

REPUBLIC OF ESTONIA

THE COPYRIGHT ACT

Passed 11 November 1992

Entered into force 12 December 1992

Chapter I

General Provisions

§ 1. Purpose of functions Copyright Act

(1) The purpose of the Copyright Act is to ensure the consistent development of culture and protection of cultural achievements, the development of copyright-based industries and international trade, and to create favourable conditions for authors, performers, producers of phonograms, broadcasting organisations, producers of first fixations of films, makers of databases and other persons specified in this Act for the creation and use of works and other cultural achievements.

(2) The Copyright Act provides for:

- 1) the protection of a specific right (copyright) of authors of literary, artistic and scientific works for the results of their creative activity;
- 2) the persons who may acquire rights to literary, artistic or scientific works created by an author and the rights of such persons;
- 3) the rights of performers, producers of phonograms and broadcasting organisations (related rights);
- 3¹) the rights of makers of databases and conditions for the exercise and protection thereof;
- 3²) the related rights of producers of first recordings of films and of other persons specified in this Act;
- 4) limitations on the exercise of copyright and related rights upon the use of works in the interest of the public;

5) guarantees for the exercise of copyright and related rights and the protection of such rights.

§ 2. Copyright legislation

(1) The copyright legislation of the Republic of Estonia consists of this Act, other Acts drafted on the basis thereof and other legislation adopted by the Government of the Republic, ministries and executive agencies.

(2) If a piece of copyright legislation is in conflict with an international agreement of the Republic of Estonia, the provisions of the international agreement apply.

(3) The provisions of this Act shall be without prejudice to the application of other specific Acts passed in the field of intellectual property.

§ 3. Validity of Copyright Act

(1) The Copyright Act applies to works:

1) the author of which is a citizen or a permanent resident of the Republic of Estonia;

2) first published in the territory of the Republic of Estonia or not published but located in the territory of the Republic of Estonia, regardless of the citizenship or the permanent residence of the creator of the works;

3) which must be protected in accordance with an international agreement of the Republic of Estonia.

(2) This Act applies to works first made available to the public in a foreign state or not made available to the public but located in the territory of a foreign state, the author of which is a person whose permanent residence or registered office is in the foreign state and to which clause (1) 3) of this section does not apply, only if this state guarantees similar protection for works of the authors of the Republic of Estonia and for works first published in the Republic of Estonia.

Chapter II

Works Protected by Copyright

§ 4. Works in which copyright subsists

- (1) Copyright subsists in literary, artistic and scientific works.
- (2) For the purposes of this Act, “works” means any original results in the literary, artistic or scientific domain which are expressed in an objective form and can be perceived and reproduced in this form either directly or by means of technical devices. A work is original if it is the author’s own intellectual creation.
- (3) Works in which copyright subsists are:
 - 1) written works in the fields of fiction, non-fiction, politics, education, etc.;
 - 2) scientific works or works of popular science, either written or three-dimensional (monographs, articles, reports on scientific research, plans, schemes, models, tests, etc.);
 - 3) computer programs that shall be protected as literary works. Protection applies to the expression in any form of a computer program;
 - 4) speeches, lectures, addresses, sermons and other works which consist of words and which are expressed orally (oral works);
 - 5) scripts and script outlines, librettos;
 - 6) dramatic and dramatico-musical works;
 - 7) musical compositions with or without words;
 - 8) choreographic works and entertainments in dumb show;
 - 9) audiovisual works (§ 33);
 - 11) works of painting, graphic arts, typography, drawings, illustrations;
 - 12) productions and works of set design;
 - 13) works of sculpture;
 - 14) architectural graphics (drawings, drafts, schemes, figures, plans, projects, etc.), letters of explanation explaining the contents of a project, additional texts and programs, architectural works of plastic art (models, etc.), works of architecture and landscape architecture (buildings, constructions, parks, green areas, etc.), urban developmental ensembles and complexes;
 - 15) works of applied art;

- 16) works of design and fashion design;
- 17) photographic works and works expressed by a process analogous to photography, slides and slide films;
- 18) cartographic works (topographic, geographic, geological, etc. maps, atlases, models);
- 19) draft legislation;
- 19¹) standards and draft standards;
- 20) opinions, reviews, expert opinions, etc.;
- 21) derivative works, i.e. translations, adaptations of original works, modifications (arrangements) and other alterations of works;
- 22) collections of works and information (including databases). For the purposes of this Act, “database” means a collection of independent works, data or other economics arranged in a systematic or methodical way and individually accessible by electronic or other means. The definition of database does not cover computer programs used in the making or operation thereof. In accordance with this Act, databases which, by reason of the selection or arrangement of their contents, constitute the author’s own intellectual creation shall be protected as such by copyright and no other criteria is applied.
- 23) other works.

(4) An author shall also enjoy copyright in the results of the intermediate stages of creating a work (drafts, sketches, plans, figures, chapters, preparatory design economic, etc.) if these are in compliance with the provisions of subsection (2) of this section.

(5) The original title (name) of a work is subject to protection on an equal basis with the work.

(6) The protection of a work by copyright is presumed except if, based on this Act or other copyright legislation, there are apparent circumstances which preclude this. The burden of proof lies on the person who contests the protection of a work by copyright.

§ 5. Results of intellectual activities to which this Act does not apply

(1) This Act does not apply to:

- 1) ideas, images, notions, theories, processes, systems, methods, concepts, principles, discoveries, inventions, and other results of intellectual activities which are described, explained or expressed in any other manner in a work;

- 2) works of folklore;
- 3) legislation and administrative documents (acts, decrees, regulations, statutes, instructions, directives) and official translations thereof;
- 4) court decisions and official translations thereof;
- 5) official symbols of the state and insignia of organisations (flags, coats of arms, orders, medals, badges, etc.);
- 6) news of the day;
- 7) facts and data;
- 8) ideas and principles which underlie any element of a computer program, including those which underlie its user interfaces.

§ 6. Creation of copyright regardless of purpose, value, form of expression or manner of fixation of work

The purpose, value, specific form of expression or manner of fixation of a work shall not be the grounds for the non-recognition of copyright.

§ 7. Moment of creation of copyright

- (1) Copyright in a work is created with the creation of the work.
- (2) The creation of a work means the moment of expression of the work in any objective form which allows the perception and reproduction or fixation of the work.
- (3) The registration or deposit of a work or completion of other formalities is not required for the creation or exercise of copyright.

§ 8. Copyright in works not made available to public and works made available to public

- (1) Copyright subsists in works not made available to the public and in works made available to the public (published, communicated to the public).
- (2) “The public” means an unspecified set of persons outside the family and immediate circle of acquaintances.

§ 9. Published works

(1) A work is deemed published if the work or copies of the work, whatever may be the means of manufacture of the copies, are placed, with the consent of the author, at the disposal of the public provided that the availability of such copies has been such as to enable the public to examine or obtain the work. Publication of a work includes also publication of the work in print, offering original copies of the work for sale, distribution, lending and rental of the work and placing the work at the disposal of the public in any other manner for a charge or free of charge.

(2) A work is deemed published if it is recorded in a computer system accessible to the public.

(3) The performance of a dramatico, dramatico-musical or a musical work, the presentation of audiovisual works, the public recitation of a literary work, the broadcasting or cable transmission of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication, except in the case specified in subsection (2) of this section.

§ 10. Works communicated to public

(1) A work is deemed to be communicated to the public if it has been performed in public, demonstrated to the public, transmitted to the public, retransmitted, made available to the public or communicated to the public in any other manner by means of any technical device or process.

(2) Communication of a work to the public also includes:

1) making the work public in a place open to the public or in a place which is not open to the public but where an unspecified set of persons outside the family and an immediate circle of acquaintances are present, regardless of whether the public actually perceives the work or not;

2) communication of a transmitted or retransmitted work to the public by means of any technical device or process, regardless of whether the public actually perceives the work or not.

(3) The work is deemed publicly performed if it is recited, played, danced, acted or otherwise performed directly or indirectly by means of any technical device or process.

(4) A work is deemed displayed (exhibited) to the public if the work or a copy thereof is presented either directly or indirectly by means of film, slides, television or any technical device or process.

(5) A work is deemed communicated if it is communicated without the use of cable network (by means of radio, television or satellite). Coded signals are deemed transmitted if for the purpose of their communication to the public the means for decrypting are ensured by a broadcasting organisation or with its authorisation.

(6) The work is deemed made available to the public if it is communicated to the public by a cable network or by communicating it without cable in such a way that the public may access the work from a place and at a time chosen by them.

(7) For the purposes of this Act, “place open to the public” means the territory, building or room which is granted for use by the public or to which its owner or holder allows individual access (a street, square, park, sports facility, festival grounds, market, recreation area, theatre, exhibition hall, cinema, club, discotheque, shop, retail enterprise, service enterprise, public means of transport, accommodation establishment etc.).

§ 10². Communication by satellite

(1) For the purposes of this Act, “satellite” means any communications satellite operating on frequency bands which are reserved for the broadcast of signals for reception by the public or which are reserved for closed, point-to-point communication on the condition that the circumstances in which individual reception of the signals takes place are comparable to those which apply in the first case.

(2) For the purposes of this Act, “communication by satellite” means the act of introducing, under the control and responsibility of the broadcasting organisation, the programme-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth.

(3) The act of communication by satellite occurs solely in the state where, under the control and responsibility of the broadcasting organisation, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

(4) If the programme-carrying signals are encrypted, then there is communication by satellite on the condition that the means for decrypting the broadcast are provided to the public by the broadcasting organisation or with its consent.

§ 10³. Retransmission via cable network

For the purposes of this Act, “retransmission via cable network” means the simultaneous, unaltered and unabridged retransmission by a cable or microwave system for reception by the public of an initial transmission, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public.

Chapter III

Rights Arising upon Creation of Works

§ 11. Content of copyright

(1) Copyright in a work arises upon the creation of the work by the author of the work. Moral rights and economic rights constitute the content of copyright.

(2) The moral rights of an author are inseparable from the author’s person and non-transferable.

(3) The economic rights of an author are transferable as single rights or a set of rights for a charge or free of charge.

(4) The moral and economic rights of an author may be limited only in the cases prescribed in this Act.

§ 12. Moral rights

(1) The author of a work has the right to:

1) appear in public as the creator of the work and claim recognition of the fact of creation of the work by way of relating the authorship of the work to the author’s person and name upon any use of the work (right of authorship);

- 2) decide in which manner the author's name shall be designated upon use of the work – as the real name of the author, identifying mark of the author, a fictitious name (pseudonym) or without a name (anonymously) (right of author's name);
 - 3) make or permit other persons to make any changes to the work, its title (name) or designation of the author's name and the right to contest any changes made without the author's consent (right of integrity of the work);
 - 4) permit the addition of other authors' works to the author's work (illustrations, forewords, epilogues, comments, explanations, additional parts, etc.) (right of additions to the work);
 - 5) contest any misrepresentations of and other inaccuracies in the work, its title or the designation of the author's name and any assessments of the work which are prejudicial to the author's honour and reputation (right of protection of author's honour and reputation);
 - 6) decide when the work is ready to be performed in public (right of disclosure of the work);
 - 7) supplement and improve the author's work which is made public (right of supplementation of the work);
 - 8) request that the use of the work be terminated (right to withdraw the work);
 - 9) request that the author's name be removed from the work which is being used.
- (2) The rights specified in clauses (1) 7), 8) and 9) of this section shall be exercised at the expense of the author and the author is required to compensate for damage caused to the person who used the work.

