

# ACT

of 4 February 1994

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

(Consolidated text)

### Chapter 1.

#### The Object of Copyright

**Article 1.** 1. The object of copyright shall be any manifestation of creative activity of individual nature, established in any form, irrespective of its value, purpose or form of expression (work).

2. In particular, the object of copyright shall include:

- 1) works expressed in words, mathematical symbols, graphic signs (literary, journalistic, scientific and cartographic works and computer programs);
- 2) artistic works;
- 3) photographic works;
- 4) string musical instruments;
- 5) industrial design works;
- 6) architectural works, architectural and urban planning works as well as urban planning works;
- 7) musical works as well as musical and lyrical works;
- 8) theatrical works, theatrical and musical works as well as choreographic and pantomime works;
- 9) audiovisual (including film) works.

2(1). Protection may apply to the form of expression only and no protection shall be granted to discoveries, ideas, procedures, methods and principles of operation as well as mathematical concepts.

3. The work shall be in copyright since being established, even though its form is incomplete.

4. The author shall be granted copyright protection regardless of whether the formalities have been complied with or not.

**Article 2.** 1. The work derived from another author's work, in particular its translation, modification or adaptation, shall be copyrighted without detriment to the original work.

2. The disposal and use of the derivative work shall be dependent on permission of the author of the original work (derivative copyright) unless the author's economic rights to the original work have expired. The author's permission shall also be required for preparing the derivative work in the case of data bases showing the features of a piece of work.

3. The author of the original work may withdraw his/her permission if the derivative work has not been disseminated within five years from the date of granting such permission. The remuneration paid to the author is not refundable.

4. The work produced under the inspiration of another author's work shall not be considered as the derivative work.

5. The copies of the derivative work shall indicate the author and the title of the original work.

**Article 3.** Collections, anthologies, selections, and data bases showing the features of a piece of work shall be copyrighted even if they contain unprotected materials in so far as the nature of their order, arrangement or composition is creative without detriment to the rights of the works used .

**Article 4.** The copyright shall not apply to:

- 1) legislative acts and their official drafts;
- 2) official documents, materials, logos and symbols;
- 3) published patent specifications and industrial design specifications;
- 4) simple press information.

**Article 5.** The provisions of this Act shall apply to works:

- 1) whose author or coauthor is a Polish citizen; or
- 1<sup>1</sup>) whose author is a citizen of the European Union Member State or Member States of the European Free Trade Agreement (EFTA) - parties to the Agreement on the European Economic Area; or
- 2) which have been published for the first time on the territory of the Republic of Poland or simultaneously on this territory and abroad; or
- 3) which have been published for the first time in the Polish language; or
- 4) which are protected under international agreements within the scope of protection provided therein.

**Article 6. 1.** Pursuant to this Act:

- 1) published work shall mean a piece of work which has been reproduced and its copies have been made available to the public by its author's permission;
- 2) simultaneous publication shall mean publication of a piece work on the territory of the Republic of Poland and abroad within the period of 30 days from the date of its first publication;
- 3) disseminated work shall mean a piece of work which has been made available to the public in any way by its author's permission;
- 4) broadcast of a piece of work shall mean its dissemination by radio or television transmission through wireless networks (terrestrial or satellite) or cable networks;
- 5) rebroadcast of a piece of work shall mean its dissemination by an operator other than the original broadcaster in the form of taking over the entire and unchanged programme of a radio or television broadcasting organization and transmitting it for general reception simultaneously and integrally;
- 6) marketing of, it means making its original or copies available to the public through transfer of their ownership by a rightholder or with consent of the rightholder;
- 7) rental of copies of a piece of work, means their transfer for use limited in time with the objective of generating direct or indirect material benefit;
- 8) lending for use of copies of a piece of work, it means delivery thereof for use limited in time without the objective of generating direct or indirect material benefit;
- 9) presentation of a piece of work, it means providing access thereto either through sound, vision or sound and vision carriers on which the work has been recorded, or through equipment used for reception of radio or television programme on which the work is being broadcast;
- 10) technological protection measures shall be any and all technology, equipment or elements thereof intended to prevent or to restrict any actions permitting the use of works or artistic performances in breach of law;
- 11) effective technological protection measures shall be the technological protection measures which allow subjects holding rights to control the use of a protected work or an artistic performance through the application of an access code or a protection mechanism, in particular encryption, scrambling or any other transformation of a piece of work or an artistic performance or a reproduction inspection mechanism which serve the protection objective;
- 12) information on management of rights shall be information providing identification of the work, the author, the owner of the copyright or information on the conditions of exploitation of a piece of work, provided that they have been attached to the copy of the work or are delivered in relation to dissemination thereof, including identification codes.

2. Whenever this Act mentions an equivalent of a given amount denominated in euro it shall mean its equivalent denominated in the Polish currency, calculated at the average euro exchange rate or its

equivalent denominated in other currency, calculated at the average euro exchange rate and the average exchange rate of such other currency announced by the National Bank of Poland on the day preceding the performance of this act.

**Article 6<sup>1</sup>.** 1. Dissemination of a piece of work on the territory of the Republic of Poland through satellite radio or television transmission means dissemination of such work by the act of introducing, under the responsibility of the radio or television broadcasting organization, on the territory of the Republic of Poland, the work into a chain of communication leading to the satellite and back down to Earth.

2. If dissemination of any work through satellite radio or television transmission occurs in any non-member country of the European Union which does not ensure the level of protection defined in Chapter II of the Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcast and cable rebroadcast (Official Journal of the European Union, Special Polish Edition, Chapter 17, Vol. 1, p. 134), and if:

- 1) the work-carrying signal is transmitted to the satellite through an uplink station situated on the territory of the Republic of Poland, it is believed that such work has been disseminated on the territory of the Republic of Poland by the operator of that station;
- 2) the work-carrying signal is transmitted to the satellite through an uplink station situated on the territory of a non-Member State of the European Union and the work is disseminated on the commission of a radio or television organization having its seat in one of the European Union Member States and the main enterprise on the territory of the Republic of Poland, it is believed that the work has been disseminated on the territory of the Republic of Poland by such organization.

3. If the work-carrying signal is encrypted to prevent the common and unlimited reception thereof, it shall be considered as dissemination pursuant to paragraph 1 provided that the means for receiving the signal are provided by the radio or television broadcasting organization or with its consent.

4. A satellite shall be any artificial Earth satellite operating within the frequency bands which pursuant to the Act of 16 July 2004 - the Telecommunications Law (Dz.U. 2004, No. 17, item 1800, as amended) are reserved for the broadcast of signals for reception by the public or which are reserved for closed point-to-point communication, provided that in both those cases the reception of signals must occur in comparable conditions.

**Article 7.** Should the international agreements, to which the Republic of Poland is a party, provide for broader protection than envisaged by this Act for unpublished works of Polish citizens or for works published for the first time on the territory of the Republic of Poland or simultaneously on the territory of the Republic of Poland, or for works published for the first time in Polish, the provisions of such agreements shall apply.

## **Chapter 2.**

### **Owner of the Copyright**

**Article 8.** 1. The owner of the copyright shall be the author unless this Act states otherwise.

2. It shall be presumed that the author is the person whose name has been indicated as the author on copies of the work or whose authorship has been announced to the public in any other manner in connection with the dissemination of the work.

3. In order to exercise his/her copyright the author, as long as he/she does not disclose his/her authorship, shall be represented by the producer or the publisher and in the absence thereof - by the competent collective management organization.

**Article 9.** 1. The co-authors shall enjoy copyright jointly. It shall be presumed that the amounts of shares are equal. Each of the co-authors may claim the amounts of shares to be determined by the court on the basis of his/her contribution of creative work.

2. Each of the co-authors may exercise his/her copyright with respect to his/her autonomous part of the work without detriment to the other co-authors.

3. The consent of all co-authors shall be required in order to exercise copyright with respect to the whole work. In the event of absence of such consent, each of the co-authors may request a court decision which shall take into account the interests of all the co-authors in its decision.

4. Each of the co-authors may lay claims for infringement of copyright with respect to the whole work. All co-authors shall have the right to compensation received in proportion to their shares.

5. Economic rights of co-authors shall be regulated by the respective provisions of the Civil Code on the co-ownership of fractional parts.

**Article 10.** If authors have combined their separate works in order to disseminate them jointly, each of them may request from the other authors their permissions for the dissemination of the so created whole, unless there are reasonable grounds for withholding such permissions and the contract does not state otherwise. Provisions of Article 9(2)-(4) above shall apply accordingly.

**Article 11.** The producer or publisher shall have the author's economic rights in a collective work and in particular the rights in encyclopedias or periodical publications, and the authors shall have economic rights in their specific parts which may exist independently. It shall be presumed that the producer or publisher have the right to the title.

**Article 12.** 1. Unless this Act or a contract of employment states otherwise, the employer, whose employee has created a piece of work within the scope of his/her duties resulting from the employment relationship, shall, upon acceptance of the work, acquire the author's economic rights within the limits resulting from the purpose of the employment contract and the congruent intention of the parties.

2. If, within two years from accepting the work, the employer does not start the dissemination of the work to be disseminated under such contract of employment, the author may fix in writing a time limit for the employer to disseminate the work with the effect that upon its expiry, the rights acquired by the employer together with the ownership of the object in which the work has been fixed shall return to the author, unless the contract states otherwise. The parties may agree upon another time limit for starting the dissemination of the work.

3. Unless the contract of employment states otherwise, upon the acceptance of the work, the employer shall acquire the ownership of the object in which the work has been fixed.

**Article 13.** If, within six months from delivery of the work, the employer fails to notify the author of its rejecting or conditioning the acceptance upon making specific changes within an appropriate time for making such changes, it shall be considered that the work has been accepted without objections. The parties may agree on a different time limit.

**Article 14.** 1. Unless the contract of employment states otherwise, the research institutions shall have the priority in publishing a scientific work when its employee created such work as a result of performing his/her duties under the employment relationship. The author shall have the right to remuneration. The priority of publication shall expire if within six months from the date of delivery of the work no publication contract has been made with the author or if, within two years from the date of its acceptance, the work has not been published.

2. The research institution may, without separate remuneration, use the scientific materials included in the work specified in paragraph 1 and may make the work accessible to the third parties if it results from the agreed designation of the work or has been provided for in the contract.

**Article 15.** It shall be presumed that the producer or publisher is the person whose surname or business name has been shown as such on the objects in which the work has been fixed or whose name or business name has been disclosed to the public in any other manner in connection with the dissemination of the work.

**Article 15a.** A higher education institution pursuant to the regulations on higher education, shall enjoy the right of priority to publish a diploma work of its student. If the higher education institution has not published the diploma work within six months from the defense, the student who wrote such work may publish it unless it is a part of collective work.

### **Chapter 3.**

#### **The Content of Copyright**

##### **Division 1.**

##### **Author's Moral Rights**

**Article 16.** Unless this Act stipulates otherwise, the moral rights shall protect the link between the author and his/her work which is unlimited in time and independent of any waiver or transfer, and, in particular, the right:

- 1) to be an author of the work;
- 2) to sign the work with the author's name or pseudonym, or to make it available to the public anonymously;
- 3) to have the contents and form of the author's work inviolable and properly used;
- 4) to decide on making the work available to the public for the first time;
- 5) to control the manner of using the work.

##### **Division 2. Author's**

##### **Economic Rights**

**Article 17.** Unless this Act stipulates otherwise, the author shall have an exclusive right to use the work and to manage its use throughout all the fields of exploitation and to receive remuneration for the use of the work.

**Article 17<sup>1</sup>.** Preparing a derivative work or reproducing a data base possessing the features of a piece of work by a legal user of the data base or a copy thereof shall not require permission of the author of the data base if it is required for access to the contents of the data base and for normal use of its contents. If the user is authorized to use only a part of the data base, this provision shall apply only to this part.

**Article 18.** 1. The author's economic rights shall not be subject to execution as long as they serve the author. The above shall not apply to receivables due.

2. After the author's death his/her heirs may object to the execution of an unpublished work under copyright unless the objection contradicts the expressed wish of the author as to the dissemination of the work.

3. The right to remuneration referred to in Articles 19(1), 19<sup>1</sup>, 20(2)-(4), 20<sup>1</sup>, 30(2) and 70(3) cannot be waived, transferred or executed. The above shall not apply to receivables due.

