

## ***ITALIAN COPYRIGHT STATUTE***

### **Law for the Protection of Copyright and Neighbouring Rights** *(Law No. 633 of April 22, 1941, as last amended by* *Legislative Decree No. 68, of April 9, 2003)*

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PART I  
PROVISIONS ON COPYRIGHT

CHAPTER I

*Works Protected*

Article 1

Works of the mind having a creative character and belonging to literature, music, figurative arts, architecture, theatre or cinematography, whatever their mode or form of expression, shall be protected in accordance with this Law.

Computer programs shall also be protected as literary works, within the meaning of the Convention for the Protection of Literary and Artistic Works, ratified and enforceable pursuant to Law no. 399 of June 20, 1978, as well as data-bases 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.

Article 2

In particular, protection shall extend to:

- 1) literary, dramatic, scientific, didactic and religious works, whether in written or oral form;
- 2) musical works and compositions, with or without words, dramatico-musical works, and musical variations that themselves constitute original works;
- 3) choreographic works and works of dumb show, the form of which is fixed in writing or otherwise;
- 4) works of sculpture, painting, drawing, engraving and similar figurative arts, including scenic art
- 5) architectural plans and works;
- 6) works of cinematographic art, whether silent or with sound form, provided they are not mere documentaries protected in accordance with the provisions of Chapter V of Part II.
- 7) works of photographic art and works expressed with processes analogous to photograph, provided they are not simple photographs, protected according to the provisions of Chapter V of Part II.
- 8) computer programs, in whatever form they are expressed, provided that they are original and result from the author's own intellectual creation. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, shall be excluded from the protection afforded by this Law. The term "computer program" shall include their preparatory design materials.
- 9) databases under point II of art. 1, meant as collections of works, data or other independent materials which are systematically or methodically arranged and can be individually accessed by electronic or other means. The copyright protection for databases shall not extend to their contents and shall be without prejudice to any rights subsisting in said contents.
- 10) Works of industrial designs which themselves have a creative and artistic value

Article 3

Collective works formed by the assembling of works, or part of works, and possessing the character of a self-contained creation resulting from selection and co-ordination with a specific literary, scientific, didactic, religious, political or artistic aim, such as encyclopaedias, dictionaries, anthologies, magazines and newspapers, shall be protected as original works, independently of and without prejudice to any copyright subsisting in the constituent works or parts thereof.

Article 4

Without prejudice to the rights subsisting in the original work, works of a creative character derived from any such work, such as translations into another language, transformations into any other literary or artistic form, modifications and additions constituting a substantial remodelling of the original work, adaptations, arrangements, abridgements and variations which do not constitute an original work, shall also be protected.

Article 5

The provisions of this Law shall not apply to the texts of official acts of the State or of public administrations, whether Italian or foreign.

## CHAPTER II

### *Holders of the Right*

#### Article 6

Copyright shall be acquired on the creation of a work that constitutes the particular expression of an intellectual effort.

#### Article 7

In the case of a collective work, the person who organizes and directs its creation shall be the author.

A person who has created a derivative work shall be deemed the author of that work within the limits of his own effort.

#### Article 8

A person who is shown, in the customary manner, as the author, or is announced as such in the course of the recitation, performance or broadcasting of a work shall, in the absence of proof to the contrary, be deemed the author of the work.

Any pseudonym, professional name, initials or customary sign, well known as being equivalent to a true name, shall be deemed to have the same value as such true name.

#### Article 9

Any person who has performed or published in any manner an anonymous or pseudonymous work shall be entitled to assert the rights of the author until such time as the author reveals his identity.

This provision shall not apply in the case of pseudonymous as referred to in the second paragraph of the preceding Article.

#### Article 10

If the work has been created by the indistinguishable and inseparable contributions of two or more persons, the copyright shall belong to all the joint authors in common.

In the absence of proof of a written agreement to the contrary, the indivisible shares shall be presumed to be of equal value.

The provisions which regulate property owned in common shall be applicable. Furthermore, moral right may be asserted, at any time individually by any one joint author; and the work, if unpublished, may not be published, nor be modified or utilized in a form differing from that of first publication, without the agreement of all the co-authors. However, in the event of unjustified refusal by one or more joint authors, publication, modification or new utilization of the work may be authorized by the judicial authority upon such conditions and terms as that authority may order.

#### Article 11

Copyright in works created and published under the name and at the expense of the State, the Provinces or the Communes shall belong to them.

In the absence of agreement to the contrary with the authors of the works published, the same right shall also belong to private legal entities of a non-profit-making character, as well as to the Academies and other public cultural organisations, in respect of records of their proceedings and their publications.

## CHAPTER III

### *Content and duration of Copyright*

#### SECTION I

#### ECONOMIC EXPLOITATION OF WORKS

#### Article 12

An author shall have the exclusive right to publish his work.

He shall, in addition, have the exclusive right to the economic utilization of the work in any form or manner, whether original or derivative, within the limits fixed by this Law, and especially as regards the exercise of the exclusive rights indicated in the following Articles.

The first form of exercise of the right of utilization shall be considered to be the first publication.

#### Article 12 bis

In the absence of any stipulation to the contrary, the employer shall be exclusively entitled to exercise all economic rights in the computer program or database created by an employee in the execution of his duties of following the instructions given by his employer.

#### Article 12 ter

In the absence of any stipulation to the contrary, the employer shall be exclusively entitled to exercise all economic rights in the work of industrial design created by an employee in the execution of his duties of following the instructions given by his employer

#### Article 13

The exclusive right of reproduction concerns the multiplication of copies of the work in all or in part, either direct or indirect, temporary or permanent, by any means or in any form, such as copying by hand, printing, lithography, engraving, photography, phonography, cinematography, and any other process of reproduction.

#### Article 14

The exclusive right of transcription concerns the use of means suitable for transforming an oral work into a written work or into a work reproduced by one of the methods referred in the preceding Article.

#### Article 15

The exclusive right of public performance or recitation concerns the performance or recitation however carried out, and for payment or not, of a musical, dramatic or cinematographic work, of any other work suitable for public showing, and of oral works.

The performance or recitation of a work within the normal circle of the family, of a community, a school or a retirement home, shall not be deemed a public performance provided that it has not been carried out with gainful intent.

#### Article 15 bis

1. Authors shall receive reduced remuneration if the performance or recitation of their works takes place on the premises of officially constituted assistance centres or institutions, or benevolent associations, on condition that they are intended solely for members and guests and that they are not carried out with gainful intent. Failing agreement between the Italian Society of Authors and Publishers (*Società Italiana degli Autori ed Editori*) and the concerned associations, the amount of the remuneration shall be laid down by decree of the President of the Council of Ministers (*Presidente del Consiglio dei Ministri*) issued after consultation with the Minister for Home Affairs.

2. The criteria and conditions for ascertaining the subjective and objective circumstances justifying application of the provision in the first sentence of paragraph (1), shall be established by decree of the President of the Council of Ministers, issued in accordance with Article 17(3) of Law n. 400 of August 23, 1988, after consultation with the responsible parliamentary committees. The following in particular shall be prescribed:

- a) verification of the fact that the above mentioned legal persons have been entered for at least two years in the registers set up by Article 6 of Law no. 266 of August 11, 1991;

- b) the conditions for identifying the premises of such legal persons and for verifying the number of members and guests, which should be limited and determined in advance;
- c) membership must have been obtained in a form that can be attested to and a long time before the date of performance;
- d) verification of the fact that the performers are giving an exclusively free performance in a spirit of solidarity based on a benevolent action.

#### Article 16

1. The exclusive right of communication to the public of the work by wire or wireless means concerns the use of any means of diffusion at a distance, such as telegraphy, telephony, radio or television broadcasting, and other like means including communication to the public by satellite and cable retransmission, as well as the encrypted transmission by means of specific conditions of access; it also includes the making available to the public of a work in such a way that members of the public may access it from a place and at a time individually chosen by them.

2. The right referred to in paragraph 1 shall not be exhausted by any act of communication to the public, including the acts of making available to the public.

#### Article 16 bis

1. For the purposes of this Law:

- (a) "satellite means any satellite operating within frequency bands which, pursuant to the Law on Telecommunications, are reserved for the transmission of signals intended for direct public reception or for private individual communication, provided such private reception takes place under circumstances comparable with those applying to public reception;
- (b) "communication to the public by satellite" means the distribution, under the supervision and responsibility of the broadcasting organization operating on the national territory; program-carrying signals intended for public reception as an uninterrupted direct communication sequence towards the satellite and then towards earth. If the program-carrying signals are broadcast in a coded form, communication to the public by satellite shall be deemed to exist if the means of decoding the broadcast are made available to the public either by the broadcasting organization itself or by third parties with its consent. If the communication to the public by satellite takes place on the territory of a State not a member of the European Union which does not afford the level of protection laid down by this Law in respect of such system of communication to the public:
  - 1. communication to the public by satellite shall be deemed to take place in Italy if the upwards program-carrying signals are transmitted to the satellite by a station located on the national territory. The rights afforded by this Law as regards satellite broadcasting shall be exercised in respect of the person responsible for such station;
  - 2. communication to the public shall be deemed to take place on the national territory if the up-wards signals are transmitted by a station which is not located on the territory of a Member State of the European Union but the communication to the public by satellite is performed on behalf of a broadcasting organization located in Italy, provided such organization has its main establishment on the national territory. The rights afforded by this Law as regards satellite broadcasting shall be exercised in respect of the person responsible for such broadcasting organization;
- (c) "cable retransmission means the simultaneous retransmission in an unmodified and integral form, intended for the public, by means of a cable or very high frequency redistribution system, of primary radio or television broadcasts, whatever their broadcasting mode, originating from another Member State of the European Union and intended for public reception.

#### Article 17

1. The exclusive right of distribution concerns the right to market, place in circulation or make available to the public, by whatever means and for whatever purpose a work or copies thereof and also includes the exclusive right to introduce into the territory of the countries of European Community, for distribution, copies of a work made in countries not members of the European Community.

2. The distribution right shall not be exhausted within the European Community in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community is made by the rightholder or with his consent.

3. What is provided for under paragraph 2, shall not apply to the making available to the public of a work in such a way that members of the public may access it from a place and at a time individually chosen by them, even when the making of copies of the work is permitted.

4. For the purposes of exhaustion under paragraph 2, the free delivery of copies of a work for promotional purposes or for teaching or scientific research, when carried out or authorized by the rightholder, shall not be deemed to be exercise of the exclusive right of distribution.

#### Article 18

The exclusive right of translation concerns all forms of modification, adaptation and transformation of a work as referred to in Article 4.

An author shall also have the exclusive right to publish his works in a collection.

Finally, he shall have the exclusive right to make any modifications to his work.

#### Article 18 bis

1. The exclusive right of rental concerns the making available of use of originals, of copies or of carriers of copyright works, for a limited period of time and for direct or indirect economic or commercial advantage.

2. The exclusive right of lending concerns the making available for use of originals, of copies or of carriers of copyright works, for a limited period of time and for purposes other than those referred to in paragraph (1) when made through establish marks which are accessible to the public.

3. The author shall have the exclusive right to authorize rental or lending by third parties.

4. The above mentioned rights shall not be exhausted by any sale or other act of distribution of originals, copies or carriers of works.

5. Even where the right of rental is assigned to a producer of phonograms or cinematographic or audiovisual works or of sequences of moving images, the author shall retain his right to fair remuneration for a rental contract concluded by such producer with third parties. Any agreement to the contrary shall be null and void. In the absence of agreement between the categories concerned as defined in the first paragraph of Rule 16 of the Regulations, the said remuneration shall be set according to the procedure provided for in Article 4 of Decree Law no. 440 of July 20, 1945.

6. Paragraphs (1) to (4) shall not apply to plans or designs of buildings or to works of applied art.

#### Article 19

The exclusive rights referred to in the preceding Articles shall be independent of each other. The exercise of any one right shall not exclude the exercise of the other rights.

They shall extend to the work in its entirety and to each of its parts.

### SECTION II

#### PROTECTION OF RIGHTS IN THE WORK IN DEFENSE OF THE PERSON OF THE AUTHOR (MORAL RIGHT OF THE AUTHOR)

#### Article 20

Independently of the exclusive rights of exploitation of the work referred to in the provisions of the preceding Section, and even after the transfer of such rights, the author shall retain the right to claim authorship of his work and to object to any distortion, mutilation or any other modification of, and other derogatory action in relation to, the work, which would be prejudicial to his honour or reputation.

However, in the case of works of architecture, the author may not oppose modifications deemed necessary in the course of construction. Further, he may not oppose other modifications which may be necessary in any such completed work.

However, if the work is recognized by the competent State authority as having an important artistic character, the author shall be entrusted with the study and execution of such modifications.

#### Article 21

The author of an anonymous or pseudonymous work shall at all times have the right to reveal his identity and to have his position as author recognized by judicial procedure.

Notwithstanding any prior agreement to the contrary, persons who have derived title from an author who has revealed his identity shall be required to indicate the name of the author in publications, reproductions, transcriptions, performances, recitations and diffusions, or in any other form of manifestation or announcement to the public.

#### Article 22

The rights referred to in the preceding Articles shall be inalienable.

However, if the author was aware of and has accepted modifications to his work, he shall not be entitled to intervene to prevent the performance thereof or to demand its suppression.

#### Article 23

After the death of the author, the right referred to in Article 20 may be asserted, without limitation of time, by his spouse and children and, in the absence thereof, by his parents and other direct ascendants and descendants, and in absence of such ascendants and descendants, by his brothers and sisters and their descendants.

If the public interest should so require, such action may also be taken by the President of the Council of the Ministers after hearing the competent professional association.

#### Article 24

The right to publish unpublished works shall belong to the heirs of the author or to the legatees of such works, unless the author has expressly forbidden publication or has entrusted it to other persons.

If the author has fixed a period of time to precede publication, unpublished works shall not be published before the expiration of such period.

If more than one person is concerned by the first paragraph and there is disagreement between them, the matter shall be decided by judicial authority after hearing the public prosecutor. The wishes of the deceased person, when expressed in writing, shall in all cases be respected.

The provisions of Part III, Chapter II, Section II, shall apply to such works.

### SECTION III

#### DURATION OF EXPLOITATION RIGHTS

#### Article 25

The exploitation rights of a work shall subsist for the lifetime of the author and until the end of the seventieth calendar year after his death.

#### Article 26

In the case of works referred to in Article 10, and of dramatico-musical and choreographic works and works of dumb show, the duration of the exploitation rights of each joint-author and contributor shall be determined by the lifetime of the last surviving joint-author.

In the case of collective works, the duration of the exploitation rights of each joint-author and contributor shall be determined by the respective lifetimes of such contributors. The duration of rights of exploitation as a whole shall be fifty years from the date of first publication, whatever the form in which publication was effected, except in the case of magazines, newspapers and other periodical works to which the provisions of Article 30 shall apply.



#### Article 27

In the case of anonymous or pseudonymous works other than those referred to in the second paragraph of Article 8, the duration of the exploitation rights shall be seventy years from the date of first publication, whatever the form in which publication was effected.

If, before the expiry of such term, the author has revealed his identity, or his identity has been revealed by the persons referred to in Article 23 or by the persons authorized by the author, and in the manner established by the following Article, Article 25 shall apply.

#### Article 27 bis

*(Repealed)*

#### Article 28

In order to enjoy the normal duration of the exploitation rights, the person concerned must reveal his identity by means of a declaration made to the Office of Literary, Scientific and Artistic Property (*Ufficio della proprietà letteraria, scientifica ed artistica*) of the Office of the President of the Council of Ministers in accordance with the applicable regulations.

The declaration shall be published in the form required by the regulations and shall have effect, as regards third parties who have acquired rights in the anonymous or pseudonymous work, ad from the date of filing.

#### Art. 29

The duration of the exploitation rights belonging, under art. 11, to the State, the provinces, the communes, the academies or public cultural organizations, or to private legal entities of a non-profit making character, shall be twenty years from first publication, whatever the form in which publication was effected. In the case of communications and memoranda published by academies and other public cultural organizations, the term shall be reduced to two years, after which the author shall wholly recover his right to the unrestricted disposal of his writings.

#### Article 30

When parts or volumes of a given work are published separately and at different times, the duration of the exploitation rights, when fixed in years, shall run from the year of publication of each part or volume. The author shall enjoy the benefit of fractions of years.

In the case of collective periodical work, such as a magazine or newspaper, the rights shall also be calculated from the end of the year of publication of the individual parts or issues.

#### Article 31

In the case of works first published after the author's death that are not governed by the provisions of Art. 85ter, the duration of the exclusive exploitation rights shall be 70 years from the author's death.

#### Article 32

Without prejudice to the provisions of Article 44, the exploitation rights in the cinematographic or assimilated works shall lapse at the end of the 70<sup>th</sup> year following the death of the last survivor of the following persons: the artistic director, the authors of the scenario, including the author of the dialogue, and the composer of the music specially created for use in the cinematographic or assimilated work.

#### Article 32 bis

The exploitation rights in photographic work shall lapse at the end of the 70<sup>th</sup> year following the author's death.

#### Article 32 ter

The duration of the exploitation rights provided for in the provisions of this Section shall be counted in every case from the first of January of the year following that of the author's death or that in which any other event provided for in this Law has occurred.