§ 13. Economic rights

- (1) An author shall enjoy the exclusive right to use the author's work in any manner, to authorise or prohibit the use of the work in a similar manner by other persons and to receive income from such use of the author's work except in the cases prescribed in Chapter IV of this Act. The author's rights shall include the right to authorise or prohibit:
- 1) reproduction of the author's work (right of reproduction of the work).
"Reproduction" means the making one or several temporary or permanent copies of the work or a part thereof directly or indirectly in any form or by any means;
 - 2) distribution of the author's work or copies thereof (distribution right).
"Distribution" means the transfer of the right of ownership in a work or copies thereof

or any other form of distribution to the public, including the rental and lending, except for the rental and lending of works of architecture and works of applied art. The first sale or transfer in some other manner of the right of ownership of a copy of a work by the author or with his or her consent in a Member State of the EU or a state which is a contracting party of EEA Agreement shall exhaust the right specified in this clause and copies of the work may be further distributed in the Member States of the EU or the states which are contracting parties of EEA agreement without the consent of the author. An author shall enjoy the exclusive right to authorise or prohibit the rental or lending of copies of his or her works to the public even in the case where the distribution right has been exhausted, except in the cases provided for in § 13³ of this Act;

- 4) translation of the author's work (right of translation of the work);
- 5) making adaptations, modifications (arrangements) and other alterations of the work (right of alteration of the work);
- 6) compilation and publication of collections of the author's works and systematisation of the author's works (right of collections of works);
- 7) public performance of the work as a live performance or a technically mediated performance (right of public performance);
- 8) displaying the work to the public (right of exhibition of the work). "Exhibition of a work" means presentation of the work or a copy thereof either directly or by means of film, slides, television or any other technical device or process;
- 9) communication of the work by radio, television or satellite, and retransmission thereof by cable network, or direction of the work at the public by other technical devices, except in the manner specified in clause 9¹ of this section (right of communication of the work);
- 9¹) making the work available to the public in such a way that persons may access the work from a place and at a time individually chosen by them (right of making the work available to the public);
- 10) carrying out the author's architectural project pursuant to the procedure prescribed by law;
- 11) carrying out the author's project of a work of design or a work of applied arts, etc.

(3) For the purposes of this Act, “rental” means making a work, copies thereof or any other results specified in this Act available for use, for a limited period of time and for direct or indirect economic or commercial advantage.

(4) For the purposes of this Act, “lending” means making a work, copies thereof or any other results specified in this Act available for use through establishments which are accessible to the public, for a limited period of time and not for direct or indirect economic or commercial advantage.

(5) The first sale of a copy of a database shall exhaust the right to control resale of the copy of the database.

§ 13¹. Exercise of author’s economic rights

(1) Authors exercise their economic rights either independently or through collective management organisations (Chapter IX).

(2) A work may only be communicated to the public if the person organising the communication of the work to the public has been granted prior authorisation (licence) therefor by the author, his or her legal successor or the collective management organisation representing the author. If several persons organise the communication of a work to the public, one of them shall apply for the authorisation under an agreement between the persons.

(3) The procedure prescribed in subsection (2) of this section also applies if a work is planned to be communicated to the public by technical means (record, cassette or CD player, etc.) in a place open to the public.

(4) A work may be transmitted by radio, television, or satellite or retransmitted by a cable network only if the person communicating or retransmitting the work has been granted prior authorisation (licence) therefor by the author, the author’s legal successor or the collective management organisation representing the author.

(5) The procedure prescribed in subsection (2) of this section also applies if a work communicated by means specified in subsection (4) is planned to be transmitted by radio, television, satellite or a cable network in a place open to the public or in such a way that persons may access the work from a place and at a time individually chosen by them.

§ 13². Additional economic rights related to computer programs

In addition to the economic rights specified in § 13 of this Act, the author of a computer program has the exclusive right for the physical use and holding of the computer program for commercial purposes.

§ 13³. Remuneration for lending of copy of work from libraries

(1) The author does not have the right to prohibit the lending of copies of his or her works from libraries but the author is entitled to receive remuneration for such lending.

(2) The amount of remuneration payable to the author is calculated on the basis of the state budget funds allocated for remunerations in the financial year and the electronically registered loans in public libraries within the calendar year.

(3) The remuneration is paid by a legal person who represents the authors or authors' organisations and determined by the Minister of Cultural Affairs.

(4) Remuneration shall be paid on the basis of an application in written format or in a format which can be reproduced in writing.

(5) The remuneration payable to the authors for the lending of audiovisual works or phonograms is paid to collective management organisations which represent the authors of audiovisual works and phonograms.

(6) In order to pay the remuneration prescribed in subsection (1) of this section, the Government of the Republic shall establish:

- 1¹) the list of information to be submitted in an application;
- 2) the rates of distribution of the remuneration between different authors;
- 3) the bases of and procedure for calculation and payment of remuneration.

(7) The payer of remuneration has the right to obtain from public libraries all the information necessary for the payment of the remuneration. Any additional related expenses are borne by the payer of the remuneration.

(8) The upper limit of the remuneration shall be four times the average gross wages of the preceding year in Estonia as reported by the Statistical Office.

§ 14. Author's right to remuneration

(1) An author has the right to obtain remuneration (author's remuneration) for the use of the author's work by other persons except in the cases prescribed by this Act.

(2) The amount of the remuneration, including rental fees, and the procedure for the collection and payment thereof shall be determined by an agreement (contract) between the author and a user of the work or, by the authorisation of the author, by an agreement between a collective management organisation representing authors or any other person and a user of the work, in which case the specifications provided for in subsections 76 (3) and 77 (3) of this Act shall be taken account of.

(3) It is prohibited to use a work before an agreement specified in subsection (2) of this section is reached.

(4) If the parties agree on the remuneration but the obligated party fails to perform the party's obligation in part or in full by the due date, the obligated party must stop using the work unless otherwise agreed with the entitled party.

(5) A violation of subsection (4) of this section is deemed the use of a work without the authorisation of the author or holder of the author's rights.

(6) Where an author has transferred (assigned) the author's economic rights to a producer of audiovisual works or granted an authorisation (licence) to use (including to rent) the original or a copy of an audiovisual work, or where such transfer or authorisation is presumed, the author shall retain the right to obtain equitable remuneration from the television broadcaster, commercial lessor or another person who uses the audiovisual work. An agreement to waive the right to obtain equitable remuneration is void.

(7) Where an author has transferred (assigned) the right or granted an authorisation (licence) to a producer of phonograms to rent a copy of a phonogram, or where such transfer or authorisation is presumed, the author shall retain the right to obtain equitable remuneration from the commercial lessor for such rental. An agreement to waive the right to obtain equitable remuneration is void.

§ 15. Remuneration for resale of original works of art

- (1) The author of an original work of art has the right to receive a remuneration based on the sale price each time when the work is sold after the first transfer of the right of ownership in the work.
- (2) The right specified in subsection (1) of this section shall apply to acts of resale involving as sellers, buyers or intermediaries salesrooms, art galleries or dealers in works of art.
- (3) For the purposes of this section, "original work of art" means works of visual art such as paintings, graphics, sculptures, installations, works of applied art and photographs, provided they are made by the artist himself or herself or are copies which have been numbered, signed or otherwise authorised him or her.
- (4) Rates of remuneration:
 - 1) 5 per cent for the portion of the sale price up to 780 000 kroons;
 - 2) 3 per cent for the portion of the sale price from 780 001 to 3 120 000 kroons;
 - 3) 1 per cent for the portion of the sale price from 3 120 001 to 5 460 000 kroons;
 - 4) 0.5 per cent for the portion of the sale price from 5 460 001 to 7 800 000 kroons;
 - 5) 0.25 per cent for the portion of the sale price exceeding 7 800 000 kroons.
- (5) The remuneration for the resale of an original work of art shall not exceed 195 000 kroons.
- (6) The remuneration specified in subsection (1) of this section shall not be applied if the sale price is less than 1000 kroons.
- (7) For a period of three years after the resale, the author and the collective management organisation have the right to require from the person who arranged the resale to furnish the information necessary in order to secure payment of royalties in respect of the resale.
- (8) The remuneration specified in subsection (1) of this section shall be paid within thirty days as of the date of resale.
- (9) The author has the right to receive the remuneration specified in subsection (1) of this section for a period of three years after the resale.

§ 16. Copyright and right of ownership

- (1) Copyright in a work shall belong to the author or his or her successor regardless of who has the right of ownership in the economic object in which the work is expressed. The

manner in which the economic rights of the author or his or her successor are exercised shall be determined by an agreement between the author or his or her successor and the owner.

(2) In order to make a copy of a work of visual art, the author of the work has the right to request access to the original of the work which is in the ownership or lawful possession of another person.

(3) An author may, with the owner's consent, improve, supplement or process in any other manner the author's work of visual art, architecture, applied art, design, etc.

Chapter IV

Limitations on Exercise of Economic Rights of Authors (Free Use of Works)

1. Fundamental Provisions

§ 17. Limitation to economic rights of authors

Notwithstanding §§ 13 – 15 of this Act, but provided that this does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, it is permitted to use a work without the authorisation of its author and without payment of remuneration only in the cases directly prescribed in §§ 18 – 25 of this Act.

§ 18. Free reproduction and translation of works for purposes of personal use

(1) A lawfully published work may be reproduced and translated by a natural person for the purposes of personal use without the authorisation of its author and without payment of remuneration on the condition that such activities are not carried out for commercial purposes.

(2) The following shall not be reproduced for the purposes of personal use without the authorisation of the author and without payment of remuneration:

- 1) works of architecture and landscape architecture;
- 2) works of visual art of limited edition;
- 3) electronic databases;
- 4) computer programs, except the cases prescribed in §§ 24 and 25 of this Act;
- 5) notes in reprographic form.

§ 18¹. Restriction of author's right to reproduce

(1) Without the authorisation of the author and without payment of the remuneration, a temporary or casual reproduction of the work which occurs as an integral and essential part of a technical process and the purpose of which is to mediate the communication of the work in the network between third parties or to make possible the lawful use of the work or an object of related rights and which has no independent commercial purpose is permitted.

(2) Subsection (1) of this section does not extend to computer programs.

2. Use of Works without Authorisation of Author and without Payment of Remuneration

§ 19. Free use of works for scientific, educational, informational and judicial purposes

The following is permitted without the authorisation of the author and without payment of remuneration if mention is made of the name of the author of the work, if it appears thereon, the name of the work and the source publication:

- 1) making summaries of and quotations from a work which has already been lawfully made available to the public, provided that its extent does not exceed that justified by the purpose and the idea of the work as a whole which is being summarised or quoted is conveyed correctly;
- 2) the use of a lawfully published work for the purpose of illustration for teaching and scientific research to the extent justified by the purpose and on the condition that such use is not carried out for commercial purposes;
- 3) the reproduction of a lawfully published work for the purpose of teaching or scientific research to the extent justified by the purpose in educational and research institutions whose activities are not carried out for commercial purposes;
- 4) for the purpose of reporting current events, the reproduction in the press and communicating to the public of works seen or heard in the course of an event, to the extent justified by the purpose, in the form and to the extent required by the purpose of reporting current events;

- 5) reproduction of a work for the purposes of a judicial procedure or insurance of public security and to the extent justified by the purposes of a judicial procedure or insurance of public security;
- 6) the reproduction, distribution and communication to the public of a lawfully published work in the interests of disabled persons in a manner which is directly related to their disability on the condition that such use is not carried out for commercial purposes. Works created especially for disabled persons may not be reproduced, distributed and made available without the authorisation of the author;
- 7) the use of a lawfully published work in a caricature, parody or pastiche to the extent justified by such purpose.