**Article 19.** 1. The author and his/her heirs, in the case of professionally performed resale of original copies of the artistic or photographic work, shall have the right to remuneration being the sum total of the rates below:

- 1) 5% of a part of the selling price, if this part is included in the range up to the equivalent of EUR 50,000; and
- 2) 3% of a part of the selling price, if this part is included in the range from the equivalent of EUR 50,000.01 to the equivalent of EUR 200,000 ; and
- 3) 1% of a part of the selling price, if this part is included in the range from the equivalent of EUR 200,000.01 to the equivalent of EUR 350,000 ; and
- 4) 0.5% of a part of the selling price, if this part is included in the range from the equivalent of EUR 350,000.01 to the equivalent of EUR 500,000 ; and
- 5) 0.25% of a part of the selling price, if this part is included in the range exceeding the equivalent of EUR 500,000

- the remuneration being not higher, however, than the equivalent of EUR 12,500.

2. The provision of paragraph 1 shall not apply in the case of the selling price lower than the equivalent of EUR 100.

3. Pursuant to paragraph 1, original copies of a piece of work shall include:

- 1) the copies performed personally by the author;
- 2) the copies considered original copies of the work, if they were performed personally, in a limited number, by the author or under his/her supervision, numbered, signed or otherwise designated by him/her.

**Article 19<sup>1</sup>.** The author and his/her heirs shall have the right to remuneration in the amount of 5% of the price of professionally performed resale of manuscripts of literary and musical works.

**Article 19<sup>2</sup>.** 1. Pursuant to Article 19(1) and Article 19<sup>1</sup>, the resale shall mean any sale effected after the first disposal of the work by the author.

2. The professional resale pursuant to of Article 19(1) and Article 19<sup>1</sup> shall mean any acts having the nature of resale performed, as a part of the activity carried on, by sellers, buyers, intermediaries, and other subjects professionally dealing with trading in works of art or manuscripts of literary and musical works.

**Article 19<sup>3</sup>.** 1. The seller referred to in Article 19<sup>2</sup>(2) shall be liable to pay the remuneration referred to in Article 19(1) and Article 19<sup>1</sup>, and when he/she acts on behalf of a third party professionally dealing with trading in works of art or manuscripts of literary and musical works, he shall be jointly and severally liable with him/her.

2. The seller shall be obliged to disclose the third person specified in paragraph 1 above. He/she may be released from such duty through payment of the due remuneration.

3. The author of the work referred to in Article 19(1) and Article 19<sup>1</sup> and his/her heirs may demand that the persons mentioned in paragraph 1 provide the information and render available the documents necessary to determine due remuneration for the resale of an original copy or manuscript of a piece of work for the period of 3 years of the day of performing the resale.

**Article 19<sup>4</sup>.** The selling prices specified in Article 19(1) and Article 19<sup>1</sup> shall mean the prices net of the output goods and services tax due in respect of the performed resale of an original copy or manuscript of a piece of work.

**Article 19<sup>5</sup>.** The provisions of Articles 19 to 19<sup>4</sup> shall also apply to original copies and manuscripts of works other than those listed in Article 5, whose authors have a place of permanent stay on the territory of the Republic of Poland on the date of performing the resale.

**Article 20.** 1. Producers and importers:

- 1) of tape recorders, video recorders and other similar devices;
- 2) of photocopiers, scanners and other similar reprographic devices which allow to make copies of all or a part of a published work;
- 3) of blank carriers used for fixing, within the scope of personal use, works or objects of related rights, with the help of the devices listed in subparagraphs 1 and 2 - shall be obliged to pay to collective management organizations specified in paragraph 5 which act to the benefit of artists, artistic performers, producers of phonograms and videograms, and publishers, fees at not more than 3% of the amount due from the sale of those devices and carriers.

2. The amount received in the form of fees from the sale of tape recorders and other similar devices as well as blank carriers related thereto, shall be distributed as follows:

- 1) 50% - to artists;
- 2) 25% - to artistic performers;
- 3) 25% - to producers of phonograms.

3. The amount received in the form of fees from the sale of video recorders and other similar devices as well as blank carriers related thereto, shall be distributed as follows:

- 1) 35% - to artists;
- 2) 25% - to artistic performers;
- 3) 40% - to producers of videograms.

4. The amount received in the form of fees from the sale of reprographic devices as well as blank carriers related thereto, shall be distributed as follows:

- 1) 50% - to artists;
- 2) 50% - to publishers.

5. The Minister competent for culture and protection of the national heritage, having consulted collective management organizations, associations of authors, artistic performers, organizations of producers of phonograms, producers of videograms and publishers as well as organizations of producers or importers of the devices and blank carriers listed in paragraph 1, shall define, by way of a regulation: categories of devices and carriers as well as the fees referred to in paragraph 1, on the basis of the capacity of a device and carrier to reproduce works, and the designed use thereof for functions other than reproduction of works, the manner of collection and distribution of the fees as well as the collective management organizations authorized to collect such fees.

**Article 20<sup>1</sup>.** 1. Any person who is in possession of any reprographic devices and conducts economic activities within the scope of reproduction of works for the personal use of third parties, shall be obliged to pay, through a collective management organization, fees at up to 3% of proceeds generated from such activities, to authors and publishers, unless the reproduction is done on the basis of a contract signed with a rightholder. Such fees shall be paid to authors and publishers in equal parts.

2. The Minister competent for culture and protection of the national heritage, having consulted collective management organizations, associations of authors and publishers as well as a respective chamber of commerce, shall define, by way of a regulation, the fees referred to in paragraph 1, taking into account the share of works reproduced for personal use in all of the reproduced materials, the manner of collection

and distribution of the fees as well as designate the organization or collective management organizations authorized to collect such fees.

**Article 21.** 1. Radio and television broadcasting organizations may broadcast minor musical works, minor lyrical works as well as musical and lyrical works exclusively on the basis of the contract signed with the collective management organization, unless the radio or television broadcasting organization is entitled to broadcast works commissioned thereby on the basis of a separate contract.

2. An author may waive, in a contract concluded with a radio or television broadcasting organization, the agency of the collective management organizations management referred to in paragraph 1. The waiver must be in writing, otherwise being null and void.

2<sup>1</sup>. Provisions of paragraphs 1 and 2 shall respectively apply to making works available to the public in a manner permitting everyone to access it at a place and in time selected thereby.

3. Repealed.

4. Repealed.

**Article 21<sup>1</sup>.** 1. Cable network operators may retransmit in cable networks the works broadcast in programmes of radio and television broadcasting organizations exclusively on the basis of a contract concluded with the relevant collective management organization.

2. In the event of disputes connected with the conclusion of the contract, referred to in paragraph 1, the provisions of Article 110<sup>18</sup> shall be applied.

**Article 22.** 1. Radio and television broadcasting organizations shall be allowed to fix the works, with their own means and for their own broadcasting purposes, to use them in compliance with law.

2. The fixations referred to in paragraph 1 shall be destroyed within one month from the date of expiry of the right to broadcast the work.

3. The provisions of paragraph 2 shall not apply to fixations made in the course of preparing own radio broadcasts and programmes which have exceptional documentary character and which will be placed in the archives.

### **Division 3. Permissible Use of**

#### **Protected Works**

**Article 23.** 1. It shall be permitted to use free of charge the work having been already disseminated for purposes of personal use without the permission of the author. This provision shall not authorize to build constructions according to other authors' architectural works as well as architectural and urban planning works and to use electronic data bases possessing the features of a piece of work unless this applies to one's own scientific use not connected with any profit-gaining purposes.

2. The scope of personal use shall include use of single copies of works by a circle of people having personal relationships, and in particular any consanguinity, affinity or social relationship.

**Article 23<sup>1</sup>.** No author's permission shall be required for transitory or incidental reproduction of works, such reproduction having no independent economic significance but constituting an integral and fundamental part of a manufacturing process the sole purpose of which is to enable:

- 1) transmission of work through the data transmission system between third parties by an intermediary;  
or
- 2) the use of work in compliance with law.

**Article 24.** 1. It shall be permitted to disseminate through a group antenna or cable network the works broadcast by another radio or television broadcasting organization through satellite or terrestrial networks if it is done within the framework of concurrent, integral and free dissemination of radio and television programmes and is designed for a specific group of receivers living in either a single apartment building or single family houses including up to 50 households.

2. Owners of devices used for receiving radio or television programme may receive by means of such devices broadcast works even if such devices are located in a public place, provided that it is not connected with the obtaining of material benefits.

3. Repealed.

4. Ineffective.

**Article 25.** 1. It shall be permitted, for informative purposes, to broadcast through the press, radio and television the materials:

1) having been already broadcast:

a) reports on current events;

b) current articles on political, economic or religious issues, unless there is a clear provision that any further dissemination thereof is prohibited;

c) current comments made and photographs taken by reporters;

2) short excerpts from reports and articles, specified in subparagraph 1(a) and (b);

3) reviews of publications and disseminated works;

4) speeches delivered at public meetings and proceedings; this, however, shall not authorize to publish collections of speeches of a single person;

5) short summaries of a disseminated work.

2. The author shall have the right to remuneration for the use of the works specified in paragraph 1(1) (b) and (c) above.

3. Dissemination of the works specified in paragraph 1 shall be allowed both in the original and in translation thereof.

4. Provisions of paragraphs 1 to 3 shall respectively apply to making works available to the public in such a manner which permits everyone to access them at a place and time selected by any such person, provided that if the remuneration referred to in paragraph 2 is not paid on the basis of an agreement with the rightholder, the remuneration shall be paid through the collective management organization.

**Article 26.** It shall be permitted to quote, in the reports of current events, the works made available in the course of such events, however, within the limits justified by the purpose of the information.

**Article 27.** Research and educational institutions shall be allowed, for teaching purposes or in order to conduct their own research, to use disseminated works in original and in translation, and to make copies of fragments of the disseminated work.

**Article 28.** Libraries, archives and schools shall be allowed: 1) to provide free access to copies of disseminated works within the scope of their tasks as stated under statute;

2) to make or mandate making copies of disseminated works in order to supplement them, maintain or protect one's own collections;

3) to make the collection available for research or learning purposes through information technology system terminals (endings) located at the premises of those entities.

**Article 29.** 1. It shall be permitted to quote, in works constituting an independent whole, fragments of disseminated works or minor works in full, within the scope justified by explanation, critical analysis, teaching or the rights governing a given kind of creative activity.

2. For teaching and research reasons it is permissible to include disseminated minor works or excerpts from larger works in textbooks and reading books.

2<sup>1</sup>. It shall be permissible to include in anthologies, for teaching or research purposes, minor works of fragments or larger works which have already been disseminated.

3. In the events specified in paragraphs 2 and 2<sup>1</sup> the author shall have the right to remuneration.

**Article 30.** 1. The centres of information and documentation may prepare and disseminate their own documentation studies and single copies, not larger than one publishing sheet of excerpts of the published works.

2. The author and the competent collective management organization management shall be authorized to collect from the centres specified in paragraph 1 above, remuneration for the paid access to copies of fragments of the works.

**Article 30<sup>1</sup>.** Articles 28, 29(2) and (3) and 30 shall not apply to data bases possessing the features of a piece of work.

**Article 31.** It shall be permitted to gratuitously perform in public any disseminated works during religious ceremonies, school and academic events or official state ceremonies, provided that it is not, directly or indirectly, connected with any material benefits and the artists do not receive any remuneration, except for any advertising, promotional or election events.

**Article 32.** 1. The owner of a copy of the artistic work may exhibit it publicly if no material benefit is intended to be gained.

2. In the event of deciding to destroy the original copy of an artistic work found in a public place, the owner shall be obliged to offer the author or his/her relatives to sell it, if it is possible to contact him in order to make the offer of sale. The highest price limit shall be set by the value of the materials. If the sale is not possible, the owner shall make it possible for the author to make a copy, or depending on the type of the work, a proper documentation thereof.

**Article 33.** It shall be allowed to disseminate:

- 1) the works permanently exhibited on commonly accessible public roads, streets, squares or gardens, although not for the same use;
- 2) the works exhibited in commonly accessible public collections such as museums, galleries, and exhibition halls, though only in catalogues and printed publications for promotion of such works and also in press and television current event reports within the limits justified by information purposes;
- 3) in encyclopaedias and atlases - printed artistic and photographic works if it is difficult to get into contact with the author. In such case, the author shall have the right to remuneration.

**Article 33<sup>1</sup>.** It shall be permitted to use the already disseminated works for the benefit of the handicapped, provided that such use is directly related to their handicap, that it is not a profit-gaining activity and that it is proportionate to the nature of the handicap.