## CHAPTER IV

### *Special Provisions on Exploitation Rights in Certain Categories of Works*

#### SECTION I

#### DRAMATICO-MUSICAL WORKS, MUSICAL COMPOSITIONS WITH WORDS CHOREOGRAPHIC WORKS AND WORKS OF DUMB SHOW

##### Article 33

In the absence of a special agreement between contributors in respect of operas, operettas, melologues, musical compositions with words, and dance and ballet music, the provisions of the following three Articles shall apply.

##### Article 34

The author of the musical part shall be entitled to exercise the exploitation rights except for the rights deriving from the association of the parties.

The profits derived from exploitation shall be shared in proportion to the values of the respective literary and musical contributions.

For the operas, the value of the musical part shall be deemed to be three quarters of the total value of the work.

For operettas, melologues, musical compositions with words, and dance and ballet music, the value of the two contributions shall be considered equal.

Subject to the provisions of the following Articles, each contributor shall be entitled to use his own work separately and independently.

##### Article 35

The author of the literary part may not use his part in association with any other musical work, except in the following cases:

1. If, after the final text of the manuscript of the literary contribution has been sent to the composer, he does not set it to music within five years in the case of a libretto for an opera or operetta, or within one year in the case of any other literary work to be set to music;
2. If, after having been set to music and considered by the parties as being ready for performance, the work is not performed within the periods specified in the preceding subparagraphs, unless longer periods have been afforded for performance by Articles 139 and 141;
3. If, after a first performance, the work ceases to be performed for a period of ten years in the case of an opera, an oratorio, a symphonic poem or an operetta, or for a period of two years in the case of any other composition.

In the cases specified in subparagraphs (2) and (3), the composer may make use of the music in other ways.

##### Article 36

In the case referred to in subparagraph (1) of the preceding Article, the author of the literary part shall recover his right of unrestricted disposal, without prejudice to any subsequent action for damages that he may take against the composer.

In the cases referred to in subparagraph (2) and (3), and without prejudice to any action for damages referred to in the preceding paragraph, the joint rights in respect of the work which has already been set to music shall not be affected, but the work itself may not be performed without the consent of both contributors.

#### Article 37

In the case of choreographic works or works of dumb show, and in the case of other works consisting of music with words, dancing or mimic, such as musical revues and similar works, in which the musical part does not constitute the principal function or value, the exercise of the exploitation rights shall belong, in the absence of agreement to the contrary, to the author of the choreographic or dumb show part, and in the case of musical revues to the author of the literary part.

The provisions of articles 35 and 36 shall apply to such works, subject to the modifications required by the provisions of the preceding paragraph.

### SECTION II

#### COLLECTIVE WORKS, MAGAZINES AND NEWSPAPERS

#### Article 38

In the case of a collective work, the exploitation rights shall belong, in the absence of agreement to the contrary, to the publisher of the work, without prejudice to any right deriving from the application of Article 7.

The individual contributors to collective works shall have the right to utilize their own contributions separately, provided they observe existing agreements or, in the absence of agreements, the rules set out below.

#### Article 39

If, without prior contractual agreement, an article is sent to a magazine or newspaper by a person who is not a member of the editorial staff, for the purpose of reproduction, its author shall recover the right to dispose of it unrestrictedly if he does not receive notice of acceptance within one month of sending the article or, if it is not reproduced, within six months of the notice of acceptance.

In the case of an article furnished by a member of the editorial staff, the director of the magazine or newspaper may defer reproduction beyond the periods set out in the preceding paragraph. However, once a period of six months as from the delivery of the manuscript has expired, the author shall be entitled to utilize the article for reproduction in a volume, or as in offprint in the case of newspaper, and also in any other periodical in the case of a magazine.

#### Article 40

In the absence of agreement to the contrary, a contributor to a collective work other than magazine or newspaper shall be entitled to have his name appear in the customary manner in the reproduction of his work. In the absence of agreement to the contrary, this right shall not be enjoyed by the editorial staff of newspapers.

#### Article 41

Without prejudice to the application of the provisions of Article 20, the director of a newspaper shall be entitled, in the absence of agreement to the contrary, to introduce into an article submitted for reproduction such modifications of form as are required by the nature and aims of the newspaper.

In articles to be reproduced without mention of the name of the author, this faculty shall extend to the omission or reduction of parts of the said article.

#### Article 42

The author of an article or other work reproduced in a collective work shall be entitled to reproduce it as an offprint, or to include it in a volume, provided he mentions the collective work from which it has been taken and the date of publication.

In the case of articles appearing in magazines or newspapers, the author shall also have the right, in the absence of agreement to the contrary, to reproduce them in other magazines or newspapers.

#### Article 43

The publisher or director of magazine or newspaper shall not be required to keep or return the manuscripts of unsolicited articles which have been sent to him.

### SECTION III

#### CINEMATOGRAPHIC WORKS

#### Article 44

The author of the subject-matter, the author of the scenario, the composer of the music and the artistic director shall be considered joint-authors of a cinematographic work.

#### Article 45

Within the limits set out in the following Articles, the exercise of the exploitation rights in a cinematographic work shall belong to the person who has organized the production of the work.

The person who is mentioned in the cinematographic film as the producer shall be deemed to be the producer of the cinematographic work. If the work is registered in accordance to the second paragraph of Article 103, the presumption established by that Article shall prevail.

#### Article 46

The exercise of exploitation rights belonging to the producer shall concern the cinematographic exploitation of the work produced.

In the absence of agreement to the contrary, the producer shall not make or show adaptations, transformations or translations of the produced work without the consent of the authors referred to in Article 44.

The authors of music, the musical compositions and the words which accompany the music shall be entitled to collect directly from persons publicly showing the work separate remuneration in respect of such showing. In the absence of agreement between the parties, the payment shall be fixed according to the applicable Regulations.

The authors of the subject matter and of the scenario and the artistic director, in cases where they are not remunerated by a percentage of the receipts obtained from public showing of the cinematographic work, shall, in the absence of agreement to the contrary, be entitled to receive additional remuneration when the receipts have reached a level to be fixed by contract with the producer, the form of which shall be fixed by agreement between the concerned parties.

#### Article 46 bis

1. Notwithstanding the provisions of Article 46, where the broadcasting rights are assigned to the producer, the authors of cinematographic or assimilated works are entitled to equitable remuneration<sup>1</sup> from the broadcasting organizations for every use of the work that takes the form of communication to the public by electromagnetic waves, cable or satellite.

2. For every use of cinematographic or assimilated works that is different from that provided for in paragraph (1) above and paragraph (5) of Article 18*bis*, the authors of the said works are entitled to equitable remuneration<sup>1</sup> from those exercising the exploitation rights for each separate act of exploitation.

3. For every use of cinematographic or assimilated works of which the original language is not Italian, the authors of the derived works constituted by the translation or adaptation of the dialogues in Italian shall like-wise be entitled to equitable remuneration.<sup>1</sup>

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<sup>1</sup> Payable as from January 1, 1998 (*Editor's note*)

4. The remuneration<sup>1</sup> provided for in paragraphs (1), (2) and (3) may not be waived and, in the absence of agreement between the categories concerned as defined in the first paragraph of Rule 16 of the Regulations, shall be set according to the procedure provided for in Article 4 of Decree Law No. 440 of July 20, 1945.

#### Article 47

The producer shall have the right to make such modifications to works utilized in a cinematographic work as are necessary for their cinematographic adaptation.

In the absence of agreement between the producer and one or more of the authors referred to in Article 44 of this Law, the question whether modifications effected or to be effected in a cinematographic work are necessary shall be decided by a panel of specialists designated by the President of the Council of Ministers in accordance with the applicable Regulations.

The findings of the Panel shall be final.

#### Article 48

The authors of a cinematographic work shall be entitled to have their names, together with their professional capacity and their contributions, mentioned in the showing of a cinematographic work.

#### Article 49

The authors of the literary or musical parts of a cinematographic work may reproduce them or utilize them separately in any manner, provided no prejudice is caused to the exploitation rights belonging to the producer.

#### Article 50

If the producer fails to complete the cinematographic work within a period of three years from the delivery of the literary or musical parts, or does not show the completed work within three years from its completion, the authors of those parts shall be entitled to dispose of the work itself without restriction.

### SECTION IV

#### BROADCAST WORKS

#### Article 51

By reason of the nature and purpose of broadcasting as a service that is the preserve of the State, which operates the service either directly or by means of concession, the exclusive right of broadcasting, either directly or by any intermediate means, shall be governed by the following special provisions.

#### Article 52

Under the conditions and within the limits set out in this and the following Articles, the organization which operates the broadcasting service shall be entitled to broadcast intellectual works from theatres, concert halls or any other public place.

Proprietors, impresarios, and all persons involved in a performance, shall be required to permit such installations and technical tests as may be necessary in preparation for the broadcast.

The consent of the author shall be required for the broadcasting of new works and for the first performance in any given season of works which are not new.

A theatrical work which has been publicly performed in three different theatres or other public places shall not be deemed to be new.

#### Article 53

Where the season for theatrical performances or concerts is not less than two months, the right of the organization referred to in the preceding Article may be exercised once a week in respect of theatrical performances, and once for each five or each group of five in respect of concerts.

The duration of a theatrical or concert season shall be understood to be the season announced in notices or programs published before the commencement of the season.

#### Article 54

The task of ascertaining whether broadcasts comply with proper technical standards shall be the exclusive responsibility of the State organizations responsible for the supervision of broadcasting and having the powers conferred by Article 2 of Royal Decree Law of June 14, 1923, No. 1352, and of Article 2 of Royal Decree Law of February 3, 1936, No. 654, converted into the Law of June 4, 1936, No. 1552.

The name of the author and the title of the work shall be broadcast at the same time as the work itself.

#### Article 55

1. Without prejudice to the rights of the author in connection with the broadcasting of his work, the broadcasting organization shall be authorized to record the work on a disk or on another medium, for the purpose of subsequent broadcasting, when this is necessitated by consideration of time or technology, provided that, after its use, the recording be destroyed or rendered unusable.

2. The preservation of the recordings under the above paragraph in official archives shall be permitted, on the ground of their exceptional documentary character, and provided they are not used for further economic or commercial exploitation, unless this latter is authorized by the author of the work and by the neighbouring rights' holders.

#### Article 56

The author of a work broadcast in accordance with the preceding Articles shall be entitled to obtain from the broadcasting organization the payment of remuneration, the amount of which, in the event of disagreement between the parties, shall be settled, by judicial authority.

No application may be made to the judicial authority until an attempt has been made to reach a settlement in the manner and form laid down by the Regulations.

#### Article 57

The amount of remuneration shall be based upon the number of transmissions.

The Regulations shall determine the criteria for establishing the number and manner of deferred or repeated transmissions.

#### Article 58

The author shall be entitled to equitable remuneration for the performance in public establishments of broadcast works by means of sound radio receivers equipped with loudspeakers, of which the amount shall be determined periodically by agreement between the S.I.A.E. and the representatives of the professional organizations concerned.

#### Article 59

The broadcasting of intellectual works from the premises of the broadcasting organization shall be subject to the consent of the author, in accordance with the provisions of Chapter III of this Part; the provisions of the foregoing Articles, except those of Article 55, shall not be applicable to such broadcasting.

#### Article 60

When requested by the President of the Council Ministers the broadcasting organization shall make special broadcasts of cultural and artistic nature intended for other countries, subject to payment of remuneration determined in accordance with the Regulations.

## SECTION V

### WORKS RECORDED ON CARRIERS

#### Article 61

1. An author shall have the exclusive right , within the meaning of the provisions of Section I of Chapter III of this Part:
  - a) to adapt and record his work on any carrier reproducing sounds, voices and pictures, regardless of the technology employed;
  - b) to reproduce, to distribute, to rent out or to lend out the copies of the work thus adapted or recorded;
  - c) to perform in public and communicate to the public his work by means of any medium.
2. The assignment of the right of reproduction or the right of distribution shall not include, unless otherwise agreed upon, the assignment of the right of public performance nor the right of communication to the public.
3. As to broadcasting, copyright shall continue to be governed by the provisions of the preceding Section.

#### Article 62

1. The phonographic carriers on which an intellectual work has been recorded, shall not be distributed unless they bear in an indelible manner the following details:
  - a) the title of the work reproduced;
  - b) the name of the author;
  - c) the name of the performing artist. Orchestral or choral groups shall be identified by their customary name;
  - d) the date of production.

#### Article 63

1. Carriers shall be made or utilized in such a manner that the moral rights of the author are respected, within the terms of articles 20 and 21 of this Law.
2. Modifications of a work necessitated by the technical requirements of recording shall be considered lawful.

#### Article 64

Any authorization given to a national phonogram publishing house to utilize the masters of the state Record Library (*Discoteca di Stato*) for the purpose of making records to be distributed for sale, whether in Italy or abroad, within the terms of Article 5 of Law of February 2, 1939, No. 467, containing provisions for the reorganization of the State Record Library, shall be subject, insofar as the works recorded are protected works, to the payment of royalties in accordance with the applicable Regulations.

## SECTION VI

### COMPUTER PROGRAMS

#### Article 64 bis

1. Without prejudice to the provisions of articles *64 ter* and *64 quater*, the exclusive rights afforded by this law with regard to computer programs shall include the right to do or to authorize:

- a) the permanent or temporary reproduction of a computer program by any means or in any form, in part or in whole. In so far as loading, displaying, running, transmission or storage of the computer program necessitates such reproduction, such acts shall be subject to authorization by the rightholder;
- b) the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program;
- c) any form of distribution to the public, including the rental of the original computer program or of copies thereof. The first sale in the European Community of a copy of the program by the rightholder, or with his consent, shall exhaust the distribution right in the EU of that copy, with the exception of the right to control further rental of the program or of a copy thereof.

#### Article 64 ter

1. In the absence of any agreement to the contrary, the acts referred to in Article 64bis(a) e (b) shall not require authorization by the right holder where they are necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose, including error correction.
2. The making of a back-up copy by a person having a right to use the computer program may be prevented by contract in so far as it is necessary for that use.
3. The person having a right to use a copy of a computer program shall be entitled, without the authorization of the right holder, 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 does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to. Any contractual clause that is contrary to the provisions of this paragraph and of paragraph (2) shall be null and void.

#### Article 64 quater

1. The authorization of the right holder shall not be required when the reproduction of the code and translation of its form within the meaning of article 64 bis(a) and (b), are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:
  - a) these acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorized to do so;
  - b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in subparagraph (a);
  - c) the acts are confined to the parts of the original program which are necessary to achieve interoperability.
2. The provisions of paragraph (1) shall not permit the information thus obtained:
  - a) be used for goals than to achieve the interoperability of the independently created computer program;
  - b) to be given to others, except where necessary for the interoperability of the independently created computer program;
  - c) be used for the development, production or marketing of a computer program substantially similar, in its expression, or for any other act which infringes copyright.

3. Any contractual clause contrary to paragraphs (1) and (2) shall be null and void.

4. In accordance with the provisions of Berne Convention for the protection of Literary and Artistic Works, ratified and enforceable by Law no. 399 of June 20, 1978, the provisions of this article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests, or conflicts with a normal exploitation of the computer program.

## SECTION VII

### DATA BASES

#### Art. 64 quinques

1. The author of a database shall have the exclusive right to carry out or authorize:



- a) temporary or permanent reproduction by any means and in any form, in whole or in part;
- b) translation, adaptation, a different arrangement and any other alteration;
- c) any form of distribution to the public of the database or of copies thereof. The first sale in the Community of a copy of the database by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;
- d) any communication, display or performance to the public, including the transmission carried out by any means and in any form;
- e) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in b).

#### Art. 64 sexies

1. The authorization by the rightholder provided for in art. 64-quinquies shall not be required in the following cases:
  - a) where the database is accessed and visualized for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purposes to be achieved. Within the above activities of access and visualization, the possible operations of permanent reproduction of the contents in whole or in a large part on any other carrier shall always be subject to the rightholder's authorization;
  - b) when using a database for the purposes of public security or as a consequence of administrative or judicial procedures.
2. The acts listed in article 64 quinquies which are performed by the lawful user of the database or of a copy thereof do not need the authorization of the database author when they are necessary to have access to the contents and the data base itself and to normally exploit it; if the lawful user is authorized to the use of only a part of the database, this section shall only apply to that part.
3. Any contractual clause infringing paragraphs 1 and 2 shall be null and void pursuant to the article 1418 of the Civil Code
4. In accordance with the Berne Convention for the protection of Literary and Artistic Works, ratified and enforceable pursuant to Law 20 June 1978, no. 399, the provisions under paragraphs 1 and 2 may not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with normal exploitation of the database.

### CHAPTER V

#### *Exceptions and Limitations*

#### SECTION I

#### REPROGRAPHY AND OTHER EXCEPTIONS AND LIMITATIONS

#### Article 65

1. Articles on current interest of an economic, political or religious character, published in magazines or newspapers, as well as articles broadcast or made available to the public, and other subject-matters of the same character shall be freely reproduced or communicated to the public in other magazines or newspapers also in broadcast news programs, unless such reproduction or utilization is expressly reserved, provided the source, the date and the author's name, if quoted, are indicated.
2. The reproduction or the communication to the public of works or protected subject-matters utilized during current events shall be permitted for the purposes of reporting the above current events and to the extent justified by the informatory purpose, as long as the source, including the author's name, if quoted, is indicated, unless it turns out to be impossible.

