohibited by the author in writing, at the time original version was disposed of.

(2) No author may prohibit the displaying of the original version of a work belonging to a museum, art gallery or a similar public institution.

#### 4.3.4. Author's Priority Right of Modification of a Work of Architecture

##### Article 38

(1) If the owner of a building, which is a materialized work of architecture, intends to make certain alterations on that building, he/she shall first offer the author to make such alteration, if he/she is accessible. Author has the obligation to make a declaration concerning the offer of the owner of the building in the term of 30 days from the reception date of the offer.

(2) The author of the work of architecture can not oppose to the alterations of his work if the need to make alterations came out of the circumstances involving safety risk or technical reasons.

(3) The author's moral rights shall be observed if alterations in a building are not made in accordance with the modification of the work made by the author.

#### 4.4. Authors' Right to Special Remuneration

##### Article 39

(1) The authors of works, which in view of their nature, can be expected to be reproduced for personal non-commercial purposes on sound, picture and text carriers (works of literature, music, cinematographic works and similar), shall have the right to **remuneration** on the basis of import and/or sale of technical

devices and sound, picture and text carriers, for which it can be justifiably assumed that they shall be used for such reproduction.

(2) The remuneration from paragraph 1 of this article are paid by the producers of devices for sound or visual recording, producers of photocopying devices or other devices with the similar technology for multiplication, the producers of empty carriers of sound, picture and text, and in solidarity with them, the importers of devices for sound or visual recording, photocopying devices or other devices with the similar technology for reproduction and empty carriers of sound, picture or text, with the exception of the import of small amounts intended for the private and non commercial use, as part of the personal luggage.

(3) If the devices and items from paragraph 1 of this article are not produced in the Republic of Serbia, the remuneration is paid by the importer.

(4) The obligation for the payment of remuneration from paragraph 1 of this article originates:

1) at the first sale in the Republic of Serbia or import in the Republic of Serbia of new devices for sound or visual recording;

2) at the first sale in the Republic of Serbia or import in the Republic of Serbia, of empty carriers of sound, picture and text;

3) at the first sale in the Republic of Serbia or import in the Republic of Serbia, of new devices for photocopying or other devices with the similar technology of copying.

(5) In the case of copying works protected by copyright by photocopying or similar technology, apart from the right to remuneration from paragraph 1 of this article, the author has the right to remuneration from the legal or natural person providing commercial services of photocopying.

(6) Persons from paragraph 2 of this article do not pay remuneration for the:

1) technical devices and empty carriers of sound, picture and text if they are intended for export,

2) technical devices which are usually not used for the copying of works for personal non commercial purposes (for example, studio equipment and devices, dictaphone, and similar),

3) empty carriers of sound, picture and text applicable exclusively with technical devices from item 2 of this paragraph.

(7) Persons from paragraphs 2 and 5 of this article have an obligation, at the request of the organizations for collective management of copyright and related rights, to forward information on the type and number of sold or imported devices or carriers of sound, picture and text, as well as information on the number of photocopies made, as the ground for the calculation of compensation. Information obtained in such a way can be used by the organization only for the calculation of the remuneration and must not be used for any other purposes.

(8) Remuneration from paragraphs 1 and 5 of this article must be the fair compensation and the determination of its amount must take into account the probable damage suffered by the author when his work is copied without his permission for personal non commercial use, the application of technical measures of protection and other circumstances that can influence the correct calculation of the amount of this special remuneration.

(9) The authors may realize their right to remuneration from paragraphs 1 and 5 of this article only through the organizations for collective management of copyright and related rights.

(10) At the proposal of the bodies of government administration competent for the intellectual property matters (henceforward: competent body), with the previously obtained opinion of the body of government administration competent for the development of information society, the Government shall establish the list of technical devices and objects for which there is an obligation of payment of special remuneration under the conditions of paragraphs 1 to 9 of this article.

#### Article 40

(1) The author shall have the right to remuneration from the person who lends copies of his/ her work, except computer programs, when such person is registered for such an activity.

(2) Provision of paragraph 1 of this Article shall not apply when lending:

- 1) library material in public libraries,
- 2) buildings;
- 3) works of applied arts and/or industrial design.

(3) The right referred to in Paragraph 1 of this Article may be exercised only through an organization for collective exercise of copyright and related rights.

### *5. LIMITATIONS ON COPYRIGHT*

#### **5.1. Common Provision**

##### Article 41

(1) In the cases in which a work of authorship is exploited pursuant to the provisions of this Law dealing with limitations on copyright, the name of that work's author and the source from which the work was taken (publisher of the work, year and place of publication, periodical, newspaper, television or radio station where the work or a part of it was originally published or directly taken from, and the like), shall be quoted.

(2) In any specific case, the scope of limitation of exclusive rights may not conflict with a normal exploitation of the work nor may unreasonably prejudice the legitimate interests of the author.

#### **5.2. Suspension of Exclusive Rights and Right to Remuneration**

##### Article 42

A work of authorship may be reproduced and communicated to the public without the author's permission and without paying remuneration for the purpose of conducting an official procedure before a court or other state bodies.

##### Article 43

(1) In the scope of informing the public on current events with the means of the press, radio and television, it shall be permissible to make copies of a work, as well as to communicate the work in all other forms to the public without its author's permission and without paying remuneration, on the following conditions:

- 1) That the work has been disclosed;
- 2) That the work is appearing as an integral part of a current event about which the public is being informed;
- 3) That the reproduction of copies of the work and other forms of communicating it to the public are done only to the extent corresponding to the purpose and mode of informing on the current event.

(2) If the subject-matter of informing is a speech, oration or some other work of the same kind, the work involved may be reproduced and communicated to the public as a whole, without the author's permission and without paying remuneration.

##### Article 44

Short excerpts from the disclosed works may be reproduced without the author's

permission and without paying remuneration if used for non-commercial purposes in the field of education, examination or scientific research.

#### Article 45

Public libraries, educational institutions, museums and archives shall have the right to reproduce works without author's permission and without paying remuneration, exclusively for their archival and non-commercial purposes.

#### Article 46

(1) Without prejudice to the provisions of Article 208, Paragraph 1, Items 4 and 5 of this Law, any natural person shall have the right to reproduce for personal noncommercial purposes a disclosed work without the author's permission and without paying remuneration.

(2) The copies referred to in Paragraph 1 of this Article shall not be placed on the market or be used for any other form of public communication of that work.

(3) The provisions of Paragraph 1 of this Article shall not apply to the following:

- 1) Recording of the performance, presentation or showing the work;
- 2) Three-dimensional realization of drawings for works of fine arts;
- 3) Constructed works of architecture;
- 4) Construction of a new building after an existing building, which is a work of authorship;
- 5) Computer programs.

(4) The author shall have the right of remuneration in accordance with the provisions of Article 39 of this Law for the use of its work in a manner prescribed by this Article.

#### Article 47

(1) If a work of authorship is a computer program, the person who has legitimately obtained a copy of that computer program for his/her own usual use, may do the following without its author's permission and without paying any remuneration:

- 1) Store the program in the computer memory and run the program;
- 2) Eliminate errors in the program, as well as make any other necessary changes in it, in accordance with its purpose, unless otherwise provided by contract;
- 3) Make a one back-up copy of the program on a lasting tangible carrier;
- 4) Decompile the program exclusively for the purpose of obtaining the data necessary for making that program inter-operational with some other independently developed program or some hardware, on condition that such data were not accessible in some other way and that decompilation is limited only to those parts of the program which are necessary to achieve interoperability.

(2) The data obtained in the way referred to in Paragraph 1, Item 4, of this Article may not be communicated to others or be used for other purposes, particularly for the purpose of developing or selling another computer program that would infringe on the copyright on the original one.

(3) Act referred to in Paragraph 1, Sub-paragraph 4 of this Article may be directly conducted by a person who has legally obtained a copy of a computer program, or by some other qualified person acting under his/her instructions.

#### Article 48

Any person shall have the right of temporary reproduction of the work of authorship

without the author's permission and without paying any remuneration, under the following conditions:

- 1) Reproduction is transient or incidental,
- 2) Reproduction is an integral and essential part of a technological process,
- 3) Purpose of reproduction is to enable a transmission of data in a network between two or more persons through an intermediary, or to enable a lawful use of a work of authorship, and
- 4) Reproduction does not have independent economic significance.

#### Article 49

Short excerpts of a work of authorship may be reproduced or be communicated to the public (right of quotation), without the author's permission and without paying remuneration, on the following conditions:

- 1) The work has been disclosed;
- 2) The mentioned parts are integrated into another work without alterations, for the sake of illustration, confirmation or reference, with a clear indication that a reference is involved;
- 3) The name of the quoted author, the title of the quoted work and when and where the quoted work was disclosed or published are noted in a suitable place.

#### Article 50

(1) A broadcasting enterprise possessing the permission to broadcast a work may record it using its own facilities on a sound carrier or picture carrier or on a sound and picture carrier, for its own broadcasting purposes, without the author's permission and without paying any remuneration.

(2) The recording of the work referred to in Paragraph 1 of this Article shall be deleted within three months from the date on which such work was broadcasted at the latest.

(3) The recording referred to in Paragraph 1 of this Article may be retained in official public archives, if it has a documentary value.

(4) Any work recorded pursuant to Paragraph 1 of this Article may not be rebroadcast without author's permission.

#### Article 51

Any work that is permanently displayed in a street, a square or some other open public places may be reproduced in two dimensions and its copies thus made may be put on the market, as well as communicated to the public in some other way, without the author's permission and without paying remuneration.

#### Article 52

Displayed works may be reproduced in a suitable way and their copies thus made may be marketed, for the purpose of making public exhibition catalogues or conducting public sales, without the authors' permission and without paying any remuneration.

#### Article 53

(1) In shops, at trade fairs and other places where the operation of the sound and picture recording reproducing and transmitting devices is demonstrated, works may be reproduced on a sound and picture carrier and communicated to public

therefrom without their authors' permission and without paying remuneration, though only to the extent necessary to demonstrate the operation of such devices.  
(2) Any recording made pursuant to the provision of Paragraph 1 of this Article shall be deleted without any delay.

#### Article 54

For the needs of the persons with invalidity, it is allowed, without the permission of the author and without payment of the remuneration, to copy and distribute the work protected by copyright, if such a work does not exist in the required form, if its use is in direct connection with the invalidity of persons concerned and in the scope that is required by a specific kind of invalidity providing the copying and distribution has not been made for the sake of realizing direct or indirect commercial gain.

### **5.3. Statutory License**

#### Article 55

(1) State bodies, educational institutions and public libraries shall have the right to reproduce works without the author's permission, with the obligation to pay the remuneration, for educational or scientific research purposes, by means of photocopying or using any other kind of photographic technique or similar technique with the similar results, on a paper or any other similar medium.  
(2) Provision of Paragraph 1 of this Article shall not apply to sheet music.

#### Article 56

(1) The articles published in mass media may be reproduced, marketed or in other way communicated to the public by other mass media, without the author's permission, with the obligation to pay the remuneration, provided that such articles relate to current economic, political or religious issues and that such activity is not expressly forbidden by the author concerned.  
(2) There shall be no obligation to pay remuneration if only small parts of commentaries or articles are used in the way referred to in Paragraph 1 of this Article in the form of a summary of several different commentaries or articles.

#### Article 57

Three-dimensional reproduction of works permanently displayed in the streets, squares and other open public places may be made and such copies may be marketed, without their authors' permission, with the obligation to pay remuneration, except in the following cases:

- 1) If the copy of a sculpture is obtained as a casting from the original mould, from which also the copy permanently displayed at an open public place or from a mould made by casting the sculpture;
- 2) If a building is built after an existing building;
- 3) If the product is formed after a work of applied arts.

## **6. TRANSFER OF THE COPYRIGHT**

### **6.1. Transfer by Inheritance**

#### Article 58

(1) The author's heirs may exercise all powers with respect to the author's moral rights, except for the right to publish an undisclosed work, if the author has

prohibited it, and the right to modify the work.

(2) Besides his/her heirs, associations of authors, as well as institutions in the fields of culture, science and arts, may also protect an author's rights relating to authorship, integrity of the work and prohibition of unbecoming exploitation of the work.

Article 59

The pecuniary rights of any author shall be inheritable.