§ 20. Free use of works by public archives, museums or libraries

- (1) A public archive, museum or library has the right to reproduce a work included in the collection thereof without the authorisation of its author and without payment of remuneration, in order to:
 - 1) replace a work which has been lost, destroyed or rendered unusable;
 - 2) make a copy to ensure the preservation of the work;
 - 3) replace a work which belonged to the permanent collection of another library, archives or museum if the work is lost, destroyed or rendered unusable;
 - 4) digitise a collection for the purposes of preservation;
 - 5) make a copy for a natural person for the purposes specified in § 18 of this Act;
 - 6) make a copy on the order of a court or a state agency for the purposes prescribed in clause 19 6) of this Act.
- (2) The provisions of clauses (1) 1)-3) of this section apply in the case when acquisition of another copy of the work is impossible.
- (3) A public archive, museum or library has the right to use a work included in the collection thereof without the authorisation of its author and without payment of remuneration for the purposes of an exhibition or the promotion of the collection to the extent justified by the purpose.
- (4) Public archives, museums and libraries have the right to make available works in their collections through special equipment located in their territory on orders from natural persons for study or scientific purposes.

(5) The activities specified in this section shall not be carried out for commercial purposes.

§ 20¹. Free use of reproductions of works located in places open to public

It is permitted to reproduce works of architecture, works of visual art, works of applied art or photographic works which are permanently located in places open to the public, without the authorisation of the author and without payment of remuneration, by any means except for mechanical contact copying, and to communicate such reproductions of works to the public except if the work is the main subject of the reproduction and it is intended to be used for direct commercial purposes. If the work specified in this section carries the name of its author, it shall be indicated in communicating the reproduction to the public.

§ 20². Free use of reproductions of works of architecture located in places open to public in real estate advertisements

The reproduction and communication to the public of reproductions of works of architecture in real estate advertisements to the extent justified by the purpose without the authorisation of the author and without payment of remuneration is permitted if mention is made of the name of the author of the work.

§ 22. Free public performance of works

The public performance of works in the direct teaching process in educational institutions by the teaching staff and students without the authorisation of the author and without payment of remuneration is permitted if mention is made of the name of the author or the title of the work used, if it appears thereon, on the condition that the audience consists of the teaching staff and students or other persons (parents, guardians, caregivers, etc.) who are directly connected with the educational institution where the work is performed in public.

§ 23. Use of ephemeral recordings of works by broadcasting organisations

(1) A broadcasting organisation may make, without the authorisation of the author and without payment of remuneration, ephemeral recordings of works which it has the right to

broadcast on the condition that such recordings are made by means of its own facilities and used for its own broadcasts.

(2) The broadcasting organisation is required to destroy recordings prescribed in subsection (1) of this section within thirty days as of the making thereof unless otherwise agreed with the author of the work thus recorded.

(3) Ephemeral recordings prescribed in this section shall not be destroyed if they have considerable value in terms of cultural history. In such case, the recordings shall be preserved, without the authorisation of the author, in the archives of the broadcasting organisation as works of solely documentary character. Works to be preserved in the archives shall be decided on by the broadcasting organisation or, in the case of a dispute, by the State Archivist.

§ 24. Free use of computer programs

(1) Unless otherwise prescribed by contract, the lawful user of a computer program may, without the authorisation of the author of the program and without payment of additional remuneration, reproduce, translate, adapt and transform the computer program in any other manner and reproduce the results obtained if this is necessary for:

- 1) the use of the program on the device or devices, to the extent and for the purposes for which the program was obtained;
- 2) the correction of errors present in the program.

(2) The lawful user of a computer program is entitled, without the authorisation of the author of the program or the legal successor of the author and without payment of additional remuneration, to make a back-up copy of the program provided that it is necessary for the use of the computer program, or to replace a lost or destroyed program or a program rendered unusable.

(3) The lawful user of a computer program is entitled, without the authorisation of the author of the program and without payment of additional remuneration, to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he or she does so while performing any act of loading, displaying, running, transmitting or storing the program which he or she is entitled to do.

(5) Any contractual provisions which prejudice the exercise of the rights specified in subsection (2) or (3) are void.

§ 25. Decompilation of computer programs

(1) The lawful user of a computer program may reproduce and translate a computer program without the authorisation of the author of the program and without payment of additional remuneration if these acts are indispensable to obtain information necessary to achieve the interoperability of a program created independently of the original program with other programs provided that the following conditions are met:

- 1) these acts are performed by the lawful user of the program or, on the behalf of the lawful user of the program, by a person authorised to do so;
- 2) the information necessary to achieve the interoperability of programs has not previously been available to the persons specified in clause 1) of this subsection;
- 3) these acts are confined to the parts of the original program which are necessary to achieve interoperability.

(2) Information obtained as a result of the acts prescribed in subsection (1) of this section shall not be:

- 1) used for goals other than to achieve the interoperability of the independently created program;
- 2) disclosed to third persons except when necessary for the interoperability of the independently created program;
- 3) used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes the copyright of the author of the original program.

(3) Any contractual provisions which prejudice the exercise of the rights specified in this section are void.

§ 25¹. Free use of database

The lawful user of a database or of a copy thereof is entitled, without the authorisation of the author and without payment of additional remuneration, to perform any acts which are necessary for the purposes of access to the contents of the database and normal use of its contents. If the lawful user is authorised to use only part of the database, this provision shall only apply to the corresponding part of the database or of a copy thereof. Any contractual provisions which prejudice the exercise of the right are void.

3. Use of Works without Authorisation of Author but with Payment of Remuneration

§ 26. Private use of audiovisual works and sound recordings of works

(1) Audiovisual works or sound recordings of such works may be reproduced for the private use (scientific research, studies, etc.) of the user without the authorisation of the author. The author as well as the performer of the work and the producer of phonograms have the right to obtain equitable remuneration for such use of the work or phonogram (§ 27).

(2) Subsection (1) of this section does not apply to legal persons.

§ 27. Remuneration for private use of audiovisual works and sound recordings of works

(1) The manufacturers, importers, sellers of storage media and recording devices, persons who bring storage media and recording devices from the Community customs territory into Estonia within the meaning of the Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 302, 19.10.1992, pp. 1–50) shall pay the remuneration specified in § 26 of this Act.

(2) The seller shall pay the remuneration in the case when the manufacturer, importer, or the person who brings storage media and recording devices from the Community customs territory into Estonia has not paid the remuneration.

(3) The seller has the right to reclaim the remuneration from the manufacturer, importer and the person who brings storage media and recording devices from the Community customs territory into Estonia.

(4) Natural persons shall pay remuneration in the case when the importing of storage media and recording devices or bringing of the storage media and recording devices from the Community customs territory into Estonia is carried out for commercial purposes.

(5) The remuneration shall be repaid on the storage media and recording devices:

- 1) which, due to their technical characteristics, do not enable the reproduction of audiovisual works and sound recordings of works as single copies;
- 2) exported or transported from Estonia into the Community customs territory;
- 3) which are used in the course of the activities specified in the articles of association of the undertaking;
- 4) which are used in an activity in the case of which the result of the main activity of the person who makes the recording requires the manufacture of an audio or video recording as an intermediate stage;

- 5) which are intended for recording activities in educational and research institutions for the purpose of teaching or scientific research;
 - 6) used for making recordings for the benefit of disabled persons.
- (6) A collective management organisation shall repay the remuneration to the persons specified in subsection (5) of this section within one month after submission of a corresponding written application.
- (7) The amount of the remuneration is:
- 1) 3 per cent of the value of the goods in the case of recording devices;
 - 2) 8 per cent of the value of the goods in the case of storage media.
- (8) The remuneration shall be distributed among authors, performers and producers of phonograms according to the use of works and phonograms.
- (9) The remuneration shall be distributed on the basis of a distribution plan for the preparation of which the Minister of Culture shall appoint a committee every year, which is proportionally comprised of collective management organisations representing the authors, performers and producers of phonograms and a representative of the Ministry of Culture.
- (10) Remuneration may also be paid to organisations for the development of music and film culture and in order to finance educational and research programmes or for use thereof for other similar purposes, but only in an amount not exceeding 10 per cent of the remuneration subject to distribution.
- (11) The Minister of Culture shall approve the distribution plan not later than three months after the end of the budgetary year, having previously obtained the approval of the representatives of authors, performers and producers of phonograms.
- (12) The Minister of Culture shall appoint a collective management organisation as the collector of remuneration and the organisation has the right to deduct expenses related to the collection and payment of remuneration from the remuneration collected. The collector of remuneration shall submit a written report on the collection and payment of remuneration and the deductions made to the Ministry of Culture each year by 31 January.
- (13) The collective management organisation which is appointed as the collector of remuneration has the right to obtain necessary information from customs authorities and statistical organisations and manufacturing and importing organisations and sellers. The information submitted is confidential and the collector of remuneration has the right to use and disclose the information only in connection with the collection of remuneration.
- (14) The Government of the Republic shall establish by a regulation:

- 1) the procedure for payment of remuneration to compensate for private use of audio-visual works and sound recordings of works and the list of storage media and recording devices;
- 2) the procedure for application for the remuneration specified in subsection (10) of this section.

§ 27¹. Remuneration for reprographic reproduction works

- (1) Authors and publishers are entitled to receive equitable remuneration for the reprographic reproduction of their works in the cases specified in subsection 18 (1) and clause 19 3) of this Act.
- (2) The amount of remuneration payable to the author is calculated on the basis of the state budget funds allocated for remunerations in the financial year and the number of the names of works registered in the database of national bibliography.
- (3) The amount of remuneration payable to the author is calculated on the basis of the state budget funds allocated for remunerations in the financial year and the number of the names of works with an ISBN and ISSN number published during ten calendar years preceding submission of the application.
- (4) The remuneration is paid by a legal person who represents the authors or authors' organisations and determined by the Minister of Cultural Affairs.
- (5) Remuneration shall be paid on the basis of an application in written format or in a format which can be reproduced in writing.
- (6) The Government of the Republic shall establish the rates of distribution of the remuneration prescribed in subsection (1) of this section between the authors and publishers of fiction and scientific and educational literature and the procedure for payment of remuneration.

Chapter V

Persons to whom Copyright Shall Belong

§ 28. Author of work

- (1) The moral and economic rights of an author shall initially belong to the author of a work unless otherwise prescribed by this Act with regard to the economic rights of the author.
- (2) The author of a work is the natural person or persons who created the work.
- (3) Copyright shall belong to a legal person only in the cases prescribed in this Act.
- (4) Copyright shall belong to the state only in the cases prescribed in this Act.

§ 29. Presumption of authorship

- (1) The authorship of a person who publishes a work under his or her name, a generally recognised pseudonym or the identifying mark of the author shall be presumed until the contrary is proved. The burden of proof lies on the person who challenges authorship.
- (2) The author of a work which is communicated to the public anonymously or under a pseudonym or the identifying mark of the author shall enjoy copyright in the work. Until the moment when the author reveals his or her real name and proves his or her authorship, the economic rights of the author are exercised by the person who lawfully published the work.
- (3) The person who represents the author in the cases prescribed in subsection (2) of this section shall retain the rights to use the work acquired by the person during the time the person acts as a representative unless otherwise prescribed by an agreement between the person and the author.