#### Article 66

1. Speeches on matters of political or administrative interest delivered in public assemblies or in any other public manner, as well as extracts of public lectures, shall be freely reproduced or communicated to the public, to the extent

justified by the informatory purpose, in magazines or in newspapers, also if broadcast or in electronic format, provided that the source, the author's name, the date and the place where the speech was delivered, are indicated.

#### Article 67

1. The reproduction of works or portions of works shall be permitted for the purposes of public security as well as in parliamentary, judicial or administrative proceedings, as long as the source, including where possible the author's name, is indicated.

#### Article 68

1. The reproduction of single works or of portions of works for the personal use of readers, when made by hand or by a means of reproduction unsuitable for marketing or disseminating the work in public, shall be permitted.

2. The photocopying of works available in publicly accessible libraries or in school libraries, in public museums or in public archives for the services of the said institutions shall be permitted, if made without any either direct or indirect economic or commercial advantage.

3. With the exception of sheet music, the reproduction for personal use of intellectual works made by means of photocopying, xerocopying or like means shall be permitted limited to the 15% of each volume or issue of a magazine, excluding advertising pages.

4. Those responsible for the premises or copy centres, where copying or xerocopying machines or like reproduction systems are utilized or made available to third parties, even for free, are obliged to pay a remuneration to the authors and publishers of intellectual works published in printed form which have been reproduced by means of said machines for the purposes under paragraph 3. The amount of this remuneration and the terms of its collection and distribution are set forth in article 181-ter of this Law. Except otherwise agreed between SIAE and the interested trade associations, the amount of this remuneration cannot be less, for any reproduced page, than the average per-page-price that is determined each year by ISTAT<sup>2</sup> with reference to books.

5. Reproductions of works available in public libraries, made inside the library by the means listed at the third paragraph, shall be permitted, within the limitations provided for in the same paragraph, on payment of a lump sum remuneration in favour of rightholders, pursuant to paragraph 2 of article 181-ter, fixed according to the second sentence of the 1<sup>st</sup> paragraph of article 181-ter. This remuneration is paid on a yearly basis directly by the libraries, making up on the revenues collected for their service, without any further charges to the State balance or to the balance of the bodies to which libraries are subject. The limitations under paragraph 3 shall not apply to works that are not present in publishing catalogues and that are rare, as they are hard to find through commercial channels.

6. The distribution of such copies to the public and, in general, any use of them in competition with the exploitation rights of the author shall be prohibited.

#### Article. 68 bis

1. Without prejudice to the provisions concerning the liability of the intermediary service providers set out in the law regulating the electronic commerce, temporary acts of reproduction which have no independent economic significance, which are transient or incidental and integral and essential part of technological process and whose sole purpose is to enable the transmission in a network between third parties by intervention of an intermediary or the lawful use of a work or other subject matters shall be exempted from the reproduction right.

#### Article 69

1. Loans from libraries and record libraries belonging to the State or to public authorities, made exclusively for purposes of cultural promotion and personal study, shall not require authorization by the rightholder, to whom no remuneration shall be due, and shall exclusively concern:

- a) printed copies of the works, with the exception of sheet music;
- b) phonograms and videograms containing cinematographic or audiovisual works or sequences of moving images, with or without sound, provided that at least eighteen months have elapsed since the first exercise of the right of

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<sup>2</sup> National Statistical Institute

distribution, or, in the case the right of distribution has not been exercised, provided that at least twenty four months have elapsed since the realization of the above works and sequences of moving images.

2. For the services of libraries and record or video libraries belonging to the State or to public authorities, it is permitted the reproduction, in a single copy, of the phonograms and videograms containing cinematographic or audiovisual works or sequences of moving images, either they be with or without sound, available in these libraries and record or video libraries belonging to the State or to public authorities.

#### Article 70

1. The abridgment, quotation or reproduction of fragments or parts of a work and their communication to the public for the purpose of criticism or discussion, shall be permitted within the limits justified for such purposes, provided such acts do not conflict with the commercial exploitation of the work; if they are made for teaching or research, the use must have the sole purpose of illustration, and non-commercial purposes.

2. In anthologies for school use, reproduction shall not exceed the extent specified in the Regulations, that shall also lay down the manner for determining equitable remuneration in respect of such reproduction.

3. The abridgment, quotation or reproduction must always be accompanied by a mention of the title of the work, and of the names of the author, the publisher and, in the case of a translation, of the translator, whenever such mentions appear on the work that has been reproduced.

#### Article 71

1. Musical groups and bands of the armed forces of the State may perform musical pieces or portions of musical works in public without payment of any fee in respect of copy .

#### Article 71 bis

1. The reproduction of works or protected subject matter as well as the use of their communication to the public are permitted to persons with disability, for personal use, provided these permitted acts are directly related to the disability, are of a non-commercial nature and are limited to the extent required by the specific disability.

2. A decree adopted by the Minister of Culture, in agreement with the Minister of Labour and Social Affairs, after hearing the Committee under art. 190 of this Law, the categories of disabilities referred to in paragraph 1 and the criteria to identify individual beneficiaries are stated, as well as, if necessary, the conditions on which this exception shall be enjoyed.

#### Article 71 ter

The communication or making available to individual members of the public is free if made for the purpose of research or private study by dedicated terminals on the premises of publicly accessible libraries, educational establishment, museums or archives, limited to the works and other subject matter contained in their collections that are not subject to purchase or licensing terms.

#### Article 71 quater

1. The reproduction of broadcasts made by public hospitals or prisons, for internal uses only, shall be permitted, on condition that rightholders receive a fair compensation, that shall be determined by a decree of the Minister of Culture, after hearing the Committee under art. 190.

#### Article 71 quinquies

1. The rightholders who have applied the technological measures under art. 102 quarter of this Law, are obliged to remove them, upon request of the competent authority, in order to allow the utilization of the protected works and of subject-matter, for public security purposes or to ensure the proper performance of and administrative, parliamentary or judicial proceeding.

2. The rightholders are obliged to adopt proper solutions, also by means of specific agreements with the associations representing beneficiaries in order to allow the exercise of the exceptions provided for in articles 55; 68, paragraphs 1 and 2; 69, paragraph 2; 70, paragraph 1; 71-bis e 71-quater, on beneficiaries' specific request and on condition that the beneficiaries have acquired the lawful possession of the copies of the work or of the protected subject-matter or have lawfully accessed to them in order to use

them, in accordance and within the limitations pursuant to the above mentioned articles, including the payment of the fair compensation, if due.

3. The rightholders are not obliged by the provisions under paragraph 2 in respect of works or subject-matter made available to the public in such a way that members of the public may access them in a place and at a time individually chosen by them, when the access takes place on the basis of contractual agreements.

4. Rightholders' trade associations and the entities or associations representing the beneficiaries of the exceptions provided for in paragraph 2 may enter negotiations in order to allow the exercise of the above exceptions. In the absence of such agreements, both party may apply to the committee under art. 190, so that it may carry out the mandatory attempt for dispute resolution, pursuant to the criteria set out in art. 194-bis.

5. No charges for the State shall derive from the application of this provision.

## SECTION II

### PRIVATE COPY FOR PERSONAL USE

#### Article 71 sexies

1. Private reproduction of phonograms and videograms on any carrier is permitted on condition that it is carried out by natural person with the sole purpose of personal use and provided that it has not a gainful intent, nor does it have direct or indirect commercial purposes and in compliance with the technological measures under art. 102-quater.

2. The reproduction under paragraph 1 shall not be carried out by a third party. The supply of services for the purpose of enabling the reproduction of phonograms and videograms by a natural person for personal use shall constitute an act of reproduction and shall be subject to the provisions pursuant to articles 13, 72, 78-bis, 79 and 80.

3. . The provision under paragraph 1 does not apply to protected works and subject matter made available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them, when the work is protected by the technological measures under art. 102- quater or when the access is permitted on the basis of agreed contractual terms.

4. Without prejudice to the provisions under paragraph 3, rightholders must allow that, notwithstanding the application of technological measures under art. 102-quater, the natural person who has acquired legal possession of copies of the protected works or of protected subject matters, or has legally accessed them, may make a private copy, which can also be just an analogue copy, for personal use, on condition that this act does not conflict with the normal exploitation of the work or of the other subject-matter and does not unreasonably prejudice the rightholders.

#### Article 71 septies

1. Authors and producers of phonograms, as well as original producers of audiovisual works, performing artists and producers of videograms and their successors in title, are entitled to receive a remuneration for the private reproduction of the phonograms and videograms under art. 71-sexies. In respect of the devices solely meant for the analogue or digital recording of phonograms or videograms, this remuneration shall consist of a percentage on the price paid by the retailer or of a fixed amount for each device. For multifunctional devices, the remuneration is based on the price of a device which has features equivalent to the internal recording component or, when it is not feasible, it shall consist of a fixed amount for each device. As to audio and video recording media, such as analogue carriers, digital carriers, fixed or removable memories which are meant for the recording of phonograms and videograms, the level of the remuneration shall take full account of the recording capacity of each medium.

2. The remuneration under paragraph 1 shall be determined by a decree of the Minister of Culture, after hearing the Committee under art. 190 and the most representative trade associations of manufacturers of devices and media under paragraph 1. For the purpose of determining the level of the remuneration, the application or non-application of the technological measures under art. 102-quater shall be taken into account; to the same purpose it shall also be considered the different impact of digital copying in comparison to analogue copying. The decree shall be submitted to revision every three years.

3. The remuneration is due by the persons who manufacture or import in the territory of the State for commercial purposes, the devices and media referred to in paragraph 1. The above persons shall quarterly submit to the Italian Society of Authors and Publishers a statement of the sales made and of the remuneration due; this latter must be paid upon presentation of the statement. In the event the remuneration is not paid, the distributor of the recording devices and media shall be jointly liable for its payment.

4. In the event the obligations under paragraph 3 are not fulfilled, or when there is serious evidence that the above statement is untruthful, the Italian Society of Authors and Publishers (S.I.A.E.) may ask the judge to be shown the accounting books of the defaulter, or it may also require that the judge oblige this latter to supply all the prescribed documentation.<sup>3</sup>

#### Article 71 octies

1. The remuneration referred to in art. 71-septies from audio recording devices and media shall be paid to the Italian Society of Authors and Publishers which shall distribute it, net of expenses, in the measure of the 50% to the authors and successors in title and for the remaining 50% to the phonogram producers, also through their most representative trade associations.

2. The phonograms producers shall pay to the concerned performing artists 50% of the remuneration they have received, pursuant to paragraph 1, without delay and not later than a period of six months.

3. The compensation under art. 71-septies from video recording devices and media shall be paid to the Italian Society of Authors and Publishers, which shall distribute it, net of expenses, also through their most representative trade associations, in the measure of 30% to the authors and the remaining 70%, in equal shares, to the original producers of audiovisual works, to the producers of videograms and to the performing artists. The amount received by the performing artists shall be allocated in the measure of 50% to the activities and purposes referred to in art. 7, paragraph 2, of the law 5 Feb, 1992, no. 93.

### SECTION III

#### COMMON PROVISIONS

##### Article 71 nonies

1. The exceptions and limitations in this Chapter and in any other provision in this Law, when applied to protected works or other subject-matter made available to the public in such a way that members of the public may access them in a time and from a place individually chosen by them, shall (must) not conflict with the normal exploitation of the work or of the other subject-matter and not unreasonably prejudice the rightholders.

##### Article 71 decies

1. The exceptions and limitations to authors' right in this Chapter shall apply also to the neighbouring rights under chapters I, I-bis, II and III and, where applicable, to other chapters of Part II, as well to chapter I of Part II-bis.?"

### PART II

#### PROVISIONS ON NEIGHBOURING RIGHTS

##### CHAPTER I

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<sup>3</sup> Art. 39 of Decree 9 April 2003, n. 68 1. The remuneration under art. 71-septies of the law April 22, 1941, no. 633, is determined until December 31, 2005, and, in any case, until the decree under art. 71-septies is issued, as follows:

a) analogue audio media: 0,23 euro per recording hour;

b) digital dedicated audio media, such as minidisc, CD-R audio and CD-RW audio: 0,29 euro per recording hour. The remuneration shall be increased proportionally for media of longer recording capacity;

c) digital non-dedicated media, usable for phonograms recording, such as CD-R data and CD-RW data: 0,23 euro for 650 megabyte.

d) digital dedicated audio memories, static or transferable (removable), such as flash memories and MP3 cartridges (cards) and similar media: 0,36 euro for 64 mega-byte.

e) analogue video media: 0,29 euro per recording hour;

f) digital dedicated video media such as DVHS, DVD-R video and DVD-RW video: 0,29 euro per hour, equal to 0,87 euro per hour for media whose recording capacity is 180 minutes. The remuneration shall be increased proportionally for media with longer recording capacity;

g) digital media usable for phonograms and videograms recording, such as DVD Ram, DVD-R and DVD-RW: 0,87 euro for 4,7 gigabyte. The remuneration shall be increased proportionally for media with longer capacity.

h) devices solely usable for audio and video analogue or digital recording: 3% on the list price to retailer.

## *Rights of the Phonogram Producer*

### Article 72

1. Without prejudice to the rights granted to authors pursuant to Part I, the phonogram producer shall have the exclusive right, for the period and under the conditions laid down in the following articles:
  - a) to authorise the direct or indirect, temporary or permanent reproduction of his phonograms by whatever means, in whole or parts and by whatever duplication process;
  - b) to authorize the distribution of the copies of his phonograms. The exclusive right of distribution shall not be exhausted within the Community, except where the first sale of the carrier incorporating the phonogram is made by the producer or with his consent in a member State;
  - c) to authorize the rental and lending of the copies of his phonograms. This right shall not be exhausted by the sale or the distribution of the copies of the phonogram in any form;
  - d) to authorise the making available to the public of his phonograms in such a way that members of the public may access them at a time and from a place individually chosen by them. This right shall not be exhausted by any act of making available to the public.

### Article 73

1. Independently of the rights of distribution, rental and lending granted to them, the phonogram producer, as well as the performing artists who performed the interpretation or the performance fixed or reproduced upon the phonograms shall be entitled to a remuneration for the utilization with gainful intent of their phonograms in cinematography, through the broadcasting by radio or television, including the communication to the public by satellite, in public dancing parties, in public premises and on the occasion of any further public utilization of the said phonograms. This right shall be exercised by the producer, who shall share the remuneration with the performing artists concerned.
2. The amount of such remuneration and the scale of distribution, together with the corresponding conditions, shall be determined in accordance with the provisions of the regulations.
3. No remuneration shall be due for the utilization for education purposes and in communications of public interest made by the State administration or by institutions authorized by the State for such purposes.

### Art. 73 bis

1. The performers and the producer of the phonogram utilized shall be entitled to equitable remuneration including when the utilization referred to in article 73 was not effected with gainful intent
2. Unless otherwise agreed by the parties, the remuneration shall be calculated, collected and distributed in accordance to the Regulations.

### Article 74

1. The producer shall be entitled to oppose any utilization of a phonogram, as referred to in Articles 73 ad 73-bis, if it is effected under conditions such as to seriously prejudice his economic interests.
2. At the request of the interested party, pending a decision by the judicial authority, the Ministry of Culture may nevertheless authorize the use of a phonogram, after technical investigation and order, where necessary, any measure needed to eliminate defects in the regularity of its utilization.

### Article 75

1. The duration of rights specified in this Chapter shall be 50 years from the time of fixation. Nonetheless, if during that period the phonogram is lawfully published under the provisions of art. 12, paragraph 3 of this Law, the duration of the rights shall be 50 years following the date of first publication.<sup>4</sup>

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<sup>4</sup>Art. 38 of Decree 9 April, 2003, n. 68:

1. The provisions of this decree shall apply to all works and subject-matters covered herein, which are protected at the date of December 22, 2002.
2. The acts concluded and the rights acquired before said date shall remain in force.
3. The rights of the producer of a phonogram, whose protection term, under art. 75 of the law April 22, 1941, no. 633 and subsequent amendments, has expired before December 22, 2002, shall not be protected again.

#### Article 76

The carriers containing phonograms shall not be distributed unless they bear the particulars specified in article 62, where applicable, indelibly affixed.

#### Article 77 *repealed*

#### Article 78

1. The phonogram producer is the person or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds.
2. The place in which the original live recording was made shall be considered the place of production.

#### Article 78 bis

1. The utilization of phonograms by the broadcasters is subject to the provisions of this chapter.

### CHAPTER I bis

#### *Rights of Producers of Cinematographic or Audiovisual Works or of Sequences of Moving Images*

#### Article 78 ter

1. The producer of a cinematographic or audiovisual works or of a sequence of moving images shall have the exclusive right:
  - a) to authorize the direct or indirect, temporary or permanent reproduction, by whatever means, of whole or parts of the original or of the copies thereof.
  - b) to authorize the distribution, by any means, including sale, of the original and of the copies thereof; the right of distribution shall not be exhausted within the European Community, unless the first sale is made by the producer or with his consent in a member State.
  - c) to authorize the rental and lending of the original and of the copies thereof; the sale or the distribution, in any form, shall not exhaust the right of rental and lending;
  - d) to authorize the making available to the public of the original and of the copies thereof, in such a way that members of the public may access them in the time and from the place individually chosen by them. This right shall not be exhausted by any act of making available to the public
2. The rights referred to in paragraph (1) shall end on the expiration of a period of 50 years from the time of fixation. If the cinematographic or audiovisual work or the sequence of moving images is published or communicated to the public during that period, the said rights shall expire 50 years from the first publication or, if earlier, from the first such communication to the public of the cinematographic or audiovisual work or of the sequence of moving images.

