

**Republic of Moldova**

**PARLIAMENT**

Law No. LP230/2022  
of 28.07.2022

**on Copyright and Related Rights**

Published: 09.09.2022 in the Official Gazette No. 278-282 Art. 578 Date of entry into force

The Parliament adopts this organic law.

This Law transposes:

- 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 broadcasting and cable retransmission, published in the Official Journal of the European Communities L 248 of 6 October 1993, as last amended by Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019;
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, published in the Official Journal of the European Communities L 77 of 23 March 1996;
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society, published in the Official Journal of the European Communities L 167 of 22 June 2001, as last amended by Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019;
- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, published in the Official Journal of the European Communities L 272 of 13 October 2001;
- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, published in the Official Journal of the European Communities L 157 of 30 April 2004; Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version), published in the Official Journal of the European Union L 376 of 27 December 2006; Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version), published in the Official Journal of the European Union L 372 of 27 December 2006, as last amended by Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011;

- Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (codified version) (text with EEA relevance), published in the Official Journal of the European Union L 111 of 5 May 2009;

- Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society, published in the Official Journal of the European Union L 242 of 20 September 2017;

as well as partly transposes:

- Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programmes and amending Council Directive 93/83/EEC (text with EEA relevance), published in the Official Journal of the European Union L 130 of 17 May 2019;

- Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (text with EEA relevance), published in the Official Journal of the European Union L 84 of 20 March 2014;

- Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, published in the Official Journal of the European Union L 130 of 17 May 2019.

## Chapter I

### GENERAL PROVISIONS

#### **Article 1.** Legal Framework

(1) Copyright and related rights, protection of these rights and liability for their violation shall be governed by the Constitution of the Republic of Moldova, international treaties to which the Republic of Moldova is a party, this Law and other normative acts.

(2) This Law regulates copyright and related rights, the management of such rights, the organization and functioning of collective management organizations, and the procedures and remedies applicable to violation of copyright and related rights.

(3) The provisions of this Law relating in particular to computer programs and databases are without prejudice to the provisions on patents, trademarks, industrial designs, utility models, topography of integrated circuits, protection of national treasures, restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public information, contract law.

#### **Article 2.** International Treaties. National Treatment

(1) The protection provided for by this Law shall apply to authors and rightholders of copyright and related rights who have the nationality of the Republic of Moldova or who have their domicile, and, in the case of legal persons, the headquarters on the territory of the Republic of Moldova.

(2) Foreign natural or legal persons shall enjoy equal treatment with the treatment of the citizens of the Republic of Moldova, in regards to copyright and related rights.

(3) If an international treaty to which the Republic of Moldova is party establishes rules other than those provided for in this Law, the rules of the international treaty shall be applied.

#### **Article 3.** Main Notions

The following terms are used in the present law:

*representation agreement* - an agreement concluded between collective management organizations whereby one collective management organization mandates another collective management organization to manage the rights it represents;

*act carried out on a commercial scale* – an act carried out for direct or indirect economic or commercial advantage. The act of the end-consumer who acts in good-faith shall not be deemed as act carried out on a commercial scale;

*author* - a natural person or natural persons who has created a work;

*author of a database* - the natural person or natural persons who has created the database. When a database is created jointly by more than one natural person, the exclusive rights shall be jointly owned by those persons;

*database* - a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means;

*management fee* - amount charged, deducted or offset by a collective management organization from rights revenue or from any revenue arising from the investment of the rights revenue in order to cover the costs of its management of copyright or related rights;

*communication to the public* - any communication of a work, made directly or by any technical means, made in a place open to the public or in any place where a number of persons are gathered beyond the normal circle of members of a family and of his/her acquaintances, including stage representation, recitation or any other public means of direct performance or presentation of the work, public display of works of plastic art, applied, photographic and architectural art, projection of cinematographic works and other audiovisual works to the public, including works of digital art, presentation in a public place by any means, including by means of phonograms or videograms, of a broadcast work. The right to authorize or prohibit the communication to the public of works shall not be deemed to have been exhausted by any act of communication to the public;

*communication to the public by satellite* - introduction, under the control and responsibility of a broadcasting organization located on the territory of the Republic of Moldova, of the programme-carrying signals intended for reception by the public, into an uninterrupted chain of communication leading to the satellite and down towards to the earth;