## **6.2. Transfer by Contract**

### 6.2.1. Author's Moral Rights

Article 60

The moral rights of any author are not transferable by a contract.

### 6.2.2. Author's Pecuniary Rights

Article 61

The author or his/her successor in rights may licence to another person some or all of the pecuniary rights on his/her work.

Article 62

(1) The licensing of pecuniary rights may be either exclusive or non-exclusive.

(2) In the case of exclusive licensing of pecuniary rights, only the licensee shall be authorized to exploit the work of authorship in the way stipulated by contract, as well as to license such rights to somebody else, with the author's or his/her successor's special permission. The right a licensee licences to others shall be a non-exclusive right, unless otherwise provided by contract.

(3) In the case of non-exclusive licensing of pecuniary rights, the licensee shall not be authorized neither to prohibit somebody else from exercising the copyright nor to a license his/her right to somebody else.

(4) Where the contract does not state whether exclusive or non-exclusive licensing is implicated, concerned licensing of pecuniary rights shall be deemed to be nonexclusive.

Article 63

(1) The licensing of pecuniary rights may be limited in terms of subject-matter, territory and time.

(2) In the case of limitation relating to subject-matter, the licensee shall be authorized to perform one or several specified operations towards exploiting the work of authorship.

(3) In the case of territorial limitation, the licensee shall be authorized to exploit the work of authorship within a specified territory, which is smaller than the one in which the right of authorship exists.

(4) In the case of temporal limitation, the licensee shall be authorized to exploit the work of authorship within a specified period, which is shorter than the period of validity of the copyright with respect to such work.

Article 64

(1) Any person who has acquired pecuniary rights by a licence from the author or his/her heir may cede such right wholly to another person, subject to the permission of the author or his/her heir.

(2) The permission of the author or his/her heir shall not be needed in the event of transfer of the enterprise holding the pecuniary right.

#### Article 65

The transfer of title on an original of a work of authorship shall not imply the acquisition of copyright on that work.

#### Article 66

(1) The licensing of pecuniary right on a work which has not been created yet shall be permissible on condition that the kind of the future work and ways of exploiting it are determined.

(2) Any licensing of pecuniary rights on all future works of an author, as well as on still unknown forms of exploiting a work, shall be null and void.

#### 6.2.3. Copyright Contract

##### Article 67

(1) Copyright may be licensed or ceded in whole by the copyright contract.

(2) The provisions of the law that regulates contracts and torts shall apply to copyright contracts, unless otherwise provided by this Law.

(3) Copyright contracts shall be made in writing, unless otherwise provided by this Law.

##### Article 68

(1) In the event of doubt as to the contents and scope of the rights being licensed or ceded by the copyright contract, it shall be deemed that less rights have been licensed or assigned.

(2) The licence for the publication of a work, for the recording a work on a sound or a picture carrier, and the licence for broadcasting shall be contracted expressly, unless otherwise provided by this Law.

(3) The licensing or cession of a right to exploitation of a work shall not be understood to also mean the licensing or cession of the right to remuneration in the case of exploitation of a work of authorship on the basis of a statutory licence.

(4) The licensing and/or cession of a right to exploit a work shall also mean the licence for making such changes in the work that are technically inevitable or usual for such exploitation of the work.

##### Article 69

A copyright contract shall include the following: names of contracting parties, title and/or identification of the work of authorship, rights that the subject-matter of licensing or cession, amount of remuneration if any, and the method and terms for its payment, as well as limitations related to content, territory and time, if any.

##### Article 70

(1) If the profit made by exploiting a work of authorship is evidently disproportionate to the contractual remuneration, the author or his/her heir shall have the right to request the contract to be modified for the purpose of eliminating such disproportion.

(2) If the author's remuneration is not agreed upon and if the profit made by the use of the work of an author exceeds the costs of its use, allowing therewith the payment of author's remuneration, the author or his/her heir shall have the right to request the contract to be modified by including such remuneration in the contract.



(3) The right referred to in paragraphs 1 and 2 of this Article shall become unenforceable two years after the existence of such disproportion and /or profit made by the use of work of an author became known, but not later than six years from the end of the year in which the disproportion had arisen, and/or profit has been made.

(4) The author and/or his/her heir may not waive in advance the right referred to in Paragraphs 1 and 2 of this Article.

(5) In order to exercise rights referred to in Paragraphs 1 and 2 of this Article, the user of the work of authorship shall have a duty to present credible information on economic effects of the use of a work of authorship to the author, and/or his/her heir within period not exceeding a month as of the day of the request.

#### Article 71

(1) The author or his/her heir may withhold the permission granted or revoke a licensed pecuniary right, if the acquirer of permission or licensee is not exercising the acquired right or if the right is exercised to a lesser extent than agreed, whereby jeopardizing the interests of the author or his/her heir.

(2) The author or his heir may not withhold the permission granted or revoke a licensed pecuniary right if the acquirer is not exercising the right or is doing so inadequately for reasons for which the author or his/her heir is responsible.

(3) The author or his/her heir may not exercise the right referred to in Paragraph 1 of this Article prior to the expiration of two years as of the date of the copyright contract, or the handover of the copy of the work to the acquirer of the right, if such handover had taken place after the conclusion of contract.

(4) If a contribution (article, illustration and the like) intended to be disclosed and/or published in a newspaper or periodical is involved, the period referred to in Paragraph 3 shall be six months.

(5) Prior to withholding the permission or revoking the right, the author or his/her heir shall notify the acquirer of the permission or right accordingly, providing a reasonable period of time within which the acquirer is to commence exercising the acquired right or doing so to the agreed extent.

(6) The author or his/her heir may not waive in advance the right referred to in Paragraph 1 of this Article.

#### Article 72

(1) The author may withhold the permission granted or revoke the licensed pecuniary right, if he/she is of the opinion that the exploitation of the work could be detrimental to his/her creative or personal reputation, for reasons arisen subsequent to the conclusion of the copyright contract, for which the acquirer of the right is not responsible.

(2) The author shall indemnify the acquirer of the right for the real damage sustained.

(3) The statement of withholding the permission or right referred to in Paragraph 1 of this Article shall be effective as of the date on which the author deposits a security for the indemnity referred to in Paragraph 2 of this Article.

(4) At the author's request, the acquirer of the right shall notify the author of the amount of costs he/she has had in connection with preparations for the exploitation of the work until the date of the notice of withholding the permission or right, within three months from receipt of the statement of withholding the permission or right referred to in Paragraph 1 of this Article. Should the acquirer

fail to perform his/her duty referred to in this paragraph, the statement of withholding the permission or right shall be effective as of the expiration of the term referred to in this Paragraph.

(5) The author may not waive in advance his/her right referred to in Paragraph 1 of this Article.

#### *6.2.3.1. Publishing Contract*

##### Article 73

(1) A publishing contract shall be a contract under which an author or any other copyright holder licences or cedes to a publisher the right to reproduce a work of authorship by printing and market thus reproduced copies, and where the publisher undertakes to reproduce that work and market, as well as to remunerate, if agreed upon, the author or any other copyright holder.

(2) If the work of authorship referred to in Paragraph 1 of this Article has not been disclosed, the publisher shall be permitted under the publishing contract, to disclose such work.

(3) The author or any other copyright holder may licence or cede to the publisher, under a publishing contract, the right to have the work translated, as well as the authority to reproduce and market the translated work.

##### Article 74

A publishing contract, the subject-matter of which is the publication of articles, drawings and other authors' contributions in newspapers and periodicals, need not be concluded in writing.

##### Article 75

(1) The licensing of rights by the publishing contract shall be exclusive, unless otherwise agreed upon.

(2) The provision of Paragraph 1 of this Article shall not apply to the publishing of articles, drawings and other authors' contributions in newspapers and periodicals.

##### Article 76

(1) Besides the particulars referred to in Article 71 of this Law, a publishing contract shall also include the following:

1) Term within which the author or other copyright holder shall hand over to the publisher a proper manuscript or other original of the work, so as to make it possible for the publisher to reproduce the work. That term shall be a year from the date of contract, unless otherwise agreed upon;

2) Term within which the publisher shall start marketing copies of the work. Such term shall be a year from receipt of a proper manuscript or other original of the work, unless otherwise agreed upon;

3) Number of editions the publisher is authorized to publish. The publisher shall have the right to publish only one edition of the work, unless otherwise agreed upon;

4) Number of copies of one edition. If the number of copies has not been stipulated, it shall be 500, unless business practices and other circumstances evidently call for it to be different;

5) Term within which the publisher has to start marketing copies of the next edition upon depletion of the previous one, if so has been stipulated. Such term

shall be a year from the date on which the author had made a request to that effect, unless otherwise agreed upon.

6) Appearance and design of copies of the work.

(2) In the event of a breach of the contractual obligation referred to in Paragraph 1, Items 1, 2 and 5, of this Article, the other contracting party shall have the right to void the contract and to be indemnified because of the failure to execute the contract.

#### Article 77

The duties of the publisher shall be the following:

- 1) To take care of the sale of copies of the work and to notify the author or any other copyright holder periodically, at his/her request;
- 2) To make it possible for the author or any other copyright holder, at his/her request, to proof reads in an appropriate phase of reproduction;
- 3) To make it possible for the author to make appropriate changes in the preparation of each subsequent edition, on condition that this does not alter the work's character and that in view of the publishing contract as a whole, it does not make up a disproportionately immense obligation for the publisher.

#### Article 78

A manuscript or any other original of a work of authorship that has been handed over to the publisher shall not become the latter's property, with the exception of articles, drawings and other contributions in newspapers and periodicals or unless otherwise provided by contract.

#### Article 79

If the sole existing copy of a work of authorship perishes because of *force majeure* after it was handed over to the publisher for the purpose of being published, the author or any other copyright holder shall have the right to a fair compensation, which would have been due to him/her had the work been published.

#### Article 80

(1) A publisher who has acquired the right to publish a work in the form of a book shall have priority in the acquisition of the right to reproduce the work and market the copies thereof in the form of an electronic recording, within three years from the date of the publishing contract.

(2) The priority referred to in Paragraph 1 of this Article shall expire if the publisher does not accept in writing the offer made by the author or any other copyright holder within 30 days as of the date of the offer.

#### Article 81

If the publisher intends to sell the unsold copies of a work as scrap paper, before such sale, it shall offer the author or any other copyright holder, if accessible, to buy-up such copies at the price payable for scrap paper.

#### 6.2.3.2. *Contract on Presentation and Contract on Performance*

#### Article 82

Based on a contract on presentation or a contract on performance, the author or any other copyright holder licences a beneficiary to present or to perform of a work of

authorship, and the beneficiary undertakes to present or perform such work within a specified period of time, in the way and under the conditions established by contract.

#### Article 83

If the author or any other copyright holder fails to hand over the work (manuscript, musical score and the like) to the beneficiary within the agreed term or if the beneficiary fails to present or perform it within the agreed term, the author or any other copyright holder or the beneficiary may opt to void the contract of presentation on the contract on performance and claim damages.

#### Article 84

The manuscript, musical score or any other original work being the subject-matter of a contract on presentation or a contract on performance shall remain author's property, unless otherwise provided by the contract.

#### Article 85

The beneficiary of a contract on presentation or a contract on performance shall make it possible for the author or any other copyright holder to see the presentation or performance of the work, as well as to send him/her the programme and to notify him/her periodically of the proceeds from the presentation or performance of the work.

#### 6.2.3.3. *Contract of Modification of a Work of Authorship*

##### Article 86

Under a contract of modification of a work of authorship, the author or other holder of copyright gives some other person the permission to modify the work in order to present or perform it on the stage, make a film or for other purposes.

##### Article 87

(1) Unless otherwise provided by the contract on modification of a work of authorship for the purpose of making a film, the author or his/her heir shall cede under such contract the following exclusive rights:

- 1) To modify of the work for the purpose of making a film;
- 2) To reproduce and market of copies of the film thus made;
- 3) To show the film;
- 4) To broadcasting the film;
- 5) To subtitle and dub the film in other languages.

(2) The contract referred to in Paragraph 1 of this Article shall authorize the acquirer of the right to only one modification and one making of a film, unless otherwise provided by the contract.

(3) The provisions of Paragraphs 1 and 2 of this Article shall apply *mutatis mutandis* to a contract of modification of a work of authorship for the purpose of making a television work.