§ 30. Joint authorship and co-authorship

- (1) Copyright in a work created by two or more persons as a result of their joint creative activity shall belong jointly to the authors of the work.
- (2) A work created as a result of joint creative activity may constitute an indivisible whole (joint authorship) or consist of parts each of which has independent meaning of its own (co-authorship). A part of a work is deemed to have independent meaning if it can be used independently of other parts of the work.
- (3) Each co-author of a work shall enjoy copyright in the part of the work with independent meaning created by him or her and the co-author may use that part of the work independently. Such use shall not prejudice the interests of other co-authors or contradict the interests of joint use of the co-authors of the work.
- (4) Relations between joint authors in the exercise of copyright, including the distribution of remuneration, shall be determined by an agreement between them. In the absence of such

agreement, all authors shall exercise copyright in the work jointly and remuneration shall be divided equally between them.

(5) Each of the joint authors and co-authors may have recourse to the courts or take other measures to protect the jointly created work and eliminate any infringement of copyright.

(6) Consulting authors, performing the functions of administrative management, editing a work, drawing graphs, schemes, etc. and providing other technical assistance to authors shall not constitute the basis for the creation of joint authorship or co-authorship.

(7) If a work is created under an employment contract in execution of the direct duties of a person, in order to form a group of authors, the prior consent of the person is necessary in order to include him or her in the group of authors. Refusal to participate in the work of a group of authors for good reason shall not be considered breach of work discipline.

§ 31. Copyright in collective works

(1) A collective work is a work which consists of contributions of different authors which are united into an integral whole by a natural or a legal person on the initiative and under the management of this person and which is published under the name of this natural or legal person (works of reference, collections of scientific works, newspapers, journals and other periodicals or serials, etc.).

(2) Copyright in a collective work shall belong to the person on whose initiative and under whose management the work was created and under whose name it was published unless otherwise prescribed by contract.

(3) The authors of the works included in a collective work (contributions) shall enjoy copyright in their works and they may use their works independently unless otherwise determined by contract. Authors of contributions are not deemed to be joint authors or co-authors.

§ 32. Copyright in works created in execution of duties of employment

(1) The author of a work created under an employment contract or in the public service in the execution of his or her direct duties shall enjoy copyright in the work but the economic rights of the author to use the work for the purpose and to the extent prescribed by the duties shall be transferred to the employer unless otherwise prescribed by contract.

(2) An author may use the work created in the execution of his or her direct duties independently for the purpose prescribed by the duties only with the prior consent of the employer whereupon mention must be made of the name of the employer. In such case, the author is entitled to receive remuneration for the use of the work.

(3) An author may use the work created in the execution of his or her duties independently for a purpose not prescribed by the duties unless otherwise prescribed by the employment contract. If a work is used in such manner, mention must be made of the name of the employer.

(4) In the cases prescribed by legislation, the author of a work created in the execution of duties shall be paid, in addition to his or her pay (wages), remuneration for the use of the work. Payment of remuneration may also be prescribed in an agreement between the employer and the author.

(5) The author of a computer program or the author of a database who creates the program or database in the execution of his or her duties or following the instructions given by his or her employer shall enjoy a copyright in the program or database but the employer has the exclusive licence to exercise all economic rights unless otherwise provided by contract.

(6) Economic rights in a work created in the public service shall transfer to the state unless otherwise prescribed by contract. The rights shall be exercised by the state agency which assigned, commissioned or supervised the creation of the work.

§ 33. Copyright in audiovisual works

(1) Audiovisual works are all works which consist of series of related images whether or not accompanied by sound and which are intended to be demonstrated using corresponding technical means (cinematographic films, television films, video films, etc.).

(2) Copyright in an audiovisual work shall belong to its author or joint or co-authors - the director, the script writer, the author of dialogue, the author of the musical work specifically created for use in the audiovisual work, the cameraman and the designer. The economic rights of the director, the script writer, the author of dialogue, the cameraman and the designer shall transfer to the producer of the work unless otherwise prescribed by contract. The economic rights of the author of the musical work used in the audiovisual work shall not transfer to the producer regardless of the fact whether or not the work was specifically created for use in the audiovisual work.

(3) The producer of a work is a natural or legal person who financed or managed the creation of the work and whose name is fixed in the audiovisual work.

(4) The fact that the person whose name is indicated in an audiovisual work is the producer shall be presumed until the contrary is proved. The burden of proof lies on the person who challenges the fact that this person is the producer.

(5) Directors, script writers, composers and authors of script outlines, dialogue and the announcer's text, designers, cameramen, choreographers, sound recordists and other persons who participate in the creation of an audiovisual work shall enjoy copyright in their work which constitutes a part with independent meaning of the audiovisual work and which can be used independently of the work as a whole. Economic rights with regard to such works may be exercised independently unless otherwise provided by contract on the condition that such use shall not prejudice the interests of using the work as a whole.

§ 34. Copyright of compilers

(1) A person who creates a collection as a result of his or her creative activity by selecting or arranging the economic (compiler) shall enjoy copyright in this collection.

(2) A compiler may independently arrange and transform results of intellectual activity to which this Act does not apply (§ 5).

(3) A compiler may independently arrange and transform, observing the provisions of § 44 of this Act, works whose term of protection of copyright has expired.

(4) Works subject to protection by copyright may be arranged and included in collections as originals or in a transformed form only with the consent of the author or his or her legal successor except in the cases prescribed in Chapter IV of this Act. A compiler is required to observe the copyright in works included in the collection.

(5) The publication of a collection by a person shall not restrict other persons in using the same economic in order to create an independent collection pursuant to the provisions of subsections (1) and (4) of this section.

(6) A collection compiled by a person may be transformed by other persons only if they observe the copyright of the compiler of the original collection.

§ 35. Copyright in derivative works

(1) The author of a work which is derived from the work of another author shall enjoy copyright in his or her work.

(2) The creation of derivative works, including the transformation of a narrative work into a dramatic work or a script, the transformation of a dramatic work or a script into a narrative work, the transformation of a dramatic work into a script, and the transformation of a script into a dramatic work, shall be carried out only pursuant to the procedure prescribed in Chapter VII of this Act and observing the copyright of the creator of the original work.

(3) A person who creates, on the basis of a work of another author (original work), a new, creatively independent work which is separate from the original work shall enjoy copyright in this work. In such case, the name of the author of the original work, the title (name) of the work and the source where the work is published shall be indicated.

(4) The provisions of subsection (1) of this section also apply to works the authors of which are unknown (works of folklore, anonymous works, etc.), works whose term of protection of copyright has expired and to results of intellectual activity to which this Act does not apply (§ 5).

§ 36. Succession of copyright

(1) Succession of copyright shall be intestate succession or shall be effected pursuant to the testamentary disposition of the bequeather according to the general provisions of the law of succession.

(2) The copyrights of an author specified in clauses 12 (1) 4)-6) and §§ 13-15 of this Act shall transfer to an intestate successor for the term of protection of copyright unless otherwise prescribed by a testamentary disposition.

(3) Copyright transferred to the state by way of succession shall be exercised by the Ministry of Culture.

(4) The Ministry of Culture has the right to use the remuneration received in the exercise of the copyright specified in subsection (3) of this section for granting a scholarship. The Minister of Culture shall establish the procedure for payment of the scholarship by a Regulation.

§ 37. Copyright of legal successors of authors who are not successors

Only the economic rights of an author may transfer, on the basis of a contract entered into with the author or in the cases directly prescribed in this Act, to natural and legal persons who are not successors of the author.

Chapter VI

Duration of Copyright

§ 38. Term of protection of copyright

(1) The term of protection of copyright shall be the life of the author and seventy years after his or her death, irrespective of the date when the work is lawfully made available to the public, except in the cases prescribed in §§ 39 – 42 of this Act.

(2¹) Where the country of origin of a work, within the meaning of subsection 4 of Article 5 of the Berne Convention on Literary and Artistic Works, is a third country, and the author of the work is not a citizen or permanent resident of the Republic of Estonia, the term of protection of copyright shall run within a period prescribed by the law of the country of origin but may not exceed the term specified in subsection (1).

§ 39. Term of protection of copyright in case of joint authorship or co-authorship

The term of protection of copyright in a work created by two or more persons as a result of their joint creative activity (§ 30) shall be the life of the last surviving author and seventy years after his or her death.

§ 40. Term of protection of copyright in anonymous or pseudonymous works

In the case of anonymous or pseudonymous works, the term of protection of copyright shall run for seventy years after the work is lawfully made available to the public. If the author of the work discloses his identity during the above-mentioned period or leaves no doubt as to the connection between the authorship of the work and the person who created the work, the provisions of §§ 38 and 39 apply.

§ 41. The term of protection of copyright in collective works, works created in execution of duties, audiovisual works and serials

(1) The term of protection of copyright in a collective work (§ 31) or work created in the execution of duties (§ 32) shall run for seventy years after the work is lawfully made available to the public.

(1¹) The term of protection of copyright in an audiovisual work (§ 33) shall expire seventy years after the death of the last surviving author (director, script writer, author of dialogue, author of a musical work specifically created for use in the audiovisual work).

(2) If a work specified in subsection (1) of this section is not made available to the public fifty years after the creation thereof, the term of protection of copyright shall expire seventy years after the creation of the work.

(3) Where a work is published as a serial (volumes, parts, issues or instalments, etc.) and the term of protection of copyright runs from the time when the work was lawfully made available to the public, the term of protection for each instalment shall expire seventy years after the time when the instalment is lawfully made available to the public.

(4) The term of protection of copyright in independent works included in a collective work, a work created in the execution of duties or in an audiovisual work which have not been made available to the public anonymously or under a pseudonym shall expire within the term provided for in subsection 38 (1) of this Act.

§ 43. Beginning of term of protection of copyright

The term prescribed in this Chapter begins on the first of January of the year following the year of the death of the author (subsection 38 (1) and § 39) or of the year following the year when the work was lawfully made available to the public or of the year following the year of creation of the work (subsection 38 (2); §§ 40, 41 and 42).

§ 44. Protection of authorship of work, name of author, honour and reputation of author and title of work without term

(1) The authorship of a certain work, the name of the author and the honour and reputation of the author shall be protected without a term.

(2) The use of the title (name) of a work by another author for a similar work when the term of protection of copyright has expired is not permitted if such use may result in identification of authors which would mislead the public.

§ 45. Use of works after term of protection of copyright expires

Works whose term of protection of copyright has expired may be freely used by all persons pursuant to the provisions of § 44 of this Act and the Heritage Conservation Act (RT I 2002, 27, 153; 47, 297; 53, 336; 63, 387; 2004, 25, 171).

Chapter VII

Use of Works

1. Fundamental Provisions

§ 46. Use of works by other persons

(1) Works shall be used by other persons only in the case of transfer (assignment) of the author's economic rights by him or her or on the basis of an authorisation (licence) granted by the author except in the cases prescribed in Chapter IV of this Act.

(3) The transfer of the author's economic rights by him or her or the grant of an authorisation to use a work may be limited with regard to certain rights and to the purpose, term, territory, extent, manner and means of using the work.

§ 47. Sublicence to use work

A person who is granted an authorisation to use a work may authorise a third person to use the work (grant a sublicence) only with the prior consent of the author.

2. Author's Contract

§ 48. Definition of author's contract

(1) An author's contract is an agreement between the author or his or her legal successor and a person who wishes to use the work for the use of a work on the basis of which the author or his or her legal successor transfers the author's patrimonial rights to the other party or grants to the other party an authorisation to use the work to the extent and pursuant to the procedure prescribed by the conditions of the contract.

(2) An author's contract may be entered into to use an existing work or to create and use a new work.

(3) Upon use an existing work on the basis of a licence agreement, the provisions of the Law of Obligations Act (RT I 2001, 81, 487; 2002, 60, 374; 2003, 78, 523; 2004, 13, 86; 37, 255) concerning licence agreements apply to the author's contract unless otherwise provided by this Act.