### CHAPTER II

#### *Rights in Radio and Television Broadcasting*

#### Article 79

1. Without prejudice to the rights afforded by this Law to authors, to producers of phonograms, to producers of cinematographic or audiovisual works or of sequences of moving images and to performers, persons carrying out radio or television broadcasting shall have the exclusive right:
    - a) to authorize the fixation of their broadcasts made by wire or over air: this right shall not be afforded to cable operators who simply retransmits by cable the broadcasts of other broadcasting organizations;
    - b) to authorize the direct or indirect, temporary or permanent reproduction of the fixations of their broadcasts by whatever means, in whole or parts;
-

- c) to authorize the retransmission of their own broadcasts by wire or over the air and as well as their communication to the public when it is carried out in a place which is accessible only on payment of an entrance fee;
  - d) to authorize the making available to the public in such a way that members of the public may access them in the time and from a place individually chosen by them.
  - e) to authorize distribution of the fixations of their own broadcasts: this right shall not be exhausted within the European Community, unless the first sale is made in a member State by the right holder or with his consent.
  - f) the rights under paragraph c) and d) shall not be exhausted by any act of communication or making available to the public.
2. Rightholders under paragraph (1) shall also have the exclusive right of utilization of the fixations of their own broadcasts for further broadcasts or rebroadcasts or for further recordings.
  3. The term “broadcasting” means broadcasts by radio and television.
  4. The term “by wire or over the air” includes broadcasts by cable and by satellite.
  5. The duration of the rights referred to in paragraph (1) shall be 50 years from the first broadcasting of a broadcast.

### CHAPTER III

#### *Rights of Performers*

##### Article 80

1. Without prejudice to the rights afforded by this Law to authors, to producers of phonograms, to producers of cinematographic or audiovisual works or of sequences of moving images and to performers, persons carrying out radio or television broadcasting shall have the exclusive right:
  - a) to authorize the fixation of their broadcasts made by wire or over air: this right shall not be afforded to cable operators who simply retransmits by cable the broadcasts of other broadcasting organizations;
  - b) to authorize the direct or indirect, temporary or permanent reproduction of the fixations of their broadcasts by whatever means, in whole or parts;
  - c) to authorize the retransmission of their own broadcasts by wire or over the air and as well as their communication to the public when it is carried out in a place which is accessible only on payment of an entrance fee;
  - d) to authorize the making available to the public in such a way that members of the public may access them in the time and from a place individually chosen by them.
  - e) to authorize distribution of the fixations of their own broadcasts: this right shall not be exhausted within the European Community, unless the first sale is made in a member State by the right holder or with his consent.
  - f) the rights under paragraph c) and d) shall not be exhausted by any act of communication or making available to the public.
2. Right holders under paragraph (1) shall also have the exclusive right of utilization of the fixations of their own broadcasts for further broadcasts or rebroadcasts or for further recordings.
3. The term “broadcasting” means broadcasts by radio and television.
4. The term “by wire or over the air” includes broadcasts by cable and by satellite.
5. The duration of the rights referred to in paragraph (1) shall be 50 years from the first broadcasting of a broadcast.

##### Article 81

1. Performers shall be entitled to oppose any communication to the public or any reproduction of their performances which might be prejudicial to their honour or reputation.
2. The provisions of the second paragraph of Article 74 shall be applicable.
3. Insofar as broadcasting is concerned, disputes arising from the application of this Article shall be regulated according to the provisions of the first paragraph of Article 54.

##### Article 82

For the application of the foregoing provisions the definition of performers shall include:



- 1. persons who, in the performance of any dramatic, literary or musical work or composition, play significant artistic part, even if in a supporting role;
- 2. the conductors of an orchestra or choir;
- 3. the orchestras or choirs, provided that the orchestral or choral part of the performance has artistic value in itself and is not a mere accompaniment.

#### Article 83

1. The performers who play the leading parts in a dramatic, literary or musical work or composition shall be entitled to have their names mentioned when their performances, recitations or interpretations are communicated to the public and to have their names indelibly affixed on any carrier incorporating the fixation thereof, such as phonograms, videograms or cinematographic film.

#### Article 84

1. Unless otherwise agreed by the parties, performers shall be presumed to have assigned the rights of fixation, reproduction, broadcasting (including communication to the public by satellite) and distribution and also the right to authorize rental, on the conclusion of the contract for the production of a cinematographic or audiovisual work or sequence of moving images.

2. The performers who play important acting parts, in the cinematographic or assimilated work, even as supporting actors, are entitled to equitable remuneration paid by broadcasting organizations for every use of the said work that takes the form of communication to the public by electromagnetic waves, cable or satellite.

3. For every use of cinematographic or assimilated works different from that provided for in paragraph (2) above and in subparagraph (e) of Article 80 (2), the performers referred to in paragraph (2) above shall be entitled to equitable remuneration, payable by those exercising the exploitation rights, for any separate act of exploitation.

4. The remuneration provided for in paragraph (2) and (3)<sup>2</sup> above may not be waived and, in the absence of agreement between the mutual-interest body of performers and the competent union associations of the confederation of industries, shall be set according to the procedure provided for in Article 4 of Decree Law No. 440 of July 20, 1945.

#### Article 85

The duration of the rights provided for in this Chapter shall be 50 years from the time of performance. If a fixation of the performance is published or communicated to the public during that time, the duration of the rights shall be 50 years as from the first such publication or, if earlier, from the first such communication to the public of the fixation.

#### Art. 85 bis

1. In addition to the rights laid down in this and the preceding Chapters, the holders of neighbouring rights shall have the right to authorize cable retransmission pursuant to Article 110bis.

#### CHAPTER III bis

#### *Rights in Works Published or Communicated to the Public after the Author's Economic Rights Have Expired*

#### Art. 85 ter

1. Without prejudice to the author's moral rights, any person who, after the copyright protection has expired, for the first time lawfully publishes or communicates to the public a work that has not been published previously shall enjoy the exploitation accorded by the provisions of Section I of Chapter III of Title I of this Law to the extent that those provisions are applicable.

2. The duration of the exclusive exploitation rights referred to in paragraph (1) above shall be 25 years from the first lawful publication or the first lawful communication to the public.

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<sup>2</sup> Payable as from January 1, 1998

## CHAPTER III ter

### *Rights in Critical and Scientific Editions of Works in the Public Domain*

#### Art. 85 quater

1. Without prejudice to the author's moral rights, any person who in any way or by any means publishes critical and scientific editions of works in the public domain shall enjoy exclusive exploitation rights in the work resulting from the critical and analytical assessment.
2. Without prejudice to the contractual relations binding him to the owner of the economic exploitation rights referred to in paragraph (1), the person responsible for the critical and scientific edition shall have the right to be named.
3. The duration of the exclusive rights referred to in paragraph (1) above is 20 years from the first lawful publication in any form or by any means.

#### Art. 85 quinquies

The term of the rights provided for in Chapters I, I bis, II, III, III bis and this Chapter of Title II shall be counted in every case from the first of January of the year following that in which the event provided for in the Law occurred.

## CHAPTER IV

### *Rights in Designs for Stage Sets*

#### Article 86

The author of sketches of theatrical scenes which do not constitute an intellectual work covered by copyright within the meaning of the provisions of Part I, shall have a right to remuneration when such sketch is further used in theatres other than that for which it was composed.

This right shall continue for five years from the first performance in which the sketch was used.

## CHAPTER V

### *Rights in Photographs*

#### Article 87

The images of persons, or of aspects, elements or events of natural or social life, obtained by photographic or analogous processes, including reproductions of works of figurative art and stills of cinematographic film, shall be considered photographs for the purposes of this Chapter.

This provision shall not apply to photographs of writings, documents, business papers, material objects, technical drawings and similar products.

#### Article 88

The exclusive right of reproduction, dissemination and marketing of a photograph shall belong to the photographer, subject to the provisions of Section II of Chapter VI of this Part insofar as portraits are concerned, and without prejudice to any copyright in works of figurative art reproduced in photographs.

However, if the work has been produced in the execution of a contract of employment or of service, the exclusive right shall belong to the employer, within the limits of the object and purpose of the contract.

In the absence of agreement to the contrary, the same shall apply in favour of the person who commissions photographs of objects in his possession, subject to the payment of equitable remuneration to the photographer by any person who commercially utilizes the reproduction.

The President of the Council of Ministers may, in accordance with the provisions specified in the regulations, set suitable rates for the remuneration to be paid by any user of the photograph.

#### Article 89

In the absence of agreement to the contrary, transfer of the negative or similar means of reproduction of a photograph shall imply transfer of the rights referred to in the foregoing Article, provided that such rights are the property of the transferor.

#### Article 90

The copies of the photograph must bear the following particulars:

1. the name of the photographer or, in cases referred to in the first paragraph of Article 88, the name of the firm to which he belongs, or of the person who commissioned the photograph;
2. the year of production of the photograph;
3. the name of the author of the work of art which has been photographed.

If the copies do not bear these particulars, their reproduction shall not be deemed abusive and the remuneration laid down in Articles 91 and 98 shall not become due unless the photographer proves bad faith on the part of the reproducer.

#### Article 91

The reproduction of photographs in anthologies intended for school use and, in general, in scientific or didactic works, shall be lawful, subject to the payment of equitable remuneration which shall be determined in the manner provided in the Regulations.

The name of the photographer and the year of production of the photograph shall be given on the reproduction if they are given on the original photograph.

The reproduction of photographs published in newspapers or other periodicals, and which concern persons or current events or matters of any public interest, shall be lawful, subject to the payment of equitable remuneration.

The provisions of the final paragraph of Article 88 shall be applicable.

#### Article 92

The exclusive right in respect of photographs shall subsist for 20 years from the making of the photograph.

### CHAPTER VI

#### *Rights in Correspondence and Portraits*

#### SECTION I

#### RIGHTS IN CORRESPONDENCE

#### Article 93

Correspondence, letters, collections of letters, family and personal memoirs and other writings of a like nature, having a confidential character or associated with the intimacy of private life, may not be published, reproduced, or in any manner brought to the knowledge of the public without the consent of the author and, in the case of correspondence and letters, the consent also of the person to whom they are addressed.

After the death of the author or of the addressee, the consent of the spouse and children or, if none exist, the consent of the parents, shall be required; if there is no spouse, child or parent the consent of the brothers and sisters or, if none exist, the consent of the direct ascendants and descendants to the fourth degree, shall be required.

If the persons referred to in the preceding paragraph are two or more in number and disputes arise between them, the judicial authority shall decide the matter, after having heard the public prosecutor.

The wishes of the deceased person, when expressed in writing, shall in all cases be respected.

#### Article 94

The consent referred to in the foregoing Article shall not be necessary if knowledge of the contents of such written matter is required for the purposes of civil or penal proceedings or in connection with the defence of the honour or reputation of the person or family concerned.

#### Article 95

The provisions of the preceding Articles shall apply also to letters constituting works protected by copyright, even after they have fallen into the public domain. Such provisions shall not apply to official documents and letters and to documents and letters of interest to the State.

### SECTION II

#### RIGHTS IN PORTRAITS

#### Article 96

Subject to the provisions of the following Article, the portrait of a person may not be displayed, reproduced or commercially distributed without the consent of such person.

After the death of the person portrayed, the provisions of the second third and fourth paragraphs of Article 93 shall be applicable.

#### Article 97

The consent of the person portrayed shall not be necessary when the reproduction of the portrait is justified by his notoriety or his holding of public office, or by the needs of justice or the police, or for scientific, didactic, or cultural reasons, or when reproduction is associated with facts, events and ceremonies which are of public interest or which have taken place in public.

However, the portrait may not, be displayed or commercially distributed when its display or commercial distribution would prejudice the honour, reputation or dignity of the person portrayed.

#### Article 98

In the absence of agreement to the contrary, a commissioned photographic portrait may be published, reproduced, or caused to be reproduced by the person photographed or by his heirs or successors in title, without the consent of the photographer, subject to the payment of equitable remuneration to the photographer by any person making commercial use of the reproduction.

If the name of the photographer appears upon the original photograph such name shall be mentioned. The provisions of the last paragraph of Article 88 shall be applicable.

### CHAPTER VII

#### *Rights in Engineering Projects*

#### Article 99

The author of engineering projects and similar works which constitute original solutions of technical problems shall, in addition to the exclusive right of reproduction of the plans and drawings of the projects themselves, have the right to equitable remuneration from any person who, with gainful intent and without the consent of the author, carries out the technical project concerned.

In order to exercise his right to remuneration, the author must insert on the plan or drawing a declaration of reservation of the right and must deposit the plan or drawing with the President of the Council of Ministers in accordance with the provisions of the Regulations.

The right to remuneration afforded by this Article shall subsist for 20 years from the date of the deposit prescribed in the second paragraph.

## CHAPTER VIII

### *Protection of the Title, Headings and External Appearance of Works, and of Articles and News – Prohibition of Certain Acts of Unfair Competition*

#### Article 100

The title of a work, when it uniquely identifies the work, may not be reproduced in connection with any other work without the consent of the author.

This prohibition shall not extend to works which are of a kind or character so far removed as to exclude all possibility of confusion.

The reproduction of headings used in periodical publications to give unique identification to the normal and characteristic features appearing there under, shall also be prohibited, subject to the same conditions.

The title of a newspaper, magazine or other periodical publication may not be reproduced in other works of the same kind or character until two years have elapsed since cessation of its publication.

#### Article 101

The reproduction of information and news shall be lawful, provided it is not effected by way of acts which are contrary to fair practice in journalism, and provided the source is given.

The following shall be deemed to be unlawful acts:

a) the reproduction or the broadcasting, without authorization, of information bulletins distributed by press or information agencies, before sixteen hours have elapsed from the distribution of the bulletin and, in any case, before their publication in a newspaper or other periodical authorized by such agency. For this purpose and in order for the agencies to have a right of action against persons who make unlawful utilization, bulletins must bear precise information of the day and hour of their issue;

b) the systematic reproduction of published or broadcast information or news, with gainful intent, by newspapers or other periodicals or by broadcasting organizations.

#### Article 102

The reproduction or imitation in other works of a similar nature of headings, emblems, ornamentation, arrangements of printing signs or characters, or any other particularity of form or colour in the external appearance of an intellectual work, where such reproduction or imitation is capable of creating confusion between works or authors, shall be prohibited as an act of unfair competition.

## PART II bis

### PROVISIONS ON THE RIGHTS OF A MAKER OF A DATA BASE RIGHTS AND OBLIGATIONS OF THE USER

#### CHAPTER I

##### *Rights of the maker of a data base<sup>5</sup>*

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<sup>5</sup> The article 7.2, legislative decree May 6, 1999, no. 169, in its Appendix, XIX, 6, provides that “The provisions of Chapter I, Title II bis of the law April 22, 1941, shall also apply to data bases which had already been wholly made in a 15-year-period prior to January 1 1998 and which on the date of entry into force of this decree fulfil the criteria under its article 5, except for the acts which might have been previously concluded and for the rights previously acquired. The same provision shall also apply to the data bases which have been wholly made since January 1<sup>st</sup> 1998 through date of entry into force of this decree”.

## Article 102 bis

1. For the purposes of this title:

- a) “maker of a data base” shall mean the person making a qualitatively and/or quantitatively substantial investment in obtaining a data base, and in verifying or presenting its contents by using financial resources, and time or effort.
- b) “extraction” shall mean the permanent or temporary transfer of all or of a substantial part of the contents of a database to another medium by any means or in any form; the lending of a database made by organisations in article 69, section 1, shall not be an act of extraction.
- c) “re-utilization” shall mean 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, or transmission by whatever means and in whatever form. The lending of the database by the organisations in article 69, section I, shall not be an act of re-utilization.

2. The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;

3. Irrespective of the eligibility of that database for protection by copyright or by other rights and without prejudice to its contents or part of its contents, the maker of a data base shall have the right, under the term and conditions of this chapter, to prohibit any act of extraction or re-utilisation of all or of a substantial part of it..

4. The right provided for in paragraph 3 shall apply to databases whose makers or rightholders are nationals of a Member State or who have their habitual residence in the territory of the Community.

5. The provision under paragraph 3, shall also apply to companies and firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the European Union; however, where such a company or firm 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.

6. The exclusive right of the maker shall run from the date of completion of the making of the database. It shall expire fifteen years from the first of January of the year following the date of completion.

7. In the case of a database which is made available to the public in whatever manner before expiry of the period provided for in paragraph 6, the term of protection by that right shall expire fifteen years from the first of January of the year following the date when the database was first made available to the public.

8. Any substantial change or integration to the content of a database, involving the considerable investment under paragraph 1 point a), shall result in a new term of protection, equivalent to the term provided for under paragraphs 6 and 7, which shall run from the date of completion of the modified database or of the date when the modified database was made available to the public and expressly qualified as modified database.

9. The repeated and systematic extraction and/or re-utilisation of insubstantial parts of the content of the database shall not be permitted when implying acts which conflict with the normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database.

10. The right referred to under paragraph 3 can be acquired or transferred in any of the forms provided for by law

## CHAPTER II

### *Rights and Obligations of the User*

## Article 102 ter

1. A lawful user of a database which is made available to the public may not cause prejudice to the holder of a copyright or related right in respect of the works or subject matter contained in the database.