#### 6.2.3.4. *Contract on Film Production*

##### Article 88

Under a contract on film production, one or several persons undertake to creatively cooperate with a film producer in the production of a film and they assign their pecuniary rights on such work to the producer.

#### Article 89

The scriptwriter and composer of film music, as co-authors of the cinematographic work within the meaning of Article 11 of this Law, reserve the right to exploit their work independently, separately from the film, unless otherwise provided by the contract on film production.

#### Article 90

A film shall be deemed completed once an agreement is reached on its final version between the co-authors and film producer.

#### Article 91

If a film producer intends to exploit the film in a version that differs from that referred to in Article 88 of this Law, it shall obtain the consent of the majority of the film's coauthors, including the chief director.

#### Article 92

- (1) The provisions on remuneration, if any, in the contract on film production shall determine which amount of remuneration corresponds to which form and extent of exploitation of the film.
- (2) The contractual remuneration for shooting a film shall not include remuneration for other forms of exploitation of a film.
- (3) The film producer must exploit the completed film.
- (4) The film producer shall notify the film co-authors, as well as the authors of any contributions to the film, of the actual revenue, and make it possible for them to inspect the business records.

#### Article 93

- (1) The co-authors of a film shall have the right to void the contract, as well as the right to retain the contractual remuneration, if the film producer fails to complete the film within three years from the date of the film production contract, unless otherwise agreed upon.
- (2) Besides the rights referred to in Paragraph 1 of this Article, the co-authors of a film shall have the right to compensation of damages, if the film producer fails to start exploiting the film within a year from completion of its first standard copy, unless some other term is provided by the contract.

#### Article 94

- (1) Should a co-author of a film or an author of a contribution to the film refuse to cooperate in the production of the film or if due to *force majeure* is unable to continue co-operating, he/she may not object to the result of his/her creative work being used towards completing the film.
- (2) The co-author of a film or the author of a contribution to a film referred to in Paragraph 1 of this Article, shall have the appropriate author's right with respect to his/her contribution to the film.

#### 6.2.3.5. *Contract of Commissioning a Work of Authorship*

##### Article 95

- (1) Under a contract of commissioning a work of authorship, the author undertakes to

produce a work of authorship and to hand it over to for the commissioning party.

(2) The commissioning party shall have the right to disclose the work and market the copy of the work handed over by its author and the author shall retain other author's right, unless otherwise provided by the contract on commissioning.

(3) If a computer program was produced on the basis of a contract on commissioning a work of authorship, the commissioning party shall acquire all rights to the exploitation of that computer program, unless otherwise provided by the contract.

#### Article 96

The party commissioning a work of authorship shall have the right to direct and control the production of that work, though without substantially restricting the author's freedom of artistic, technical or scientific expression by doing so.

#### Article 97

(1) A work of authorship that was created by putting together the contributions of a large number of authors (an encyclopedia, anthology, computer program, database and the like) shall be regarded as a collective work of authorship.

(2) The authors of contributions to a collective work of authorship shall in an exclusive way license all their pecuniary rights to the organizer of the production of such collective work, unless otherwise provided by the contract.

(3) The organizer of the production of a collective work of authorship shall have the right to disclose and exploit such work under its own name, on condition that the authors whose contributions are contained in the collective work are listed on each copy of the work.

### *7. WORK OF AUTHORSHIP CREATED AS AN EMPLOYEE*

#### Article 98

(1) If an author has created a work as an employee in the performance of his/her duties, the employer shall be authorized to disclose such work and to hold exclusive pecuniary rights on its exploitation within the scope of the employer's registered business for the period of five years from completion of that work, unless otherwise provided by a general regulation or employment contract. The author shall have the right to special remuneration, depending on the proceeds of the work's exploitation.

(2) The author of a work created of an employee shall reserve all copyrights on that work, other than the rights referred to in Paragraph 1 of this Article.

(3) Upon the expiration of the term referred to in Paragraph 1 of this Article, the author shall acquire the exclusive pecuniary rights on the work.

(4) If the work of authorship is a computer program, the permanent holder of all exclusive pecuniary rights on such work shall be the employer, unless otherwise provided for in the contract.

#### Article 99

The criteria for setting the amount and the method of payment of the remuneration referred to in Article 96, Paragraph 1, of this Law, shall be established by a general regulation or the employment contract.

#### Article 100

(1) In the case of publication of the complete works, the author shall have the right to

disclose his/her work that was produced during employment even before the expiration of the term referred to in Article 96, Paragraph 1, of this Law.

(2) The employer's permission shall not be needed for the disclosure of the work referred to in Paragraph 1 of this Article.

#### Article 101

When using a work created by an employee, the employer shall quote the author's name, pseudonym or mark.

### *8. DURATION OF COPYRIGHT*

#### Article 102

(1) Pecuniary rights shall last for the life of an author and 70 years after his/her death.

(2) Moral rights of an author shall last even after the expiration of his/her pecuniary rights.

#### Article 103

(1) Co-authors' pecuniary rights shall expire after 70 years elapse from the death of the author that was the last to die.

(2) Pecuniary rights with respect to the work whose author is unknown (anonymous work or work under a pseudonym) shall expire after 70 years elapse from the date of its disclosure. Should its author reveal his/her identity before the expiration of the such term, the pecuniary right shall last the same as if its author's identity has been known since the date of its disclosure.

#### Article 104

(1) Where the term of copyright protection runs from the time of disclosure of the work and where the work was disclosed in installments, the term of protection shall run for each such installment separately.

(2) The term of protection of a film shall expire after 70 years elapse from the death of director, scriptwriter, dialogue author or the author of the music specifically composed for the film, whoever dies last.

#### Article 105

The term of copyright protection shall expire after 70 years elapses from the creation of the work if the term of its protection is not calculated from the date of death of the author or co-author and if such work has not been lawfully published during such period of time.

#### Article 106

All time periods used to determine expiration date of pecuniary rights of an author shall be calculated from the 1<sup>st</sup> of January of the year following the one in which the event relevant for the beginning of the period had occurred.

#### Article 107

(1) Upon the expiration of the authors' pecuniary rights, the associations of authors and institutions in the fields of culture, science and arts shall take care of the protection of authors' moral rights.

(2) Besides the parties referred to in Paragraph 1 of this Article, any person shall have the right to protect the right of authorship and integrity of the works, as well as to

oppose any form of unbecoming exploitation of the works of authorship.

#### **9. FOREIGN PERSONS TO WHICH THE LAW APPLIES-** Article 108

(1) The author's work of the foreign citizens shall be protected the Serbia and Montenegro provided that:

1) the author is a person who whose copyright is recognized on the basis of an international agreement ratified by Serbia and Montenegro, or

2) there is reciprocity between Serbia and Montenegro and the author's country.

(2) Person invoking the reciprocity referred to in paragraph 1, item 2 of this Article shall bare the burden of proof of its existence.

#### Article 109

*Droit de suite* referred to in Article 34 of this Law shall recognized to a foreign citizen exclusively on the basis of reciprocity.

#### Article 110

Author's moral rights of any foreign citizen shall be recognized regardless of whether the requirements referred to in Article 106, paragraph 1, of this Law have been met.

### **III. RELATED RIGHTS**

#### **1. PERFORMERS' RIGHTS**

##### **1.1. Establishment of the Right**

#### Article 111

A performer shall enjoy moral rights and pecuniary rights in accordance with this Law for his/her performance of a work of authorship.

##### **1.2. Performance**

#### Article 112

(1) For the purposes of this Law, the performance shall be understood to mean an intellectual commodity that originates from personal engagement of a performer during audio, visual, or audio-visual communication of the author's work.

(2) The work being performed need not be a protected work of authorship.

##### **1.3 Performer**

#### Article 113

(1) For the purpose of this Law, a performer shall be understood to mean an individual who engages personally in the performance of works (a musician, actor, dancer, performer of pantomimes, singer, conductor).

(2) Persons making only a technical contribution to the performance of works are not performers.

(3) Provisions of this Law regulating relations of co-authors shall apply *mutatis mutandis* to relationships of two or more performers participating in the performance of one work.

##### **1.4. Scope of the Right**

###### **1.4.1. Performer's Moral Rights**

#### Article 114

(1) A performer shall have the following exclusive rights:

1) To be recognized as such;

2) To have his/her name indicated on each copy of the recording, in the programme or in any other suitable way each time his/her performance is



exploited, unless where that is technically impossible or impracticable due to the actual form of the public communication of the work;

3) To oppose the alterations to his/her performance or any exploitation of the performance in an altered form, should that jeopardize his/her creative or professional reputation;

4) To oppose marketing of a recording of his/her performance, if such recording has technical deficiencies that jeopardize the integrity of the performance, and thereby the performer's reputation;

5) To oppose the exploitation of his/her performance in a way that jeopardizes or could jeopardize his/her honour or reputation.

(2) If a group of performers gives a performance, the right referred to in Paragraph 1, Item 2, of this Article shall be enjoyed both by the group as a whole and the soloists.

#### Article 115

If several performers participate in the performance of one work, the exercise of moral rights by any of them shall not be detrimental to the interests of others.

#### 1.4.2. Performer's Pecuniary Rights

##### Article 116

(1) A performer shall have the exclusive right to prohibit or permit any person to:

1) Record his/her unrecorded performance and reproduce such copies of the performance in any form or manner in the meaning of Article 20, Paragraph 1 of this Law;

2) Market the recordings of his/her performance;

3) Rent the recordings of his/her performance;

4) Broadcast or communicate to the public his unrecorded performance, except in the case when it is the case of already broadcasted performance:

5) Making the performance available to the public interactively by wire or wirelessly, in the sense of article 30 of this Law.

(2) The performer shall not have the exclusive right on broadcasting of his/her performance that is recorded and published on a sound carrier or of a performance that was recorded on a sound and picture carrier with the performer's permission.

(3) Should a performer licence to a producer of phonograms and/or videograms his/her right referred to in Paragraph 1, Item 3, of this Article, he/she retains the right to an equitable remuneration for the rental of the recording of the performance.

(4) If the contract between the performer and a film producer does not specify otherwise, it shall be deemed that under such contract the performer has licensed the producer the right to rent copies of the performance.

##### Article 117

(1) A performer shall have the right to be remunerated for the following:

1) Broadcasting and re-broadcasting of his/her performance from a published recording on a sound carrier;

2) Public communication of his/her performance, which is broadcast from a recording published on a sound carrier;

3) Public communication of his/her performance from a recording published on a sound carrier.

(2) The right to remuneration referred to in Paragraph 1 of this Article the performers can realize only through the organization for collective management of copyright and related rights. The manner of payment of the remuneration from Paragraph 1 of this article has been determined by Article 127 of this Law.

### **1.5. Transfer of the Right**

#### Article 118

(1) A performer may licence or cede his/her pecuniary rights referred to in Article 114 of this Law to another person under the contract on performance.

(2) The person to whom the right referred to in Paragraph 1 of this Article has been licensed may not licence that right to a third party without the performer's consent, unless otherwise provided by the contract on performance.

#### Article 119

(1) If more than five performers, other the conductor and soloists, participate in the performance of a work, it shall be deemed that the performance is given by an ensemble (a choir, orchestra, drama ensemble, ballet ensemble, opera ensemble).

(2) In the exercise of the rights in accordance with this Law, an ensemble shall be represented by a person duly authorized by the majority of members of such ensemble.

(3) If besides the ensemble, also the director, soloists and players of chief roles, who are not members of that ensemble, participate in the performance of a work, the exercise of the rights in accordance with Law shall be also subject to the consent of these persons, unless otherwise agreed upon between them and the ensemble.

#### Article 120

(1) The contract on performance shall include the following: names of contracting parties, type and the manner of exploiting the performance, name of author and name of the work of authorship performed and the amount, mode and terms of payment of the remuneration, if agreed upon.

(2) Besides the particulars referred to in paragraph 1 of this Article, the contract on performance with respect to the broadcasting of a performance shall also include the number of broadcasts and the period in which the broadcasting shall take place, and a performance contract with respect to the recording and reproduction of copies of the recording of a performance, shall also include the number of copies that may be made.

(3) Contract on performance shall be made in writing.

#### Article 121

The person to whom the right referred to in Article 114 of this Law has been licensed shall forward to the performer complete data on the exploitation of the performance.