(4) Upon creation and use of a new work, the provisions of the Law of Obligations Act concerning contracts for services apply to the author's contract unless otherwise provided by this Act.

§ 48¹. Content of author's agreement

(1) The following shall be recorded in an author's contract:

- 1) a description of the work (format, volume and name of the work, etc.);
- 2) transferable rights, and rights concerning which authorisation is granted, type of licence agreement (non-exclusive or exclusive licence agreement) and the right to grant a sublicence;
- 3) manner of use of the work and the territory where the work is to be used;
- 4) the term of the author's contract and the term of commencement of use of the work.

(2) The manner of payment of remuneration (percentage of the sales price of the work, a fixed amount, percentage of the profits made upon using the work, etc.) and the amount of the remuneration, the term of and procedure for payment thereof shall be determined in the author's contract by agreement of the parties.

§ 49. Format of author's contract

(1) An author's contract shall be entered into in writing. The grant of a non-exclusive licence may also be made in a format which can be reproduced in writing.

(2) The written format or format which can be reproduced in writing is not required in the case of the grant of a non-exclusive licence concerning contracts for publishing works in periodical publications or works of reference and for one-time transmissions of oral works in radio and television, or in cable networks.

§ 52. Term of author's contract

The term of an author's contract shall be determined by an agreement between the parties.

§ 53. Term of commencement of use of work

The term of commencement of use of a work shall not exceed one year as of the moment of delivery of the work to the user by the author, unless otherwise prescribed by the contract.

§ 56. Personal performance of author's contract

In the case of an author's contract for the creation of a new work, the author is required to create the work personally unless otherwise prescribed by the contract. Other persons may be involved in the creation of the work and the group of authors may be changed only with the prior consent of the person commissioning the work.

§ 57. Rights transferred to users of works by virtue of contract

(1) The right of ownership in the manuscript, draft, drawing, magnetic tape or floppy disc of a work or other economic object by means of which the work is reproduced shall transfer to the user of the work only in the cases directly prescribed by an author's contract.

(2) If an author transfers the original or a copy of his or her work, this does not constitute a transfer of the author's economic rights or grant of an authorisation to use the work unless otherwise determined by the contract.

(3) A work of visual art created on the basis of an author's contract for the creation of a new work shall be transferred into the ownership or possession of the person commissioning the work unless otherwise prescribed by the contract.

(4) Pursuant to subsection (2) or (3) of this section, the acquirer of a work has the right to display (exhibit) such work to the public without payment of additional remuneration to the author unless otherwise determined by the contract. A person who possesses the original or a copy of a work on the basis of a contract for use has no such right.

(5) If an author's contract on the use of a literary or artistic work for the creation of an audiovisual work is concluded, the user of the work has the right to display the work to the public at the cinema, on television, by cable or by other technical means, to dub the work into other languages, to provide it with subtitles and to reproduce and distribute the work, unless otherwise prescribed by the contract. The author has the right to obtain equitable remuneration for the rental of the work (subsection 14 (6)). The provisions of this subsection do not apply to musical works.

Chapter VIII

Rights of Performers, Producers of Phonograms and Broadcasting Organisations (Related Rights)

§ 62. Definition of related rights

(1) A performer, producer of phonograms, broadcasting organisation, producer of the first fixation of a film, a person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully directs at the public a previously unpublished work, and a person who publishes a critical or scientific publication of a work not protected by copyright shall enjoy the rights prescribed in this Chapter in the results created by him or her (object of related rights).

(2) The exercise of related rights does not limit the exercise of copyright by the author or his or her legal successor.

(3) For the purposes of this Chapter, "distribution" means the making available to the public of originals or copies of the object of related rights by sale or by transfer of the right of ownership in any other manner.

(4) The first sale of an object of related rights in a Member State of the EU or a contracting state of the EEA Agreement by the rightholder or with his or her authorisation shall exhaust the distribution right prescribed in this Chapter and the object of related rights

may be further distributed in a Member State of the EU or a state contracting state of the EEA Agreement without the authorisation of the rightholder and without payment of remuneration.

(5) A performer, producer of phonograms, broadcasting organisation, producer of the first fixation of a film, a person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, and a person who publishes a critical or scientific publication of a work not protected by copyright may transfer (assign) the economic rights provided for in this Chapter or grant an authorisation (licence) for the use of the object of related rights.

§ 62¹. Presumption of related rights

(1) The protection of the object of related rights is presumed, except if, based on this Act or other copyright legislation, there are apparent circumstances which preclude this. The burden of proof lies on the person who contests the protection of the object of related rights.

(2) It is presumed that the person whose name is indicated on an object of related rights as rightholder has rights regarding the specified object until the contrary is proved. The burden of proof lies on the person who contests the fact that this person holds the rights.

(3) If an object of related rights or its packaging is marked with a symbol that can be directly related with the holder of related rights or his or her legal successor, or such symbol is used in other relation with the corresponding object of related rights, the holder of the related rights who is associated with the symbol is presumed to have the rights regarding the corresponding object.

§ 63. Validity of related rights

(1) The provisions of this Chapter apply in respect of a performer if:

- 1) the performer is a citizen or a permanent resident of the Republic of Estonia;
- 2) the work is performed (produced) in the territory of the Republic of Estonia; or
- 3) the performance (production) of the work is recorded on a phonogram which is protected pursuant to subsection (2) of this section; or

- 4) the performance (production) of the work which is not recorded on a phonogram is included in a radio or television programme which is protected pursuant to subsection (3) of this section.
- (2) The provisions of this Chapter apply in respect of a producer of phonograms if:
 - 1) the producer of phonograms is a citizen or a permanent resident of the Republic of Estonia or a legal person located in the Republic of Estonia; or
 - 2) the sounds were first fixed on a phonogram in the territory of the Republic of Estonia; or
 - 3) the phonogram was first published in the territory of the Republic of Estonia. “Publication” means offering copies of a phonogram to the public in reasonable quantity.
 - (3) The provisions of this Chapter apply in respect of a broadcasting organisation if:
 - 1) the registered office of the organisation is in the territory of the Republic of Estonia; or
 - 2) the work is communicated by means of a transmitter which is located in the territory of the Republic of Estonia.
 - (4) The provisions of this Chapter apply in respect of citizens of foreign states and foreign legal persons pursuant to international agreements to which the Republic of Estonia is party.

§ 64. Definition of performer

For the purposes of this Act, “performer” means an actor, singer, musician, dancer or another person or groups of persons who acts, sings, declaims, plays on an instrument or in any other manner performs literary or artistic works or works of folklore or supervises other persons upon the performance of works, or a person who performs in variety shows, circuses, puppet theatres, etc.

§ 65. Rights of performers

Performers shall enjoy moral and economic rights in the performance (interpretation) of works.

§ 66. Moral rights of performers

A performer shall enjoy the following rights:

- 1) right of authorship of the performance;
- 2) right to a stage name;
- 3) right of inviolability of the performance;
- 4) right of protection of the performer's honour and reputation with respect to the performer's performance.

§ 67. Economic rights of performers

(1) A performer has the exclusive right to use and to authorise or prohibit the use of the performance of a work and to obtain, for such use, remuneration agreed upon by the parties except in the cases prescribed by this Act and an agreement between the parties.

(2) The following is permitted only with the consent of the performer:

- 1) recording a performance which has previously not been fixed onto a record, audio or video tape, on film or in another manner;
- 2) the broadcasting of performances by radio, television or satellite, except in the cases where a recording of the performance is broadcast or the performance is retransmitted with the permission of the broadcasting organisation which first broadcast the performance;
- 3) directing of a performance at the public by whichever technical means outside the location of the performance except in the cases where a recording of the performance is communicated to the public or the performance is directed at the public by means of radio or television;
- 3¹) making the recording of a performance available to the public in such a way that persons may access the performance from a place and at a time individually chosen by them;
- 4) use of the sound and image of the performance separately if they are recorded together and form a single whole;
- 5) the direct or indirect, temporary or permanent, partial or total reproduction of the recording of a performance in any form or by any means;
- 6) the distribution of recordings to the public;
- 7) the rental and lending of the recording of a performance. The rental right shall transfer to the producer of an audiovisual work (subsection 33 (3)) upon the

conclusion of a corresponding individual or collective contract for the creation of an audiovisual work unless otherwise prescribed by contract. The performer shall retain the right to obtain equitable remuneration (subsection 68 (4)).

- (3) The performer of a work may exercise the rights set out in subsection (2) of this section independently or through a collective management organisation.
- (4) (Repealed - 21.01.99 entered into force 15.02.99 - RT I 1999, 10, 156)
- (5) Upon performance of a work in the execution of direct duties, the economic rights of the performer are transferred to the employer only on the basis of a written agreement of the parties.

§ 68. Authorisation to use performance

- (1) A prior written consent of the performer is required for the use of a performance.
- (2) In order to use a work performed by a group of persons, the consent of all members of the group is required. The leader of an ensemble, a conductor, leader of a choir, director or another person authorised by the group of persons may grant an authorisation in the name of the group.
- (3) Unless otherwise prescribed by contract:
 - 1) an authorisation to broadcast the performance of a work on radio or television does not grant the broadcasting organisation the right to record the performance or grant an authorisation to broadcast the work to other organisations;
 - 2) an authorisation to broadcast the performance of a work on radio or television and to fix the performance does not grant the broadcasting organisation the right to reproduce the recording;
 - 3) an authorisation to record the performance of a work and to reproduce the recording does not grant the right to broadcast such recording or a copy thereof on radio or television.
- (4) Where a performer has transferred (assigned) the right to rent the original or a copy of a phonogram or audiovisual work or has granted a licence therefor, or such transfer or grant of a licence may be presumed, the performer shall retain the right to obtain equitable remuneration for the rental. An agreement to waive the right to obtain equitable remuneration is void.

§ 69. Definition of producer of phonograms

For the purposes of this Act, a producer of a phonogram (sound recording) is a natural or legal person on whose initiative or responsibility a first legal recoding of the sound arising from the performance or other sound occurs.

§ 70. Rights of producers of phonograms

- (1) A producer of phonograms has the exclusive right to authorise or prohibit:
 - 1) the direct or indirect, temporary or permanent, partial or total reproduction of the phonograms in any form or by any means;
 - 2) the importation of copies of phonograms;
 - 3) the distribution of phonograms to the public;
 - 4) the rental or lending of copies of phonograms;
 - 5) making the phonograms available to the public in such a way that persons may access the phonograms from a place and at a time individually chosen by them.
- (2) The amount of remuneration for the use of a phonogram, the manner of and procedure for payment thereof shall be determined by an agreement between the producer of phonograms and a user thereof.

§ 71. Symbol of protection of phonogram

In order to guarantee the rights of a producer of phonograms and of the performers whose works are recorded on a phonogram, the producer of phonograms has the right to mark recordings made for commercial purposes or containers thereof with the symbol P (P in a circle) together with the year of the first publication of the phonogram added thereto. The name of the producer of phonograms and the principal performers of the work recorded, if these are not directly indicated on the phonogram or the container thereof, shall be added to the said symbol.

§ 72. Remuneration for use of phonogram

- (1) If a phonogram published for commercial purposes or a reproduction thereof is used for communication to the public, the performer and the producer of phonograms are entitled to obtain equitable remuneration.
- (2) The remuneration is paid by a person who communicates the phonogram published for commercial purposes to the public.
- (3) The remuneration shall be paid in equal proportions as a single payment to the performer and the producer of phonograms unless otherwise prescribed in an agreement between the performer and the producer of phonograms.