**Article 33<sup>2</sup>.** It shall be permitted to use works for the purposes of public security or for the purposes of administrative, court or legislative proceedings and any reports thereof.

**Article 33<sup>3</sup>.** For the purposes of advertising, a public exhibition or a public sale of works it shall be permitted to use copies of already disseminated works, within the scope justified by the promotion of an exhibition or sale, excluding any other commercial use.

**Article 33<sup>4</sup>.** It shall be permitted to use works in relation to any presentation or repair of equipment.

**Article 33<sup>5</sup>.** It shall be permissible to use a piece of work such as a building structure, its drawing, plan or other assessment, for the purposes of reconstruction or repair of a building structure.

**Article 34.** It shall be permitted to use the works, within the limits of permissible use, on the condition that the author and the source have been named. The author and the source should be named subject to existing options. The authors shall not have the right to remuneration, unless this Act stipulates otherwise.

**Article 35.** The permissible use must not infringe the normal use of the work or violate the rightful interests of the author.

## **Chapter 4.**

### **Term of Author's Economic Rights**

**Article 36.** Subject to exceptions provided for in this Act the author's economic rights shall expire after the lapse of seventy years:

- 1) from the death of the author, and in case of joint works - from the death of the coauthor who has survived the others;
- 2) in the case of a piece of work the author of which is not known - from the date of the first dissemination, unless the pseudonym does not raise any doubts as to author's identity or if the author disclosed his/her or her identity;
- 3) in the case of a piece of work with respect to which the author's economic rights are, under statutory law, enjoyed by a person other than the author - from the date of dissemination of the work and if the work has not been disseminated from the date of establishment thereof;
- 4) in the case of an audio-visual work - from the death of the last of the following: the main director, the author of screenplay, author of dialogues, composer of music written for the audio-visual work.

**Article 37.** If the time of the expiration period of the author's economic rights starts to run from the dissemination of the work and the work was disseminated in parts, in a series, in fragments or inserts, the time of the period shall run for each of them separately from the date of dissemination of each of the above mentioned parts.

**Article 38.** Repealed.

**Article 39.** The term of the author's economic rights shall be calculated in full years following the year when there occurred the event from which the time started to run within limits specified in Articles 36 and 37.

**Article 40.** 1. Producers or publishers of copies of such literary and musical works, artistic works, photographic and cartographic works which do not benefit from protection of the author's economic rights, shall be obliged to transfer between 5 to 8% of gross proceeds from the sales of copies of the said works to the Fund referred to in Article 111. That shall apply to editions on the territory of the Republic of Poland.

<sup>1</sup>. Producers and publishers make the payments referred to in paragraph 1 for quarterly periods no later than by the end of the month following the end of the quarter in which the sale proceeds were

generated. If the amount of the payment is not greater than an equivalent of EUR 1,000 denominated in zlotys, it shall be possible to make settlements in other regular periods, however not longer than a financial year.

2. The provision of paragraph 1 shall apply respectively to copies of protected works derived from the works which do not benefit from protection of the author's economic rights.

3. The minister competent for culture and protection of the national heritage shall, by regulation, specify the percentage specified in paragraph 1 above.

## **Chapter 5. Devolution of Author's**

### **Economic Rights**

**Article 41.** 1. Unless the Act states otherwise:

- 1) the author's economic rights may devolve upon other persons through inheritance or by contract,
- 2) the person who acquires the author's economic rights may transfer them to other persons, unless the contract stipulates otherwise.

2. A contract for the transfer of the author's economic rights or for the use of the work, hereinafter called "the licence", shall cover the fields of exploitation specified expressly therein.

3. Any provisions of a contract concerning all works or all works of a specific type by the same author to be produced in the future shall be invalid.

4. A contract may provide only for such fields of exploitation which are known at the time of its conclusion.

5. Author of a piece of work used or incorporated in an audiovisual work or a piece of work which is a part of a collective work, after creation of new ways of exploitation of the works, cannot deny his consent for the use of such work in an audiovisual work or a collective work within the fields of exploitation unknown at the time of conclusion of agreement, unless for an important reason.

**Article 42.** Should the author's economic rights of one of the co-authors fall to the State Treasury as the statutory heir, that part shall devolve upon the surviving co-authors or their legal successors in proportion to their shares.

**Article 43.** 1. If the contract does not indicate whether the transfer of the author's economic rights or the granting of licence was free of charge, the author shall have the right to remuneration.

2. If the contract does not specify the author's remuneration, such remuneration shall be set taking into account the scope of the right granted and the benefits resulting from the use of the work.

**Article 44.** In the event of gross discrepancy between the remuneration of the author and the benefits of the acquirer of the author's economic rights or the licensee, the author may request the court for a due increase of his/her remuneration.

**Article 45.** Unless the contract stipulates otherwise, the author shall have the right to a separate remuneration for the use of the work within each separate field of exploitation.

**Article 46.** Unless the contract stipulates otherwise, the author shall retain his/her exclusive right to permit the exercise of his/her derivative copyright even though the contract stipulates for the transfer of all author's economic rights.

**Article 47.** If the remuneration of the author depends on the proceeds from the use of his/her work, the author shall have the right to receive information and to have access, as necessary, to the documentation being essential to determine such remuneration.

**Article 48.** 1. If the remuneration of the author was set as a percentage of the selling price of a copy of the work and such price has increased since then, the agreed percentage from copies sold at the higher price shall be due to the author.

2. The unilateral reduction of the selling price before the lapse of one year from starting the dissemination of such work shall not affect the amount of remuneration. The parties may extend such time limit.

**Article 49.** 1. If the contract does not specify the manner of the use of a piece of work, that manner shall comply with the character and purpose of the work and accepted practice.

2. Regardless of having purchased all the author's economic rights, a legal successor may not, without consent of the author, alter the work in any way unless it is obviously necessary and the author has no justified reason to object to it. This applies respectively to works where the period of protection of the author's economic rights has terminated.

**Article 50.** The separate fields of exploitation shall be, in particular:

- 1) within the scope of fixing and reproduction of works - production of copies of a piece of work with the use of specific technology, including printing, reprographics, magnetic fixing and digital technology;
- 2) within the scope of trading the original or the copies on which the work was fixed - introduction to trade, letting for use or rental of the original or copies;
- 3) within the scope of dissemination of works in a manner different from defined in subparagraph 2 - public performance, exhibition, screening, presentation and broadcast as well as rebroadcast, and making the work publicly available in such a manner that anyone could access it at a place and time selected thereby.

**Article 51.** 1. Ineffective.

2. Ineffective.

3. The marketing of an original or a copy of a piece of work on the territory of the European Economic Area shall exhaust the right to permit any further marketing of such copy on the territory of the Republic of Poland, except for rental or letting for use thereof.

**Article 52.** 1. Unless the contract stipulates otherwise, the transfer of ownership of a copy of work shall not result in the devolution of the author's economic rights to such work.

2. Unless the contract stipulates otherwise, the transfer of the author's economic rights shall not result in the transfer of ownership of a copy of the work to the acquirer.

3. The acquirer of an original work shall allow its author such access to the work as necessary for the exercise of copyright. The acquirer of the original may, however, claim due security and remuneration for use to be provided by the author.

**Article 53.** A contract to transfer the author's economic rights shall be made in writing under pain of nullity.

**Article 54.** 1. The author shall deliver the work within the time limit specified in the contract, and if such time limit has not been set, immediately after completing the work.

2. If the author has not delivered the work within the set time limit, the ordering party may set a proper additional time limit for the author under pain of renunciation of the contract, and upon the expiry of such time limit, the ordering party may renounce the contract.

**Article 55.** 1. If the ordered work is defective, the ordering party may set a proper additional time limit for the author to correct it, and upon its expiry, may renounce the contract or claim a decrease of the agreed remuneration, unless such defects are a result of circumstances for which the author is not responsible. The author shall, nevertheless, retain his/her right to receive part of the remuneration not higher than 25% of the contractual remuneration.

2. If the work has legal defects, the ordering party may renounce the contract or to claim the damage to be undone.

3. The claims specified in paragraph 1 shall expire upon acceptance of the work.

4. If within six months after the delivery of the work the ordering party does not inform the author about its acceptance, non-acceptance or conditioning the acceptance on making specific changes within the specific time limit set for this purpose, the work shall be deemed as accepted without reservations. The parties may set another time limit.

**Article 56.** 1. The author may renounce or terminate the contract because of his/her own fundamental interests.

2. If within two years from the renunciation or termination specified in paragraph 1 above the author intends to start using the work, he/she shall be obliged to offer such use to the purchaser or the licensee and to set for him a proper time limit for that purpose.

3. If the author renounces or terminates the contract after the work has been accepted, the other party may make that renunciation or termination dependent upon securing the costs incurred by it as a result of the contract. However, the reimbursement of costs may not be claimed if the discontinuation of dissemination has resulted from circumstances for which the author is not responsible.

4. The provision of paragraph 1 above shall not apply to architectural works and architectural and urban planning works, audiovisual works and works ordered within the scope of their exploitation in audiovisual work.

**Article 57.** 1. If the acquirer of the author's economic rights or the licensee who has undertaken to disseminate the work does not start the dissemination within the agreed time limit or if there is no agreed time limit, the author may renounce or terminate the contract within two years from the acceptance of the work and may claim the damage to be repaired after the expiry of an additional time limit, not shorter than six months.

2. If the work has not been made available to the public as a result of circumstances for which the acquirer or the licensee is responsible, the author may claim double remuneration with respect to the remuneration specified in the contract for dissemination of the work instead of repairing the damage incurred unless the licence is nonexclusive.

3. Provisions of paragraphs 1 and 2 above shall not apply to architectural and architectural and urban planning works.

**Article 58.** If the work is made available to the public in an unsuitable form or with changes to which the author may rightfully object, the author may renounce or terminate the contract after the ineffective summon to stop the infringement. The author shall have the right to remuneration specified in the contract.

**Article 59.** If this Act does not provide otherwise, each of the parties renouncing or terminating the contract may request from the other party the return of everything it received under the contract.

**Article 60.** 1. The user of the work shall allow the author to exercise the author's inspection prior to starting the dissemination of the work. If necessary changes in the work are made in connection with the inspection and such changes are a result of circumstances beyond the author's power to decide on them, the costs of their introduction shall be covered by the acquirer of the author's economic rights or the licensee.

2. If the author has not exercised the author's inspection within the specified time limit it shall be presumed that he/she has consented to the dissemination of the work.

3. Unless this Act or the contract stipulates otherwise, the author shall not have the right to additional remuneration for his/her inspection.

4. The authors of artistic works shall have the right to exercise the author's inspection for consideration.

5. The exercise of the author's inspection of architectural works and architectural and urban planning works shall be regulated by separate provisions of law.

**Article 61.** Unless the contract stipulates otherwise, acquisition of a copy of an architectural design or architectural and urban planning design from the author shall entitle the acquirer to use it for a single construction only.

**Article 62.** 1. The author may include works in a collective publication of his/her works for the publication of which a separate contract has been concluded.

2. Unless provided otherwise, the contract for the collective publication of works shall not include the right to publish particular works.

**Article 63.** If the contract covers the preparation of copies which are to be made available to the public, the author shall receive author's copies number of which has been set in the contract.

**Article 64.** Unless provided otherwise, a contract transferring the author's economic rights, shall transfer to the acquirer, upon acceptance of the work, the right to the exclusive use of the work within the field of exploitation specified in the contract.

**Article 65.** If there is no clear provision regarding the transfer of copyright it is deemed that the author has granted a licence.

**Article 66.** 1. Unless provided otherwise, a contract of licence shall authorize the use of the work for five years on the territory of the state in which the licensee has its seat.

2. After the time limit specified in paragraph 1 the right received under the contract of licence shall expire.

**Article 67.** 1. The author may grant his/her authorization to use his/her work within the fields of exploitation specified in the contract and state the scope, territory and time of such use.

2. Unless the contract reserves the exclusive use of the work in a specific form (exclusive licence), the licence shall not preclude the author's authorizing other persons to use the work within the same field of exploitation (nonexclusive licence).

3. Unless the contract stipulates otherwise, the licensee may not authorize any other person to use the work even if it is within the scope of the licence received.

4. Unless the contract stipulates otherwise, rightholder under an exclusive licence may, within the scope covered by the licence contract, lay claims for the infringement of the author's economic rights.

5. The exclusive licence contract shall be in writing under pain of nullity.

**Article 68.** 1. Unless the contract stipulates otherwise and the licence has been granted for an indefinite time, the author may terminate it keeping the contractual time limits, and if such have not been agreed, one year in advance at the end of the calendar year.