### **1.6. Rights of the Performer Arising From Employment**

#### Article 122

Provisions of this Law regulating the relations between authors and their employers shall apply *mutatis mutandis* to the rights of the performers who created their performance on the basis of the employment contract.

## *2. THE RIGHT OF THE PHONOGRAM PRODUCER*

### **2.1. Establishment of the Right**

#### Article 123

The phonogram producer, with respect to its phonogram, shall have the pecuniary rights in accordance with this Law.

### **2.2. Phonogram**

#### Article 124

- (1) Phonogram is the recording of a sound and/or a sequence of sounds on a sound carrier.
- (2) The recording of a sound is the fixation of sounds on the carrier from which they can be listened to, copied or communicated by means of a device.
- (3) Right on the existing phonogram is by no ways limited by the incorporation of that phonogram into a videogram.

### **2.3. Producer of Phonogram**

#### Article 125

The producer of a phonogram shall be understood to mean any natural or legal person, that has organized and paid for the production of the phonogram and that bears the responsibility for the first recording of a sound or a sequence of sounds.

### **2.4. Scope of the Right**

#### Article 126

A producer of a phonogram shall have the exclusive right to prohibit or permit any person to:

- 1) Reproduce the phonogram in any form or manner in the meaning of Article 20, Paragraph 1 of this Law and market the copies of the phonogram thus reproduced;
- 2) Rent the copies of the phonogram;
- 3) Make the phonogram available to the public in an interactive manner by wire or wireless means, within the meaning of Article 30 of this Law.

#### Article 127

- (1) The producer of a published phonogram shall have the right to be remunerated for the following:
  - 1) Broadcasting and re-broadcasting of the phonogram;
  - 2) Public communication of the phonogram;
  - 3) Public communication of the phonogram being broadcast.
- (2) The right for remuneration from Paragraph 1 of this Article the producer of phonograms can realize only through the organization for collective management of copyright and related rights.
- (3) The remuneration from paragraph 1 of this Article and the remuneration for performers from paragraph 117 of this Law are collected from the user in the form of the single remuneration. The collection of the single equitable remuneration is performed by one organization, determined by a contract concluded between the organization of performers and organization of the producers of phonograms.
- (4) In the contract from Paragraph 3 of this Article, the organizations have the obligation to determine the amount of expenses for the collection of the single equitable remuneration and the frequency of transfer of that single equitable remuneration to the other organization. The Contract is published at the expense of the organizations in the “Official Gazette of the Republic of Serbia”.

(5) If the organization of the producers of phonograms and the organization of the interpreters do not conclude the contract from paragraph 3 of this article in the period of six months from the date of the enforcement of this Law, the Government shall, at the proposal of the Ministry competent for science and technological development determine the organization which will perform the collection of the single equitable remuneration.

(6) The organization of the producers of phonograms and the organization of the performers have the obligation to determine the tariff jointly in a manner prescribed by Article 177 of this Law.

(7) The single equitable remuneration collected in a manner prescribed by this Article is distributed to organizations within the terms of the agreement concluded between the organization of the producers of phonograms and the organization of the performers. If the contract between the organizations does not stipulate otherwise, the organization which collects the single equitable remuneration has the obligation, after the deduction of the amount of expenses made on account of the collection of a single equitable remuneration, which can not be more than 10% of its value, to transfer one half of the collected remuneration to the other organization, without delay, and at least on a quarterly basis.

(8) If the contract between organizations does not stipulate otherwise, the organization which collects the single equitable remuneration can not perform the distribution of the collected single equitable remuneration amongst its members before it transfers the contracted part of the legally determined part of the single equitable remuneration to the other organization.

(9) If the contract between the organizations does not stipulate otherwise, the organization which collects the single equitable remuneration has the obligation to hand over to the other organization the copies of all the data concerning the utilization of phonograms and performances recorded on them obtained from the users that broadcast and publicly communicate the phonograms and performances recorded on them, at the latest in the period of 30 days from the date when the part of the collected remuneration has been handed over.

### *3. THE RIGHT OF THE VIDEOGRAM PRODUCER*

#### **3.1. Establishment of the Right**

Article 128

A producer of a videogram, the film producer (producer of videogram), shall have the pecuniary rights in accordance with this Law.

#### **3.2. Videogram**

Article 129

Videogram is a recording of a film work as well as a definite sequence of motion pictures with or without the accompanying sound on the carrier of picture, or the carrier of picture and sound.

#### **3.3. Film Producer (Producer of a Videogram)**

Article 130

Film producer (producer of videograms) is natural or legal person that on one's own behalf gives initiative, gathers financial means, organizes, manages and takes responsibility for the first recording of a film or motion pictures accompanied by a sound or without a sound (videogram).

### **3.4. Contents of the Right**

Article 129

Film producer (producer of videogram) shall have the exclusive right to prohibit or permit any person to:

- 1) Reproduce his videogram in any form and in any manner in the meaning of Article 20, Paragraph 1 of this Law or market the copies thus reproduced;
- 2) Communicate his videogram to the public from a picture carrier or picture and sound carrier (picture show);
- 3) Rent copies of his videogram;
- 4) Make the videogram available to the public in an interactive manner by wire or wireless means, within the meaning of Article 30 of this Law.

Article 132

The producer of a videogram shall have the right to oppose the exploitation of his videogram in altered form, if such exploitation can jeopardize his justified economic interests.

## *4. THE RIGHT OF THE BROADCAST PRODUCER*

### **4.1. Establishment of the Right**

Article 133

The producer of a broadcast shall have pecuniary rights in accordance with this Law.

### **4.2. Broadcast**

Article 134

A broadcast shall be understood to mean an electrical, electromagnetic or some other signal converted into audio, visual or audio-visual content that is broadcast for the purpose of being communicated to the public.

### **4.3. Producer of Broadcast**

Article 135

The producer of a broadcast shall be understood to mean any natural or legal person, which has organized and paid for the production of the broadcast.

### **4.4. The Contents of the Right**

Article 136

The producer of a broadcast shall have the exclusive right to prohibit or permit any other person to:

- 1) Re-broadcast his broadcast;
- 2) Record his broadcast on a sound or picture or a sound and picture carrier;
- 3) Reproduce the recording in any shape and in any way in the sense of Article 20, Paragraph 1 of this Law and market the copies of the recording thus reproduced;
- 4) Rent copies of the broadcast recording;
- 5) Publicly communicate the broadcast at places accessible to the public against the payment of an entrance fee;
- 6) Make the broadcast available to the public in an interactive manner by wire or wireless means, within the meaning of Article 30 of this Law.

## *5. THE RIGHT OF A DATABASE PRODUCER*

### **5.1. Establishment of the Right**

Article 137

The producer of a database shall have pecuniary rights in accordance with this Law.

## **5.2. Database**

Article 138

(1) For the purposes of this Law the database shall mean a collection of independent data, works or other materials arranged in a systematic or methodical way, individually accessible by electronic or other means.

(2) A computer program used for its development or operation shall not be deemed to a database.

## **5.3. Producer of Database**

Article 139

The producer of a database shall be understood to mean any natural or legal person that has created a database, by qualitative and/or quantitative substantial investment in obtaining, verification or presentation of its contents

## **5.4. Contents of the Right**

Article 140

(1) The producer of a database shall have the exclusive right to prohibit or permit any person to:

- 1) Occasionally or permanently reproduce a database as a whole or its essential parts by any means, for any purpose and in any form;
- 2) Market or rent copies of the database or its substantial parts;
- 3) Connect to a computer network and any other form of public communication of the database as a whole or its essential parts.

(2) The right referred to in Paragraph 1, Item 1, of this Article shall also apply to nonessential parts of the database if they are subject to repeated or systematic use which contravenes with a normal exploitation of such database or which unreasonably injures legitimate interests of a database producer.

(3) The right referred to in Paragraph 1 of this Article shall exist irrespective of the eligibility of the concrete database or its contents for copyright or any other protection.

## **6. The right of the publisher**

### **6.1. *THE RIGHT OF THE FIRST PUBLISHER OF A FREE WORK***

Article 141

Any person who, after the expiry of protection of the author's pecuniary rights, for the first time lawfully publishes or communicates to the public a previously unpublished work, shall have the rights equivalent to pecuniary rights of the author.

### **6.2 The right of the publisher of printed editions to special remuneration**

Article 142

(1) The publishers of printed editions have the right to a special remuneration prescribed in the Article 39, Paragraphs 1 and 5 of this Law under the same conditions which are valid for the authors.

(2)The publishers of printed editions and the authors of works issued in the printed form can realize their rights from Article 39, Paragraphs 1 and 5 of this Law and this Article only through the organization for collective management of copyright and related rights.

(3) The remuneration collected on the basis of the Article 39, Paragraphs 1 and 5 of this Law and this Article is divided between the author and the publisher in equal halves (50% : 50%)

## *7. COMMON PROVISIONS APPLICABLE TO RELATED RIGHTS*

### **7.1. Relationship between the Copyright and Related Rights**

Article 143

(1)Related rights shall in no way affect protection of the rights of authors with regard to their works.

(2) The provisions concerning publishing, communication to the public and releasing of copyright protected work from article 7 of this Law are accordingly applied to related rights.

### **7.2. Limitations on Related Rights and Exhaustion of Rights**

Article 144

The provisions of this Law regulating limitations and exhaustion of copyright shall apply accordingly to related rights.

### **7.3. Transfer of Related Rights**

Article 145

Related rights shall be transferable, with the exception of the performers' personal rights.

### **7.4. Right to Special Remuneration**

Article 146

The producer of phonograms, performers and the producer of videograms have the right to a special remuneration, which has been prescribed in the article 39 of this Law, under the same conditions applicable to the authors.

### **7.5. Duration of Rights**

Article 147

(1) Pecuniary rights of the performer shall last for 50 years from the date of the performance. If a performance was recorded and lawfully published or communicated to the public within this period, the term of protection shall expire 50 years from the date of the first publication or communication to the public, whichever date is earlier. A performer's moral rights shall last even after the expiration of his/her pecuniary rights.

(2) The rights of the phonogram producer or a videogram producer shall last for 50 years after the production of the phonogram or videogram. If the phonogram or videogram has been lawfully published or communicated to the public within this period, the term of protection shall expire 50 years from the date of the first publication or communication to the public, whichever date is earlier.

(3) The rights of the broadcast producer shall last for 50 years from the date of the protected broadcast's first broadcasting.

(4) The rights of the database producer shall last for 15 years from the date of the database's creation. If a database was made available to the public in whatever

manner before expiry of that term, the term of protection shall expire 15 years from the date when database was first made available to the public.

(5) If substantial changes occur in the selection or arrangement of the contents of a database, the term referred to in Paragraph 4 of this Article shall be extended for another 15 years. Any additions, deletions or improvements of a database as a whole or the part thereof, resulting in a new version of such database, shall be deemed to be substantial changes in the selection or arrangement of the contents of a database.

(6) The rights of the first publisher of a free work shall last for 25 years from the date of the first publication or first communication to the public in any other manner.

(7) The right of the publisher of printed editions to a special remuneration lasts for 50 years from the legal publication of the work.

(8) The deadlines for the need of establishing the date of the termination of the pecuniary rights of the holders of related rights are calculated from January 1<sup>st</sup> of the year which immediately follows the year in which the event relevant for the beginning of the calculation of deadlines occurred.

## **7.6. Persons to which the Law Applies**

### **Article 148**

(1) Any performer, phonogram producer, videogram producer, broadcast producer, database producer and a publisher of a printed edition and the editor of a free work which is a foreign person shall have the rights prescribed by this Law in accordance with the international agreements ratified by the Republic of Serbia or in accordance with the reciprocity principle between the Republic of Serbia and the country he/she belongs to.

(2) Exceptionally to the provision of Paragraph 1 of this Article, a database producer being a legal person without corporate domicile in the Republic of Serbia shall be granted the rights under this Law only if its business operations are linked directly and on an ongoing basis with the economy of Serbia and Montenegro.

(3) Where the existence of reciprocity is doubtful, the explanation shall be given by the Ministry for Foreign Affairs of the Republic of Serbia.

### **Article 149**

Any performer who is a foreign citizen shall be accorded the moral rights, regardless of whether the requirements referred to in Article 148 have been met.

## **IV. EXERCISE OF COPYRIGHT AND RELATED RIGHTS**

### **Article 150**

Any holder of copyright or related right shall be authorized to exercise his/her right either individually or collectively, except in the cases when the collective exercise of copyright and related rights is mandatory (Article 29, Paragraph 2, Article 39, 40, 117, 127, 142 and 146).