§ 73. Rights of broadcasting organisations

- (1) Broadcasting organisations have the exclusive right to authorise or prohibit:
 - 1) retransmission of their broadcasts;
 - 2) recording of their broadcasts;
 - 3) direct or indirect, temporary or permanent, partial or total reproduction of recordings of their broadcasts in any form or by any means;
 - 4) communication of broadcasts to the public if such direction occurs in places open to the public against payment of an entrance fee;
 - 4¹) making recordings of their broadcasts available to the public in such a way that persons may access the broadcasts from a place and at a time individually chosen by them;
 - 5) distribution of recordings of their broadcasts to the public.
- (1¹) The rights provided for in subsection (1) of this section do not depend on whether the broadcast is communicated or retransmitted by wire or over the air, including by cable network or satellite.
- (2) The amount of remuneration for the use of a recording of broadcasts, the manner of and procedure for payment thereof shall be determined by an agreement between the broadcasting organisation and a user.
- (3) The rights provided for in subsection (1) of this section do not extend to a cable operator who retransmits by cable the broadcasts of broadcasting organisations.

§ 73¹. Rights of producers of first fixations of films

- (1) Producers of first fixations of films have the exclusive right to authorise or prohibit:

- 1) direct or indirect, temporary or permanent, partial or total reproduction of the originals or copies of their films in any form or by any means;
 - 2) distribution of the originals or copies of their films to the public;
 - 3) rental or lending of the originals or copies of their films;
 - 4) making available the originals or copies of their films in a manner that persons can use the films in the place and at the time of their individual choice.
- (2) (2) For the purposes of this section, “films” mean audiovisual works or moving images whether or not accompanied by sound which are not works.

§ 74. Duration of related rights

- (1) The rights prescribed in this Chapter shall not expire before the end of a period of fifty years:
- 1) for the performer, as of the first performance of a work. If a recording of the performance is lawfully published or lawfully communicated to the public within this period, the rights of the performer shall expire in fifty years as of the date of such publication or communication to the public, whichever is the earliest;
 - 2) for the producer of phonograms, as of the first fixation of a phonogram. If a recording of the phonogram is lawfully published within this period, the rights of the producer of phonograms shall expire in fifty years as of the date of the first lawful publication. If, during the term specified in the first sentence, no lawful publication has occurred and the phonogram has been lawfully communicated to the public, the specified rights shall expire in fifty years as of the date of the first lawful communication to the public;
 - 3) for the broadcasting organisation, as of the first transmission of a broadcast, regardless of whether the broadcast is transmitted or retransmitted by wire or over the air, including by cable network or satellite;
 - 4) for the producer of the first fixation of a film, as of the first fixation of the film. If the film is lawfully published or lawfully communicated to the public within this period, the rights of the producer of the first fixation shall expire in fifty years as of the date of such publication or communication to the public, whichever is the earliest.
- (2) The term of protection commences from the first of January of the year following the year when the acts specified in subsection (1) of this section are performed.

(3) Within the term of protection specified in this section, the economic rights related to copyright shall be transferred by way of succession.

(4) The authorship and stage name of a performer and the honour and reputation of the performer shall be protected without a term.

§ 74¹. Related rights in previously unpublished works and critical or scientific publications

(1) A person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work shall benefit from a protection equivalent to the economic rights of the author (§ 13), within twenty-five years from the time when the work was first published or communicated to the public.

(2) A person who publishes a critical or scientific publication of a work unprotected by copyright has rights to the publication equivalent to the economic rights of an author (§ 13), within thirty years from the time when the publication was first published.

§ 75. Limitation of related rights

(1) Without the authorisation of a performer, producer of phonograms, broadcasting organisation, producer of the first fixation of a film and a person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully directs at the public a previously unpublished work or of a person who publishes a critical or scientific publication of a work unprotected by copyright, and without payment of remuneration, it is permitted to use the performance, phonogram, radio or television broadcast or recordings thereof, or the film, including by reproduction:

1) for private use by natural persons, taking account of the provisions of §§ 26 and 27 of this Act and on condition that such reproduction is not carried out for commercial purposes;

2) for the purpose of illustration for teaching or scientific research to the extent justified by the purpose and on condition that such use is not carried out for commercial purposes and on condition that the source is indicated, if possible;

3) if short excerpts are used in connection with the reporting of current events to the extent justified by the informational purposes to be achieved and on condition that the source is indicated, if possible;

- 4) if short excerpts (quotations) from an object of related rights which is lawfully published are used for informational purposes and to the extent justified by the informational purposes to be achieved and the obligation to convey the meaning of the whole performance, phonogram, radio or TV broadcast or film accurately is observed and on condition that the source is indicated, if possible;
- 5) for an ephemeral recording of the performance, broadcast or phonogram by a broadcasting organisation and for reproduction thereof by means of its own facilities and for the purpose of its own broadcasts, provided that the broadcast organisation has received an authorisation to broadcast the performance, broadcast or phonogram from the rightholder beforehand or the transmission or retransmission of the performance, broadcast or phonogram by the broadcast organisation is lawful on another basis. Such recordings and reproduction thereof (copies) shall be destroyed after thirty days from their making, except for one copy which may be preserved as an archive copy under the conditions set out in subsection 23 (3) of this Act;
- 6) in other cases where the rights of authors of works are limited pursuant to Chapter IV of this Act.
- (2) The free use prescribed in this section is permitted only on the condition that that this does not conflict with normal use and does not unreasonably harm the legitimate interests of holders of related rights.

Chapter VIII¹

Rights of makers of databases

§ 75¹. Purpose of this Chapter

The purpose of this Chapter is to provide independent protection for databases by establishing special rights for makers of databases to protect investments made by them.

§ 75². Definition of database

For the purposes of this Chapter, “database” means a collection of works, data or other economics arranged in a systematic or methodical way and individually accessible by

electronic or other means. The definition of database does not cover computer programs used in the making or operation thereof.

§ 75³. Maker of database

(1) The maker of a database is a person who has made a substantial investment, evaluated qualitatively or quantitatively, in the collecting, obtaining, verification, arranging or presentation of data which constitutes the contents of the database.

(2) The provisions of this Chapter apply if:

- 1) the maker of a database or rightholder is a citizen or permanent resident of the Republic of Estonia;
- 2) the maker of a database or rightholder is a company which is founded in accordance with the law of the Republic of Estonia and has its registered office, central administration or principal place of business within the territory of the Republic of Estonia. If such company has only its registered office in the territory of the Republic of Estonia, its operations must be genuinely linked on an ongoing basis with the economy of Estonia;
- 3) a database must be protected in accordance with an international agreement of the Republic of Estonia.

§ 75⁴. Rights of makers of databases

(1) The maker of a database has the exclusive right to authorise or prohibit the use of the database in the manner prescribed in subsection (2) of this section and to obtain remuneration agreed between the parties for such use, except in the cases prescribed in this Chapter or by agreement of the parties.

(2) The following is permitted only with the authorisation of the maker of a database:

- 1) extractions from the database or from a substantial part thereof. “Extraction” means the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;
- 2) re-utilisation of the database or a substantial part thereof. “Re-utilisation” means any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission.

(3) The first sale of a copy of a database by the maker of the database or with the latter's authorisation shall exhaust the right of the maker of the database to control the resale of the database or the copy as provided for in clause (2) 2) of this section.

(4) The exclusive right specified in subsection (2) of this section shall belong to the maker of a database irrespective of the eligibility of that database or the contents thereof for protection by this Act or under other legislation.

(5) Public lending is not an act of extraction or re-utilisation of a database or a substantial part thereof.

(6) The maker of a database may transfer (assign) the right provided for in subsection (2) of this section or grant an authorisation (licence) for the exercise of such right. In such cases, the provisions of Chapter VII of this Act shall apply.

§ 75⁵. Rights and obligations of lawful users of databases

(1) A lawful user of a database which is made available to public in whatever manner has the right to make extractions and to re-utilise insubstantial parts of its contents, evaluated qualitatively or quantitatively, for any purposes whatsoever. Where the person is authorised to use only part of the database in the manner provided for in this subsection, the provisions of this subsection shall apply only to that part.

(2) A lawful user of a database which is made available to the public in whatever manner shall not prejudice the copyright or related rights in the works or other economics contained in the database.

(3) A lawful user of a database which is made available to the public in whatever manner shall not perform acts that conflict with normal use of the database or unreasonably prejudice the legitimate interests of the maker of the database.

(4) Any contractual provisions which prejudice the exercise of the rights provided for in this section by a lawful user of a database are void.

§ 75⁶. Limitation to rights of makers of databases

A lawful user of a database which is lawfully made available to the public in whatever manner may, without the authorisation of its maker and without payment of remuneration, extract or re-utilise a substantial part of the database in the case of:

- 1) extraction for private purposes of the contents of a non-electronic database;

- 2) extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
- 3) extraction or re-utilisation for the purposes of public security or an administrative or judicial procedure to the extent justified by the purposes of public security or an administrative or judicial procedure.

§ 75⁷. Term of protection of rights of makers of databases

- (1) The rights of the maker of a database shall run from the date of completion of the database, which is the date on which the making of the database is completed.
- (2) The term of protection of the rights of the maker of a database shall expire in fifteen years from the first of January of the year following the date when the database was completed.
- (3) If a database is made available to the public in whatever manner within the period provided for in subsection (2) of this section, the term of protection of the rights of the maker of the database shall expire in fifteen years from the first of January of the year following the date when the database was first made available to the public.
- (4) If there is a substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from additions, deletions or alterations, which would result in the database being considered to be a substantial investment, evaluated qualitatively or quantitatively, the rights of the maker of the changed database shall expire in fifteen years from the making of corresponding changes. In such case, the term shall be calculated pursuant to the procedure provided for in subsection (2) or (3).

Chapter IX

Collective Exercise of Rights

§ 76. Collective management organisation

- (1) Authors, performers, producers of phonograms, broadcasting organisations and other holders of copyright and related rights have the right to establish collective management organisations.
- (2) A collective management organisation shall be a non-profit association which is founded, operates or is dissolved pursuant to the Non-profit Associations Act with the specifications arising from this Act.
- (3) Exercise of rights by collective management organisations is mandatory upon cable retransmission of a work or an object of related right and in the cases specified in subsections 14 (6) and (7), §§ 15 and 27 and subsection 68 (4) of this Act.
- (4) Subsection (3) of this section does not apply upon cable retransmission of a work or an object of related right if the holder of the rights is a broadcasting organisation.
- (5) A collective management organisation is has the right to obtain necessary information concerning the use of works and objects of related rights from all persons in public law and private law.

§ 77. Principles and methods of activities of collective management organisations

- (1) Collective management organisations shall exercise and protect the economic and personal non-economic rights of their members pursuant to the procedure prescribed in their articles of association and membership contracts, including:
 - 1) give their consent to the use of works or objects of related rights (performances, phonograms, radio or television broadcasts or programmes) by concluding corresponding contracts with users;
 - 2) determine the amount of author's remuneration, licence fees, performer's fees or any other remuneration, by way of conducting negotiations if necessary;
 - 3) collect and pay remuneration for the use of works or objects of related rights;
 - 4) establish and manage foundations to improve the conditions necessary for the creative activities of Estonian authors and performers, provide social guarantees for them and promote their works abroad;
 - 5) protect and represent the rights of authors and holders of related rights in court and other institutions;
 - 6) promote other activities in the field of exercise of copyright and related rights in accordance with an authorisation granted by authors or holders of related rights.