2. A lawful user of a database which is made available to the public in whatever manner may not perform acts which conflict with normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database

3. The maker of a database which is made available to the public for whatever reason may not prevent a lawful user of the database from extracting and/or re-utilising parts of its content, evaluated qualitatively and/or quantitatively, for any purposes whatsoever. Where the lawful user is authorized to extract and/or to re-utilise only part of the database, this paragraph shall apply only to that part.

4. Any contractual provision contrary to paragraph 1, 2 and 3 shall be null and void.

## PART II ter

### TECHNOLOGICAL MEASURES OF PROTECTION. RIGHTS-MANAGEMENT INFORMATION

#### Article 102 quater

1. Rightholders of any copyright or of any right related as well as of the right under art. 102-bis, paragraph 3, may apply on protected works or subject-matters any effective technological measures, including any technology, device or component that, in the normal course of its operation, are designed to prevent or restrict acts which are not authorised by them.

2. Technological measures of protection shall be deemed 'effective' where the use of the protected work or other subject matter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or any other transformation of the protected work or subject-matter or it is limited through a copy control mechanism, which achieves the protection objective.

3. The application of provisions concerning computer programs under Chapter IV section VI of Part 1 shall be unprejudiced.

#### Art. 102 quinquies

1. Electronic information on copyright management may be inserted by rightholders of any copyright or related right as well as of the right under art.102-bis, paragraph 3, in the protected work or subject-matter, or may appear in connection with their communication to the public.

2. The electronic information on rights management shall identify the protected work or subject-matter, as well as the author or any other rightholder. Said information may also contain particulars about the terms and conditions of use of the protected work or subject-matter as well as any numbers or codes that represent such information or other items of identification.

## PART III

### COMMON PROVISIONS

#### CHAPTER I

#### *Public Registers and Deposit of Work*

#### Article 103

A general public register of works protected by this Law shall be established in the Office of the President of the Council of Ministers<sup>6</sup>.

The S.I.A.E. shall keep a special public register for cinematographic works.

Works which are subject to the requirement of deposit shall be entered in the registers, together with the name of the author, the producer, the date of publication and other particulars specified in the Regulations.

The S.I.A.E. shall further be required to keep a special public register for computer programs. There shall be entered in this register the name of the holder of the exclusive exploitation rights and the publication date of the program - publication shall mean the first exercise of the exclusive rights.

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<sup>6</sup> See article 7, paragraph 1b) of the legislative decree no. 419/1999, ref. footnote article 182 of this law

In the absence of proof to the contrary, registration shall be accepted as proof of the existence of the work and of its publication. The authors and producers entered in the register shall be deemed, in the absence of proof to the contrary, to be the authors and producers of the works attributed to them. In the case of cinematographic works, the presumption shall be applicable to the entries made in the register referred to in the second paragraph.

The keeping of the public registers shall be governed by the regulations.

The registers referred to in this article may be kept by computerized means and equipment.

#### Article 104

At the request of the interested party instruments executed *inter vivos*, transferring in whole or in part rights afforded by this Law, or constituting rights of possession or security therein, and instruments of partition or of association with respect to such rights, may also be entered in the registers in the form prescribed by the regulations. Such entries shall also have the other legal or administrative effects that the provisions of this Law or other special laws afford.

#### Article 105

The authors and producers of works and products protected by this Law, or their successors in title, shall deposit with the Office of the President of the Council of Ministers one specimen or copy of the work or product, within the period and in the manner specified in the Regulations.

In the case of dramatico-musical or symphonic works of which the orchestral scores have not been printed, it shall be sufficient to deposit one copy or specimen of the version for voice and piano or for piano only.

Deposit shall be optional for computer programs and subject to payment of a fee.

Photographs shall not be subject to the requirement of deposit, except as provided in the second paragraph of Article 92.

#### Article 106

Failure to deposit shall not prevent the acquisition or exercise of copyright in respect of works protected under the provisions of Part I of this Law, or under the provisions of international conventions subject, however, in the case of foreign works, to the application of Article 188 of this Law.

*(2<sup>nd</sup> Paragraph – repealed)*

The President of the Council of Ministers shall be entitled to seize a specimen or copy of any work which has not been deposited, in accordance to the Regulations.

### CHAPTER II

#### *Transfer of Exploitation Rights*

#### SECTION I GENERAL PROVISIONS

#### Article 107

The exploitation rights belonging to the authors of intellectual works, together with neighbouring rights of an economic character, may be acquired, sold or transferred in any manner or form allowed by law, subject to application of the provisions contained in this Chapter.

#### Article 108

An author who has attained the age of 16 shall be deemed capable of accomplishing all legal acts relating to works created by him, and of instituting any action in respect of them.



#### Article 109

In the absence of agreement to the contrary, the transfer of one or more copies of the work shall not imply transfer of the exploitation rights afforded by this Law.

However, the transfer of a mold, an engraved plate or any similar medium used to reproduce a work of art shall be deemed, in the absence of agreement to the contrary, to include the right to reproduce the work, provided such right belongs to the transferor.

#### Article 110

The transfer of exploitation rights shall be set out in writing.

#### Article 110 bis

1. Authorization for the cable retransmission of broadcasts shall be given by means of a contract between the copyright holders, the holders of related rights and the cable operators.
2. If the cable retransmission of a broadcast is not authorized, the parties concerned may request a third party, to be chosen by common accord, to propose a draft contract. Failing such agreement, the choice shall be made by the presiding judge of the court competent for the place where any one of the parties concerned is resident or has registered office.
3. The proposal by the third party shall be deemed accepted if it is not challenged by any of the parties concerned within ninety days of its notification.

#### Article 111

The right of publication of an intellectual work and the exploitation rights of a published work, insofar as they belong personally to the author, may not be the subject of any pledge, seizure or sequestration, either by contractual act or by way of forced execution.

Copies of the work and the proceeds of exploitation may, on the other hand, be the subject of a pledge, or be seized or sequestered, in accordance to the Code of Civil Procedure.

#### Article 112

The rights belonging to the author, with the exception of the right to publish a work during his lifetime, may be expropriated for reasons of State interest.

#### Article 113

Expropriation shall be ordered by Presidential Decree on a joint proposal of the President of the Council of Ministers and the Minister of Public Education after hearing the Council of State.

The indemnity due to the expropriated person shall be set out in the decree of expropriation or in a subsequent decree. The decree shall have executive force against successors in title and against third parties who are the holders of physical objects necessary for the exercise of the expropriated rights.

#### Article 114

Recourse before the Council of State in its judicial capacity shall be admitted against a decree of expropriation for reasons of State interest; but disputes concerning the amount of the indemnity shall be within the competence of the judicial authority.

### SECTION II

#### TRANSMISSION *MORTIS CAUSA*

#### Article 115

After the death of the author, the exploitation rights of the work, if not otherwise disposed by the author himself, shall remain undivided between the heirs for a period of three years from the date of death, unless the judicial authority, at the request of one or more of the joint heirs, agrees, for serious reasons, that division shall be effected without delay.

When the said period has expired, the heirs may, by common accord, decide that the rights shall continue to be held in common for such period as may be fixed by them, within the limits specified by the provisions contained in the Codes.

The common ownership shall be regulated by the provisions of the Civil Code and by the provisions that follow.

#### Article 116

The administration and representation of the common interests shall be entrusted to one of the joint heirs, or to some person outside the succession.

If the joint heirs fail to appoint an administrator, or if they do not agree upon such appointment within one year from the effective date of the succession, the administration shall, at the request of one of the joint heirs or of the S.I.A.E., be entrusted to the S.I.A.E. by order of the court of the place where probate was granted.

The same procedure shall be followed for the appointment of a new administrator.

#### Article 117

The administrator shall be responsible for management of the exploitation rights of the work.

However, he may not authorize new editions, translations or other transformations, nor the adaptation of the work to cinematography, broadcasting, or recording on mechanical devices, except with the consent of heirs representing more than half of the value of the estate, and subject to such measures as may be taken by the judicial authority to safeguard the minority in accordance with the rules of the Civil Code relating to joint ownership.

### SECTION III

#### PUBLISHING CONTRACTS

#### Article 118

The contract by which the author grants to a publisher the exercise of the right of publication of an intellectual work by way of printing, at the expense of such publisher, shall be governed, in addition to the provisions contained in the Codes, by the general provisions of this Chapter and by the special provisions which follow.

#### Article 119

The contract may concern all or some of the exploitation rights belonging to the author in respect to publication, of such scope and duration as may be provided by the laws in force at the time of the contract.

In the absence of a stipulation to the contrary, it shall be presumed that the rights transferred are exclusive.

Future rights which may be afforded by subsequent laws and which provide copyright protection of wider scope or longer duration may not be included in the transfer.

In the absence of an express stipulation, transfers shall not extend to the exploitation rights in later modifications and transformations which may be made to the work, including adaptations to cinematography, broadcasting, and recording upon mechanical devices.

In the absence of an agreement to the contrary the transfer of one or more of the exploitation rights shall not imply the transfer of other rights which are not necessarily dependent on the right transferred, even if they are included, under the provisions of this Part, in the same category of exclusive rights.

#### Article 120

If the contract relates to works not as yet been created, the following rules shall apply:

1. any contract concerning all the works or all the works of a certain category which the author may create, without limitation in time, shall be null and void;
2. without prejudice to the provisions governing employment contracts and contracts for service, contracts which relate to the transfer of exclusive rights in respect of works to be created may not extend for a term in excess of 10 years;
3. if the work to be created has been specified, but the term within such work is to be delivered has not been set, the publisher may at any time request the judicial authority to set term. If the term has been set, the judicial authority may extend it.

#### Article 121

If the author should die or should be unable to complete his work after a substantial and self-sufficient portion has been completed and delivered, the publisher shall be entitled to consider the contract as terminated, or on payment of a proportional remuneration, to consider it as having been fulfilled insofar as concerns the delivered portion, unless the author has expressed or expresses a wish that the work should not be published except in its entirety, or unless such a wish has been expressed by the persons referred to in Article 23.

If the contract is terminated at the request of the author or his heirs, the incomplete work may not be transferred to others, on pain of damages for the prejudice suffered by the publisher.

#### Article 122

A publishing contract may be based on a given number of editions or on a given period of time.

A contract "by edition" shall afford the publisher the right to make one or more editions during a period of 20 years from the date of delivery of the completed manuscript.

The number of editions and the number of copies of each edition shall be specified in the contract. However, alternatives may be provided for, either in respect of the number of editions and copies, or in respect of the corresponding remuneration.

Where not specified, it shall be understood that the contract relates to a single edition of not more than 2,000 copies. A publication contract "by period" shall afford the publisher the right to produce the number of editions he may consider necessary within the period of time specified, which period shall not exceed twenty years, and shall specify a minimum number of copies of each edition; in the absence of a specified number, the contract shall be null and void. The period of twenty years shall not apply to publishing contracts concerning:

- encyclopaedias and dictionaries;
- sketches, drawings, vignettes, illustrations, photographs and similar works, for industrial use
- cartographical works;
- dramatico-musical and symphonic works.

In both forms of contract, the publisher shall be free to spread the editions over such number of reprints as he may consider suitable.

#### Article 123

Copies of the work shall be countersigned in accordance with the provisions of the Regulations.

#### Article 124

If several editions are contemplated by the contract, the publisher shall be required to notify the author, sufficiently in advance, of the probable time of exhaustion of the current edition.

He shall, at the same time, declare to the author whether or not he intends to proceed with a new edition.

If the publisher has stated that he does not intend to proceed with a new edition, or if, having stated his intention to proceed with a new edition, he does not do so within a period of two years from the notification of such declaration, the contract shall be considered terminated.

The author shall be entitled to damages for the failure to make a new edition, unless the publisher can show a good reason therefore.

#### Article 125

The author shall be required:

2. to deliver the work under the conditions specified in the contract and in form which will not make printing unduly difficult or costly;
3. to guarantee, for the entire period of the contract, the undisturbed enjoyment of the rights granted.

In addition, the author shall have both the obligation and the right to correct printers' proofs, in accordance with the conditions established by custom.

#### Article 126

The publisher shall be required:

1. to reproduce and market the work under the name of the author or as an anonymous or pseudonymous work, if so provided in the contract, in conformity with the original and according to the rules of good publishing practice.
2. to pay the agreed remuneration to the author.

#### Article 127

The publication or reproduction of the work shall take place within the period laid down in the contract; such period shall not be more than two years from the date of effective delivery to the publisher of the complete and final copy of the work.

If no period is specified in the contract, publication or reproduction of the work shall take place within two years following a written request to the publisher. However, the judicial authority may set a shorter period if justified by the nature of the work or by any other special circumstances.

Any clause waiving the setting of a period or specifying a period in excess of the maximum referred to above shall be null and void.

The maximum period of two years shall not apply to collective works.

#### Article 128

If a person acquiring the right of publication or reproduction does not publish or reproduce the work within the period specified in the contract or by the court, the author shall be entitled to require that the contract be terminated.

The judicial authority may grant to the person acquiring the right an extension of time, not exceeding one half of the above-mentioned period and subject, where necessary, to a suitable guarantee. The judicial authority may also restrict the decision on termination to part only of the provisions of the contract.

In the case of complete termination, the person who acquired the right shall return the original of the work and be required to make good any damages, unless he can show that failure to publish or reproduce took place despite the exercise of due diligence.

#### Article 129

Until such time as the work is published by printing, the author may introduce therein any changes which he considers suitable, provided that they do not alter the character and purpose of the work, and provided he bears any additional expenses occasioned by the changes.

The author shall have the same right in relation to new editions. The publisher shall consult the author on this matter before proceeding with new editions. In the absence of agreement between the parties, the period for carrying out changes shall be set by the judicial authority.

If the nature of the work requires it to be brought up-to-date prior to any new edition, and the author refuses so to do, the publisher may have it brought up-to-date by other persons, provided that the new edition identifies and distinguishes the work of such persons.

#### Article 130

The author's remuneration shall consist of a share of the proceeds, calculated, in the absence of agreement to the contrary, on a percentage of the retail price of the copies sold. However, his remuneration may be represented by a lump sum for editions of:

- dictionaries, encyclopaedias, anthologies and other works produced in collaboration;
- translations, newspaper and magazine articles;
- speeches or lectures;
- scientific works;
- cartographical works;
- musical or dramatico-musical works;
- works of figurative art.

In contracts providing for the sharing of proceeds the publisher shall be required to render an annual account of copies sold.

#### Article 131

In publishing contracts, the retail price shall be set by the publisher, after having given the author sufficient notice. The author may object to the price set or altered by the publisher if it would gravely prejudice the interests of the author or the dissemination of the work.

#### Article 132

The publisher may not transfer the rights he has acquired to other persons without the consent of the author except in the event of transfer of the enterprise. However, in the latter event, the publisher may not transfer his rights if such transfer would be prejudicial to the reputation of the author or to the dissemination of the work.

#### Article 133

If the work does not find a sufficient market at the price fixed, the publisher, before selling the remaining copies at a reduced price, or as waste, shall ask the author if he wishes to acquire the copies at a price calculated on basis of the amount obtainable by sale at such price or as waste.

#### Article 134

Publishing contracts shall terminate:

1. on expiry of the contractual period;
2. if continued execution is impossible due to lack of success of the work;
3. if the author dies before completion of the work, subject to the application of the provisions of Article 121;
4. if the work cannot be published, reproduced or marketed by reason of a judicial decision or a provision of law;
5. in the event of termination of the contract as provided in Article 128, or in the case referred to in Article 133;
6. if the work has been withdrawn from the market in accordance with the provisions of Section V of this Chapter.

#### Article 135

The bankruptcy of the publisher shall not bring about termination of the publishing contract.

However, the publishing contract shall be terminated if the liquidator, within one year of the declaration of bankruptcy, does not continue the activities of the publishing business or does not transfer it to some other publisher under the conditions specified in Article 132.

### SECTION IV

#### CONTRACTS FOR PUBLIC PERFORMANCES

#### Article 136

Contracts by which the author grants the right to perform in public a dramatic, dramatico-musical, choreographic, dumb show or other work intended for performance shall, in addition to the general provisions contained in the Codes, be governed by the general provisions of this Chapter and by the special provisions which follow.

In the absence of provision to the contrary, the grant of any such right shall be neither exclusive nor transferable.

#### Article 137

The author shall be required:

1. to deliver the text of the work, unless it has already been published in printed form;
2. to guarantee, for the duration of the contract, the undisturbed enjoyment of the rights granted.

#### Article 138

The assignee shall be obliged:

1. to perform the work without addition, deletion or variation that has not been agreed to by the author, and with prior announcement to the public, in the customary manner, of the title of the work and the name of the author and of any translator or arranger of the work.
2. to allow the author to supervise the performance;
3. not to change, without serious reasons, the leading performers of the work and the conductors of the orchestras and choirs, if designated in agreement with the author.

#### Article 139

The provisions of Articles 127 and 128 shall apply to the performance of the work except as concerns the period referred to in the second paragraph of Article 127 which, in the case of dramatico-musical works, shall be increased to five years.

#### Article 140

If the assignee of the right of performance, notwithstanding the request of the author, fails to continue to perform the work after a first performance or a first cycle of performances, the author of the musical or literary portion who shows that the assignee is at fault shall be entitled to request the cancellation of the contract, with the consequences specified in the third paragraph of Article 128.