2. The licence granted for longer than five years shall be deemed, after a lapse of that period, as granted for an indefinite time.

## **Chapter 6.**

### **Special Provisions on Audiovisual Works**

**Article 69.** Co-authors of audiovisual work shall be persons who made a creative contribution to its completion, and in particular: the director, picture operator, the author of the adaptation of a literary work, the author of musical works or musical and lyrical works created for the audiovisual work and the author of the screenplay.

**Article 70.** 1. It is presumed that the producer of an audiovisual work acquires, pursuant to the contract for creation of such work or a contract for use of an existing work, exclusive economic rights for the exploitation of those works within the framework of the audiovisual work as a whole.

2. Ineffective

2<sup>1</sup>. Co-authors of audiovisual work and artistic performers shall have the right to:

1) remuneration proportionate to proceeds received from screening the audiovisual work in cinemas;

2) appropriate remuneration for the rental of copies of audiovisual works and their public presentation;

3) appropriate remuneration for the broadcasting of the work on television or through other means of public presentation of works;

4) appropriate remuneration for the reproduction of the audiovisual work on the copy for individual use.

3. The person using an audiovisual work shall pay remuneration referred to in paragraph 2<sup>1</sup> through the competent collective management organization.

4. Respective remuneration for the use of a Polish audiovisual work abroad or a foreign work in the Republic of Poland may be agreed on a lump sum basis.

**Article 71.** The producer shall be allowed to make translations of the audiovisual work into various language versions without the consent of the authors.

**Article 72.** The author of a piece of work ordered for an audiovisual work may, five years after the acceptance of the ordered work, allow for dissemination of that work in another audiovisual work, if within such time, the original audiovisual work with his/her work in it has not been disseminated. The parties may shorten this time limit.

**Article 73.** The right to the author's inspection may be exercised only with respect to the final version of the audiovisual work.

## **Chapter 7.**

### **Special Provisions Concerning Computer Programs**

**Article 74.** 1. Computer program shall be subject to protection as literary works, unless the provisions of this Chapter provide otherwise.

2. Protection accorded to computer programs shall cover all forms of expression thereof. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, shall not be protected.

3. Unless the contract of employment stipulates otherwise, the author's economic rights in a computer program created by an employee while performing of his/her duties under the employment relationship shall be owned by the employer.

4. The economic rights in a computer program, subject to the provisions of Article 75(2) and (3), shall include the right to do:

- 1) the permanent or temporary reproduction of a computer programs in full or in part, by any means and in any form; where it is necessary to reproduce a computer program for its loading, displaying, running, transmitting and storing, consent of the rightholder shall be required for such acts;
- 2) the translation, adaptation, arrangement or any other modification of a computer program, providing for the rights of the person who made such modifications;
- 3) the public dissemination, including letting for use or rental, of a computer program or a copy thereof.

**Article 75.** 1. Unless the contract stipulates otherwise, the acts specified in Article 74(4)(1)-(2) shall not require consent of the rightholder if they are necessary for the use of the computer program in accordance with its purpose, including the correction of errors by a person who has lawfully acquired it.

2. The consent of the rightholder shall not be required:

- 1) to make a back-up copy if that is necessary for using such computer program. Unless the contract stipulates otherwise, such copy may not be used concurrently with the computer program;
- 2) to observe, study and test the functioning of the computer program by a person who, in order to learn about its idea and principles, has a right to use a copy of the computer program, if such person is entitled to perform those acts and does it while loading, displaying, running, transmitting or storing the computer program;
- 3) to reproduce a code or translation of its form pursuant to of Article 74(4)(1)-(2), if that is indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other computer programs provided that the following conditions are met:
  - a) the acts are performed by the licensee or another person having a right to use a copy of the computer program or by another person acting on his/her behalf;
  - b) information necessary for achieving interoperability has not been previously readily available to persons mentioned under letter a;
  - c) such acts apply only to the parts of the original computer program which are necessary to achieve interoperability.

3. Information specified in paragraph 2(3) may not be:

- 1) used for purposes other than to achieve interoperability of an independently created computer program;
- 2) given to other persons, unless it is necessary for achieving interoperability of an independently created computer program;
- 3) used for developing, manufacturing or marketing the computer programs substantially similar in form of expression or to other acts infringing the copyright.

**Article 76.** Provisions of contracts at variance with Article 75(2)-(3) shall be null and void.

**Article 77.** Provisions of Articles 16(3)-(5), 20, 23 , 23<sup>1</sup>, 27 , 28 , 30, 33<sup>1</sup>-33<sup>5</sup> , 49(2), 56, 60 and 62 shall not apply to computer programs.

**Article 77<sup>1</sup>.** A rightholder may request that a computer program user destroys the technical means held thereby (including computer programs) the sole use of which is to facilitate prohibited removal or circumventing technological protection measures of the program.

**Article 77<sup>2</sup>.** The protection granted to data bases possessing the features of a piece of work shall not cover computer programs used to develop or operate data bases accessible via electronic means.

## **Chapter 8.**

### **Protection of Author's Moral Rights**

**Article 78.** 1. The author whose moral rights have been threatened by actions of others, may request such actions to be ceased. Where an infringement is committed, the author may also request the person who committed the infringement to perform all the actions necessary for the elimination of its effects, and in particular to make a public statement of appropriate contents and form. If the infringement was culpable, the court may award the author a certain amount of money to repair the suffered damage and/or - at the request of the author, to oblige the offender to pay a relevant amount of money for a social cause as indicated by the author.

2. Unless the author provided otherwise, upon his/her death, the suit for the protection of moral rights of the deceased may be brought by the spouse, and if such does not exist, by descendants, parents, siblings, and descendants of siblings, in that order.

3. Unless the author provided otherwise, persons mentioned in paragraph 2 above shall be authorized in the same order to exercise the moral rights of the deceased author.

4. Unless the author stipulates otherwise, the suit referred to in paragraph 2 above may also be brought by the relevant association of authors according to the type of creative activity, or the collective management organization which had been administering copyright of the deceased author.

## **Chapter 9. Protection of Author's**

### **Economic Rights**

**Article 79.** 1. The rightholder may request from the person who infringed his/ her author's economic rights to:

- 1) cease the infringement;
- 2) eliminate the consequences of the infringement;
- 3) repair the inflicted damage: a)  
on the general terms or
- b) by payment of double or, where the infringement is culpable, triple the amount of respective remuneration that would have been due as of the time of claiming it in exchange for the rightholder's consent for the use of the work; 4) render the acquired benefits.

2. Irrespective of the claims specified in paragraph 1, the rightholder may demand:

- 1) a single or multiple announcements of a press declaration having the proper wording and form, or communicating to the public all or a part of a court pronouncement issued in the examined case, in the manner and within the scope defined by the court;
- 2) payment by the person who breached the author's economic rights of an appropriate sum of at least double the probable value of the benefits received by the offender of the infringement in favour of the Fund referred to in Article 111, provided that the infringement was culpable and has been committed

within the scope of economic activity performed by the offender in the name of a third party or in his own name even if on account of a third party.

3. A person who breached the author's economic rights may be instructed by the court, at such person's request and with the rightholder's consent, if the breach is non-culpable, to pay a relevant sum to the rightholder if discontinuance of the breach or elimination of the consequences of the breach would have been excessively onerous for the offender.

4. When issuing its decision on breach of law the court may adjudge, at the rightholder's request, on illegally produced objects and means and materials used to produce them and in particular, the court may adjudge on their withdrawal from trading, on assigning them to the rightholder as part of damages or on their destruction. While issuing its decision the court shall take into account the weight of the breach and third party interests.

5. It shall be presumed that the means and materials referred to in paragraph 4 are owned by the person who breached the author's economic rights.

6. The provision of paragraph 1 shall respectively apply to elimination or circumvention of technological protective measures which prevent any access to, reproduction or dissemination of a piece of work, provided that the objective of such acts is illegal use of such work.

7. Paragraphs 1 and 2 shall apply respectively in the event of unauthorised removal or change of any electronic information on the management of copyright or related rights, as well as intentional dissemination of works with such information having been illegally removed or modified.

**Article 80.** 1. The court competent to hear the cases of infringement of the author's economic rights in the locality where the offender conducts its activity or where his economic is located, also prior to filing suit, shall consider, within no more than 3 days of filing, an application of a party with legal interest therein:

- 1) for securing evidence and securing claims related thereto;
- 2) for obliging the person who infringed the author's economic rights to provide information and any documentation specified by the court and being material to the claims referred to in Article 79(1);
- 3) for obliging a person other than the infringing party to provide information material to the claims defined in Article 79(1) on the origin, distribution networks, volume and price of goods or services which infringe the author's economic rights, provided that:
  - a) such person has been confirmed to have goods which breach the author's economic rights; or
  - b) such person has been confirmed to benefit from services which breach the author's economic rights; or
  - c) such person has been confirmed to render services used in any acts which the breach author's economic rights; or
  - d) the person specified in letters (a), (b) or (c) indicated a person who participated in production, manufacturing or distribution of goods or rendering of services in breach of the author's economic rights

and the purpose of any of the above actions is to generate, directly or indirectly, profit or any other economic benefit, although it does not include any actions by consumers acting in good faith.

2. If it admits any evidence or considers any applications referred to in paragraph 1, the court ensures that the operator's business secrets as well as all other secrets protected by law are kept confidential.

3. The duty referred to in paragraph 1(2)-(3) may be avoided exclusively by anyone who under the Code of Civil Procedure could have refused to give testimony or to respond to any questions asked of him acting as witness.

4. If justified, the court may condition the issuance of a ruling to secure any of the evidence referred to in paragraph 1, subparagraph 1 from payment of a security deposit.

5. Complaints against a court ruling in any of the matters referred to in paragraph 1 shall be considered by the court within 7 days.

6. Any securing of evidence shall comply with Article 733, Article 742 and Articles 744 to 746 of the Code of Civil Procedure respectively.

## **Chapter 10.**

### **Protection of Image, Addressee of Correspondence and Confidentiality of Sources of Information**

**Article 81.** 1. The dissemination of an image shall require the permission of the person presented in it. Unless there is a clear reservation, such permission shall not be required if such person has received the agreed price for posing.

2. The permission shall not be required for dissemination of the image:

- 1) of a commonly known person, if such image has been made in connection with his/her performance of public functions and, in particular, political, social or professional functions;
- 2) of a person constituting only a detail of a whole, such as a meeting, a landscape, or a public event.

**Article 82.** Unless the person, to whom correspondence is addressed, has not declared his/her will otherwise, dissemination of the correspondence within twenty years after his/her death shall require the permission of the spouse, or in absence thereof the permission of descendants, parents or siblings, in that order.

**Article 83.** The provisions of Article 78(1) shall apply respectively to claims brought due to the dissemination of the image of the person presented in it and the dissemination of correspondence without the required permission of the person to whom it was addressed; such claims may not be brought after the lapse of twenty years from the death of those persons.

**Article 84.** 1. The author, or the publisher or producer at the request of the author, shall keep as confidential the sources of information used in the work and shall not disclose any documents connected therewith.

2. The disclosure of a secret shall be permissible upon consent of the person who entrusted such a secret or by virtue of the decision of the competent court.

## **Chapter 11.**

### **Related rights**

#### **Division 1.**

#### **Rights in Artistic Performances**

**Article 85.** 1. Each artistic performance of a piece of work or a folk art work shall enjoy protection regardless of the value, the designation and form of expression thereof.

2. Pursuant to of paragraph 1, artistic performances shall include, without limitation, the actions of: actors, reciters, conductors, instrumentalists, singers, dancers and mimes as well as other individuals who make a creative contribution to a performance.

**Article 86.** 1. Artistic performers shall have, within the limits specified by this Act, the exclusive right to:

- 1) protection of personal interests, particularly within the scope of:
  - a) listing him/her as a performer, except for cases when omission is customary practice;
  - b) deciding how the performer should be named, including maintaining anonymity or using a pseudonym;
  - c) raising objections against any distortions, misrepresentations and other changes in the performance which could harm his or her good name;
- 2) use the artistic performance and have the right of disposition of the rights thereto within the following fields of exploitation:
  - a) within the scope of fixing and reproduction - production of copies of artistic performance with the use of specific technology, including magnetic fixing and digital technology;
  - b) within the scope of trading the copies on which the artistic performance was fixed - introduction to trade, letting for use or rental of the copies;
  - c) within the scope of dissemination of artistic performance in a form different from that defined in letter b - broadcast, rebroadcast and presentation, unless made with the use of a copy introduced to the market, or making available to the public any fixing of artistic performance in such a way as to allow anyone to access it at a place and time selected by them.