*private copy* - reproduction of a work lawfully published on any equipment and tangible medium which may be used to make such reproductions, whether the process used is analogue or digital, provided that the reproduction is made by a natural person solely for personal use and is not intended to obtain any direct or indirect commercial advantage;

*pirated access-control device* - any device the making of which has not been authorized by the rightholder recognized by this Law in relation to a particular service of conditionally accessible television programmes, designed to facilitate the access to that service;

*distribution* - putting into circulation, by sale or by any other means of transmission into the ownership, free of charge, of the original or copies of a work or subject-matters of related rights, and the public offering thereof. The right of distribution shall be exhausted with the first sale or transfer of ownership of the original or copies of a work on the territory of the Republic of Moldova by the rightholder or with his/her consent;

*right to audiovisual adaptation* - the exclusive right of the author or rightholder in a pre-existing work to transform or incorporate it into an audiovisual work. By concluding the contract for adaptation, the author or holder of the copyright in a pre-existing work transfers to the producer the exclusive right to transform and include that work in an audiovisual work. The authorization granted by the copyright holder in the pre-existing work must expressly lay down the conditions for the production, dissemination and projection of the audiovisual work;

*broadcast by a radio and TV broadcasting organization* - broadcast created directly by the radio and TV broadcasting organization or, on its command and financial means;

*authorized entity* – a non-profit organization that is authorized or recognized by the State to provide education, instructional training, adaptive reading or information access to beneficiary persons. It also includes a public institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities, institutional obligations or as part of its public-interest missions, within the meaning of Article 58 to 59;

*accessible format copy* - a copy of a work or other subject-matter of protection which is made in an alternative manner or form which gives a beneficiary person access to the works or other subject-matters of protection, including to permit the person to have access as feasibly and comfortably as those enjoyed by a person without visual impairment or other print disability referred to in the term ‘beneficiary person’ within the meaning of Article 58 to 59;

*expressions of folklore* - any form in which cultural practices and traditional knowledge are expressed by local communities and passed on from generation to generation as an integral part of the traditional identity and heritage of that community. Expressions of folklore may undertake tangible or intangible forms or a combination thereof, being dynamic and constantly evolving and include, among others, stories, legends, poems, riddles, songs, musical instruments, dances, plays, ceremonies, rites and rituals, traditional games and sports, puppet performances, crafts and objects of folklore art, architecture, ceremonial masks or clothing, architecture, other tangible spiritual forms;

*extraction* – permanent or temporary transfer of all or a substantial part, evaluated qualitatively or quantitatively, of the contents of a database to another medium by any means or in any form;

*fixation* - incorporation of sounds, images or sounds and images, or their digital representation on any medium, enabling them to be perceived, reproduced or communicated to the public by means of a device;

*audiovisual fixation* - incorporation of moving images, whether or not accompanied by sounds or representations thereof, which can be perceived, reproduced or communicated by means of a device;

*phonogram* - any exclusively fixation of sounds of a performance, work or other sounds, or of the representations thereof, except for fixation of sounds included in the audiovisual work;

*phonogram published for commercial purposes* - phonogram made available to the public by sale or by wire or wireless means in such a way that everyone can access it at the place and at the time individually chosen;

*online content-sharing service provider* - a provider of an information society service whose sole or main purpose is to store and enable its users to upload and share a large amount of protected works or other subject-matter with the aim of making a profit, either directly or indirectly, through the organization and promotion for profit-making purposes of that content, including its classification and the use of targeted promotion, in order to attract the widest possible audience.

An online content-sharing service provider shall be deemed to store and provide access to a large amount of content protected by copyright and related rights depending on factors such as the role in the online content market, competing with other online content services, such as online audio and video streaming services, intended for the same audience, the number of files with protected content uploaded by users of the service.

Non-profit online encyclopedias, educational or scientific non-profit archives, open-source software development and sharing platforms, providers of electronic communications services, online marketplaces and cyberlocker platforms, business cloud services as well as cloud services enabling users to upload content for their own use – are not online content-sharing service providers;

*rights management information* - any information provided by the author or rightholder, which identifies the work or other subject-matter protected by this Law, the author or rightholder, or the information about the terms and conditions of use of the work or other protected subject-matter, as well as any numbers and codes that represent such information;

*performer* – an actor, singer, musician, dancer and other person who presents, declaims, sings, plays in, dances, interprets or otherwise performs literary or artistic works, including expressions of folklore;