### ***1. INDIVIDUAL EXERCISE***

#### **Article 151**

(1) Copyright and related rights can be exercised individually either directly or through a duly authorized representative.

(2) Both natural or legal persons may act as representatives in the exercise of copyrights and related rights.

### ***2. COLLECTIVE EXERCISE***



## **2.1. Organization for Collective Exercise of Copyright and Related Rights**

### Article 152

- (1) Copyright and related rights can be collectively exercised through organizations for the collective exercise of such rights (hereinafter: the organization).
- (2) The organization shall not be established for the purpose of earning profit.
- (3) The organization shall specialize in the exercise of certain kinds of rights in connection with certain subject-matters of protection, in conformity with its statute.

### Article 153

- (1) Through the organization, the holders of copyright or related rights collectively exercise exclusive pecuniary rights stemming from copyright and/or related rights, as well as the right to claim the remuneration for their works and/or the subject matters of related rights.
- (2) In the case of exercising exclusive pecuniary rights, the holders of copyright and/or related rights shall, by the contract, licence their rights exclusively to the organization, instructing it to conclude contracts on the non-exclusive licensing of such rights, in its own name and for their behalf, with the users of works of authorship and subject-matter of related rights (hereinafter: the users).
- (3) In the case of exercise of the right to remuneration, the holders of copyright and/or related rights shall instruct the organization to collect that remuneration from the users, in its own name and for their behalf.
- (4) The organization has the right to perform control over the exploitation of the subject matters of protection on its repertoire
- (5) The organization shall have the right to protect the rights entrusted to it by the holders of copyrights and/or related rights to be collectively exercised, before courts and other authorities.
- (6) Upon the request of the organization, any authority responsible for maintaining the records of data that are relevant for determining the amount of remuneration, shall make such data available to the organization.

## **2.2. Foundation of the Organization**

### Article 154

The organization may be founded by authors and/or holders of copyright or related rights and/or their associations (hereinafter: the founders).

### Article 155

- (1) Memorandum of association shall be the founding document of the organization.
- (2) The founding decision shall be the founding document of an organization founded by one association.

### Article 156

- (1) The Organization can not perform any other activity except the activities provided for in the article 153 of this Law.
- (2) With the exception of the stipulations of Paragraph 1 of this Article, the organization may

- 1) perform activities realizing the artistic, expert or social interests of the holders of rights, and
- 2) performs specific administrative and technical services in the name and on the account of another organization, on the basis of a written contract.

(3) For the sake of more rational and efficient collection and distribution of the compensation for the use of copyright and related rights by means of a unified data base, the organizations for the collective management of copyright and related rights can form a joint Service.

(4) The special agreement shall determine the scope of its activities, competences, amount of the remuneration for its work and the systemization of the working posts of the personnel employed in the Service.

#### Article 157

(1) The founders of the organization shall obtain from the competent body the organization's operating license for performing the activities of that organization

(2) Only one organization can obtain an operating license for collective management of copyright or related rights for the same kind of rights on the same kind of work or subject matter of related rights.

(3) The application by the founders for the operating license shall be accompanied with the organization's founding document, statute, excerpt from the Register of Legal persons if the founders are legal persons, proof of the business seat of the organization, data on the number of authors or holders of right that empowered the organization to realize the rights regarding their works or subject matter of related rights, list of works or subject matter of related rights which will constitute the repertoire of the organization, proof on the fulfillment of the staff, technical and organizational conditions for the efficient collective management of rights entrusted to them and proof of payment of the prescribed administrative fee which is the income of the budget of the Republic of Serbia.

#### Article 158

The operating licence shall be issued to an organization that filed a request in compliance with the Article 157, paragraph 3 of this Law, if it fulfills the following conditions:

- 1) It has a business seat in the Republic of Serbia;
- 2) Its founders represent the majority of holders of copyrights and/or related rights in the activity of that organization that are residents or citizens of the Republic of Serbia;
- 3) In terms of staff, finances, equipment and organization, it is capable to efficiently exercise the rights of domestic and foreign holders of copyrights and/or related rights in the Republic of Serbia, and/or the rights of domestic holders of copyrights and/or related rights abroad in the fields to which its business relates.
- 4) foundation act and statute of the organization in compliance with the stipulations of this Law

#### Article 159

(1) It shall be taken that the organization realizes the conditions from Article 158, Paragraph 1, Item 3 of this Law if it has the following:

- 1) business premises equipped with the usual communication and information equipment;

- 2) employee with the diploma of the Faculty of Law and at least two years of expert experience and the knowledge of one of the world languages;
  - 3) employee who meets the prescribed demands for book keeping and has at least two years of working experience on the tasks of organizing and performing book keeping.
- (2) Expert education and knowledge of languages is proved by the appropriate documents, and the working experience by documentation from which it is obvious how the experience has been gained.

#### Article 160

- (1) The competent authority shall render a decision granting the operating licence or a decision rejecting the application, within 30 days from the filing date of the application for the operating licence
- (2) If the request filed for the grant of the permission has been formally incorrect in the meaning of Article 157 and 159 of this Law or if the forwarded foundation actor the statute contain regulations which are contrary to the stipulations of this law, the competent body shall invite the person filing the request to correct the request filed according to the mentioned objections, in the term of 15 days from the receipt of the objections
- (3) If in the tem provided, the person filing the request does not correct his request in compliance with the objections of the competent body, the competent body shall reject the request.
- (4) Based on the decision granting the operating license, the organization shall acquire the right to engage in the collective management of copyright and/or related rights for the period of five years as of the date of rendering the decision.
- (5) The organization shall have the right to apply for the renewal of its operating licence for an unlimited number of times in the way and following the procedure prescribed by this law for the obtaining of the license.

#### Article 161

- (1) The organization shall acquire the status of a legal person once it is entered in the register of associations in compliance with the Law that regulates the legal position of associations.
- (2) The application the founders of the organization for entry in the register referred to in paragraph 1 of this Article shall be accompanied with the decision of the competent authority granting its operating licence.
- (3) Any organization that does not renew its operating licence before the expiration of the term referred to in Article 160, paragraph 4, of this Law, or the one whose operating license is revoked pursuant to Article 162 of this Law, after the performed procedure of liquidation or bankruptcy in compliance with the law regulating the procedure of liquidation or bankruptcy shall be deleted from the register referred to in paragraph 1 of this Article or the register from Article 163 of this Law.

#### Article 162

- (1) The competent authority shall revoke the organization's operating license where it establishes that:
  - 1) The operating license was issued on the basis of false data;
  - 2) The organization has stopped fulfilling some of the prescribed conditions for issuing a license from Article 158 of this Law;
  - 3) The organization has seriously and repeatedly violated the provisions of this Law;

4) The organization has not fulfilled its obligation in compliance with Article 187 of this Law.

(2) Before the revocation of the operating license, from the reasons stated in Paragraph 1, items 2, 3 and 4 of this Article, the competent body shall state in writing the mistakes in the work of the organization, direct measures for the correction of mistakes and determine the deadline for their removal.

(3) The decision on revoking the operating license referred to in Paragraph 1 of this Article shall be final and an administrative dispute can be initiated against it.

(4) The competent authority shall notify the authority competent for maintaining the register in which the organization is registered, of the decision referred to in Paragraph 1 of this Article.

(5) The decision on granting, renewing and revoking of an operating licence shall be published in the Official Gazette of the Republic of Serbia.

#### Article 163

(1) The organization shall be entered in the register of organizations for the collective exercise of copyrights and related rights maintained by the competent authority.

(2) The following shall be entered in the register of organizations for the collective exercise of copyright and related rights referred to in Paragraph 1 of this Article: name and corporate domicile of the organization, business activity of the organization, date of entry, date of renewal of entry and the date deletion of the organization from the register, contracts on co-operation with foreign organizations and the data on membership in international organizations.

(3) The organization shall notify the competent authority of any change of data entered in the register of organizations for the collective exercise of copyrights and related rights, within fifteen days from the occurrence of such change.

(4) The changes referred to in Paragraph 3 of this Article shall be entered in the register of organizations for the collective exercise of copyrights and related rights.

(5) The data concerning the register of the organization for collective management of copyright and related rights are available to all the interested parties.

### **2.3. Bodies of the Organization**

#### Article 164

(1) The organization shall be governed by its founders and members in accordance with the organization's statute.

(2) The organization's bodies shall be: General Assembly, Board of Directors, Managing Director and the Supervisory Board.

### **2.4. General Acts of the Organization**

#### Article 165

(1) The organization's general acts shall be: the Statute, Schedule of fees, Distribution plan and other general acts dealing with certain matters concerning the business activity of the organization.

(2) The Statute shall be the organization's basic act and other general acts shall be compliant with it.

(3) The individual acts adopted by the organization's bodies and authorized officers of the organization shall be compliant with the organization's general act.

#### Article 166

- (1) The Statute of the organization shall include provisions on the kind and subject matter of the rights collectively exercised through the organization.
- (2) The Statute of the organization shall be adopted by the organization's General Assembly, by simple majority of votes of the members of the Assembly.

#### Article 167

- (1) The distribution plan contains criteria on the basis of which the organization distributes to the holders of copyright and related rights the income collected from the users in the form of the remuneration for the use of the subject matter of protection.
- (2) The principles of the distribution plan are the following: proportionality, appropriateness and justice, that depend on the: kind of the subject matter of protection, manner of use of the subject matter of protection, scope of use of the subject matter of protection and other goals established by the foundation act of the organization.
- (3) The distribution plan is established by the assembly of the organization.

#### Article 168

In compliance with the statute and the decisions of its bodies, the organization takes part of the income collected from the users to cover the costs of its operations.

### 2.5 The concept of Tariff

#### Article 169

Tariff is the general act of the organization that determines the amount and way of determining remuneration that the organization charges from users for specific kinds of use of copyright protected works and subject matter of related rights and pays special remuneration to the obligors.

##### 2.5.1

#### Rules for the Determination of the Tariff

#### Article 170

- (1) Tariff must be appropriate to the kind and manner of use of the copyright protected work or the subject matter of related rights.
- (2) If the use of the subject matter of protection is indispensable for the performing of the activities of the user (in the case of broadcasting or concert use of the subject matter of protection, and similar) the tariff is determined, as a rule, in the percentual amount from the income that the user realizes by performing activity in the framework of which the subject matter of protection is being used. That amount must be proportional to the importance that the use of the subject matter of protection from the repertoire of the organization has for the income of the user.
- (3) If by using the subject matter of protection the user from Paragraph 2 of this Article does not realize an income, the tariff is determined in the percentual amount of the expenses necessary for the performing of that activity in the framework of which the subject matter of protection is being used, taking into account the importance of the use of the subject matter of protection for the activities of the user.
- (4) Along with the remuneration determined in a way prescribed by the Paragraphs 2 and 3 of this Article, the tariff also determines the lowest amount of remuneration for the use of the subject matter of protection from the repertoire of the organization.

- (5) In the course of determining the tariff, the tariffs of the collective management organizations of the states which have the similar value of gross domestic product to the GDP of the Republic of Serbia are taken into consideration.

#### Article 171

- (1) If the use of the subject matter of protection is not necessary for the performing of activity of the user, but only useful or pleasant (such as in transport, hotelier and catering industry, merchant and manufacture shops, shopping malls, exhibition spaces and similar) and under condition that the determination of tariff in percentual amount would be impossible or unreasonably difficult, the tariff can be determined as a lump sum.
- (2) During the determination of the amount of the lump sum remuneration, the following shall be taken into consideration:
  - 1) kind and manner of use of the subject matter of protection;
  - 2) geographical location of the seat of the user;
  - 3) kind and size of the space where the subject matter of protection is being used;
  - 4) duration and scope of use and prices of services offered by the user.

#### Article 172

- (1) If the use of the copyright protected works is performed together with the use of the subject matter of related rights, i.e. if there are more holders of rights involved in one use of work, the tariffs are determined proportionally.
- (2) For the calculation of proportion between the tariffs of remuneration for the copyright and related rights, the usual international practice is meritory.