(2) Under a corresponding contract or in the cases provided by law, collective management organisations may also represent authors and holders of related rights who are not members of these organisations.

(3) During the period when a collective management organisation has, pursuant to law or contract, the right to represent authors or holders of related rights, the authors or holders of related rights cannot exercise such rights themselves.

(4) In the cases of evident violations of the rights and legitimate interests of authors or holders of related rights, collective management organisations have the right to represent all authors or holders of related rights without authorisation.

(4¹) Subsection (4) of this section does not apply in the conducting of proceedings concerning a violation of the retransmission right of a broadcasting organisation committed in cable distribution network.

(5) Collective management organisations shall represent foreign authors and holders of related rights under contracts entered into directly with them or bilateral or multilateral agreements concluded with foreign collective management organisations or on the basis of membership.

§ 78. Guarantees for members of collective management organisations

In order to prevent unlawful and unjustified limitations to copyrights and related rights:

1) all decisions on remuneration (author's remuneration, licence fees, performers' fees or any other fees) and the percentage deducted from such fees to cover administrative expenses of a collective management organisation (commission), methods of collection, distribution and payment of fees, as well as the use of collected fees for social or cultural purposes, for the foundation of foundations or other purposes relating to the common interests of members of a collective management organisation shall be adopted by the general meeting of the collective management organisation or by members authorised by them (meeting of representatives or of the central administration);

2) remuneration collected shall be distributed among authors and holders of related rights as proportionately as possible subject to the actual use of the works after deducting from the fees the percentage jointly determined by the members of the organisation to cover administrative expenses and for other purposes prescribed in clause 1) of this section;

- 3) the members of a collective management organisation shall have access to regular and complete information concerning all activities of the organisation and the use of their works and the remuneration to be obtained by them;
- 4) the same rules apply to foreign authors and holders of related rights as to Estonian authors and holders of related rights;
- 5) foreign collective management organisations with whom bilateral or multilateral agreements have been concluded shall, at their request, receive all necessary information concerning management of the rights of their authors and holders of related rights in Estonia.

§ 79. Exercise of right of retransmission via cable network

- (1) If the holder of the right does not conclude a contract with a collective management organisation for the exercise of the right of retransmission via cable network, the organisation representing holders of rights of the same category is authorised to represent the rightholder.
- (2) If there are several collective management organisations specified in subsection (1) of this section, the rightholder is free to choose which of the organisations is authorised to manage the rightholder's rights.
- (3) A rightholder represented pursuant to subsection (1) of this section has the same rights and obligations as the rightholder who is represented by a collective management organisation pursuant to a membership contract or another corresponding contract.
- (4) Under a contract between a cable operator and a collective management organisation, a rightholder represented pursuant to subsection (1) of this section may claim the rightholder's rights and performance of obligations corresponding to the rights within three years as of the date of retransmission of the radio or television broadcast which includes the work.
- (5) Subsection (1) of this section does not apply to broadcasts of broadcasting organisations.

§ 79¹. Exercise of right of communication by satellite

- (1) Section 79 of this Act applies to communication of a work by satellite if the communication of the work to the public by a broadcasting organisation by satellite simulcasts a terrestrial broadcast by the same broadcaster.

(2) The holder of right represented by a collective management organisation pursuant to the procedure provided for in § 79 of this Act has at any time the right to demand that the representation be terminated and to exercise his or her rights either individually or collectively.

(3) This section does not apply to audiovisual works.

Chapter X

Protection of Rights

§ 80. Protection of rights of makers of databases

The provisions concerning the protection of copyright and related rights apply to the protection of the rights of makers of databases (Chapter VIII¹) unless otherwise provided by law.

§ 80¹. Pirated copy

(1) For the purposes of this Act, “pirated copy” means a copy, in any form and whether or not with a corresponding packaging, of a work or object of related rights which has been reproduced in any country without the authorisation of the author of the work, holder of copyright or holder of related rights.

(2) “Pirated copy” means also a copy of a work or object of related rights which has been reproduced in a foreign state with the authorisation of the author of the work, holder of copyright or holder of related rights but which is distributed or is going to be distributed in Estonia without the authorisation of the author, holder of copyright or holder of related rights.

§ 80². Trading in pirated copies

“Trading in pirated copies” means the sale, rental, offer for sale or offer for rental of pirated copies and the storage, possession and distribution of pirated copies for commercial purposes.

§ 80³. Technological measure

(1) Authors and holders of related rights may, in order to protect their rights, add technological measures to a work or object of related rights.

(2) For the purposes of this Act, a technological measure means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts related to a work, an object of related rights or a database within the meaning of Chapter VIII¹ of this Act and for which the holder of copyright, the holder of related rights or the maker of the database has not granted the authorisation thereof within the meaning of Chapter VIII¹ of this Act.

(3) With the help of technological measures, the rightholders control the use of protected works or objects of related rights through the application of an access control or protection process which achieves the protection objective (such as encryption, scrambling or other transformation or a copy control mechanism). The technological measures voluntarily applied by the rightholders, including those applied in the implementation of voluntary agreements, shall enjoy protection.

(4) In the cases of free use of the works permitted by § 18, clauses 19 2), 3), 8) and 9) of and §§ 20 and 23 of this Act and objects of related rights permitted by clauses 75 (1) 1), 2), 5) and 6) of this Act, the rightholder shall adjust such measures to his or her work or object of related rights which allow the entitled persons to freely use the work or object of related rights to the extent necessary for the free use in the cases prescribed by law on the condition that entitled persons have legal access to the protected work or object of related rights. If the person entitled to freely use the work or object of related rights and the rightholder fail to reach an agreement on application of the corresponding measures within a reasonable period of time, the person entitled to freely use the work or the object of related rights has the right to address the copyright committee under the conditions set out in § 87 of this Act.

(5) Subsection (4) of this section does not apply to such works and objects of related rights which have been made available to the public on the basis of an agreement in such a way that persons can use them from a place and at a time individually chosen by them.

(6) This section does not apply to computer programs.

§ 80⁴. Information on exercise of rights

(1) The authors and holders of related rights may add information on the exercise of rights to published works or objects of related rights.

(2) For the purposes of this Act, information on the exercise of rights is any information presented to the rightholders that defines the work, the object of related rights or database within the meaning of Chapter VIII¹ of this Act or the terms of their use and identifies the author, the holder of related rights or the maker of the database within the meaning of Chapter VIII¹; figures and codes containing information on the exercise of rights is also deemed to be such information.

(3) Subsection (1) of this section applies only if information on the exercise of rights accompanies the work, object of related rights or database within the meaning of Chapter VIII¹ of this Act or is presented at same time with their communication to the public.

(22.09.2004 entered into force 29.10.2004 - RT I 2004, 71, 500)

Chapter X¹

Liability

§ 81¹. Trade in pirated copies

(1) Trade in pirated copies is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

§ 81². Removal or alteration of information on exercise of rights

(1) Removal or alteration of electronic information on the exercise of the rights of authors or holders of related rights; and distribution, communication, communication to the public or

making available to the public of works, objects of related rights or databases from which information concerning the exercise of rights has been removed without authorisation or the information has been altered, is punishable by a fine of 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

§ 81³. Proceedings

(1) The provisions of the General Part of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 82, 480; 105, 612; 2003, 4, 22; 83, 557; 90, 601; 2004, 7, 40; 46, 329; 54, 387; 56, 401) and of the Code of Misdemeanour Procedure (RT I 2002, 50, 313; 110, 654; 2003, 26, 156; 83, 557; 88, 590; 2004, 46, 329; 54, 387 and 390; 56, 403) apply to the misdemeanours provided for in §§ 81¹ and 81² of this Act.

(2) The following extra-judicial bodies conduct proceedings in matters of misdemeanours provided for in §§ 81¹ and 81² of this Act:

1) police prefectures;

2) the Consumer Protection Board.

(3) A police prefecture or court shall confiscate the object which was the direct object of commission of a misdemeanour provided for in this § 81¹ of this Act.

§ 81⁴. Protection of copyright and related rights under civil law

(1) In the case of the unlawful use of a work or an object of related rights, the author or holder of related rights may, among other, claim the following:

1) compensation, pursuant to § 1043 of the Law of Obligations Act, for the patrimonial and non-patrimonial damage caused through the unlawful use of a work or an object of related rights;

2) termination of the unlawful use of a work or an object of related rights and refrainment from further violation pursuant to § 1055 of the Law of Obligations Act;

3) delivery of that which was received by way of the unlawful use of a work or an object of related rights pursuant to §§ 1037 and 1039 of the Law of Obligations Act.

(2) If, as a result of a violation of copyright legislation, a work or an object of related rights is communicated to the public, reproduced, distributed or altered etc., an entitled person may claim:

- 1) restoration of the work or object of related rights in the original form;
- 2) alteration of copies of the work or object of related rights by specific means, or
- 3) destruction of pirated copies.

(3) The provisions of clauses (2) 2) or 3) of this section do not apply to works of architecture.

(4) It is prohibited to transfer pirated copies to the author, holder of related rights or to their representatives.

§ 84¹. Prohibition on trade in certain goods

(1) If a misdemeanour report is prepared concerning a misdemeanour provided for in subsection 81¹ (1) or (2) of this Act, the body conducting the proceedings in the matter of the misdemeanour may prohibit the person who holds a registration for retail trade from trading in goods falling within the heading of the Estonian Nomenclature of Commodities (hereinafter ENC) which covers the pirated copies that were the subject of the trade. The prohibition applies, regardless of where the misdemeanour was committed, for all places of business until the date of entry into force of the decision made in the matter. The authority conducting proceedings in the matter of the misdemeanour shall make a corresponding notation in the third division of the register of economic activities, or make a proposition to the rural municipality or city government for making such notation.

(2) If proceedings concerning a misdemeanour specified in subsection 81¹ (1) or (2) of this Act with respect to a legal person are terminated, the body conducting the proceedings in the matter of the misdemeanour or the rural municipality or city government, on proposal of the body conducting the proceedings in the matter of the misdemeanour shall delete the notation specified in subsection (1) of this section from the register of economic activities.

(3) A person regarding whose punishment a decision has entered into force pursuant to subsection 81¹ (1) or (2) of this Act is prohibited from trading in goods falling within the heading of the ENC which covers the pirated copy which was the direct object of the misdemeanour. The prohibition applies, regardless of where the misdemeanour was committed, for all places of business for a period of three years as of the date of entry into force of the decision.

XI peatükkChapter XI

Seaduse rakendamineImplementation of Act

§ 85. Identification of pirated copies and prevention of further circulation thereof

(1) In civil, criminal or administrative procedure, the following is taken as the basis for considering a copy of a work to be a pirated copy:

- 1) statements given and documents provided by the author, holder of the author's rights or holder of related rights or by a representative thereof, legal copies of the work or any other factual information received from the above-mentioned persons; or
- 2) the absence of a required special marking on the object of related rights or its packaging.

(2) Pirated copies are subject to confiscation regardless of the imposition of penalties.

(3) Pirated copies are subject to seizure regardless of the fact to whom they belong.

(4) Illegal copies of objects of architecture are not subject to confiscation.

(5) Seized pirated copies are destroyed.

(6) A person who obtains a pirated copy in good faith has the right to file an action in court against the person who sold or transferred the pirated copy to that person.

§ 86. Further handling of seized computer system

(1) A computer system confiscated pursuant to § 83 of the Penal Code shall be transferred to the Ministry of Education and Research.