2. Artistic performers shall have the right to remuneration for the use of the artistic performance or for disposition of rights thereto as provided in a contract or granted by the provisions of the Act.

3. In case of broadcast, rebroadcast or presentation of an artistic performance with the use of a copy introduced to the market, the artistic performer shall have the right to appropriate remuneration.

**Article 87.** The contract concluded by an artistic performer with the producer of an audiovisual work for co-participation in the production of an audiovisual work, unless it stipulates otherwise, shall transfer to the producer the rights to manage and to use the performance, within such audiovisual work, within all fields of exploitation known on the date of conclusion of the contract.

**Article 88.** The right of the artistic performer shall not infringe the copyright in the performed work.

**Article 89.** The right referred to in Article 86(1)(2) and Article 86(2) shall expire within fifty years following the year in which a given artistic performance was established. However, if within such time a fixation of such performance was published or was publicly presented, the period of protection shall be calculated from such events and if both of them occurred from the one which happened earlier.

**Article 90.** Provisions of this Act shall apply to artistic performances which:

- 1) have been made by a Polish citizen or a person residing on the territory of the Republic of Poland; or
- 1<sup>1</sup>) have been made by a citizen of a European Union Member State, or Member States of the European Free Trade Agreement (EFTA) - parties to the Agreement on the European Economic Area; or
- 2) have been established for the first time on the territory of the Republic of Poland; or
- 3) have been published for the first time on the territory of the Republic of Poland; or
- 4) shall be protected under international agreements within the scope in which such protection results from those agreements.

**Article 91.** It is presumed that the manager of a team is authorized to represent the rights to group artistic performances. Such presumption applies respectively to parts of artistic performances which have independent significance.

**Article 92.** The provisions of Articles 8 to 10, 12, 18, 21, 21<sup>1</sup>, 41 to 45, 47 to 49, 52 to 55, 57 to 59, 62 to 68, 71 and 78 shall apply to artistic performances respectively.

**Article 93.** The provision of Article 15a, Article 33(10) of the Family and Guardianship Code shall apply respectively to the right in artistic performance.

## **Division 2.**

### **Rights in Phonograms and Videograms**

**Article 94.** 1. A phonogram shall be the first fixing of the sound layer of a performance of a piece of work or other acoustic phenomena.

2. A videogram shall be the first fixing of a sequence of moving pictures, with or without sound, whether or not it constitutes an audiovisual work.

3. A producer of a phonogram or videogram shall be deemed to be the one under whose name or business name such phonogram or videogram has first been made.

4. Without detriment to the rights of the authors or artistic performers, the producer of a phonogram or videogram shall have the exclusive right to manage of and to use the phonogram or videogram within the scope of:

- 1) reproduction by a specific technique;
- 2) marketing;
- 3) rental or letting copies for use;
- 4) making a phonogram or a videogram available to the public in a form permitting anyone to have access thereto at the place and time chosen by them.

5. In the event of broadcast, rebroadcast or presentation of a phonogram or videogram already on the market, the producer shall have the right to proper remuneration.

**Article 95.** 1. The right referred to in Article 94(4)-(5) shall expire fifty years following the year in which the phonogram or videogram was made.

2. If the phonogram was published in the period referred to in paragraph 1, the right referred to in Article 94(4) and (5) shall expire fifty years following the year in which the phonogram was published.

3. If the phonogram was not published in the period referred to in paragraph 1 and if in that period it was disseminated, the right referred to in Article 94(4)-(5) shall expire fifty years following the year in which the phonogram was disseminated.

4. If a videogram was published or disseminated in the period referred to in paragraph 1, the right referred to in Article 94(4)-(5) shall expire fifty years following the year in which the first of those events had occurred.

**Article 95<sup>1</sup>.** 1. Phonograms shall be regulated by provisions of Article 21(1) respectively, unless the broadcast is done on the basis of a contract with a rightholder.

2. Phonograms and videograms shall be regulated by provisions of Article 21<sup>1</sup>.

**Article 96.** Provisions of this Act shall apply to phonograms and videograms:

- 1) whose producer has its residence or seat on the territory of the Republic of Poland; or 1<sup>1</sup>) whose producer has its place of residence or seat on the territory of the European Economic Area; or
- 2) which are protected on the basis of international agreements, within the scope of protection which results from such agreements.

### **Division 3.**

#### **Rights to Programme Broadcasts**

**Article 97.** Without detriment to the rights of the authors, artistic performers, producers of phonograms and videograms, radio or television broadcasting organizations shall have the exclusive right to manage and use their broadcast programmes within the scope of: 1) fixation;

- 2) reproduction by specific technique;
- 3) broadcast by another radio or television broadcasting organization;
- 4) rebroadcast;
- 5) introduction of their fixations to the market;
- 6) presentation at locations accessible for an entrance fee;
- 7) providing access to fixations thereof in a form allowing anyone to access them at a place and time chosen thereby.

**Article 98.** The right defined in Article 97 shall expire after fifty years following the year of the first broadcast of the program.

**Article 99.** The provisions of this Act shall apply to broadcasting programmes:

- 1) of radio and television broadcasting organizations having their seat on the territory of the Republic of Poland or
- 2) of radio and television broadcasting organizations having their seat on the territory of the European Economic Area;
- 3) which are protected by international agreements, within the scope of protection resulting from such agreements.

### **Division 3<sup>1</sup>.**

#### **Rights to First Editions and Scientific and Critical Editions**

**Article 99<sup>1</sup>.** The publisher who was the first to publish or otherwise disseminate a piece of work for which the protection period has expired and its copies have not been yet made public, shall only have the right to employ this work and to use it across all the fields of exploitation for a period of twenty five years from the date of the first publication or dissemination.

**Article 99<sup>2</sup>.** A person who, following the expiry of protection period enjoyed by copyright to a piece of work, prepared a critical or a scientific edition thereof, which is not considered as a piece of work, shall only have the right to employ such an edition and to use it within the scope referred to in Article 50(1)-(2), for a period of thirty years from the date of publication.

**Article 99<sup>3</sup>.** Provisions of Article 99<sup>1</sup> and Article 99<sup>2</sup> shall respectively apply to works and texts which, because of the time of creation or character thereof have never been protected by copyright.

**Article 99<sup>4</sup>.** The protection periods referred to in Articles 99<sup>1</sup> and 99<sup>2</sup>, shall be designated in compliance with the provisions of Articles 37 and 39, respectively.

**Article 99<sup>5</sup>.** 1. The provisions of this Act shall apply to the first editions:

- 1) whose publisher has its place of residence or seat on the territory of the Republic of Poland or
  - 2) whose publisher has its place of residence or seat on the territory of the European Economic Area; or
  - 3) which are protected under international agreements, within the scope of protection resulting from such agreements.
2. The provisions of the Act shall apply to scientific and critical editions which:
- 1) have been made by a Polish citizen or a person residing on the territory of the Republic of Poland or
  - 2) have been first established on the territory of the Republic of Poland; or
  - 3) have been first published on the territory of the Republic of Poland; or
  - 4) are protected under international agreements, within the scope of protection resulting from such agreements.

#### **Division 4.**

##### **Common Regulations on Related Rights**

**Article 100.** The exercise of the rights in artistic performances, phonograms, videograms and programme broadcasts, first editions or scientific and critical editions, shall be subject to the restrictions referred to in Articles 23-35, respectively.

**Article 101.** The provisions of Articles 1(4), 6, 6<sup>1</sup>, 8(2), 22, 39, 51, 79 and 80 shall respectively apply to the artistic performances, phonograms, videograms, programme broadcasts, first editions, as well as scientific and critical editions.

**Article 102.** 1. Each copy of a phonogram or videogram shall carry, apart from the indication of the authors and artistic performers, titles of works and the date of manufacture, the surname or business name of the producer, and in the event of fixation of a broadcast, the name of the radio or television broadcasting organization.

2. It is presumed that copies which do not meet the requirements specified in paragraph 1 have been made illegally.

**Article 103.** Disputes relating to related rights shall lay within the competence of circuit courts.

#### **Chapter 12.**

##### **Collective Management Organizations**

**Article 104.** 1. Pursuant to this Act, collective management organizations, shall mean associations grouping authors, artistic performers, producers or radio and television broadcasting organizations whose statutory objective is the collective management and protection of copyright or related rights entrusted to them, and the exercise of the powers resulting from this Act.

2. Provisions of the Act on Associations shall apply to the organizations referred to in paragraph 1 above, provided that: 1) members of the organizations may also be legal persons;

- 2) the activities specified in this Act to be undertaken by the organization shall require a permit by the minister competent for culture and protection of the national heritage;
- 3) the minister competent for culture and protection of the national heritage shall supervise the said organizations.

3. The minister competent for culture and protection of the national heritage shall grant the permit referred to in paragraph 2(2) to organizations capable to give a guarantee of the proper management of the entrusted rights.

3<sup>1</sup>. Collective management organization shall compose annual report on its operations within no longer than 6 months from the balance-sheet day.

3<sup>2</sup>. Collective management organization shall run accounting ledgers and prepare financial statements in accordance with the Act of 29 September 1994 on Accounting (Dz. U. of 2009, No. 152, item 1223; No. 157, item 1241 and No. 165, item 1316 and Dz. U. of 2010, No. 47, item 278).

3<sup>3</sup>. Annual financial statements of collective management organization shall be audited by statutory auditors. The statutory auditor shall be selected by the internal control body of the organisation.

3<sup>4</sup>. Collective management organization shall immediately deliver the report referred to in paragraph 3<sup>1</sup> and the statements referred to in paragraph 3<sup>2</sup>, together with the statutory auditor's opinion and report, to the minister competent for culture and protection of national heritage and shall make these documents available to the general public by placing them on its website.

3<sup>5</sup>. The minister competent for culture and protection of national heritage shall specify, by means of a regulation, the detailed scope of the report referred to in paragraph 3<sup>1</sup>, taking into consideration information regarding the organisational structure of the collective management organization, its internal bodies, assets and operations in terms of collective management and protection of copyright and related rights, as well as the need to evaluate the correctness of the realisation by the organization of its statutory objectives.

4. In the event of exceeding the scope of the awarded permit, the minister competent for culture and protection of the national heritage shall summon the organization to discontinue the infringement within a fixed time limit, under the threat to revoke the permit.

5. The permit referred to in paragraph 2(2) may be revoked if the organization:

- 1) fails to perform its duties within the scope of the management of copyright and related rights entrusted to it or their protection;
- 2) infringes the regulations within the scope of the permit;
- 3) does not fulfil the obligation of submitting for approval the tables of remuneration for using works and objects of related rights in cases specified in Article 21 paragraphs 1 and 2<sup>1</sup>, Article 21<sup>1</sup> paragraph 1 and Article 70 paragraph 2<sup>1</sup> and in the "public presentation" field of exploitation.

6. Decisions of the minister competent for culture and protection of the national heritage to grant or to revoke the permit for undertaking the exercise of the powers specified in paragraph 1 above by collective management organizations, shall be announced in the official gazette *Dziennik Urzędowy Rzeczypospolitej Polskiej Monitor Polski*.

**Article 105.** 1. It is presumed that the collective management organization shall be authorized to administer and to protect the rights within the fields of exploitation covered by collective management and that it shall be authorized within this scope to participate in judicial proceedings. Such presumption may not be referred to if more than one collective management organization claims to have a title to the same work or artistic performance.

2. Within the scope of its activities the collective management organization may demand the submission of information and access to documents necessary to determine remuneration and fees claimed.

**Article 106.** 1. The collective management organization shall be obliged to provide equal treatment to the rights of its members and other persons it represents within the scope of administering such rights or claiming their protection.

2. Collective management organisation may not, without important reasons, refuse its consent to the use of works or objects of related rights within the scope of their management.

3. The collective management organization may not, without important reasons, refuse to undertake the management of copyright or related rights. Such management shall be exercised in accordance with its statute.

**Article 107.** If in a given field of exploitation there is more than one collective management organisation, the competent organisation within the meaning of this Act shall be the one to which the author or the party entitled under a related right belongs, and if the author or the entitled party does not belong to any organisation or has not disclosed his/her authorship – the organisation indicated by the Copyright Commission referred to in Article 110<sup>1</sup>.