*lending* - making available for use, for a limited period of time and without direct or indirect economic or commercial advantage, a work or a subject-matter of related rights, where it is made through publicly accessible establishments;

*rental* - making available for use, for a limited period of time and for direct or indirect economic or commercial advantage, a work or a subject-matter of related rights;

*pirated goods* - all copies of whatever medium, including covers, made without the consent of the author, rightholder or person duly authorized by him and which are made, directly or indirectly, in whole or in part, from a copyright or related rights-bearing product or from their packaging or covers;

*technical protection measures* - any technology, device or component which, in common functioning, is designed to prevent or limit acts not authorized by authors, holders of copyright or related rights or by the holder of the *sui generis* right in respect of works or related subject-matter;

*managed environment* - an environment in which an operator of a retransmission service provides a secure retransmission to authorized users;

*operator of retransmission services* - operator which aggregates broadcasts of television and radio programmes into packages and provides them to users simultaneously with the initial transmission of those broadcasts, unaltered and unabridged, uses various techniques of retransmission, such as cable, satellite, digital terrestrial, and mobile or closed circuit Internet Protocol (IP protocol)-based networks , as well as internet access services;

*work or other subject-matter of protection* - a work in the form of a book, periodical publication, newspaper, magazine or other writing, notations, including sheet music, and related

illustrations, on any medium, including audio, such as audio books, and in digital format, which is protected by copyright or related rights and which is lawfully published or made available to the public within the meaning of Article 58 to 59;

*audiovisual work* - a work consisting of a sequence of coherent images produced by any method and on any medium, whether or not accompanied by sounds, producing the impression of motion, intended for visual and auditory perception (where the images are accompanied by sound) by means of a particular device. For the purposes of this Law, cinematographic films, television films, animated films, music videos, advertising spots and documentaries shall be regarded as audiovisual works;

*collective work* - a work created by several natural persons - the contribution of which forms an indivisible whole, so that it is impossible to identify their contribution, at the initiative and under the direction of a natural or legal person, who is to publish the work under his/her name;

*joint work* - a work created by the joint effort of two or more persons (co-authors), irrespective of whether it constitutes a single unitary whole or consists of parts;

*originality* - a necessary criterion for determining the nature of copyright-protected work, which takes into account the intrinsic form of the work's expression, from which the intellectual creation activity, spiritual attributes, talent and personality of the author expressed by making free and creative choices must be shown;

*beneficiary person* - within the meaning of Article 58 to 59, a person who:

- a) is blind;
- b) has a visual impairment which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment and so is, as a result, unable to read printed works to substantially the same degree as a person without such an impairment;
- c) has a perceptual or reading disability and is, as a result, unable to read printed works to substantially the same degree as a person without such disability;
- d) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading;

regardless of any other disabilities;

*database producer* – a natural or legal person who has made a substantial quantitative and qualitative investment in order to obtain, verify or present the contents of a database;

*producer of phonograms* - a natural person or legal entity, who or which takes the initiative and has the responsibility, including financial, is performed the first fixation of the sounds of a performance, other sounds or the representation of sounds;

*producer of audiovisual works* – a natural or legal person on the initiative and responsibility of which, including financial, an audiovisual work is created;

*producer of videograms* – a natural or legal person on the initiative and responsibility of which, including financial, a videogram is fixed;

*computer program* - any expression of a program, application programs and operating systems, expressed in any language, whether in source code or object code, preparatory design material, and manuals. The ideas, processes, methods of operation, mathematical concepts and principles underlying any element in a computer program, including those underlying its interfaces, algorithms and programming languages, are not protected;

*publication* - offering of copies of a work, performance, phonogram, videogram or broadcast to the public, with the consent of the author or holder of copyright or related rights, in a quantity sufficient to satisfy the reasonable requirements of the public. : The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the broadcasting of literary or artistic works; the exhibition of a work of graphic or plastic art and the construction of a work of architecture shall not constitute publication. A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication;

*making available to the public* - offering to the public of a work or subject-matter of related rights through wireless means, including the internet or other computer networks, so that any member of the public can access them from a place and at any time individually chosen by them. The right to authorize or prohibit making available to the public shall not be deemed exhausted by any act of making available to the public;