### 2.5.2 Negotiations and Agreement on the Tariff

#### 2.5.2.1 Negotiations on the Tariff

#### Article 173

The organization initiates negotiations about the tariff by the publication of the invitation to the associations of users and individual users in the “Official Gazette of the Republic of Serbia”, on its internet page and in one of the daily papers with high circulation.

#### 2.5.2.2

#### Article 174

- (1) After the concluded negotiations between the organization and the representative association of users, the tariff is determined by agreement in writing. We take as representative the association of users which on the territory of the Republic of Serbia represents the majority of users from a certain profession, or the one which can be acknowledged as representative on the basis of other regulations. If there is no such association, the representation authority shall be determined based on the number of the users that the association represents, the activity of the association, the degree of competent organization within the association and the similar.
- (2) The tariff can be determined also by the agreement in writing between the organization and the individual user, if the nature of conducting business of that user is such that makes him the only person performing that kind of activity in the Republic of Serbia. The provisions of this Law referring to the representative association of users also apply to the individual user.

- (3) The companies of the public broadcasting service are the individual users with whom the organizations determine the tariff by written contract in the meaning of Paragraph 2 of this Article.
- (4) The tariff, determined in a way prescribed in Paragraphs 1 and 2 of this Article, is published by the organization in the “Official Gazette of the Republic of Serbia”, and the tariff is enforced on the eight day from the publication date.
- (5) Until the termination of the procedure for the determination of the tariff in a way prescribed by this Article, the remuneration is paid according to the existing tariff.

#### 2.5.2.3 Mandatory Content of the Written Agreement

##### Article 175

The written agreement from article 174 must contain:

- 1) the amount of remuneration for the use of copyright protected work or the subject matter of related rights from the repertoire of the organization;
- 2) conditions for the use of copyright protected work or subject matter of related rights from the repertoire of the organization;
- 3) deadline and way of payment of the remuneration;
- 4) conditions of use which influence the increase or decrease of the certain amount of remuneration in the tariff.

#### 2.5.2.4 Determination of the Draft Tariff by the Administrative Board of the Organization

##### Article 176

- (1) If in the term of two months from the publication of invitation from article 173 of this Law, agreement is not reached, the proposal of the tariff is determined by the administrative board of the organization. The draft tariff thus determined is communicated to the Commission for Copyright and Related Rights (henceforward: Commission) for opinion.
- (2) Until the finalization of procedure concerning the determination of the tariff in a way prescribed by this Article, the remuneration is paid according to the existing tariff.

#### 2.5.2.5 Determination of a Single Equitable tariff for the Exercise of Rights from Articles 117 and 127 of This Law

##### Article 177

- (1) The single equitable tariff for the exercise of rights from Articles 117 and 127 of this Law is determined by an agreement in writing between the organization of the producers of phonograms and the organization of the performers from one side, and the representative association of users from the other side.
- (2) The organization of the producers of phonograms and the organization of the interpreters initiate together the negotiations on the single equitable tariff and negotiate jointly with the representative association of users in the procedure and in a way determined by article 173 and 174 of this Law.
- (3) The single equitable tariff determined in a way prescribed by Paragraph 1 of this Article is published jointly in the “Official Gazette of the Republic of Serbia”.
- (4) The tariff is enforced on the eight day from the date of publication in the “Official Gazette of the republic of Serbia”.

- (5) If, in the term of 2 months from the publication date of the invitation from Article 173 of this law, agreement from paragraph 1 of this article is not reached, the proposal of a single equitable remuneration is determined by the administrative boards of the organizations on the basis of a written agreement.
- (6) The proposal of a single equitable tariff is forwarded to the Commission for an opinion.
- (7) If in the term of 90 days from the date of the publication of the invitation from article 173 of this Law, the organization of the producers of phonograms and the organization of the interpreters do not file to the Commission the request for the opinion on the proposal of the single equitable tariff, that tariff shall be determined by the Commission.

#### 2.5.2.6 The Determination of a Single Equitable Tariff for the Payment of a Special Remuneration

##### Article 178.

- (1) The single equitable remuneration for the realization of right to a special remuneration from article 39 and 146 of this Law, which is paid from the first sale or import into the Republic of Serbia of devices to sound or visual recording and empty carriers of sound, picture and text, is determined by agreement in writing between the organizations which exercise the right of those holders of copyright and related rights that by the virtue of this law enjoy the right to a special remuneration on one side and on the other side the representative association of producers or importers of devices for sound and visual recording and importers of empty carriers of sound, picture and text.
- (2) The organizations from Paragraph 1 of this Article jointly initiate the negotiations on the single equitable tariff, jointly negotiate in the procedure and in a way determined by article 173 and 174 of this Law and jointly publish the single equitable remuneration from paragraph 1 of this article in the "Official Gazette of the Republic of Serbia".
- (3) The single equitable remuneration determined in a way prescribed by Paragraphs 1 and 2 of this Article is enforced on the eight day from the publication date in the "Official Gazette of the Republic of Serbia".
- (4) If in the term of two months from the date of the publication of the invitation from Article 174 of this Law, the agreement from Paragraph 1 of this Article has not been reached, the proposal of the single equitable tariff from Paragraph 1 of this Article is determined by the administrative boards of the organizations on the basis of a written agreement.
- (5) The proposal of a single equitable remuneration is communicated to the Commission for an opinion.
- (6) If in the term from 90 days from the publication of the invitation from the article 173 of this Law, the organizations from paragraph 1 of this article do not file to the Commission the request for the opinion on the proposal of a single equitable tariff, that tariff shall be determined by the Commission.
- (7) The collection of the single equitable remuneration from Paragraph 1 of this Article is performed by the organization for the collective management of musical rights with the previously reached agreement in writing with the organizations that participated in the negotiations on the single equitable tariff and the amount of the expenses of



- collecting the special remuneration and the regime of distribution of the special remuneration among the organizations from this paragraph.
- (8) The organization for the collective management of musical rights has the obligation to divide the totally collected special remuneration, after the deduction of expenses of collection of the special remuneration determined as agreed, to the authors and direct to the organizations of the interpreters and the producers of phonograms or videograms in the following way: 40% to the authors, 30% to the interpreters and 30% to the producers and phonograms and the producers of videograms.

## **2.6. Application of Other Laws *Mutatis Mutandis***

### Article 179

The provisions of the law regulating the legal status of associations shall apply accordingly to the organization, unless otherwise provided by this Law.

## **2.7. Duties of the Organization**

### Article 180

- (1) In the conduct of the organization's business, it shall be assumed that organization is authorized to act on behalf of all holders of the copyright and/or related rights with respect to any rights and any kind of subject-matters of protection that are within the scope of its business activity.
- (2) Any holder of a copyright and/or related right that has not concluded the contract referred to in Article 153 of this Law with the organization, may notify the organization in writing of his/her intention to exercise the rights individually, except in the case when this Law prescribes the compulsory collective management of copyright and related rights (Article 29, Paragraph 2, Articles 39, 40, 117, 127, 142 and 146).
- (3) The organization shall notify the users of the names of the holders of copyright and/or related rights referred to in Paragraph 2 of this Article.
- (4) With respect to the distribution of remuneration, the organization shall treat the holders of copyright and/or related rights who have not notified the organization of their intention to exercise their rights individually equally to the holders of copyright and related rights who have concluded the contract referred to in Article 153 of this Law with the organization.

### Article 181

- (1) The organization has an obligation to inform regularly the users and interested parties through the mass media and by electronic publishing on its Internet page on the following:
- 1) categories of the holders of right it represents;
  - 2) pecuniary rights that are realized;
  - 3) categories of users of the subject matter of protection and other natural and legal persons that are obligors to pay the remuneration;
  - 4) contents of the general acts of the organization (statute, tariff, distribution plan, etc)
  - 5) number and list of bilateral contracts concluded with the foreign organizations;
  - 6) data on the authorized representatives of the organization;
  - 7) working hours of the organization.
- (2) The organization has the obligation to give information, to every user or other person having legal interest, about its repertoire and the conditions for the exercise of copyright and related rights.

#### Article 182

The organization has the obligation to make the following information available to the members of its organization, apart from the information from Article 181 of this Law, on its internet page:

- 1) list of the members of the assembly, administrative board and supervisory board;
- 2) annual report on conducting business;
- 3) information on the sessions of the assembly (date, time, venue, agenda and decisions of the assembly);
- 4) decisions of the administrative board and the supervisory board.

#### Article 183

(1) The organization shall conclude a contract of non-exclusive licensing of the right of exploiting the subject-matter of protection from its repertoire with each interested user and/or association of users, under equal and appropriate terms.

(2) The contract referred to in Paragraph 1 of this Article shall include the following in particular: kind of the subject-matter of protection, mode of exploiting the subject-matter of protection, amount of remuneration and manner of its payment to the organization and a period in which the contract is to be effective.

#### Article 184

The organization shall distribute to the holders of copyright and/or related rights who have concluded with it the contract referred to in Article 153 of this Law and the holders of copyright and related rights referred to in Article 180, Paragraph 4, of this Law, the income from the remuneration collected from users, except for funds designated for the purposes referred to in Article 165 of this Law, in accordance with the Distribution Plan.

#### Article 185

(1) The distribution referred to in Article 184 of this Law shall be based on accurate Data concerning the use of the subject matter of protection.

(2) If accurate data are not available and/or if the collection of accurate data would create an unacceptable organizational and financial burden for the organization, the distribution plan may be based on estimates stemming from relevant and verifiable facts.

#### Article 186

(1) The organization shall provide for the collective exercise of copyrights and related rights of domestic holders abroad, as well as those of foreign holders in the Republic of Serbia, on the basis of contracts concluded with appropriate foreign organizations.

(2) The organization has the duty to fulfill the obligation from Paragraph 1 of this Article in the period of five years from the date of acquisition of the first operating license.

### **2.8. Duties of the Users**

#### Article 187

(1) The users have an obligation, in compliance with Article 183 of this Law, to acquire from the organization the rights for the use of the subject-matter of the protection before the begin of the actual utilization of the subject matter of protection.

(2) The users have the obligation to notify the organization of the title of the subject-matter of protection, frequency and extent of its exploitation, as well as of other

circumstances of relevance for the calculation of the remuneration payable in accordance with the tariff.

(3) The data referred to in Paragraph 2 of this Article shall be forwarded to the organization within 15 days from the date of the beginning of exploitation of the subject matter of protection, in a way and in a form prescribed by the general acts of the organization.

(4) The users who are authorized under this Law to exploit subject-matter of protection without permission of the right holders, and with the obligation of payment of the remuneration, shall forward the data referred to in Paragraph 2 of this Article monthly, in a way and in a form prescribed by the general acts of the organization.

(5) The broadcasting organizations have an obligation to send once a month a list of broadcasted subject matters of protection to the organizations whose subject matters of protection have been used in a way and in a form determined by the general acts of the organization.

(6) The users have the obligation to enable to the authorized persons from the organization, in the course of control of the use of the subject matters of protection, the insight into the documentation and the data relevant for the calculation of the remuneration which must be paid according to the tariff.

(7) An owner, holder and lessee of the premises in which the subject-matter of the protection was used, as well as the organizer of the activity by which the subject matter was used, shall be jointly and severally liable for the user's obligations.

(8) In case of a dispute between the organization and the user regarding the amount of remuneration, the user shall pay to the organization the amount determined by the previously valid tariff, until the dispute is resolved by the final and enforceable decision. If the amount in question refers to the tariff number which did not exist in the previously valid tariff, the user has the obligation to pay to the organization the amount envisaged in the new tariff into the special fund which is not distributed to the holders of right until the legal dispute has been finally resolved.

## **2.9. Supervision over the Organization's Activity**

### **Article 188**

(1) The supervision over the operations of the organization shall be done by the competent authority that supervises whether the organization performs its tasks in compliance with the license granted and in compliance with the provisions of this Law.

(2) For purposes of the supervision, the organization shall submit the following to the competent authority:

- 1) Annual business report and annual account and the report of the competent auditor;
- 2) agreements between the organization and the representative associations of users;
- 3) Amendments to the Statute, tariff and amendments thereto, remuneration distribution plan and amendments thereto, contracts with appropriate foreign organizations and court and administrative decisions where the organization was party.

(3) The organization shall submit the documents and data referred to in Paragraph 2 of this Article within 15 days from their adoption, or the receipt of the report, and/or the date of change.