**Article 107<sup>1</sup>** 1. Collective management organisations may conclude agreements regarding the granting of licenses for the use of works and objects of related rights and the collection of remunerations in this respect, under the terms of these agreements.

2. Collective management organisations conclude agreements regarding the joint collection of remunerations for the use of the objects of related rights in the "presentation" field of exploitation, under the terms of these agreements and approved tables of remuneration.

3. If within 6 months from the final and binding approval of tables of remuneration, in the matters referred to in paragraph 2, an agreement regarding the collection of remunerations for the use of the objects of related rights has not been concluded, the minister competent for culture and protection of national heritage shall appoint, by means of a decision and after consultation with collective management organisations that have the "presentation" field of exploitation indicated in the permit referred to in Article 104 paragraph 2 point 2, associations of performers and producers and organisations grouping users of the objects of related rights in the "presentation" field of exploitation, one collective management organisation from among organisations representing parties entitled under related rights to perform the joint collection referred to in paragraph 2, considering the necessity of ensuring effective collection of remunerations and their payment to entitled parties and the assessment of effectiveness and correctness of operations of collective management organisations of related rights in the "presentation" field of exploitation.

4. Collective management organisations may, by means of an agreement, indicate from among themselves one organisation authorised to perform actions referred to in paragraphs 1, 2 and 3 or may appoint an entity that shall perform these actions on their behalf on the basis of granted permissions and autorisations.

**Article 108.** Repealed

**Article 109.** Repealed

**Article 110.** The remunerations claimed within the scope of collective management by collective management organisations shall take into account the amount of revenue derived from the use of works and objects of related rights and the nature and scope of use of such works and objects of neighbouring rights.

## **Chapter 12<sup>1</sup>.**

### **Copyright Commission**

#### **Division 1**

#### **General provisions**

**Article 110<sup>1</sup>** 1. The minister competent for culture and protection of natural heritage shall appoint

the Copyright Commission, hereinafter referred to as the "Commission".

2. The Commission shall:

- 1) examine cases for approval of tables of remuneration and for modification of approved tables of remuneration for the use of works or objects of related rights;
- 2) settle disputes regarding the use of tables referred in point 1;
- 3) settle disputes connected with the conclusion of the contract referred to in Article 21<sup>1</sup> paragraph 1;
- 4) indicate the competent organisation within the meaning of this Act in the event referred to in Article 107;
- 5) examine cases for the reconstruction of files and for the supplement or correction of Commission rulings;
- 6) examine cases for interpretation of the Commission's decisions.

3. Unless the provisions of this Chapter specify otherwise, the provisions of the Code of Civil Procedure on the non-litigious procedure shall accordingly apply to the proceedings before the Commission.

4. The provisions of Article 49 of the Code of Civil Procedure shall not apply.

**Article 110<sup>2</sup>.** 1. The Commission shall consist of thirty arbitrators appointed from among the candidates referred to in paragraph 3.

2. The minister competent for culture and protection of national heritage shall publish in at least two printed daily nationals and on his webpage in the Public Information Bulletin, not later than within 60 days before the end of the tenure of the Commission, the information on the commencement of the procedure of appointing Commission arbitrators and the time limit for proposing candidates that shall not be shorter than 30 days from the day of publishing the announcement.

3. Candidates for Commission arbitrators shall be proposed by:

- 1) collective management organisations;
- 2) associations of authors, performers and producers;
- 3) organisations grouping users of works or objects of related rights;
- 4) radio and television organisations.

4. Candidates for Commission arbitrators should have appropriate knowledge and necessary professional experience in terms of copyright and neighbouring rights.

5. The function of Commission arbitrator may not be held by a person who:

- 1) performs a function in a body of an entity referred to in paragraph 3, regardless of whether this entity proposed this arbitrator's candidacy;
- 2) has been sentenced with a final and binding judgement for a wilful offence or a wilful fiscal offence or that has been forbidden in a court ruling to perform certain functions, work in certain professions or conduct certain types of business activity.

6. The minister competent for culture and protection of national heritage shall appoint fifteen arbitrators from among the candidates proposed by entities listed in paragraph 3 points 1 and 2 and fifteen arbitrators proposed by entities referred to in paragraph 3 points 3 and 4.

7. Commission arbitrators shall be independent in performing their functions.

8. The tenure of the Commission shall be 3 years.

9. Commission arbitrators may not refuse to perform the function of a member of a Commission adjudicating panel or the function of chairman or deputy chairman of the Commission without important reasons.

**Article 110<sup>3</sup>.** 1. Prior to the lapse of the time limit specified in Article 110<sup>2</sup> paragraph 8, the mandate of a Commission arbitrator expires in the event of his/her death or dismissal.

2. Commission arbitrators are dismissed by the minister competent for culture and protection of national heritage in the event of:

- 1) resigning from the function of Commission arbitrator;
- 2) having been sentenced with a final and binding judgement for a wilful offence or a wilful fiscal offence or having been forbidden in a court ruling to perform certain functions, work in certain professions or conduct certain types of business activity;
- 3) illness preventing him/her from performing the function of Commission arbitrator and lasting for longer than 6 months;
- 4) starting to perform a function in a body of an entity referred to in Article 110<sup>2</sup> paragraph 3.

3. In the event referred to in paragraph 1, the minister competent for culture and protection of national heritage shall appoint a new Commission arbitrator under the terms of Article 110<sup>2</sup> paragraphs 1–6. The mandate of the newly appointed Commission arbitrator shall expire with the termination of the tenure of the Commission.

4. If the Commission arbitrator referred to in paragraph 1 was a member of an adjudicating panel of the Commission or if the arbitrator who is a member of an adjudicating panel has been appointed Commission chairman or deputy chairman, the new member of the adjudicating panel shall be appointed within 7 days, in accordance with the principles specified for this procedure.

**Article 110<sup>4</sup>.** 1. The minister competent for culture and protection of national heritage shall publish, in his official journal and on his webpage in the Public Information Bulletin, the names of Commission arbitrators and the information on the expiration of mandates of Commission arbitrators and on the appointment of new Commission arbitrators.

**Article 110<sup>5</sup>.** 1. The first Commission meeting shall take place within 14 days from the date of its appointment.

2. The first Commission meeting shall be called and conducted by the minister competent for culture and protection of national heritage. During this meeting, Commission arbitrators shall elect the Commission chairman.

3. The election of the Commission chairman shall take place with a 2/3 majority of votes in the presence of at least 20 Commission arbitrators.

4. In the event of the chairman not having been elected in the first Commission meeting, the chairman shall be appointed by the minister competent for culture and protection of national heritage within 14 days from the end of this Commission meeting.

5. The Commission deputy chairman shall be elected, appointed and dismissed upon the motion of the Commission chairman, who shall indicate the candidate for this function, under the terms of paragraph 3.

6. The motion to dismiss a Commission arbitrator from the function of the Commission chairman, indicating candidates for this position, may be submitted by at least ten arbitrators.

7. The Commission chairman, within 14 days from the date of the submission of the motion referred to in paragraph 6, shall call a Commission meeting in which the motion shall be put to a vote under the terms of paragraph 3.

8. The Commission chairman and his deputy may not be members of adjudicating panels of the Commission.

9. The Commission chairman shall perform the actions specified in Article 130 § 1–4 and Article 130<sup>2</sup> § 1 and 2 of the Code of Civil Procedure and shall refer cases for examination to relevant adjudicating panels of the Commission.

**Article 110<sup>6</sup>.** 1. Meetings of adjudicating panels of the Commission shall take place in the presence of at least 2/3 of a three-person adjudicating panel and 3/5 of a five-person adjudicating panel.

2. The rulings of adjudicating panel of the Commission shall be made with the majority of votes of the composition of this adjudicating panel.

3. Rulings ending the proceedings shall be made in the presence of all members of an adjudicating panel of the Commission.

4. Rulings ending the proceedings together with grounds for these rulings shall be ex officio delivered to all participants of these proceedings.

5. The Commission chairman shall publish all rulings of adjudicating panels of the Commission on the webpage of the minister competent for culture and protection of national heritage in the Public Information Bulletin.

**Article 110<sup>7</sup>.** The Commission chairman and his deputy are entitled to monthly remuneration in the amount of twice the average monthly remuneration in the private sector, together with the distribution of profit, in the preceding quarter, published by the President of the Central Statistical Office in the "Monitor Polski" Journal of Laws of the Republic of Poland, paid from the state budget, from funds available to the minister competent for culture and protection of national heritage.

**Article 110<sup>8</sup>.** 1. Members of the adjudicating panels of the Commission are entitled to remuneration:

- 1) for participation in adjudicating in cases referred to in Article 110<sup>1</sup> paragraph 2 point 1, in the amount of twice the average monthly remuneration in the private sector, together with the distribution of profit, in the quarter preceding the submission of the application, published by the President of the Central Statistical Office in the "Monitor Polski" Journal of Laws of the Republic of Poland,
- 2) for participation in mediation proceedings in cases referred to in Article 110<sup>1</sup> paragraph 2 points 2 and 3 – in the amount of the average remuneration referred to in point 1,
- 3) for participation in adjudicating in cases referred to in Article 110<sup>1</sup> paragraph 2 point 4 – in the amount of the average remuneration referred to in point 1,
- 4) for participation in adjudicating in cases referred to in Article 110<sup>1</sup> paragraph 2 point 5 and 6 – in the amount of 1/3 of the average remuneration referred to in point 1 – paid after the issuing of the ruling ending the proceedings before the Commission or after the completion of the mediation proceedings.

2. The remuneration referred to in paragraph 1 shall be paid from state budget, from funds available to the minister competent for culture and protection of national heritage.

3. In the event referred to in Article 110<sup>3</sup> paragraph 4, the remuneration shall be paid to the members of adjudicating panels of the Commission proportionally to the number of meetings they participated in.

**Article 110<sup>9</sup>.** 1. Applications in cases within the competence of the Commission are subject to fees in the amount of:

- 1) ten times the average monthly remuneration in the enterprise sector, together with the distribution of profit, in the quarter preceding the submission of the application, published by the President of the Central Statistical Office in the "Monitor Polski" Journal of Laws of the Republic of Poland – for cases referred to in Article 110<sup>1</sup> paragraph 2 point 1;
- 2) triple the average remuneration referred to in point 1 – for cases referred to in Article 110<sup>1</sup> paragraph 2 points 2–4;
- 3) the average remuneration referred to in point 1 – for cases regarding the interpretation of a Commission ruling issued in a three-person adjudicating panel;
- 4) one and 2/3 of the average remuneration referred to in point 1 – for cases regarding the interpretation of a Commission ruling issued in a five-person adjudicating panel;

2. The fees shall be paid at the time of submitting the application referred to in paragraph 1, to the bank account of the minister competent for culture and protection of national heritage.

3. Payments referred to in paragraph 1 shall be income of the state budget.

4. No fees shall be collected for applications referred to in Article 110<sup>1</sup> paragraph 2 point 5.

**Article 110<sup>10</sup>.** Technical and organisational service for the Commission shall be provided by the

office providing service to the minister competent for culture and protection of national heritage.

## **Division 2**

### **Approval of tables of remuneration**

**Article 110<sup>11</sup>**. 1. Cases for the approval of tables of remuneration for the use of works and objects of related rights shall be examined by adjudicating panels of the Commission in a five-person adjudicating panels.

2. Within 7 days from receiving an application in the case referred to in paragraph 1, the Commission chairman shall appoint to the adjudicating panel of the Commission, from the list of Commission arbitrators, two arbitrators proposed to the Commission by entities listed in Article 110<sup>2</sup> paragraph 3 points 1 and 2 and two arbitrators proposed to the Commission by entities listed in Article 110<sup>2</sup> paragraph 3 points 3 and 4.

3. Commission arbitrators appointed in accordance with the provisions of paragraph 2, in a meeting called by the Commission chairman, shall elect from the list of Commission arbitrators, by an absolute majority of votes in the presence of at least three arbitrators and, the chairman of the adjudicating panel of the Commission.

4. In the event of Commission arbitrators not electing the chairman of the adjudicating panel of the Commission within month from being designated as members of the adjudicating panel, the chairman shall be appointed by the Commission chairman.

**Article 110<sup>12</sup>**. 1. Applications for the approval of tables of remuneration for the use of works or objects of related rights covered with collective management shall be submitted by collective management organisations. Applications for the approval of a shared table may be submitted by several organisations together.

2. Collective management organisations shall submit for the Commission's approval tables of remuneration for the use of works or objects of related rights in cases referred to in Article 21 paragraph 1 and 2<sup>1</sup>, Article 21<sup>1</sup> paragraph 1 and Article 70 paragraph 2, and in the "presentation" field of exploitation.