*broadcasting* - the transmission of a work and/or subject-matter of related rights by a radio or TV broadcasting organization by any means used for the wireless broadcasting of signs, sounds or images, or of their representation, including its communication to the public by satellite, for the purpose of reception by the public or transmission of a work or its representation, by wire, cable, optical fiber or any other similar process, except open networks, for the purpose of its reception by the public;

*production of derivative works* – the translation, publication in collections, adaptation and any other transformation of a pre-existing work, if it constitutes intellectual creation;

*re-issue* – the simultaneous issuance by a radio broadcasting organization of a broadcast of another radio broadcasting organization;

*director or, where applicable, director of the audiovisual work* - the natural person who, in the contract with the producer, assumes the management of the creation and execution of the audiovisual work, as the principal author;

*reproduction* – production of one or more permanent or temporary copies of a work or subject-matter of related rights by any means or in any form, directly or indirectly, including for the purpose of audio or video fixation and/or storage of a work or subject-matter of related rights on tangible or electronic media;

*reprographic reproduction* - reproduction on paper or any similar medium, made by the use of any kind of photographic technique or by other process having similar effects, except for partitions, provided that the rightholders receive fair compensation;

*repertoire* - the totality of works and/or subject matter of related rights transmitted to a collective management organization for management purposes;

*cable retransmission* – the simultaneous, unaltered and unabridged retransmission by cable or by an ultra-short wave broadcasting system, for reception by the public of an initial transmission by wire or wireless means, including by satellite, of radio or television programmes intended for reception by the public, irrespective of how the operator of a cable retransmission service obtains programme-carrying signals from the radio broadcasting organization for the purpose of retransmission;

*retransmission* - the simultaneous, unaltered and unabridged retransmission, other than retransmission by cable, for reception by the public of an initial transmission of television or radio programmes intended for reception by the public, where such initial transmission is made by wire or wireless means, including by satellite, but not online, provided that the retransmission:

a) is made by a party other than the radio broadcasting organization which made the initial transmission, or under the control and responsibility of which the initial transmission was made, irrespective on how the retransmission party obtains programme-carrying signals from the radio broadcasting organization for the purposes of retransmission; and

b) takes place in a managed environment through an internet access service, i.e. a publicly available electronic communications service providing access to the internet and thus connectivity between, theoretically, all terminal points connected to the internet, irrespective of the network technology and terminal equipment used;

*re-utilization* - any form of making available to the public all or a substantial part of the contents of a database, evaluated qualitatively or quantitatively, by the distribution of copies, by renting or in other forms, including by making the contents of the database available to the public, so that everyone can access it at the place and at the time individually chosen. The first sale on the internal market of a copy of a database by the holder of the *sui generis* right or with his consent shall exhaust the right to control the resale of that copy;

*satellite* - any satellite operating in frequency bands which are reserved, under telecommunications legislation, for the communication to the public (transmission by ether) of signals for the purpose of reception by the public or which are reserved for private communication from one point to another. At the same time, in the latter case, the circumstances in which the reception of signals by members of the public takes place must be comparable to those prevailing in the former case;

*internet access service* - a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used;

*information society service* - any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a beneficiary of services.

For the purposes of this definition:

a) '*at a distance*' means that the service is provided without the parties being simultaneously present;

b) '*by electronic means*' means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data and is entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

c) '*at the individual request of a beneficiary of services*' means that the service is provided through the transmission of data on individual request;

*copyright holder* - natural or legal persons who have acquired that status by inheritance or assignment, under the terms of the law, and publishers of musical works and written works, in respect of rights transferred to them under individual agreements and who are entitled to at least a share of the rights revenue;

*holder of related rights* – any performer, for his own performances, any producer of phonograms and producer of videograms, for his own recordings, any radio and TV broadcasting organization, for its own broadcasts and programme services;

*rightholder* – any person or entity, other than a collective management organization, which is the holder of a copyright or related right or which, under an authorization for the management of rights or by law is entitled to a share of the rights revenue;

*user* - any natural or legal person who is carrying out actions subject to the authorization of the author or rightholder or of the collective management organization, remuneration or payment of compensation to them and is not acting in the capacity of a consumer;

*videogram* - the result of fixation of an audiovisual work on a tangible medium;

*rights revenue* - income collected by a collective management organization on behalf of rightholders, whether deriving from an exclusive right, a right to remuneration or a right to compensation.