#### Article 141

A contract for the performance of a musical composition shall be governed by the provisions of this Section, insofar as they are applicable to the nature and object of such contract.

### SECTION V

#### WITHDRAWAL OF WORKS FROM THE MARKET

#### Article 142

Whenever serious moral reasons arise, the author shall be entitled to withdraw his work from the market, subject to liability to compensate any persons who have acquired rights to reproduce, disseminate, perform or sell such work. This right is personal and is not transmissible.

In order to exercise this right, the author shall notify his intention to the persons to whom he has transferred rights and to the Office of the President of the Council of Ministers, that shall give public notice of such intention in the manner laid down by the Regulations.

Within a period of one year from the last date of notification and publication, the interested parties may have recourse to judicial authority to oppose the exercise of the claim of the author or to obtain liquidation and compensation for damages.

#### Article 143

If the judicial authority accepts the existence of the serious moral reasons invoked by the author exist, shall exhibit the reproduction, diffusion, performance or circulation the work, subject to the payment of an indemnity in favor of the interested parties, and shall fix the amount of such indemnity and the period for its payment.

Before the expiry of the period laid down in the final paragraph of the preceding Article, the judicial authority may provisionally order prohibition, upon request and if it finds that urgent reasons exist, after payment of such security as it may deem necessary.

If the compensation is not paid within the period set by the judicial authority, the effects of the order shall automatically cease.

Continued reproduction, dissemination, performance or sale of the work after the expiration of the period allowed for recourse to the judicial authority, as laid down in the final paragraph of the foregoing Article, or if any order suspending trading in the work, shall be liable to the civil and penal sanctions under this Law for infringement of copyright.

### SECTION VI

#### RIGHTS OF THE AUTHOR IN RESPECT OF THE INCREASE IN VALUE OF WORKS OF FIGURATIVE ART

#### Article 144

The authors of works of figurative art in the form of paintings, sculptures, drawings and prints and the authors of original manuscripts shall be entitled to a percentage of the presumed amount by which the price of the first public sale of original copies of such works and manuscripts exceeds the price of first transfer.

However, the organizer of the sale, the vendor and the purchaser shall, however, be entitled to prove that such public sale was not preceded by any act of transfer for valuable consideration, or that the price of first transfer was not less than that obtained in the public sale.

#### Article 145

The authors of the works referred to in the preceding Article shall also be entitled to a percentage of the higher value that the original copies of their works subsequently acquire in successive public sales, such higher value being the difference between the price at the last public sale and the price at the public sale which immediately preceded it.

#### Article 146

The percentages referred to in the preceding Articles shall be due only if the selling price is in excess of 1,000 lire for drawings and prints 5,000 lire in the case of paintings, and 10,000 lire for sculptures. They shall be payable by the owner selling the work.

#### Article 147

If the price of the original copies of the works referred to in this Section, at any sale not deemed public under Law, reaches 4,000 for drawings and prints, 30,000 lire for paintings, and 40,000 lire for sculptures and also exceeds five times the price of first transfer, however effected, such increase in value shall be subject to a payment of 10 percent to the authors of the works, payable by the owner selling them.

Proof of the price paid for a work and of the conditions set out in this Article shall be the responsibility of the authors.

The percentage shall be reduced to 5% if the vendor proves, in turn, that he acquired the copy at a price not less than half of that realized by him.

The provisions of Article 145 shall apply for the purpose of determining the higher value.

The provisions of this Article shall not apply to anonymous or pseudonymous works, except as provided by Article 8 of this Law in regard to the latter category of works.

#### Article 148

For the purposes of the protection afforded by the foregoing Articles, replicas made by the author shall also be considered as original works, but not reproductions produced in other manner. Prints which have been taken from original engravings and are signed by the author shall be considered original works.

#### Article 149

For the purposes of this Law, the following shall be considered public sales:

- a) sales effected at shows and exhibitions, authorized within the meaning of Royal Decree Law of January 29, 1934, No. 454, which became the Law of July 5, 1934, No. 1607;
- b) sales by court order
- c) sales by public auction
- d) sales of works offered for sale at public auctions but withdrawn as the result of private negotiations
- e) sales effected in connection with private exhibitions organized or carried out by third parties

#### Article 150

The rights set out in Articles 144, 145, 146 and 147 shall belong to the author and, after his death, and in the absence of testamentary provisions, to his spouse and legitimate heirs to the third degree, according to the rules of the Civil Code; if there are no successors as mentioned above, the rights shall devolve upon the insurance and assistance fund of the National Authority for Insurance and Assistance to Painters and Sculptors.

Such rights shall continue for the life of the author and fifty years after his death, and may not be alienated or renounced in advance.

#### Article 151

The percentage due on the price of the first public sale within the meaning of Article 144 shall be fixed at 1 percent for amounts up to 50,000 lire; 2 percent for amounts exceeding that sum and up to 100,000 lire; and 5 percent for any larger amount.

#### Article 152

The percentages due on the increase in value determined in accordance with Article 145 shall be as follows:

- 2% for increases in value not exceeding 10,000 lire
- 3% for increases in value in excess of 10,000 lire
- 4% for increases in value in excess of 30,000 lire
- 5% for increases in value in excess of 50,000 lire
- 6% for increases in value in excess of 75,000 lire
- 7% for increases in value in excess of 100,000 lire
- 8% for increases in value in excess of 125,000 lire
- 9% for increases in value in excess of 150,000 lire
- 10% for increases in value in excess of 175,000 lire

#### Article 153

The person who legally presides over the public sale of works of figurative art referred to in this Section shall be required to deduct from the sale price of original copies the percentages of Articles 144 and 145 and to pay such amount to the S.I.A.E. under the conditions specified in the Regulations.

Until such time as payment is effected, the person who presides at the sale shall, for the purposes of law, be deemed to be the depository of the sums deducted.

#### Article 154



Works of art which, in a public sale, have reached at least the price shown in Article 146, shall be notified to the S.I.A.E. by the person who legally presides over the sale. The S.I.A.E. shall make the corresponding registration in the manner prescribed by the Regulations.

In the absence of any false declaration, the registration effected shall constitute proof of the price obtained for the work.

#### Article 155

The amounts referred to in the Articles of this Section may be modified by Presidential Decree.

### CHAPTER III

#### *Legal Remedies And Penalties*

#### SECTION I

#### CIVIL PROTECTION AND SANCTIONS

#### § 1. Provisions Relating to the Exploitation Rights

#### Article 156

Any person having reason to fear the infringement of an exploitation right belonging to him under this Law, or who seeks to prevent the continuation or repetition of an infringement which has already occurred, may institute legal proceedings to ensure that his right be recognized and the infringement forbidden.

The proceedings shall be governed by the provisions of this Section and by the provisions of the Code of Civil Procedure.

#### Article 157

Any person who is entitled to exercise the rights of public performance of a work intended for such performance, including a cinematographic work or a work of musical composition, may, in accordance with the provisions of the regulations, request the Prefect of the province to prohibit any performance for which written proof of his consent is not produced.

The Prefect shall, upon request and on the basis of the notices and documents submitted to him, authorize or forbid the performance, subject to the right of the interested party to have recourse to the judicial authority for final decision within its competence.

#### Article 158

Any person injured in the exercise of an exploitation right belonging to him may institute legal proceedings for the destruction or removal of the material constituting the infringement or for payment of damages.

#### Article 159

The removal or destruction referred to in the foregoing Article may be effected only in respect of specimens or copies illegally reproduced or disseminated, and devices employed for reproduction or dissemination which, by their nature, are not capable of use for the reproduction or dissemination of other matter.

If a part of the specimen copy, or device in question is capable of use for the reproduction or dissemination of other matter, the interested party may, at his expense, request the separation, in his interest, of such part.

If the specimen, copy, or device of which the removal or destruction is requested has special artistic or scientific value, the judge may, *ex officio*, order that it be deposited in a public museum.

The injured party may, at any time, ask that the specimens, copies, and devices to be destroyed be delivered to him and their estimated value set off against the damages due to him.

The provisions for destruction and delivery shall not apply to infringing specimens or copies acquired in good faith for personal use.

#### Article 160

Removal or destruction shall not be demanded in the last year of the term for which the right endures. Seizure of the work or of the product may be ordered at any time up to the end of the said term. If the damages arising from the infringement of the right have been paid, seizure may be authorized even at a date prior to that indicated above.

#### Article 161

For the purposes of the proceedings referred to in the previous Articles, the judicial authority may order a description, an ascertainment, an expert appraisal or the seizure of all matter constituting an infringement of the exploitation right.

Seizure may not be effected in the case of works resulting from the collaboration of two or more persons, except in particular serious cases or where the infringement is imputable to all joint authors.

In particularly serious cases the judicial authority may also order the seizure of profits due to the author of the disputed work or product.

The provisions of this Section shall also apply to any person putting into circulation, in whatever manner, or possessing for commercial purposes, unauthorized copies of computer programs and any means the sole intended purpose of which is to facilitate the unauthorized removal or the circumvention of any device applied to protect computer programs.

#### Article 162

1. Except when otherwise provided for by this Law, the proceedings pursuant to article 161 are regulated by the provisions of the civil procedure code which concern the preventive proceedings such as seizure and preventive examination with regard to description, ascertainment and expert appraisal.

2. The description and the seizure are carried out by a judicial official, with the assistance, if needed, of one or more experts and also by means of technical ascertainment and photographic contrivances or tools of different nature. As to public performances, the limitations on days and time provided for by the civil procedure code in respect of such measures, shall not apply.

3. The concerned parties may be authorized to be present at the operations, also through their representatives, as well as with the assistance of technicians whom they trust.

4. The paragraphs 2 and 3 of article 693 of the civil procedure code shall not apply to the description. For the purposes of article 697 of the civil code, the necessity and urgency must be assessed according to the need of not impairing the implementation of this measure. The provisions of articles 669-octies, 669- undecies and 675 of the civil procedure code are also applicable to the inventory.

5. When the term under article 675 of the civil procedure code has lapsed, the operations of description and seizure already in progress can be completed, but any further operation founded on the same order cannot be started; anyway there shall remain the possibility to ask the judge to issue any further orders of description or seizure during the proceedings on the merits of the issue.

6. Either the description and the seizure may concern products owned by persons that have not been identified in the petition, provided that these products have been produced, offered, imported or distributed by the party in whose regard the above orders have been issued, excepted those products which are employed for personal use or provided that they contain works disseminated by any means. The record of the description and seizure operations, together with the petition and order, shall be notified to the third party owning the products described and seized within 15 days from the completion of the operations, under penalty of nullity.

#### Article 163

1. The owner of an exploitation right may request a restrictive injunction against whatever activity infringing his exploitation right, pursuant to the rules of the civil procedure code about the preventive proceedings.

2. When issuing the restrictive injunction, the judge may fix the sum due for any infringement or non-compliance later ascertained or for any delay in the compliance with the injunction.

3. When in the judicial proceedings, it is ascertained that the remuneration due for the rights under articles 73 and 73-bis has not been paid, besides ordering the payment of the remuneration, the judicial authority may prohibit the use of phonograms for not less than 15 days and not more than 180 days.

4. When in the judicial proceedings it is ascertained that the use of phonograms is prejudicial to the phonogram producer, under article 74, the judicial authority may impose an administrative sanction of not less than Euros 260 and not more than Euros 5.200, in addition to the permanent prohibition of their use.

#### Article 164

If the actions for which provision is made in this and the following Section are instituted by one of the public law entities referred to in Articles 180 to 184, the following rules shall be observed:

1. the officers of the above-mentioned entities may, without special authorization, institute the actions referred to above in the interests of the rightholder;
2. such public law entities shall be relieved of the obligation to provide security for carrying out acts in respect of which security is prescribed or authorized;
3. the public law entity shall appoint the officers who are authorized to issue certifications of the sums due for copyright, as well as certifications relating other activities carried out by the public law entity; these certifications are enforceable under article 474 of the civil procedure code.

#### Article 165

The author of a work which is the subject of an exploitation right may, even after the assignment of such right, intervene at any time, in order to protect his interests, in proceedings instituted by the assignee.

#### Article 166

The court may, at the request of the interested party or *ex officio*, order the operative portion of the judgment to be published, more than once if necessary, in one or more newspapers, at the expense of the unsuccessful party.

#### Article 167

The exploitation rights afforded by this Law may also be asserted in law by any person legitimately entitled to such rights.

### §2. Special Provisions for Proceedings in Respect of Moral Right

#### Article 168

The provisions contained in the preceding Section<sup>7</sup> shall be applicable in proceedings concerning the exercise of the moral right, insofar as the nature of such rights permits, subject to the application of the provisions of the following Articles.

#### Article 169

Actions in defence of the rights relating to the authorship of a work shall give rise to removal or destruction only if the damage cannot be remedied by means of the addition or suppression of notices on the work which refer to its authorship or by other means of publicity.

#### Article 170

Actions in defence of the rights bearing relating to the integrity of a work shall give rise to removal or destruction of the deformed, mutilated or otherwise modified copy of the work only when it is not possible to restore such copy in its original form at the expense of the party wishing to avoid removal or destruction.

## SECTION II

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<sup>7</sup> Recte **Paragraph**

## PENAL REMEDIES AND PENALTIES

### Article 171

Without prejudice to the provisions of articles 171-bis and 171-ter, any person who, without having the right thereto, and for any purpose and in any form:

- a) reproduces, transcribes, recites in public, disseminates, sells or offers for sale, or otherwise commercially distributes the work of another person, or reveals the contents of such work before it is made public, or introduces or circulates within the territory of the State copies produced abroad contrary to Italian Law;
- b) performs or recites in public or disseminates, with or without variations or additions, the work of another person intended for public performance, or a musical composition. Performance includes the public showing of a cinematographic work, the performance in public of musical compositions included in cinematographic works, and broadcasting by means of a loud-speaker operated in public;
- c) commits the acts referred to in the preceding items by means of any form of transformation referred to in this Law;
- d) reproduces copies or gives performances in excess of the number which he has the right to reproduce or perform;
- e) [Repealed]
- f) in violation of Article 79, retransmits by wire or by radio, or records on phonograph records or other like devices radiophonic transmissions or retransmissions, or sells the unlawfully recorded phonograph records or other like devices,

shall be liable to a fine of between 100,000 and 4,000,000 lire.

The penalty shall be imprisonment of up to one year or a fine of not less than 1,000,000 lire if the acts referred to above are committed in relation to a work of another person which is not intended for public disclosure, or by usurpation of the authorship of the work, or with deformation, mutilation or other modification of the work and such acts constitute an offence against the honour or reputation of the author.

Infringement of the provisions under paragraphs 3 and 4 of article 68 shall result in a 6-month-up-to-1-year suspension of the activity of photocopying/xerocopying or of like reproduction system, as well as in the administrative pecuniary penalty from 2,000,000 up to 10,000,000 lire.

### Art. 171 bis

1. Any person who with gainful intent unlawfully duplicates computer programs or who, to the same intent, imports, distributes, sells, holds for commercial purposes or rents computer programs contained in a carrier not bearing SIAE's mark shall be liable to imprisonment of between six months and three years and to a fine of between 5,000,000 and 30,000,000 lire. The same penalty shall apply if the act concerns any means, the sole intended purpose of which is to allow or to facilitate the unauthorized removal or circumvention of any technical device applied to protect a computer program. The penalty shall be imprisonment of not less than two years and a fine of 30,000,000 lire if the offence is serious.

2. Any person who, with gainful intent, reproduces on carriers not bearing SIAE's mark, transfers onto another carrier, distributes, communicates, presents or shows in public, the content of a data-base, thus infringing the provisions under articles 64-quinquies and 64-sexies, or extracts or reutilizes a data base, thus infringing the provisions under articles 102bis and 102-ter, or distributes, sells or leases a data base shall be liable to imprisonment for a period of six-months up to three years and to a fine from 5,000,000 up to 30,000,000 lire. The penalty shall be imprisonment of not less than two years and a fine of not less than 30,000,000 lire if the offence is serious.

### Article 171 ter

1. Any person who, for purposes other than personal use and with gainful intent,
  - a) unlawfully duplicates or reproduces, broadcasts or performs a public show, by whatever means, of whole or parts of intellectual works intended for cinematographic or television distribution, or for sale or for rental, records, tapes or like media as well as any other media containing phonograms or videograms of musical, cinematographic or audiovisual works or sequences of moving images;
  - b) unlawfully reproduces, broadcasts or performs a public show, by whatever means, of whole or parts of literary, dramatical, scientific or educational, musical or dramatico-musical works, or multimedia works, even when they are part of collective works, or works made in collaboration or data bases;

c) without having participated in the duplication or reproduction introduces onto the territory of the State, holds for sale or distribution, distributes, markets, rents, or transfers under whatever title, or performs a public show of or broadcasts or disseminates to the public the unlawful duplications or reproductions referred to in item (a) and (b);

d) holds for sale or distribution, markets, sells, rents, transfers under whatever title, publicly shows, broadcasts by any means video cassettes, audiocassettes, any carrier containing phonograms or videograms of musical works, cinematographic or audiovisual works or sequences of moving images or any other carrier which do not bear the SIAE mark or bear a counterfeited or altered mark, in all cases where the SIAE mark is compulsory according to this law;

e) without a prior consent of the lawful distributor, re-transmits or broadcasts, by whatever means, an encrypted service received by means of devices or parts of devices capable to decode the conditioned-access transmissions;

f) introduces onto the territory of the State, holds for sale or distribution, sells, rents, transfers under whatever title, promotes for commercial purposes, sets up special devices or decoding elements which allow to have access to an encrypted service without paying the due subscription fee;

f-bis) manufactures, imports, distributes, sells, rents, transfers under whatever title, advertises for sale or rental, holds for commercial purposes devices, products or components or provides services whose main purpose or commercial use is to circumvent any effective technological measures under art. 102-quater, or which are primarily designed, manufactured, adapted or performed for the purpose of enabling or facilitating the circumvention of said measures. These technological measures shall comprise the measures that are applied or that remain after certain measures are removed by rightholders voluntarily or by virtue of agreements with the beneficiaries of exceptions, or in compliance with an injunction by an administrative or judicial authority;

h) unlawfully removes or alters the electronic rights-management information under art. 102-quinquies, or distributes, imports for distribution, broadcasts, communicates or makes available to the public protected works or other subject-matters whose electronic information has been removed or altered,

shall be liable to imprisonment of between six months and three years and a fine of between 5,000,000 lire and 30,000,000 lire.