### **Article 189**

- (1) The organization has an obligation to adopt or obtain the following for very previous business year, in the period of six months after its termination:

- 1) annual reports of the management bodies and the supervisory bodies concerning the amount of the collected remuneration, its distribution, the business of the collective management organization, the execution of the agreements concluded with the representative association of users and the execution of contracts concluded with the foreign organizations;
  - 2) report of the empowered auditor;
  - 3) proposal of the financial plan of the organization for the following year which includes the plan of its business expenses.
- (2) The provisions of this Article do not influence the obligations which the organization has regarding other legislation concerning financial management, reports and auditing.

#### Article 190

- (1) The annual report on conducting business, the balance sheet and book keeping must be submitted to auditing.
- (2) The auditing of the management of the organization can be performed only by a competent auditor, in compliance with the Law on Accounting and Auditing.
- (3) The auditor report is accordingly subject to the regulations of the Law on Accounting and Auditing.

#### Article 191

- (1) The competent authority shall have the right to have its representatives present at the sessions of the organization's bodies, as well as the right to inspect business records and other business documentation
- (2) The representative of the competent authority has the right to state its opinion on all the issues referring to the issues of collective management of copyright and related rights and the compliance with the legislation without the right to vote at all the sessions of the bodies of the organization.
- (3) The competent body may demand from the organization a written answer concerning all the issues referring to the activities and management of the organization.
- (4) If the competent authority establishes the irregularities in the organization's activity, it shall indicate them, issue an order for the application of measures for the elimination of irregularities and set a term for their elimination.

### V COMMISSION FOR COPYRIGHT AND RELATED RIGHTS

#### 1. Commission for Copyright and Related Rights

#### Article 192

- (1) The Commission for Copyright and Related Rights is an expert body competent to give opinion in the field of management of copyright and related rights concerning the draft tariff proposed by the organizations.
- (2) The Commission is not a permanent body.

##### 1.1 Composition of the Commission

#### Article 193

- (1) The Commission is composed of a president and four members.

(2) The president and members of the Commission are nominated from the ranks of well known experts whose previous work and knowledge of the problems of the exercise of the copyright and related rights can contribute to the realization of goals inspiring the establishment of the Commission.

## 1.2 The Nomination of the Commission

### Article 194

(1) The president and the members of the Commission are nominated by the Government at the proposal of the manager of the competent body. Apart from the president and the members, the vice-president and two deputy members of the Commission shall also be nominated who must fulfill the requests provided by Article 193 of this Law.

(2) For the preparation of the proposal from Paragraph 1 of this Article, the manager of the competent body publishes in the “Official Gazette of the Republic of Serbia”, on its internet page and in one daily paper with high circulation, the invitation to the organizations and representative associations of users to propose the candidates for the members of the Commission and their deputies, in particular: two members of the Commission and one deputy member of the Commission each. The president and the vice president are proposed by the competent body.

(3) The organizations and representative associations of the users can communicate to the competent body the written reasoned proposals for the candidates for the members of the Commission and their deputies in the period of one month from the publication date of the of the public invitation from Paragraph 2 of this Article.

(4) On the basis of the received proposals from Paragraph 3 of this Article, the competent body proposes to the Government the composition of the Commission.

(5) If the competent body considers that the proposed candidates do not meet the conditions from Article 193 it can repeat the public invitation.

(6) The mandate of the president and the members of the Commission, as well as their deputies, last for four years. After the expiration of the mandate of the president and the members of the Commission, as well as their deputies, the competent body again implements the procedure of proposal according to the regulations of this Article.

(7) The president and the members of the Commission, as well as their deputies whose mandate has elapsed, can be nominated again.

## 1.3 Termination of the function of the president or the member of the Commission

### Article 195

(1) The member of the Commission can be removed from duty before the expiration of time for his nomination if:

- 1) he does not perform his duty in a conscientious or impartial way;
- 2) he permanently loses capacity for performing his duty due to illness or other justified causes;
- 3) he personally asks to be relieved from duty for other justified reasons.

(2) The member of the Commission is relieved from duty by the Government.

## 1.4 Clerical Jobs and Administrative Assistance

### Article 196

- (1) The competent body secures the premises and equipment for the operations of the Commission and provides the necessary administrative and technical conditions for work.
- (2) The competent body performs all the accounting tasks connected to the payment of the compensation for work and expenses to the members of the Commission.

## 1.5 Initiating procedure before the Commission for Copyright and Related Rights

### Article 197

- (1) Procedure for the obtaining of opinion on the proposal of tariff is initiated by the written request submitted by the Organization to the Commission in the period of three months from the date of the publication of the invitation mentioned in article 173 of this Law, at the latest.
- (2) If the proposal of a single equitable tariff has been agreed upon by two or more organizations, those organizations jointly initiate the procedure before the Commission for obtaining the opinion on the proposal of a single equitable tariff.

### 1.5.1 Contents of a Request for Obtaining the Opinion on the Proposal of a Tariff

#### Article 198

- (1) The request for the obtaining of opinion on the proposal of the tariff must contain:
  - 1) data on the person or persons submitting the request;
  - 2) proposal of the tariff;
  - 3) if negotiations have been held, the citations of the present course and results of the negotiations on the tariff, as well as explanation why the agreement on the tariff has not been reached;
- (2) The request for the obtaining of opinion on the proposal of the tariff is forwarded in two copies.

## 1.6 Procedure before the Commission

### Article 199

- (1) One copy of the request from article 198 of this Law is forwarded by the Commission to the representative association of users or the individual user inviting it to make a statement about the issue in the course of 30 days from the reception date.
- (2) If the representative association of users does not make a statement in the envisaged term concerning the forwarded request, the Commission states an opinion on the basis of the submitted request.
- (3) The Commission can make an appointment for consultations with the representatives of the organization and the representative association of users if it considers it necessary.

## 1.7 The Opinion of the Commission

### Article 200

- (1) The opinion of the Commission from Article 192 of this Law contains the evaluation whether the proposal of the tariff of the organization includes those rights for which the organization has the license for collective management issued on the part of the

- competent body and whether the compensation has been determined in harmony with the rules for the determination of the tariff prescribed by this Law.
- (2) The Commission gives an opinion at the session, by the majority of votes of the Commission. The opinion of the Commission is signed by the president of the Commission.
  - (3) The opinion from Paragraph 1 of this Article is given by the Commission in the term of 60 days from the date of the receipt of the request from Paragraph 198 of this Law.
  - (4) The opinion is forwarded to the organization and the representative association of users or the individual user.
  - (5) The organization publishes a tariff in the “Official Gazette of the Republic of Serbia” in the term of 15 days from the receipt of the opinion, if the Commission has evaluated in its opinion that the proposal of the tariff includes the collective management of all the rights covered by the license issued by the competent body, and that the remuneration has been determined in compliance with the regulations for the determination of a tariff prescribed by this Law.
  - (6) If the Commission holds the opinion that the proposal of the tariff does not include all those rights for which the organization holds the license for collective management issued by the competent body or that the remuneration has not been determined in harmony with the regulations for the determination of the tariff prescribed by this Law, the organization has the obligation to repeat the negotiations with the representative association of users, in the period of 30 days from the receipt of the opinion of the Commission mentioned in this Article, or to forward a new proposal of tariff to the Commission for an opinion in the same term.
  - (7) If, after the consideration of the new proposal of the tariff from paragraph 6 of this article, the Commission evaluates that the remuneration is not determined in compliance with the rules for the determination of the tariff prescribed by this Law, it shall pass alone the decision about the tariff.

#### 1.8 Expenses of the Procedure before the Commission

##### Article 201

- (1) The president and the members of the Commission have the right to compensation for their work. The compensation shall be covered by the parties participating in the procedure before the Commission, in equal parts.
- (2) The amount of compensation for the work of the members of the Commission equals 20% from the basic monthly salary of the judge of the district court for every initiated month of the course of procedure, and the amount of the compensation for the work of the president of the Commission equals the amount of the compensation for the member increased for 10%
- (3) The government shall regulate by special provision the manner of payment of the compensation for the work of the Commission.

## **VI. RECORDS OF WORKS OF AUTHORSHIP AND SUBJECT-MATTERS OF RELATED RIGHTS**

##### Article 202

- (1) For the purpose of securing the evidence, the holders of copyright and related

rights may deposit copies of their works and subject-matters of related rights with the competent authority.

(2) The copies of works and subject-matters of related rights to be deposited shall be in the form of a written document (manuscript, printed text, musical score), sound, visual or audio-visual recording or in digital form.

(3) The competent authority shall keep a record of each kind of works of authorship and subject-matters of related rights.

(4) When a work of authorship or subject-matter of related rights is being deposited and entered into records, the holder of copyright or related right concerned shall give true and complete data about his/her work of authorship or subject-matter of related right.

(5) The data entered in the records shall be deemed true until proven to the contrary.

(6) Any *bona fide* person, who has infringed somebody else's copyright or related right in reliance on the accuracy of the data entered in the records, shall not be liable for damages for such infringement.

(7) The entry in records and depositing of the copies of works of authorship and subject-matters of related rights, shall in no way affect the onset and duration of the rights determined by this Law.

(8) The contents of the records referred to in Paragraph 3 of this Article and the requirements to be met by the copies of works and subject-matters of related rights that are being deposited shall be determined by a specific regulation.

#### Article 203

The prescribed fee shall be paid for entering the copies of authorship in the records and depositing them.

### **VII. PROTECTION OF COPYRIGHT AND RELATED RIGHTS**

#### Article 204

The infringement of the copyright or related rights is the unauthorized performance of any act encompassed by the exclusive rights of the holder of copyright or related rights, not paying remuneration prescribed by this Law or contract, as well as inobservance of other obligations due to the holder of copyright or related rights, as prescribed by this Law.

#### Article 205

(1) Any holder of copyright, performer, producer of a phonogram, producer of a videogram, producer of a broadcast, producer of a database and acquirer of exclusive license for copyright and related rights, may file a suit and request particularly the following:

- 1) Determination of the infringement of a right;
- 2) Termination of the infringement of a right;
- 3) Destruction or alteration of the objects instrumental to the infringement on rights, including copies of the subject-matter of protection, their packaging, stencils, negatives and the like;
- 4) Destruction or alteration of the tools and equipment that has been used for production of the objects instrumental to the infringement of rights, if so is necessary for the protection of rights;



- 5) Compensation for material damages;
- 6) Publication of the court decision at the defendant's expense.
- (2) Any author and/or performer shall have the right to file a suit and request compensation for non-material damage for infringement of his/her moral rights.
- (3) The provision of Paragraph 1, Item 3, of this Article shall not apply to the following:
  - 1) Constructed works of architecture;
  - 2) Separable parts of the object which was instrumental to the infringement of rights, if the production of such parts and marketing thereof are not illegal.
- (4) The plaintiff may, instead of a request for the destruction or alteration of the objects that were instrumental to the infringement on a right (Paragraph 1, Item 3, of this Article), request such objects to be handed over to him/her.

#### Article 206

If the infringement of a pecuniary right was done intentionally or by gross negligence, the plaintiff may, instead of indemnity for material damage, claim up to threefold amount of usual remuneration that would have been paid had the concrete protected subject-matter been used lawfully.

#### Article 207

- (1) Notwithstanding the provision in Article 9, Paragraph 2 of this Law, if the plaintiff's name is stated on the copy or other form of materialization of the author's work and/or subject-matter of related right, he will be considered to be the holder of copyright to that work and/or related right to that subject-matter of protection, until proven otherwise.
- (2) Proceedings for the infringement on copyright and related rights shall be urgent.

#### Article 208

Apart from the cases envisaged by the provision of article 204 of this Law, the following shall be deemed to be an infringement of right:

- (1) Any of the following shall be deemed to be an infringement of the right:
  - 1) The exploitation of any of the subject-matters of protection involving the use of copies of such subject-matter of protection that were made without authorization, and/or are based on the unauthorized broadcasting;
  - 2) Holding copies of the work of authorship or subject-matter of related right for commercial purposes, if the holder knows or has reason to know that such copies are produced without authorization;
  - 3) Production, import, marketing, sale, rental, advertising for the purposes of sale or rental or holding for commercial purposes of the devices primarily constructed, produced or adjusted for enabling or facilitating the circumvention of any technological measure, which do not have any other significant purpose than the said one;
  - 4) Circumvention of any technological measure, or supply or advertising of services enabling or facilitating such circumvention;
  - 5) Removal or alteration of the electronic information regarding rights, or marketing, import, broadcasting or public communication in any other manner of the work of authorship or the subject-matter of the related rights, from which the electronic information on rights is removed or altered without

authorization, where the perpetrator knows or has reason to know that by doing so he induces, enables, facilitates or conceals infringement of copyright or related right.