3. Cases from applications for the approval of tables of remuneration in the "presentation" field of exploitation shall be examined together as part of the same proceedings.

4. The application for the approval of table of remuneration shall specify:

- 1) fields of exploitation the table of remuneration is applicable to;
- 2) categories of works or objects of neighbouring rights the table of remuneration is applicable to;
- 3) categories of entitled parties on behalf of which the applicant acts;
- 4) remuneration rates.

5. In the applications for the approval of tables of remuneration, collective management organisations shall specify lower rates for entities conducting cultural activity and for educational institutions using works and objects of related rights as part of their statutory activity, unless such use results in obtaining material profits.

6. Participants in the proceedings for the approval of tables of remuneration are:

- 1) the applicant;
- 2) other collective management organisations whose permits referred to in Article 104 paragraph 2 point 2 indicate fields of exploitation covered by these tables of remuneration – if they have submitted an application for participation in the proceedings within the time limit set, in accordance with paragraph 8, by the chairman of the adjudicating panel of the Commission;
- 3) organisations grouping entities using works or objects of related rights whose activity covers the fields of exploitation resulting from tables of remuneration – if they have submitted an application for participation in the proceedings within the time limit set, in accordance with paragraph 8, by the chairman

of the adjudicating panel of the Commission.

7. Complaints may be filed against the decision refusing participation in the case.

8. The chairman of the adjudicating panel of the Commission shall publish, in at least two printed editions and on the webpage of the minister competent for culture and protection of national heritage in the Public Information Bulletin, an announcement on the institution of proceedings regarding cases for the approval of tables of remuneration and shall summon stakeholders referred to in paragraph 6 points 2 and 3 to join the proceedings, setting a time limit not shorter than 14 days and not longer than 30 days from the day of publishing the announcement.

**Article 110<sup>13</sup>.** 1. Proceedings in cases for the approval of tables of remuneration before the adjudicating panel of the Commission shall not last longer than 6 months, unless all participants of such proceedings express their consent to a specific extension of this time limit.

2. In particularly justified cases, upon consent from the participants of the proceedings, the adjudicating panel of the Commission may extend the time limit specified in paragraph 1 by a further definite period, as necessary for issuing a ruling in the case.

3. In the event of the proceedings not having been completed within time limits referred to in paragraphs 1 and 2, the adjudicating panel of the Commission shall discontinue the proceedings.

4. The adjudicating panel of the Commission shall approve or refuse the approval of tables of remuneration, in entirety or in part. In the scope in which the panel refused to approve the tables of remuneration, it shall provide written proposals of changes in the tables of remuneration, together with grounds for these proposals.

5. In issuing a ruling, the adjudicating panel of the Commission shall take into consideration:

- 1) the criteria specified in Article 110;
- 2) the total amount of charges paid by users of the works or objects of related rights to all collective management organisations for the use of copyright and related rights in a given field of exploitation;
- 3) evidence collected in the case;
- 4) standpoints of participants of the proceedings;
- 5) justified public interest.

6. Approved tables of remuneration shall include remuneration rates expressed in quota terms or in percentage terms.

7. The Commission chairman shall publish the approved tables of remuneration on the webpage of the minister competent for culture and protection of national heritage in the Public Information Bulletin.

8. By 15 February of each year, collective management organisations shall, on the basis of the annual average price index of consumer goods and services published by the President of the Central Statistical Office for the previous year, perform the valorisation of remuneration rates expressed in quota terms and shall present the information on valorised remuneration rates to the Commission chairman. These rates are being published on the webpage of the minister competent for culture and protection of national heritage in the Public Information Bulletin.

**Article 110<sup>14</sup>.** 1. Participants dissatisfied with a Commission ruling may submit, within 14 days from the day of receiving the ruling with grounds thereto, an application for approval or non-approval of tables of remuneration by a court.

2. In the event of submitting the application referred to in paragraph 1, the Commission chairman shall hand over such application, together with case records, to the court within 14 days, and shall publish information of the submission of such application in the Public Information Bulletin, on the webpage of the minister competent for culture and protection of national heritage.

3. If the proceedings have been discontinued for reasons referred to in Article 110<sup>3</sup> paragraph 3, the applicant may, within 14 days from receiving the ruling on discontinuation of proceedings before the adjudicating panel of the Commission, submit an application for the approval of tables of remuneration by

a court. In the event of submitting such application, provisions of paragraph 2 shall apply accordingly.

4. In the event of the application referred to in paragraph 1 not having been submitted, the ruling of the Commission on the approval of tables of remuneration shall become final and binding. In the event of the application referred to paragraph 1 having been submitted, the ruling of the Commission on the approval of tables of remuneration shall become final and binding in the part not covered by the submitted application. In the scope in which the ruling refuses the approval of a table of remuneration, the proposals of modifications of the table presented for approval included in the ruling shall become final and binding in the part in respect of which the application referred to paragraph 1 has not been submitted.

5. The submission of the application referred to in paragraph 1 shall result in the Commission ruling losing force in entirety or in the part covered by the submitted application.

**Article 110<sup>15</sup>.** In the event of a substantial change of circumstances constituting the basis for a ruling in a case for approval of tables of remuneration, each of the participants of the proceedings may submit to the Commission an application for the modification of the approved tables of remuneration. The provisions on the approval of tables of remuneration shall apply to proceedings in cases for the modification of approved tables of remuneration.

**Article 110<sup>16</sup>.** 1. Rates specified in the approved tables of remuneration shall be applied in contracts that a collective management organisation is a party to.

2. Contractual provisions specifying rates less beneficial for authors and parties entitled under related rights than those specified in approved tables of remuneration shall be invalid and shall be replaced with relevant provisions of these tables.

### **Division 3**

#### **Indication of the organisation competent within the meaning of the Act**

**Article 110<sup>17</sup>.** 1. In the cases referred to in Article 107, the organisation competent within the meaning of this Act shall be indicated by an adjudicating panel of the Commission composed of two Commission arbitrators and the chairman of the panel, appointed from the list of Commission arbitrators by the Commission chairman.

2. The application in the case referred to in paragraph 1 may be submitted by:

- 1) the author or a party entitled under a related right;
- 2) a collective management organisation that, on the basis of the permit referred to in Article 104 paragraph 2 point 2, manages copyrights or related rights regarding the same category of works or objects of related rights in the field of exploitation covered by the application;
- 3) an organisation grouping users of the works or objects of related rights;
- 4) an user of the works or objects of neighbouring rights.

3. Participants of the proceedings referred to in paragraph 1 shall be:

- 1) the applicant;
- 2) collective management organisations that, on the basis of the permit referred to in Article 104 paragraph 2 point 2, manage copyrights or neighbouring rights regarding the same category of works or objects of related rights in the field of exploitation covered by the application;
- 3) organisations grouping users of the works or objects of neighbouring rights, whose activity is covered by the scope of the application – if they have submitted an application for participation in the proceedings.

4. Complaints may be filed against the decision refusing participation in the case.

5. The chairman of the adjudicating panel of the Commission shall publish an announcement on the institution of proceedings referred to in paragraph 1. Provisions of Article 110<sup>12</sup> paragraph 8 shall apply to such announcements.

6. The ruling of the adjudicating panel of the Commission issued in the procedure specified in paragraphs 1–4 may be appealed against to court within 14 days from receiving such ruling. The provisions of the Code of Civil Procedure on appeal shall apply to proceedings pending as a result of such appeal.

#### **Division 4**

##### **Settlement of disputes**

**Article 110<sup>18</sup>**. 1. Disputes regarding the finally and bindingly approved tables of remuneration and disputes connected with the conclusion of the contract referred to in Article 21<sup>1</sup> paragraph 1 may be settled by means of mediatory proceedings between the parties.

2. The mediation is voluntary.

3. The chairman of the Commission shall appoint the mediator from the list of Commission arbitrators. However, the parties may select another mediator from this list.

4. The mediator may present the parties with proposals of settlement. If none of the parties has objected to the proposed settlement within three months from the day of such settlement being proposed, the settlement proposal shall be deemed to have been accepted.

5. The provisions of the Code of Civil Procedure regarding mediation shall accordingly apply to proceedings in cases referred to in paragraph 1.

#### **Division 5**

##### **Other proceedings**

**Article 110<sup>19</sup>**. 1. Cases for the reconstruction of files shall be examined by adjudicating panels of the Commission composed of two Commission arbitrators and the chairman, appointed by the chairman of the Commission from the list of Commission arbitrators.

2. The provisions of the Code of Civil Procedure regarding loss or destruction of files shall apply to proceedings regarding the recreation of files held before the Commission.

3. Cases for the supplement, correction or interpretation of Commission rulings shall be examined by a Commission panel composed as at the time of issuing the ruling.

#### **Division 6**

##### **Court proceedings**

**Article 110<sup>20</sup>**. 1. The court competent for examining cases referred to in Article 110<sup>14</sup> paragraphs 1 and 3 and Article 110<sup>17</sup> paragraph 6 shall be a regional court.

2. The Minister of Justice shall appoint, by means of an ordinance, one regional court competent for the examination of cases referred to in paragraph 1.

3. Applications referred to in Article 110<sup>14</sup> paragraphs 1 and 3 and the appeal referred to in Article 110<sup>7</sup> paragraph 6 shall be submitted via the Commission.

**Article 110<sup>21</sup>**. The court referred to in Article 110<sup>20</sup> paragraph 2 shall also examine complaints regarding the rulings of adjudicating panels of the Commission issued during proceedings before the Commission.

**Article 110<sup>22</sup>**. 1. Participants in the case shall be:

- 1) the applicant;
  - 2) the entity submitting the application for the refusal to approve tables of remuneration or submitting the appeal referred to in Article 110<sup>17</sup> paragraph 6;
  - 3) entities participating in the proceedings before the Commission if they have joined the proceedings before the proceedings have been completed in the second instance.
2. Complaints may be filed against the decision refusing participation in the case.

**Article 110<sup>23</sup>.** In cases from applications referred to in Article 110<sup>14</sup> paragraphs 1 and 3, the court shall adjudge on the approval or non-approval of tables of remuneration, in entirety or in part, taking into consideration the criteria specified in Article 110<sup>13</sup> paragraph 5. Rulings ending the proceedings in a given case shall be ex officio delivered to the Commission chairman

## **Chapter 12<sup>2</sup>.**

### **Optical Carriers Production Inspection**

**Article 110<sup>24</sup>.** The minister competent for culture and protection of the national heritage shall exercise inspection over production and reproduction of optical carriers, particularly in order to ensure their compliance with the authorisations granted by the rightholders pursuant to this Act.

**Article 110<sup>25</sup>.** An operator who conducts economic activity within the scope referred to in Article 110<sup>24</sup> shall be obliged to use identification codes in all the equipment and the elements thereof in the course of optical carriers production process.

**Article 110<sup>26</sup>.** 1. An operator who conducts economic activity within the scope referred to in Article 110<sup>24</sup> shall advise the minister competent for culture and protection of the national heritage of the object and scope of activity conducted thereby within thirty days from the date of commencement of such activity.

2. The operator shall deliver the following information to the minister competent for culture and protection of the national heritage:

- 1) name and surname, place of residence and address or business name, seat and address, the persons entitled to represent it, and the location where the activity is performed;
- 2) equipment for production and reproduction of optical carriers owned thereby;
- 3) the identification codes used in the production process in all the equipment and elements thereof.

3. By the tenth of each month the operator shall deliver information pertaining to the previous month with respect to:

- 1) total production volume and type thereof;
- 2) performance of a contract elsewhere than at the place of pursuit of the activity;
- 3) distribution of the equipment for the production and reproduction of optical carriers.

4. The first time that the operator is obliged to provide the information referred to in paragraph 3 shall be by the tenth day of the month following the month of the operator's transfer of information referred to in paragraph 1 for the period from the commencement of economic activity within the scope referred to in Article 110<sup>24</sup>, however, not longer than two previous months.

5. The operator shall immediately advise the minister competent for culture and protection of the national heritage of any changes to the information referred to in paragraph 2.

6. The information shall be provided on forms.

7. The operator shall maintain documentation used to develop the information referred to in paragraphs 2 and 3 for a period of five years.

**Article 110<sup>27</sup>.** 1. The minister competent for culture and protection of the national heritage shall keep a register of information referred to in Article 110<sup>26</sup>.