2. Any person who

- a) unlawfully reproduces, duplicates, broadcasts, sells or markets, transfers under whatever title or imports more than 50 copies or carriers of works protected by copyright and neighbouring rights
- b) for business purposes, effects the reproduction, distribution, sale or marketing, import of works protected by copyright and neighbouring rights, thus making himself guilty of the offences under paragraph 1;
- c) promotes and organizes the unlawful activities under paragraph 1

shall be liable to imprisonment for a one-up-to-four-year period and to a fine from 5,000,000 to 30,000,000 lire.

3. The punishment shall be reduced in the event of a particularly light offence

4. Conviction for any of the offences under paragraph 1 shall include

- a) the application of the ancillary penalties provided for in articles 30 and 32-bis of the Penal Code;
- b) the publication of the sentence in one or more newspapers, of which one at least is distributed onto the entire national territory, and in one or more specialized magazines;
- c) a one-year-period suspension of the license or authorization to broadcast the activity or business by radio and tv

5. the amounts derived from the application of the fines referred to in paragraphs (1) and (2) shall be paid to the Social Security and Assistance Agency for Painters and Sculptors, Musicians, Writers and Playwrights.

Article 171 quater

1. Any person who, without being authorized and with gainful intent:

- a) rents or, in any manner, permits the use, for whatever purpose, of original specimens or of copies or of media, obtained lawfully, of copyrighted works;
- b) records the performances referred to in article 80 on audio, video or audiovisual media,

shall be liable, except where the act amounts to a more serious offence, to imprisonment of up to one year or a fine of between 1,000,000 and 10,000,000 lire.

Article 171 quinquies

1. For the purposes of its provisions, this Law regards as equal rental and sale with right of redemption or under resolutive condition when it is provided that in the event of redemption or occurrence of the condition, where the seller pays back a smaller sum than the money paid by the purchaser or when it is provided that the purchaser, pays, on delivery (whether as an advance payment or under other title) an amount of money which is smaller than the sale price.

#### Article 171 sexies

1. When the seized material, due to its quantity, is difficult to be kept, the judicial authority may order its destruction, in compliance with the provisions under article 83 of the implementation and co-ordination provisions and the transitional provisions of the Penal Procedure Code, approved with legislative decree July 28 1989, no. 271.
2. There shall always be ordered the forfeiture of means and materials which contributed or were meant to commit the offences under articles 171-bis, 171-ter and 171-quater as well as the forfeiture of the videotapes and of any other audiovisual, phonographic, or information carriers that have been unlawfully duplicated, reproduced, transferred, marketed, held or introduced into the national territory and not bearing the SIAE's mark, when provided for by law, or bearing a mark which has been counterfeited, or altered or meant for another work. The forfeiture shall also be ordered in the case the penalty is applied on parties' demand pursuant to article 444 of the Penal procedure Code.
3. The provisions of the above paragraphs shall be applied also when the copyrighted products belong to another legal person, in whose interest one of those committing the offence has acted.

#### Article 171 septies

1. The punishment provided for in article 171-ter, paragraph 1, shall also apply:
  - a) to producers and importers of the carriers under article 18-bis which are not subject to SIAE's mark, when they do not communicate to SIAE all the information necessary to the unambiguous identification of these carriers, within 30 days from their commercialisation onto the national territory or within 30 days from the date of import
  - b) to whoever mendaciously states he has fulfilled the obligations under article 181-bis, paragraph 2, of this law, unless the fact does not constitute a more serious offence

#### Article 171 octies

1. Whoever produces, sales, imports, promotes, installs, modifies, or uses, either for personal or public use, with fraudulent purposes, devices or parts of devices meant to decode conditional-access audiovisual transmissions which have been broadcast by air, satellite or cable, whether in analogue or digital form, shall be punished by imprisonment from a 6-month up to 3-year period and a fine from 5-up-to 50,000,000 lire, if the fact does not constitute a more serious offence. By "conditional-access" service it is meant the broadcasting of the audiovisual signals by Italian or foreign broadcasters in such a way so to make those signals solely available to specific groups of users selected by the broadcaster of the signal, apart from the users' payment of a subscription fee related to above service.
2. When the offence is particularly serious, the punishment shall not be less than a 2-year imprisonment and a 30,000,000 lire fine.

#### Article 171 nonies

1. The heaviest of the punishments for the offences under articles 171-bis, 171-ter and 171-quater shall be reduced from 1 third to 1 half, with no application of ancillary penalties, when, before he is charged with copyright infringement by the judicial authority, the offender voluntarily reports his infringement or, when he supplies all the information he gets to know, thus contributing to identify the promoter or organiser of the unlawful activities under articles 171-ter and 171-quater, or to identify the duplicator or distributor or also helps to carry out the seizure of large quantities of audiovisual or phonographic carriers or of devices and materials used or meant to commit copyright offences.
2. The provisions of this article shall not apply to the promoter or organiser of the unlawful activities provided for in article 171-bis, paragraph 1 and in article 171-ter, paragraph 1.

#### Art. 172

If the acts referred to in article 171 are committed by negligence, the penalty shall be a fine of up to 2,000,000 lire.

Any person who:

- a) acts as an intermediary in violation of Articles 180 and 183
- b) fails to carry out the obligations set out in Articles 153 and 154
- c) violates the provisions of Articles 175 and 176

shall be liable to the same penalty.

#### Article 173

The penalties set out in the preceding Articles shall apply in all instances where the acts in question do not constitute a more serious offence under the Penal Code or other laws.

#### Article 174

In penal proceedings governed by this Section, a party, who sues for civil injury, may at any time request the penal court to apply the measures and the penalties set out in Articles 159 and 160.

#### Article 174 bis

1. Without prejudice to the penal sanctions applicable, the infringement of the provision of this part is punishable by the administrative pecuniary penalty equivalent to the double of the market price of the work or of the carrier whose rights are infringed and in no case less than 103,00 euros. When the market price is hard to be determined, the infringement shall be punished by an administrative sanction amounting to a sum from 103,00 up to 1.032,00 euros. The administrative sanction shall amount to the penalty established for each infringement and for each item unlawfully duplicated or reproduced.

#### Article 174 ter

1. Provided that he does not contribute (concur) in the offences under articles 171, 171-bis, 171-ter, 171-quater, 171-quinquies, 171-septies e 171-octies, whoever unlawfully exploits by whatever means, broadcasts by air or transmits by cable, duplicates, reproduces protected works or subject matters, in whole or parts, also by using means intended to circumvent the technological measures of protection; purchases or rents audiovisual, phonographic, software or multimedia carriers, non-compliant with the provisions of this Law; purchases or rents devices, products or components intended to circumvent technological measures of protection shall be liable to the administrative pecuniary penalty of euro 154 and to the ancillary sanctions of the forfeiture of the materials and of the publication of the sentence in a national newspaper,

2. In the cases of relapse or of serious offence due to the number of infringements or because of the quantity of copies purchased or rented, the administrative sanction shall be increased up to 1.032 euros and the offence shall be punished by the forfeiture of the devices and the materials, by the publication of the sentence in one or more national newspapers or in one or more specialized magazines and, in the case of a business activity, by the withdrawal of the broadcasting licence or permission or the revocation of the business authorization.

#### Article 174 quater

1. The proceeds from the administrative sanctions, applied under articles 174-bis e 174-ter, flow into the State balance, in order to be later allocated, by decree of the Minister of The Treasury, Budget and Economic Planning, as follows:

- a) 50% to a fund of the budget of the Ministry of Justice for the powering of the structures and of the means deployed to prevent and ascertain the offences under this Law. This fund is established by a decree of the Ministry of Justice, in agreement with the Minister of the Interior, pursuant to art. 17, paragraph 3, of the Law August 23, 1988, no. 400;
- b) 50% to a specific item of the budget of the Ministry of Economy and Finance to promote the information campaigns under paragraph 3-bis of the article 26 of the law of August 23, 1988 no. 400, and subsequent amendments.

#### Article 174 quinquies

1. In the criminal prosecution of certain malicious offences under this section, when committed within a commercial firm or a business activity subject to authorization, the public prosecutor shall communicate all information necessary to issue the injunction under paragraph 2 to the “questore” (high police official).

2. After examination of the elements in the information under paragraph 1, upon hearing the interested parties, on the basis of a justified injunction the questore (high police official) may order the suspension of the commercial or business activity for not less than 15 days and for not more than 3 months, without prejudice to the penal seizure, if it has been ordered.

3. In case of conviction for certain offences under paragraph 1, as an ancillary administrative sanction, the provisional suspension of the commercial or business activity shall always be ordered for a 3-month up to 1-year term, inclusive of the suspension period ordered under paragraph 2, if any. Article 24 of the law November 24, 1981, no. 689 shall apply. In the case of persistent relapse, the revocation of the commercial licence or the withdrawal of the authorization for the business activity shall be ordered.

4. The provisions of this article shall also apply to the film development, synchronization and post-production plants as well as mastering, pressing and printing plants, and any plant that carries out industrial activities connected to the manufacture of counterfeited carriers; these provisions shall also apply to tv-program broadcasting or reception stations. The allowances under art. 45 of the Law November 4, 1965, no. 1213, and subsequent amendments, shall be suspended in case of penal prosecution; in the case of conviction, they shall be withdrawn and shall not be granted again for at least two years.

#### PART IV

#### PUBLIC DOMAIN FEES

*Arts 175-179 [Repealed]*

#### PART V

#### PUBLIC LAW ENTITIES FOR THE PROTECTION AND EXERCISE OF AUTHOR'S RIGHTS

#### Article 180

The right to act as an intermediary in any manner whether by direct or indirect intervention, mediation, agency or representation, or by assignment of the exercise of the rights of performance, recitation, broadcasting, including communication to the public by satellite, and mechanical and cinematographic reproduction of protected works, shall belong exclusively to the S.I.A.E.

It shall pursue the following activities:

1. the granting of licenses and authorizations for the exploitation utilization of protected works, for the account of and in the interests of the rightholders;
2. the collection of the revenues arising from the licenses and authorizations;
3. the distribution of that revenue among the rightholders.

The SIAE shall also pursue its activities, in accordance with the provisions of the regulations, in those foreign countries in which it possesses organized representation.

These exclusive of powers shall not prejudice the right of the author or his successors in title to exercise directly the rights afforded them by this Law.

In the distribution of the proceeds referred in item (3) of the second paragraph, a share shall be reserved to the author in all cases. The limits and the methods of distribution shall be determined by the Regulations.

However, if the exploitation rights in a work may give rise to the collection of funds abroad on behalf of Italian citizens domiciled or resident within the State territory and the owners of such rights do not, for any reason, collect those funds, then, the S.I.A.E. shall be empowered, after the lapse of one year from the date on which liability for payment arose, to exercise the rights for the account and in the interests of the author or his successors in title.

The funds mentioned in the preceding paragraph which are collected by S.I.A.E. shall, be held, after the deduction of expenses of collection at the disposal of claimants for a period of three years. If this period elapses without such funds being claimed, they shall be paid to the National Federation of Professionals and Artists (Confederazione Nazionale Professionisti ed Artisti) for the purposes of providing aid to authors, writers and musicians.

#### Article 180 bis

1. The exclusive right to authorize cable retransmission shall be exercised by copyright holders and holders of neighbouring rights exclusively through the SIAE. For the holders of related rights, the SIAE shall act on the basis of specific agreements to be entered into with Performers Mutual Fund in respect of the rights of performers and, possibly, with other collective administration societies specifically set up to manage, as their sole or main business, other neighbouring rights.

2. Such societies shall also act on behalf of holders of the same category of rights who are not members in accordance with the same criteria as applied to their own members.



3. Right holders who are not members may claim their rights within three years of the date of cable retransmission of their works or other protected items.

4. Broadcasting organizations shall be exempt from the obligation referred to in paragraph (1) as regards administration of the rights relating to their own broadcasts, whether they be their own rights or acquired rights.

#### Article 181

In addition to the tasks set out in the foregoing Article and those imposed upon it by this Law and other provisions, the S.I.A.E. may, pursuant to its statutes, exercise other activities connected with the protection of intellectual works.

The S.I.A.E. may undertake, for the account of the State or of public or private institutions, the services of ascertaining and collecting taxes, contributions and fees.

#### Article 181 bis

1. Pursuant to article 181 and to the effects of article 171-bis and 171-ter, the Italian Society of Authors and Publishers (SIAE) shall affix its mark upon each carrier containing computer or multimedia programs as well as on each carrier containing sounds or images in motion, bearing the fixation of works or of parts of the works listed in article 1, first paragraph, intended to be marketed or transferred under whatever title with a gainful intent. An analogous technical system aiming to control the reproductions under article 68 could be adopted by a decree of the President of the Council of Ministers, on the basis of an agreement between SIAE and the concerned trade associations.

2. SIAE's mark shall be affixed upon the carriers under paragraph 1 for the only purpose to protect the rights on intellectual works, after claimant has certified to have fulfilled all his obligations deriving from the law on copyright and neighbouring rights. In the case of serious evidence, SIAE shall check, even later, the circumstances and elements which are material for affixing the mark.

3. Without prejudice to (the fulfilment of) the obligations deriving from the rights provided for by this Law, in conformity with the conditions and the cases provided for by the regulation under paragraph 4, taking into consideration the specific agreements between SIAE and the concerned trade categories, SIAE's mark may be not affixed upon the carriers containing computer programs ruled by the legislative decree 29 December 1992, no. 518, used solely by means of a computer, provided that these programs do not contain any sounds, voices or sequences of images in motion, that are phonographic, cinematographic or audiovisual works expressly realized for a computer program, in whole or in parts longer than fifty per cent of the original work, which are in competition with the economic exploitation of these works. In these cases, the lawfulness of the products, also for the purposes of the penal protection pursuant to article 171-bis, is confirmed by means of specific identifying declarations given in advance to SIAE by producers and importers.

4. Timing and features of the mark and the place where the mark will be affixed shall be determined by decree of the President of the Council of Minister within 180 day from the coming into force of this provision, after hearing SIAE and the concerned associations, in order to assure its easy application, its visibility and to prevent alteration and counterfeiting of the works. The system determining the timing, the features and the place where the mark will be affixed provided for by the previous rules shall be applicable until the entry into force of the above regulation. The applicants shall be charged of all the expenses and charges also for what concerns the control operations; the amount of the expenses, in the absence of an agreement between SIAE and the concerned associations, shall be fixed by decree of the President of Council of Ministers, after hearing the Standing Consultative Committee on Copyright.

5. SIAE's mark is due to possess such features as to be impossible to move it onto a different carrier. It must also contain such characteristics which allow to identify the title of the work in whose regard it has been required and also the name of the author, of the producer or of the right-holder. It is also due to contain the information of the progressive number for each single work that has been reproduced or recorded, as well as information about its intended final destination (sale, rental or any other different form of distribution).

6. The application of the mark can be effected by the mark applicant or by a third party appointed by him that will assume all the consequent legal liabilities. The same persons shall inform SIAE, at least every three months, about the activity they performed and the utilization stage of the mark supplies they have been delivered. For the purposes of a timely application of the mark, except where a specific agreement between SIAE and the producer exists, the importer is obliged to inform SIAE in advance about the entrance of the products in the national territory. Provisions under paragraph 4 shall apply.

7. In the cases listed in paragraph 6, SIAE and the mark applicant may agree that the affixing of the mark is replaced with a provisional certification, made in compliance with the provisions of paragraph 2, integrated with SIAE's reception note.

8. SIAE's mark is considered to be a distinctive feature of the intellectual work to the effects of enforceability of penal law.

#### Article 181 ter

1. The royalties due for reproduction under article 68, paragraphs 4 and 5 are collected and distributed, after deduction of a commission, by Società Italiana degli Autori ed Editori (SIAE). In the absence of an agreement between SIAE and the interested trade associations, the amount and the conditions of their payment, as well as the percentage of the commission due to SIAE, shall be determined by decree of the President of the Council of Ministers, after hearing the interested parties and the Consultative Committee under article 190. The enforceability of the provisions under article 68 paragraphs 4 and 5 shall run from the day when the agreement is stipulated or from the date of the coming into force of the decree of the President of the Council of Ministers.

2. The distribution to the rightholders for whom SIAE does not act as an intermediary, according to article 180, may also be carried out through the main interested trade associations, determined by decree of the President of Council of Ministers, after hearing the Consultative Committee under article 190, on the basis of specific agreements.