(2) For the purposes of Paragraph 1 of this Law:

1) the term “technological measures” shall mean any technology, device or component constructed in such manner as to prevent or restrict, during the normal course of its operation, the acts regarding the works of authorship or any other protected subject-matter, which are not authorized by the holder of copyright or holder of related rights;

2) the term “information on rights” shall mean any information originating from the holder of the right that identifies the work of authorship or the subject matter of related right, the author, and/or the holder of the right, or the information on the conditions of the use of a work or subject-matter of related right, or any number or code representing such information.

#### Article 209

(1) Copyright and performers’ rights may not be the subject of the judicial enforcement

(2) Only specific pecuniary claims stemming from the rights referred to in Paragraph 1 of this Article may be the subject of the judicial enforcement.

(3) Unfinished works and unpublished manuscripts may not be the subject the judicial enforcement.

#### Article 210

At the request of a holder of the right who makes it credible that his/her copyright or related right has been infringed on or will be infringed on, the court may order a provisional measure involving the seizure or removal from the market of the object with which the infringement is made and/or a provisional measure involving a prohibition against the acts under way, which could be conducive to infringement.

#### Article 211

(1) At the request of the holder of the right who makes it credible that his/her copyright or related right has been infringed, or that such infringement is imminent or that irreparable harm is likely to occur, as well as that there is justified apprehension that the evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order a measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected.

(2) For the purposes of Paragraph 1 of this Article, the securing of evidence shall mean the inspection of premises, books, documents, databases, etc., as well as the seizure of documents and infringing goods, interrogation of witnesses and expert witnesses

(3) The court order for measures to secure evidence shall be served to the person from which evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible.

#### Article 212

(1) Temporary injunctions or the securing of evidence from Articles 210 and 211 of this Law may be requested even before filing an action.

(2) In the case referred to in Paragraph 1 of this Article, decision establishing the temporary injunction or the securing of evidence shall contain the period in which the action has to be filed which shall not be shorter than 30 days from the date of passing the decision on the determination of the temporary injunction or decision providing the securing of evidence.

(3) An appeal filed against a decision ordering a provisional measure referred to in Article 210 shall not postpone the execution of the decision.

#### Article 213

(1) The court may order the defendant to furnish information about third parties related to the infringement or hand over documents relating to the infringement.

(2) The person that fails to perform its obligation referred to in Paragraph 1 of this Article shall be liable for the damage thus incurred.

#### Article 214

In the event of a dispute for the determination of rights of a publisher and/or a person who published a work whose author is unknown (Article 13), the court shall provide for the author's anonymity to be preserved.

### **VIII. PENAL PROVISIONS**

#### Article 215

(1) A punishment is envisaged for the economic transgression as a pecuniary penalty in the amount of 100,000 to 3,000,000 dinars against business company or any other legal person that:

- 1) discloses, records, reproduces or communicates to the public in any manner wholly or partly, a work of authorship, performance, phonogram, videogram, broadcast or database without permission, or markets or rents or holds in possession in commercial purposes copies of works of authorship, performances of phonograms, videograms, broadcasts or databases that have been reproduced or placed on the market without authorization (Articles 16, 20, 21, 22, 25, 26, 27, 28, 29, 116, 126, 131, 136 and 140 of this Law);
- 2) markets or rents copies of works referred to in paragraph 1 of this Article, for the purpose of deriving pecuniary benefit for itself or somebody else, knowing that they were disclosed, recorded or reproduced without authorization (Articles 16, 20, 21, 22, 25, 26, 27, 28, 29, 116, 126, 131, 136 and 140 of this Law);
- 3) produces, imports, markets, sells, rents, advertises for the purposes of sale or renting, or holds for commercial purposes devices primarily constructed, produced or adjusted for enabling or facilitating the circumvention of any technological measure, which do not have any other significant purpose than the said one (Article 208, paragraph. 1 item 3 of this Law);
- 4) circumvents any technological measure, or supplies or advertises the services which enable or facilitate such circumvention (Article 208, paragraph 1, item 4 of this Law);
- 5) removes or alters electronic information on rights, or markets, imports, broadcasts or in any other manner communicates the work of authorship or the subject-matter of related right to the public, from which the electronic information on rights has illegally been removed or altered, while knowing or having reason to know that by doing so it instigates, enables, facilitates or conceals the infringement of a copyright or related right (Article 208,

Paragraph 1, Item 5 of this Law);

6) being the owner of a building, makes an alteration on the building which is materialized copy of the work of architecture without prior offering the author to do the alterations of the work (Article 38 of this Law);

7) does not forward to the organization or does not forward in the prescribed period the data on the title of the subject matter of protection, frequency and scope of utilization, as well as other circumstances which are relevant for the calculation of the remuneration that must be paid according to the tariff (Article 39, Paragraph 7 and Article 187, Paragraphs 2, 3, 4 and 5 of this Law).

8) conducts collective exercise of copyright and/or related rights without permission of the competent authority (Article 160, paragraph 4 of this Law).<sup>52</sup>

(2) The responsible person in the business company or other legal person concerned shall also be punished for economic transgression by a pecuniary penalty in the amount of 50,000 to 200,000 dinars for any of the acts referred to in Paragraph 1 of this Article.

(3) Objects implying performing economic transgression and objects which were instrumented for the performing of economic transgression from Paragraph 1 of this Article shall be confiscated and all the objects implying performing economic transgression shall also be destroyed.

(4) The decision pronouncing the punishment for the economic transgression from Paragraph 1 of this Article to the offender is published publicly.

#### Article 216

(1) The entrepreneur shall be punished for economic transgression by a pecuniary penalty in the amount of 50,000 to 500,000 dinars for any of the acts referred to in Article 215, Paragraph 1, Items 1, 2, 3, 4, 5 and 7.

(2) The natural person shall be punished for the economic transgression by a pecuniary penalty in the amount of 10,000 to 50,000 dinars for acts referred to in Article 215, Paragraph 1, Item 6 of this Law.

(3) Objects implying performing economic transgression and objects which were instrumented for the performing of economic transgression from Paragraphs 1 and 2 of this Article shall be confiscated and all the objects implying performing economic transgression shall also be destroyed.

#### Article 217

(1) A punishment is envisaged for the economic transgression as a pecuniary penalty in the amount of 100,000 to 1,000,000 dinars against business company or any other legal person that:

- 1) without stating the author's or performer's name or under different name, wholly or partially discloses, performs, presents, communicates the performance or presentation or broadcasts work of authorship or performance of another person (Article 15 and 114, Paragraph 1, Item 2 of this Law);
- 2) without permission of the author modifies or adapts work of authorship or

recorded performance of another person (Article 17, 31 and 114, Paragraph 1. Item 3 of this Law.):

3) as a gallery keeper or an organizer of a public auction of original works of fine art, and/or original manuscripts does not inform the author of the work of name and address of the seller of its work, name and address of the new buyer and price which was paid or does not pay the author the amount of 3% of the sale price of the work within the period of 30 days as of the day of the sale of the original works and/or manuscripts (Article 35, Paragraph 1 and Article 36, Paragraphs 1 and 2 of this Law).

4) gives incorrect data or deceives true data about its work of authorship or subject-matter of related rights when entering into the records and depositing work of authorship or subject-matter or related right with the competent authority (Article 202, Paragraph 4 of this Law);

5) as a publisher sells the unsold copies of the work as scrap paper without previously offering it to the author or his/her heirs for purchase (Article 81 of this Law);

(2) The responsible person in the business company or other legal person concerned shall also be punished for the economic transgression by a pecuniary penalty amounting from 10,000 to 50,000 dinars for any of the acts referred to in Paragraph 1 of this Article.

(3) The entrepreneur shall be punished for an economic transgression by a pecuniary penalty amounting from 10,000 to 200,000 dinars for acts from Paragraph 1 of this Article.

(4) Natural person shall be punished for economic transgression by a pecuniary penalty amounting from 10,000 to 50,000 dinars for any acts referred to in Paragraph 1, Items 4 and 5 of this Article.

(5) The natural person who in the period of 30 days from the date of sale of the copy of the original work of fine art or manuscript does not inform the author of the work about the name and address of the buyer and does not pay the amount of 3% of the sale price (Article 35, Paragraph 1 and Article 36, Paragraph 2 of this Law) shall be punished for the economic transgression by a pecuniary penalty in the amount from 10,000 to 50,000 dinars

## **IX. TRANSITIONAL AND FINAL PROVISIONS**

### Article 218

Author, interpreter, producer of phonograms, producer of videograms and producer of broadcasting, whose duration of right expired before the day this Law enters into force can not ask the establishment of rights according to this Law.

### Article 219

(1) The existing organizations for collective management of copyright and related rights which performed the tasks of the management of these rights before the entry into force of this Law shall continue working after this Law enters into force.

(2) All subjects from Paragraph 1 of this Article have an obligation to harmonize its statutory composition and way of doing business with the provisions of this Law in the term of one year from the date this Law enters into force. For the sake of harmonization of legal form, the

existing organizations have an obligation to perform the application of entry into the Register of associations and change of legal form and submit the request for the delete from the Company Register where they had been previously entered.

(3) The subjects from Paragraph 1 of this Article have the obligation, in the term of 60 days from the date this Law enters into force, to announce the invitation from article 173 of this Law.

#### Article 220

The implementation of Article 29, paragraph 2 of this Law is postponed until the establishment of the appropriate organization for the collective management of rights in the Republic of Serbia, and at the latest until the date of the accession of the Republic of Serbia to the European Union.

#### Article 221

(1) Provisions of this Law related to protection of copyright, performer's right, phonogram producer's right and broadcast producer's right, except for provisions of Articles 14 to 18, shall apply to both natural and legal persons as defined under the Article 1, Paragraph 3 of the TRIPs Agreement after ratification of this Agreement.

(2) Provisions of Articles 35 and 36 of this Law shall apply to nationals or residents of the member state of the World Trade Organizations only if the condition of reciprocity.

#### Article 222

- (1) In the term of 30 days from the date this Law enters into force, the competent body shall publish the invitation from Article 194, Paragraph 2 of this Law, and at the latest at the expiry of two months from the date of the publication of the invitation, the head of the competent body shall propose to the Government the candidates for the selection of the members of the Commission and their deputies.
- (2) The Government shall nominate the candidates for the president and members of the Commission as well as their deputies in the term of 30 days from the date of the reception of the proposal from the competent body.
- (3) In the term of 30 days from the date of the entry into force of this Law, the competent body shall propose to the Government the list of technical devices and objects for which there is an obligation of payment of a special remuneration on the basis of Article 39 of this Law.
- (4) The Government shall establish a list of devices and objects mentioned in Article 29, paragraph 10 of this Law in the term of 60 days from the reception of proposal from the competent body.
- (5) Until the establishment of the list from Paragraph 4 of this Article, the persons mentioned in Article 39, Paragraph 2 of this Law do not pay remuneration for computers, computer equipment and components, as well as all kinds of computer memories.

#### Article 223

The Commission has an obligation to pass the Rules of procedure of the Commission in the period of 30 days from the date of the establishment of the Commission.

Article 224

- (1) By-laws for the enforcement of this Law shall be passed in the term of four months from the date this Law enters into force.
- (2) Until the passing of by-laws prescribed by this Law, the provisions of regulations passed on the basis of the Law on Copyright and Related Rights (“Official Gazette of Serbia and Montenegro”, number 61/04) are enforced with the exception of the provisions which are contrary to this Law.

Article 225

On the date this Law enters into force, the following shall cease to be effective:

- 1) Law on Copyright and Related Rights (“Official Gazette of Serbia and Montenegro”, number 61/04);
- 2) Provisions of Articles 34, 35, 42, 43 and 44, paragraph 1, Item 1 and 3 of The Law on Special Authorities for the Sake of Efficient Protection of Intellectual Property Rights (“Official Gazette of the Republic of Serbia”, number 46/06).

Article 226

This Law shall come into force on the eight day from its publication in the “Official Gazette of the Republic of Serbia”.