(2) The Ministry of Education and Research shall remove the computer program installed in the computer without the consent of the author or holder of the author's rights and shall

transfer the computer system to a state or municipal educational institution or any other educational institution in public law free of charge and for permanent use within the framework of the Tiger Leap programme.

§ 87. Copyright committee

(1) A copyright committee (hereinafter the committee) shall be formed at the Ministry of Culture and the committee shall act in the capacity of an expert committee. The Government of the Republic shall appoint the members of the committee for a period of five years. The committee shall:

- 1) monitor compliance of the level of protection of copyright and related rights with the international obligations assumed by the Republic of Estonia;
- 2) analyse the practice of implementation of copyright legislation;
- 3) make proposals to the Government of the Republic for amendment of copyright legislation and accession to international agreements;
- 4) resolve, at the request of the parties, disputes related to copyright and related rights by way of conciliation of the parties;
- 4¹) resolve the applications submitted pursuant to subsection 80³ (4) of this Act concerning measures applicable to allow the free use of works and objects of related rights. If, in order to resolve the corresponding rights, a party has applied to the copyright committee, the parties are required to enter into negotiations through the committee and conduct the negotiations in good faith. The parties shall not prevent or hinder negotiations without valid justification;
- 5) perform other functions assigned to the committee by the Government of the Republic.

(1¹) In the resolution of a dispute by the copyright committee, the membership of the committee shall be such that its independence and impartiality is beyond reasonable doubt. If necessary, independent experts from outside the committee shall be invited to participate in its work by an order of the Minister of Culture.

(1²) In conciliation proceedings, the committee shall make a proposal to the parties to resolve the dispute and enter into an agreement. The parties may, within three months as of the receipt of the proposal, present their positions expressing consent or opposition to the content of the proposal. Failure to present a position shall be considered as consent to the proposal. If the parties consent to the proposal, the committee shall approve the agreement

and notify the parties thereof in writing. Performance of an agreement approved by the committee is mandatory to the parties and it may be submitted to a bailiff for enforcement pursuant to the procedure provided by the Code of Enforcement Procedure. If the parties fail to consent to the proposal, the applicant withdraws the application or the other party refuses to participate in the conciliation proceedings, the committee shall state the failure to reach an agreement and shall notify the parties thereof in writing.

(2) If an interested person disagrees with a decision made by the committee in a dispute specified in subsection (1) of this section, the person has the right of recourse to the courts concerning the same dispute.

(3) The committee shall provide an overview of compliance of the level of protection of copyright and related rights in Estonia with the international obligations assumed by Estonia and the practice of implementation of copyright legislation to the Government of the Republic twice a year and, if necessary, shall make proposals for the improvement of activities in this field.

§ 87¹. Negotiations and resolution of disputes in respect of rights managed only by collective management organisations

(1) In the cases specified in subsection 76 (3) of this Act, a collective management organisation and a user are required to enter into and conduct negotiations in good faith. The parties shall not prevent or hinder negotiations without valid justification.

(2) A party who fails to comply with the requirement provided for in subsection (1) of this section is required to compensate the other party for damage arising therefrom.

(3) If a collective management organisation and a user are unable to reach an agreement, one or both parties have the right to call upon the assistance of a mediator for the resolution of the dispute. The copyright committee (§ 87) or one or several persons who have been selected by the parties and whose independence and impartiality are beyond reasonable doubt may act as mediators. If the parties do not have recourse to the copyright committee, the provisions of subsection 87 (1²) of this Act shall be applied to the decision of a mediator.

§ 88. Protection of works and results of work of performers, producers of phonograms or broadcasting organisations created before entry into force of this Act

(1) This Act also extends to works and results of the work of performers, producers of phonograms or broadcasting organisations which are created before 12 December 1992.

(2) The requirements established by this Act for the use of works and results of the work of performers, producers of phonograms or broadcasting organisations do not extend to cases where use occurred before 12 December 1992.

(3) In the case of works whose term of protection of copyright has expired, the authorship of the works, the names of authors and their honour and reputation shall be protected by the Ministry of Culture (subsection 44 (1)). This provision also applies to performers (subsection 74 (4)).

§ 88¹. Application of specific provisions of Act

(1) Section 15 of this Act also applies in respect of the states party to the Berne Convention for the Protection of Literary and Artistic Works which ensure for the citizens or permanent residents of the Republic of Estonia the same level of protection as that prescribed in Article 14ter of the Berne Convention for the Protection of Literary and Artistic Works.

(2) The copyright provisions of this Act also apply in respect of the citizens and permanent residents of the contracting states of the World Trade Organisation (WTO) pursuant to Agreement on the Trade-Related Aspects of Intellectual Property Rights in Annex 1C of the Agreement Establishing the World Trade Organisation (Marrakesh Agreement).

(3) Section 15 of this Act also applies in respect of the contracting states of the World Trade Organisation which ensure for the citizens or permanent residents of the Republic of Estonia the same level of protection as that prescribed in Article 14ter of the Berne Convention for the Protection of Literary and Artistic Works.

(4) Section 74¹ of this Act does not apply in respect of the contracting states of the Berne Convention for the Protection of Literary and Artistic Works and the World Trade Organisation.

(5) The provisions of clauses 67 (2) 1)-3) and 7) of this Act and other provisions arising from the given section of this Act apply in respect of persons who are citizens of a contracting state of the World Trade Organisation.

(6) The provisions of clauses 70 (1) 1) and 4) of this Act and other provisions arising from the given section of this Act apply in respect of producers of phonograms who are citizens of a contracting state of the World Trade Organisation, or in respect of legal persons which have their registered office in a contracting state of the World Trade Organisation.

(7) The provisions of clauses 73 (1) 1), 2), 4) and 5) of this Act and other provisions arising from the given section of this Act apply in respect of broadcasting organisations which have their headquarters in the territory of a contracting state of the World Trade Organisation.

§ 89. Implementing Acts

(1) The Government of the Republic or, by its authorisation, the Minister of Culture has the right to issue regulations for the implementation of copyrights provided for in §§ 13 and 15 of this Act.

(2) The Government of the Republic has the right to establish requirements for documenting the circulation of certain objects of related rights.

(3) The upper limit of the remuneration provided for in subsection 13³ (8) of this Act shall be taken into account upon the payment of the remunerations of the previous calendar year as of the year 2005.

Chapter XII

Provisions which Enter into Force upon Accession to European Union

§ 90. Protection of databases

(1) The first sale in a Member State of the European Union of a copy of a database by the author or with his or her consent shall exhaust the right of the author as provided for in clause 13 (1) 2) of this Act to control resale of that copy within the European Union.

(2) The first sale in a Member State of the European Union of a copy of a database by the maker of the database or with his or her consent shall exhaust the right of the maker of the database as provided for in clause 75⁴ (2) 2) of this Act to control resale of that copy within the European Union.

(3) The provisions of Chapter VIII¹ of this Act also apply if:

1) the maker of a database or rightholder is a citizen of a Member State of the European Union or a person who has his or her habitual residence in the territory of the European Union;

2) the maker of a database or rightholder is a company founded in accordance with the law of a Member State of the European Union and having its registered office, central administration or principal place of business in the territory of the European Union. If such company has only its registered office in the territory of the European Union, its operations must be genuinely linked on an ongoing basis with the economy of a Member State of the European Union.

§ 91. Protection of computer programs

The first sale in a Member State of the European Union of a copy of a computer program by its author or with his or her consent shall exhaust the right of the author provided for in clause 13 (1) 2) of this Act to distribute that copy within the European Union, with the exception of the right to rent the program or a copy thereof.

§ 92. Terms of protection

(1) Where the country of origin of a work, within the meaning of subsection 4 of Article 5 of the Berne Convention, is a third country, and the author of the work is not a citizen of a Member State of the European Union, the term of protection of copyright in the European Union shall expire within a period prescribed by the law of the country of origin of the work, but may not exceed the term specified in subsection 38 (1).

(2) The terms of protection prescribed in § 74 of this Act also apply in respect of holders of related rights who are not citizens of a Member State of the European Union, provided that the Member States grant them protection. Such rights shall expire within a period prescribed by the law of the Member State of which the rightholder is a citizen, but may not exceed the term prescribed in § 74, unless otherwise prescribed by an international agreement.

(3) The terms of protection provided for in Chapter VI, and §§ 74 and 75⁷ of this Act apply to all works and objects of related rights which are protected in at least one Member State of the European Union.

§ 93. Related rights

(1) Section 74¹ and Chapter VIII¹ of this Act also apply in respect of citizens and permanent residents of the Member States of the European Union and in respect of legal persons which have their registered office in a Member State of the European Union.

(2) The Government of the Republic or, by its authorisation, the Minister of Culture shall notify the Commission of any intention to create new related rights including the basic reasons for their introduction and the term of protection envisaged.

§ 94. Rental right and lending right

The distribution right prescribed in Chapter VIII of this Act shall only be exhausted if the first sale of an object of related rights is made in the territory of the European Union by the rightholder or with his or her consent, except for the rental right which is not exhausted.

§ 95. Communication by satellite

(1) The act of communication by satellite occurs solely in the Member State where, under the control and responsibility of the broadcasting organisation, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

(2) If an act of communication by satellite occurs in a non-Community State which does not provide the level of protection provided for in this Act, then:

1) if the programme-carrying signals are transmitted to the satellite from an uplink station situated in a Member State of the European Union, that act of communication by satellite is deemed to have occurred in that Member State and the rights provided for in this Act shall be exercisable against the person operating the uplink station;

2) if no uplink station situated in a Member State of the European Union is used but a broadcasting organisation established in a Member State has commissioned the act of communication by satellite, that act is deemed to have occurred in the Member State in which the broadcasting organisation has its principal establishment in the Community and the rights provided for in this Act shall be exercisable against the broadcasting organisation.

§ 96. Retransmission via cable network

For the purposes of this Act, “retransmission via cable network” means the simultaneous, unaltered and unabridged retransmission by a cable or microwave system for reception by the public of an initial transmission from another Member State of the European Union, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public.

§ 97. Application of this Chapter to countries party to European Free Trade Association (EFTA)

Pursuant to an international agreement of the Republic of Estonia, this Chapter applies in the territory of the European Economic Area which, in addition to the Member States of the European Union, covers the Republic of Iceland, the Principality of Liechtenstein and the Kingdom of Norway.

§ 98. Entry into force of this Chapter

The provisions of this Chapter enter into force by a separate Act.

The following directives of the European Union have been taken into account in the Copyright Act:

Council Directive 91/250/EEC of May 14 1991 (OJ No. L 122 17.5.91); Council Directive 92/100/EEC of 19 November 1992 (OJ No. L 346 27.11.92); Council Directive 93/83/EEC of 27 September 1993 (OJ No. L 248 6.10.93); Council Directive 93/98/EEC of 29 October 1993 (OJ No. L 290 24.11.93); European Parliament and Council Directive 96/9/EC of 11 March 1996 (OJ No. L 77 27.3.96); Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society (OJ No. L 167 22.06.2001 pp. 0010-0019).

The Copyright Act is based on the provisions of the Bern Convention for the Protection of Literary and Artistic Works (as revised at Paris in 1971), the International Convention for the protection of performers, producers of phonograms and broadcasting organization (Rome

1961), Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva 1971) and Annex 1C to the Agreement Establishing the WTO (Marrakech Agreement) on the agreement on trade-related aspects of intellectual property rights (RT II 1999, 22, 123).

Directive 2001/84/EC of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art (OJ L 272, 13.10.2001, pp. 32–36).

(31.05.2006 entered into force 30.06.2006 - RT I 2006, 28, 210)

² RT = *Riigi Teataja* = *State Gazette*