2. The minister competent for culture and protection of the national heritage shall provide anyone who has a relevant legal interest with the information contained in the register, in the event of reasonable suspicion of violation of copyright or related rights, within the scope necessary to claim protection thereof.

3. The minister competent for culture and protection of the national heritage shall define, by regulation:

- 1) the manner of keeping the register of information, procedure for delivery of information by operators and sample forms;
- 2) the types of identification codes which comply with international standards in this respect, subject to the need to ensure clarity of entry of the information in the register and avoiding imposing any onerous obstacles on the operators with regard to the activities conducted thereby.

**Article 110<sup>28</sup>.** 1. Within the scope of control exercised thereby, the minister competent for culture and protection of the national heritage may, at any time, subject to the regulations on freedom of economic activity, commission inspection of the operator's activities with regard to compliance of the information referred to in Article 110<sup>26</sup> with the facts.

2. The inspection shall be conducted by the inspector on the basis of a written personal authorization including the name of the operator, the object, the scope and the time of commencement and completion of the inspection as well as the identity proof.

3. At the inspector's request, the operator provides access to all the documents and materials required to conduct the inspection.

4. The inspector shall have the right to:

- 1) enter immovable property, facility, premises or any part thereof owned by the operator who conducts economic activity within the scope referred to in Article 110<sup>24</sup>;
- 2) inspect documents related to the conduct of economic activity subject to the inspection, provided that all the laws on safeguarding secrets protected by statutory law are observed;
- 3) demand oral and written explanations from employees;
- 4) secure evidence.

**Article 110<sup>29</sup>.** 1. The inspector shall present the results of inspection in the inspection record.

2. The inspection record shall be made in two copies, one for the operator.

3. The inspection record shall be signed by the inspector and the operator.

4. In case the operator denies or is unable to sign the inspection record, the record is signed by the inspector only who shall put a relevant note of such denial or reasons for the inability to sign the inspection record in such record.

**Article 110<sup>30</sup>.** 1. Within 30 days after the date of signing the inspection record, the minister competent for culture and protection of the national heritage shall prepare a post-inspection report which shall be immediately delivered to the operator.

2. The operator may, within fourteen days of receipt of the post-inspection report, deliver written comments to the facts established and conclusions made in the post-inspection report.

## Chapter 13.

### Fund for Promotion of Creative Activity

**Article 111.** 1. The Fund for Promotion of Creative Activity, hereinafter called "the Fund", is hereby established.

2. The Fund shall be administered by the minister competent for culture and protection of the national heritage.

3. The Fund shall be a state earmarked fund having no legal personality.

**Article 111<sup>1</sup>.** 1. The Fund's financial management is based on an annual financial plan made for each budget year and approved by the Fund's disposer.

2. The annual financial plan defines, in particular:

- 1) revenues and expenses;
  - 2) balance of current assets of the Fund at the beginning and at the end of a budget year;
  - 3) receivables and payables.
3. The budget statements relating to the implementation of the Fund's annual financial plan shall be made within time and in compliance with the principles defined in separate regulations.

**Article 112.** The revenues of the Fund shall come from:

- 1) proceeds specified in Article 40;
- 2) proceeds specified in Article 79(2);
- 3) voluntary payments, bequests and donations;
- 4) other proceeds.

**Article 113.** The Fund's resources shall be allocated for:

- 1) scholarships for authors;
- 2) covering all or part of the costs of editions of works of special importance for Polish culture and science as well as editions for the blind;
- 3) social assistance for authors.

**Article 113<sup>1</sup>.** The payments referred to in Article 40 shall be regulated by the provisions of Section III of the Act of 29 August 1997 - The Tax Ordinance (Dz.U. of 2005, No. 8, item 60, as amended<sup>2</sup>), provided that the rights of tax authorities defined in the above referenced act may be exercised by the minister competent for culture and national heritage protection.

**Article 114.** 1. The minister competent for culture and national heritage protection shall, having consulted the respective authors' associations, appoint a commission to opine applications for subsidizing editions of works of special importance for Polish culture and science, editions for the blind and for scholarships and social assistance for authors.

2. The minister competent for culture and national heritage protection shall, by regulation, define the subjects authorized to apply for financing by the Fund as well as the formal requirements with which such application must comply, taking into account the necessity of proper implementation of the Fund's objectives.

## Chapter 14.

### Criminal Liability

**Article 115.** 1. Whoever usurps the authorship or misleads others as to the authorship of a whole or a part of another person's work or another person's artistic performance shall be liable to a fine, restriction of liberty or imprisonment for up to 3 years.

2. The same penalty shall be imposed on anyone who disseminates, without indicating the name or the pseudonym of the author, other persons' work in the original or derivative version, or publicly disfigures such work, artistic performance, phonogram, videogram or broadcast.

3. Whoever violates other persons' copyright or related rights specified in Articles 16, 17, 18, 19(1), 19<sup>1</sup>, 86, 94(4) or 97, or fails to fulfil the duties defined in Article 19<sup>3</sup>(2), 20(1)-(4), 40(1)-(2) in order to gain material benefits in a manner other than specified in paragraph 1 or 2, shall be liable to a fine, restriction of liberty or imprisonment for up to one year.

**Article 116.** 1. Whoever, without authorization or against its terms and conditions, disseminates other persons' work, artistic performance, phonogram, videogram or broadcast in the original or derivative version shall be liable to a fine, restriction of liberty or imprisonment for up to 2 years.

2. If the offender commits the act specified in paragraph 1 above in order to gain material benefits, he/she shall be liable to imprisonment for up to 3 years.

3. If the offender commits the offence specified in paragraph 1 above a regular source of income or organizes or manages a criminal activity as specified in paragraph 1, he/she shall be liable to imprisonment for 6 months to 5 years.

4. If the offender of the act specified in paragraph 1 above acts unintentionally, he/she shall be liable to a fine, restriction of liberty or imprisonment for up to one year.

**Article 117.** 1. Whoever fixes or reproduces other persons' work in its original versions or in the form of derivative version, artistic performance, phonogram, videogram or broadcast for the purposes of its dissemination and gives his/her consent to its dissemination without the authorization or against the conditions specified therein, shall be liable to a fine, restriction of liberty or imprisonment for up to 2 years.

2. If the offender commits the offence specified in paragraph 1 a regular source of income or organizes or manages a criminal activity, as specified in paragraph 1 above, he/she shall be liable to imprisonment for up to 3 years.

**Article 118.** 1. Whoever, in order to gain material benefit purchases, assists in the sale of, accepts or assists in concealing objects being carriers of a piece of work, artistic performance, phonogram, videogram disseminated or reproduced without authorization or against the conditions specified therein, shall be liable to imprisonment for 3 months to 5 years.

2. If the offender committed the crime specified in paragraph 1 above a permanent source of income, or organizes or manages a criminal activity as specified in paragraph 1, he/she shall be liable to imprisonment for up to 5 years.

3. If based on concurrent events the offender of the crime referred to in paragraph 1 or 2 should and might have assumed that an item was received in result of an illicit action, he/she shall be liable to a fine, restriction of liberty or imprisonment for up to 2 years.

**Article 118<sup>1</sup>.** 1. Whoever manufactures any equipment or components thereof designated for illegal removal or circumvention of effective technological protection measures preventing from presentation, recording or reproducing works or objects of related rights, or trades in such equipment or components

thereof or advertises them for sale or rental, shall be liable to a fine, a penalty of restriction or imprisonment for up to 3 years.

2. Whoever possesses, keeps or uses any equipment or components thereof as referred to in paragraph 1, shall be liable to a fine, a penalty of restriction of liberty or imprisonment for up to one year.

**Article 119.** Whoever prevents or hinders the exercise of a right to control the use of a piece of work, artistic performance, a phonogram or a videogram or refuses to give information provided for in Article 47 shall be liable to a fine, restriction of liberty or imprisonment for up to one year.

**Article 120.** Repealed.

**Article 121.** 1. In the event of sentencing for an offence specified in Articles 115, 116, 117, 118 or 118<sup>1</sup>, the court may order seizure of objects coming from the offence, even if they were not owned by the offender.

2. In the event of sentencing for an offence specified in Articles 115, 116, 117 or 118, the court may order seizure of objects used to commit the offence, even if they were not owned by the offender.

**Article 122.** The offences specified in Article 116(1), (2) and (4), 117(1), 118(1), 118<sup>1</sup> and 119 shall be prosecuted on complaint of the sufferer.

**Article 122<sup>1</sup>.** In cases relating to offences referred to in Articles 115 to 119, a competent organization for collective management of copyright and related rights shall also be considered as the sufferer.

**Article 123.** The Minister of Justice may, by regulation, appoint district courts competent to hear cases of offences specified in Articles 115, 116, 117, 118 or 119 - within the area of competence of a given circuit court.

## Chapter 15.

### Transitional and Final Provisions

**Article 124.** 1. Provisions of this Act shall apply to the works:

- 1) established for the first time after it has come into force;
- 2) whose copyright has not expired under the provisions hitherto in force;
- 3) whose copyright has expired under the provisions hitherto in force and which under this Act shall continue to enjoy protection, except for the period between the expiry of protection under the previous Act and the date of this Act coming into force. This Act shall not infringe the ownership of copies of works disseminated prior to the day of its coming into force.

2. The provision of paragraph 1(3) above shall apply to works of foreign citizens permanently residing abroad upon the condition of reciprocity.

3. Repealed.

4. Provisions of any agreements concluded before the entry into force of the Act and contrary to the provisions of Article 75(2)-(3) shall be null and void.

**Article 125.** 1. The provisions of this Act shall apply to artistic performances:

- 1) established for the first time after it has come into force;
- 2) within the scope of using them after this Act comes into force, if under provisions of this Act they still enjoy protection.

2. This Act shall not infringe the ownership of the copies on which such artistic performance had been recorded prior to its coming into force.

**Article 126.** 1. Provisions of this Act shall apply to: 1) phonograms and videograms which have been made after it came into force;

2) radio and television programmes which have been broadcast after it came into force;  
3) phonograms and videograms and radio and television programmes which under this Act shall still enjoy protection.

2. The rules referred to in paragraph 1(3) shall not apply to the use by schools for teaching purposes of broadcasts, phonograms and videograms which are not feature films or theatre performances made prior to this Act coming into force and for the use of artistic performances recorded on phonograms and videograms.

**Article 127.** 1. If the use of works, artistic performances, phonograms, videograms and radio or television programmes which started prior to this Act coming into force, was permissible under previous provisions but requires a permission after it came into force, it may be completed provided that the rightholder receives an adequate remuneration.

2. Subject to paragraph 3, acts in law performed prior to this Act coming into force and referring to copyright shall be effective and shall be subject to evaluation under provisions of law hitherto in force; that shall also apply to events other than acts in law.

3. This Act shall apply to long-term contracts which had been concluded prior to this Act coming into force with respect to the period after this Act coming into force, and to obligations which were assumed prior to this Act coming into force with respect to the legal effects of events following such date and not connected with the merits of the obligations.

4. Contracts concluded prior to this Act coming into force shall not cover related rights, unless the parties agreed otherwise.

**Article 127<sup>1</sup>.** The President of the Council of Ministers shall, by an order, and at the request of the minister competent for culture and protection of the national heritage, create a team for prevention of violations of copyrights and related rights, and will define the composition and tasks thereof as well as the operating procedures.

**Article 128.** The Act of 10 July 1952 on Copyright Law (Dz.U. 1952, No. 34, item 234; 1975, No. 34, item 184; 1989, No. 35, item 192) shall lose its force.

**Article 129.** This Act shall come into force 3 months after the date of its promulgation, except for Article 124(3) which shall come into force on the date of promulgation.

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<sup>1</sup> Within the scope of its regulation, this Act shall implement the following directives of the European Communities:

- 1) Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ of EC, No. L 122, 17/05/1991);
- 2) Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ of EC, No. L 346, 27/11/1992);
- 3) Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcast and cable rebroadcast (OJ of EC, No. L 248, 06/10/1993);
- 4) Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (OJ of EC, No. L 290, 24/11/1993);
- 5) Directive 96/9/EC of 11 March 1996 on the legal protection of databases (OJ of EC, L 077, 27/03/1996).

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The data concerning promulgation of legislative acts of the European Union and contained herein shall, from the day of obtaining by the Republic of Poland of membership of the European Union, concern promulgation of these acts in the OJ of the European Union - special edition.

<sup>2</sup> Amendments to the consolidated text of the Act were published in Dz.U. of 2005, No. 85, item 727, No. 86, item 732, No. 143, item 1199 and of 2006, No. 66, item 470.