#### Article 182<sup>8</sup> (repealed)

#### Article 182 bis

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<sup>8</sup> see article 7 of the legislative Decree of 29 October 1999 no. 419, as modified by Decree of 9 April 2003, n. 68

#### ART. 7

##### THE ITALIAN SOCIETY OF AUTHORS AND PUBLISHERS

1. *The Italian Society of Authors and Publishers, which is hereinafter called SIAE, is a public body with an associative nature (to which its members adhere on a voluntary basis), which carries out the following activities:*

- a) *acts as an intermediary in any manner whether by direct or indirect intervention, mediation, agency or representation, or by assignment in the exercise of the rights of performance, recitation, broadcasting, including communication to the public by satellite, and mechanical and cinematographic reproduction of protected works;*
- b) *keeps the public registers provided for under the terms of art. 103 of Law no. 633 of Apr. 22, 1941*
- c) *grants, under the terms of item a), the best protection of rights within the information society, as well as the protection and the development of intellectual works*

2. *The activity of SIAE, except for the public functions conferred to it by Law, is ruled by Private Law*

3. *SIAE performs other functions which it is empowered with by law and has also the faculty to manage services such as collection of taxes, contributions and rights, also on behalf of Public Administration, regional and local bodies and other public or private enterprises.*

4. *The organisation and the functioning of SIAE are ruled by the Statute adopted under the principles of art 13, paragraph 1 of this decree, within 3 months from the coming into effect of this decree. Provisions of art. 13, paragraph 2 shall not be applied. The Statute shall ensure the proper representation of authors and publishers within the Society's Bodies; it shall also grant that, in the distribution among rightholders of the revenues resulting from copyright collection, the real contribution of each of them is mirrored. The commissions on copyright shall be consistent with the level that is applied in other countries of the European Community.*

5. *The Statute is adopted by the majority of the SIAE Assembly members, upon proposal of the Board of Directors, and it is approved by decree of the Ministry for Cultural Activities, jointly with the Ministry of Finance, the Ministry of Treasury and the Ministry of Budget and Planning.*

6. *SIAE also ensures the separation between the management of copyright and neighbouring rights and the management of other services, as well as, starting from the financial year following the date of this decree, the accounting separation of these two distinct activities; for each one the financial balance must be pursued.*

7. *The administration of services for the protection of copyright and neighbouring rights shall comply with the principles of the greatest transparency in the distribution of royalties among the rightholders. The distribution criteria due to copyright holders shall be determined in advance by SIAE yearly and then submitted to Supervising Minister's approval.*

8. *The Ministry for Cultural Activities supervises SIAE's operations. SIAE's supervision is performed after hearing the opinion of Ministry of Finance about issues which are specifically under its competence. The following articles have been suppressed:*

- *art. 182 of Law April 22, 1941 no. 633*
- *art. 57 of Regulations to the Copyright law (royal decree no. 1369 on May 18, 1942)*

1. The Authority for the telecommunications and the Italian Society of Authors and Publishers (SIAE), in order to prevent and ascertain infringements to this Law, and each one within the tasks conferred by law, are entrusted with supervising:
  - a) the reproduction and duplication, by any means, on audio-visual and phonographic carriers, and any other carrier, as well as with supervising premises where the use in public by air or by cable takes place and the broadcasting activity made by any means;
  - b) the public show in cinemas of the works and recordings protected by copyright and neighbouring rights;
  - c) the distribution, sale, rental, broadcasting and utilization in any form of the carriers under point a);
  - d) public or private reproduction centres, which use in their own premises or make available to third parties, even for free, photocopiers, xerocopiers or analogous reproduction system;d-bis) on the manufacturing, import and distribution of the devices and of the media under art. 71-septies.
2. Within the tasks it is entrusted with by law, SIAE, shall coordinate, pursuant to paragraph 1, with the Authority for telecommunications.
3. For implementing the tasks under paragraph 1, the Authority for telecommunications may assign inspecting functions to its officers and may act in coordination with SIAE's inspectors. The inspectors shall have access to the premises where the reproduction, duplication, sale, broadcasting, cable transmission or public show of films, as well as related activities are carried out; they will also have access to the premises where the activities under item e) of paragraph 1 are carried out. They may require to examine the documentation relating to the performed activity, to the devices and the material in the industrial process, to the products in distribution or used through broadcasting and reception by air and transmitted by cable or in cinematographic shows, as well as the documentation relating to the recording devices and media under art. 71-septies. If the premises listed above are not open to the public or are not industrial plants or businesses or broadcasting stations, the inspectors may have access to the premises only upon order of the judicial authority.

#### Article 182 ter

1. In the event of infringement of this law, the inspectors shall write a report to be timely forwarded to the Police. This latter will carry out all the acts provided for by articles 347 and following of the Code of Penal Procedure.

#### Article 183

The placing of Italian non-musical dramatic works with theatrical companies and enterprises shall be subject to the preliminary authorization of the President of the Council of Ministers, in accordance with the provisions of the regulations.

The author and his successors *mortis causa* shall not be required to obtain such authorization. However, translators of foreign works shall be subject to such requirement.

The placing of such works shall be under the supervision of the President of the Council of Ministers, in accordance with the provisions of the Regulations.

#### Article 184

Any person who places Italian non musical dramatic works in foreign countries shall make a declaration thereof within three days to the Italian Agency for Theatrical Exchanges (Ente italiano per gli scambi teatrali), and that Society shall transmit a monthly list of the declarations received, together with any observations and proposals, to the President of the Council of Ministers.

The Italian Agency for Theatrical Exchanges shall also exercise such other functions as its statutes may require.

The provisions of Article 182 shall apply to the Italian Agency for Theatrical Exchanges.

### PART VI

#### FIELD OF APPLICATION OF THE LAW

#### Article 185

Subject to the provisions of Article 189, this Law shall apply to all works of Italian authors, wherever first published. It shall likewise apply to the works of foreign authors domiciled in Italy which are first published in Italy.

It may likewise be applied to the works of foreign authors who do not satisfy the conditions of protection set out in the preceding paragraph if the conditions set out in the following Articles are fulfilled.

#### Article 186

1. The international conventions for the protection of intellectual works shall govern the field of application of this Law to works of foreign authors.

2. If the conventions contain a general requirement of reciprocity or of equality of treatment, such requirement shall be interpreted according to the rules of actual equivalence of the two protections as provided in the following Articles<sup>9</sup>.

3. Without prejudice to the international conventions for the protection of phonograms, the formality provided as a condition for the exercise of the rights of the producer of phonograms that cannot be deemed to be national, shall be fulfilled if the symbol (P), accompanied by the year of first publication, is indelibly affixed on all copies of the carrier.

#### Article 187

In the absence of international conventions, the works of foreign authors which do not comply with the conditions set out in the second paragraph of Article 185 shall enjoy, within the limits of actual equivalence, the protection afforded by this Law, on condition that the State of which the author is a national affords to the works of Italian authors protection which is effectively equivalent.

If the foreigner is a stateless person or if his nationality is uncertain, the rule of the preceding paragraph shall apply with reference to the State in which the work is first published.

#### Article 188

Actual equivalence, in accordance with the following rules, shall be certified and regulated by a Presidential Decree. The duration of protection of a foreign work shall in no case exceed that enjoyed by the work in the State of which the foreign author is a national.

If the law of that State includes a period of compulsory licensing during the term of protection, the foreign work shall be submitted to an equivalent rule in Italy.

If the law of that State makes protection subject to compliance with formalities, declarations of reservation, or the deposit of copies of the work, or any other formality, the foreign work shall be subject in Italy to equivalent formalities, as determined by Presidential Decree.

The Presidential Decree may further subject the protection of the foreign work to the fulfilment of other special formalities or conditions<sup>10</sup>.

#### Article 189

The provisions of Article 185 shall apply to cinematographic works, to phonograph records or like devices, to the rights of performers, to photographs and to engineering works, if such works or products are created in Italy or may be considered national works within the meaning of this Law or any other special law.

In the absence of the conditions above mentioned, the provision of Articles 186, 187 and 188 shall be applicable to such works, rights or products<sup>11</sup>.

### PART VII

#### STANDING CONSULTATIVE

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<sup>9</sup> The application of this paragraph was suspended by Decree Law No. 82 of August 23, 1946.

<sup>10</sup> The application of this Article was suspended by Decree Law no. 82 of August 23, 1946.

<sup>11</sup> The application of this paragraph was suspended by Decree Law of August 23, 1946.

## COMMITTEE ON COPYRIGHT

### Article 190

1. A Standing Consultative Committee on Copyright shall be established at the Office of the President of the Council of Ministers.
2. The Committee shall study matters regarding copyright or matters connected therewith and shall furnish information upon questions relating to such matters, when so requested by the President of the Council of Ministers, or when special provisions so require.
3. The Committee shall carry out the mandatory attempt at settlement, under art. 71-quinquies, paragraph 4.

### Article 191

The Council shall consist of<sup>12</sup>:

- a) a Chairman designated by the President of the Council of Ministers.
- b) one Vice-Chairman each from the Corporations of the Professions and Arts, of Entertainment, and of Stationery and Printing;
- c) [not applicable]
- d) one representative each of the Ministries of Foreign Affairs, of Grace and Justice, of Finance, and of Corporations and two representatives of the Minister of Education;
- e) the director general for entertainment for the Ministry of Tourism and Entertainment and the heads of the information department and of the department for literary, artistic and scientific property in the Office of the Chairman of the Council of Ministers;
- f) the Presidents of the Confederations of Professionals and Artists, and of Industrialists, and three representatives of each of the above mentioned Confederations, particularly competent in matters of copyright, as well as a representative of the Confederation of the Workers of Industry ("Confederazione dei lavoratori dell'industria") designated by the National Confederation of Entertainment Workers ("Federazione nazionale dei lavoratori dello spettacolo").
- g) the President of S.I.A.E.;
- h) three copyright experts, designated by the President of the Council of Ministers.

The members of the Committee shall be appointed by decree of the President of the Council of Ministers and shall remain in office for a term of four years.

### Article 192

The Committee shall meet in ordinary session each year at a date fixed by the President of the Council of Ministers, and in extraordinary session on all occasions when so requested by the President.

### Article 193

1. The Committee may be convened: (a) in general assembly; (b) in special Commissions.
2. All members of the Committee shall participate in the general assembly. The special Commissions shall be set up on a case-by-case basis, for the study of specific issues, as directed by the Chairman, as well as for the mandatory attempt at settlement, as provided for in art. 71-quinquies, paragraph 4. In such a case, the special Commission shall be made by three members, chosen among the experts in the copyright field under art.191, par. 1, item h), and the

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<sup>12</sup> Following numerous changes that have occurred, the present composition is as follows:

A Chairman designated by the President of the Council of Ministers; -- The Director General of Information, publishing and literary, artistic and scientific property, Office of the President of the Council of Ministers; -- a representative of the Office of the President of the Council of Ministers; -- a representative of the Ministry of Foreign Affairs; -- a representative of the Ministry of Pardons and Justice; -- a representative of the Ministry of Finance; -- a representative of the Ministry of Industry, Trade and Craft Trades; -- a representative of the Ministry of Labor and Social Security; -- a representative of the Ministry of Cultural and Environmental Assets; -- a representative of the Ministry of Tourism and Entertainment; -- the Head of the Office of Literary, Artistic and Scientific Property of the Office of the President of the Council of Ministers; -- four representatives of the authors; -- four representatives of the industry; -- a representative of the entertainment workers; -- the President of the Italian Society of Authors and Publishers; -- three copyright experts designated by the President of the Council of Ministers.

representatives of the Ministries. The Chairman of the Commission shall be chosen among the representatives of the Ministries.

3. The President of the Council of Ministers, upon the proposal of the Chairman of the Council, may also invite to the meetings, but without voting right, persons other than the members of the Committee who are particularly competent on the matters considered.

#### Article 194

The secretariat shall be provided by the Director of the Office of Literary Scientific and Industrial Property, established by the Office of the President of the Council of Ministers.

#### Article 194 bis

1. The application for settlement under art. 71-quinquies, paragraph 4, undersigned by the applicant association or by the organization, shall be delivered to the Committee under art. 190, or shall be mailed to it by registered mail with reception notice. Within 10 days from the date of reception of the application, the Chairman of the Committee shall appoint the special Commission provided for in art. 193, paragraph 2. A copy of the application shall be sent or delivered to the counterpart by the applicant.

2. The application shall detail:

- a) the place where the applicant shall receive the notices concerning the proceeding;
- b) the explanation of the grounds of the application.

3. Within thirty days from reception of the application and if the respondent does not accept the proposed settlement of the applicant, the respondent shall submit his written objections to the Commission. Within the following 10 days, the Chairman of the Commission shall set the date of the attempt at settlement.

4. If the settlement is reached, a statement shall be drafted and undersigned by the concerned parties and by the Chairman of the Commission. The statement shall be immediately enforceable.

5. In the case a settlement is not reached, the Commission shall make a proposal for a settlement of the dispute. If this proposal is not accepted, its conditions shall be summarized in the minutes, that shall also report the comments expressed by the parties.

6. In the following civil action, the minutes of the failed attempt at settlement shall be acquired by the Court, also *ex officio*. The judicial authority shall evaluate the behaviour kept by the parties during the attempt at settlement, in order to charge the costs of the proceedings.

7. The claim may be brought to the Court ninety days after the date of delivery of the application for settlement.

8. If the Court finds that the attempt at settlement has not been requested according to the preceding paragraphs or finds that the claim has been made before the expiry of ninety days since the application for settlement, he shall stay the proceeding and shall fix a mandatory term of 60 days to apply for the attempt for settlement. Once the attempt is made or when the ninety-day-term is elapsed, the proceeding may be reinstated within the mandatory term of 180 days. In case the proceeding is not timely reinstated, the Court shall order *ex officio* the expiry of the proceedings by a decree subject to the provision under art. 308 of the civil procedure code.

#### Article 195

The members of the Committee shall receive attendance fees for each day of sitting, in accordance with the applicable regulations.

### PART VIII

#### GENERAL, TRANSITIONAL AND FINAL PROVISIONS

#### Article 196

The place in which the exploitation rights referred to in Article 12 *et seq.* of this Law are first exercised, shall be deemed the place of first publication.

As regards works of art, cinematographic works, phonograph records and other like devices for the reproduction of sounds or voices, works of photography, and any other work identified by its material form, the place of making shall be deemed the place of first publication.

#### Article 197

Publication and performance contracts shall be subject to a graduated registration fee of 0.50%.

#### Article 198

There shall be set aside in the budget of the Office of the President of the Council of Ministers, in a special section of the ordinary part thereof, as from the budget year in which this Law comes into force, a sum of 160 million lire, derived from the revenue from the fees referred to in Articles 175 and 176, to be allocated, in the manner specified in the Regulations, for the aid and Provident Fund of the Professional Associations of Authors, Writers and Musicians.

#### Article 199

This Law shall also apply to works published in any manner both before and after its entry into force.

The legal effects of acts and contracts made or concluded before its entry into force shall remain entirely unaffected and shall continue in accordance with the provisions then in force.

#### Article 199 bis

This law shall also apply to computer programs created before the date of its entry into force, without prejudice to any acts concluded or to any rights acquired prior to such date.

#### Article 200

Up to the entry into force of the new Code of Civil Procedure, the functions conferred by Article 162 on the examining judge shall be exercised by the President of the Division before whom the case is pending<sup>13</sup>.

#### Article 201

The deposit and formalities in respect of works published and products made before the entry into force of this Law which are subject for the first time to the obligation of deposit or other formalities, shall be accomplished within the time and according to the provisions of the Regulations.

#### Article 202

The prices obtained from sales effected before the entry into force of this Law shall not be taken into consideration for the purposes of Article 147.

#### Article 203

Special provisions relating to exclusive television right of may be issued by Presidential Decree.

Until such time as the Regulations referred to in the preceding paragraph have been issued, television shall be governed by the general principles of this Law, insofar as they are applicable.

#### Article 204

As from the entry into force of this Law, the Italian Society of Authors and Publishers shall assume the name S.I.A.E. (*Società Italiana Autori Editori*).

#### Article 205

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<sup>13</sup> The new code of Civil Procedure was approved by Royal Decree No. 1443 of October 28, 1940, that entered into force on April 21, 1942 as amended by Law

The Law of March 18, 1926, No. 256, which converted into law the Royal Decree Law of November 7, 1925, No. 1950, containing provisions relating to copyright and the successive laws amending that Law, are repealed.

The Law of June 17, 1937, No. 1251, which converted into law the Royal Decree Law of February 18, 1937, containing rules relating to the protection of the products of the phonographic industry, and the Law of June 2, 1939, No. 739, which converted into law the Royal Decree Law of December 5, 1938, No. 2115, containing special measures for recorded broadcasting of artistic performances, as well as any other laws or provisions of law contrary to and incompatible with the provisions of this Law, are also repealed.

#### Article 206

The implementing Regulations under this Law shall lay down the penalties for violation of its provisions.

The penalties may include a fine of not more than 320.000 lire.

This Law shall enter into force simultaneously with the Regulations which shall be promulgated within a period of six months following publication of this Law.

Within the same period, a new statute governing the "S.I.A.E." shall also be issued.

We hereby order that this Law, bearing the Seal of State, shall be inserted in the official collection of Laws and Decrees of the Republic of Italy, and all are required to observe it and to cause it to be observed as a Law of the State.