#### **Article 4.** Duties of the State Agency on Intellectual Property in the Field of Copyright and Related Rights

(1) State Agency on Intellectual Property (hereinafter - AGEPI) shall:

a) develop and ensure, within the limits of its competence, the promotion of proposals regarding the normative framework on the protection, exercise and implementation of copyright, related rights and other rights protected by this Law;

b) submit proposals to the Government, ministries and other central administrative authorities when the undertaking of certain measures necessary for the implementation of the policy referred to in letter a) does not fall within its competence;

c) conduct training and consultation activities to inform ministries, other central administrative authorities, judicial authorities and other institutions, rightholders and users about the importance and legal and practical aspects of the protection, exercise and implementation of copyright, related rights and other rights protected by this Law, developing and distributing information materials for this purpose, organizing information campaigns and actively collaborating with the mass media;

d) represent the Republic of Moldova in international and regional organizations in the field of copyright, related rights and other rights protected by this Law;

e) establish and maintain, in accordance with normative acts, mutually beneficial cooperation relations with similar offices, research agencies and institutions, with other organizations from other countries active in the field of copyright, related rights and other rights protected by this Law;

f) approve the establishment of collective management organizations and common collection structures;

g) withdraw, revoke, annul, or amend decisions approving collective management organizations and common collection structures;

h) issue an opinion on the proposals for amending the statute of the collective management organization;

i) issue an opinion on the draft methodologies developed in accordance with this Law;

j) issue decisions on the appointment of a collector in accordance with Article 103;

k) perform annual and special controls on the activity of collective management organizations and common collection structures;

l) grant collective management organizations and common collection structures a deadline for removing the irregularities identified in their activity;

m) revoke the decision to appoint a collector, issued in accordance with Article 103, orders the suspension of the activity of the collective management organization and the common collection structure;

n) monitor the functioning of collective management organizations and common collection structures;

o) keep records of the entities authorized to carry out the activities referred to in Article 58 paragraph (1) letter b);

p) issue, on behalf of the state, certificates regarding the entry of subject-matters of copyright and related rights in the State Register of Subject-Matters Protected by Copyright and Related Rights;

q) issues control markings, in accordance with the legislation;

r) manage and maintain the State Register of Subject-Matters Protected by Copyright and Related Rights and the State Register of Owners of Control Markings.

(2) In order to carry out the duties referred to in para. (1), committees and working groups may be created within the AGEPI, the organization and functioning of which shall be regulated by order of the Director General.

## **Chapter II**

### **COPYRIGHT**

#### **Article 5. Protection Conditions**

(1) In accordance with this Law, original works in the literary, artistic and scientific fields, whatever may be the mode or form of their expression, are subject to copyright protection, regardless of whether or not they have been made available to the public.

(2) The author shall enjoy the protection of copyright in his/her work by simply creating it. For the recognition and protection of copyright, no recording of the work, nor any other act of notification or other formalities, are required.

(3) Copyright does not depend on the ownership right to the material object, through which the work in question has been expressed. The acquisition of such an object does not confer to its owner any of the rights granted to the author by this Law.

#### **Article 6. Scope of Copyright**

(1) Copyright shall apply to:

a) works whose authors are citizens of the Republic of Moldova, whether they have or not been made available to the public;

b) works whose authors are natural or legal persons having their domicile or headquarters in the Republic of Moldova, whether or not they have been made available to the public,

c) works published for the first time in the Republic of Moldova or published in the Republic of Moldova within 30 days from the first publication in another country;

d) works of architecture built on the territory of the Republic of Moldova;

e) audiovisual works whose producer has his/her domicile or headquarters in the Republic of Moldova.

(2) If the work was created by more than one author, the protection provided for by this Law shall apply to all authors if at least one of the authors fulfils one of the conditions listed in paragraph (1).

## **Article 7. Works Protected by Copyright**

(1) Subject-matters of copyright shall be:

- a) literary works (stories, essays, novels, poems, etc.);
- b) computer programs;
- c) scientific works;
- d) dramatic and musical works, scripts, scores, film synopsis;
- e) musical works with or without text;
- f) choreographic works and pantomimes;
- g) audiovisual works;
- h) works of graphic or plastic art, such as: works of sculpture, painting, engraving, lithography, monumental art, scenography, tapestry, ceramics, glass and metal plastics, drawings, designs;
- i) works of architecture, urban planning and horticultural art;
- j) works of applied art;
- k) photographic works and works obtained by a process analogous to photography;
- l) maps, drawings, sketches and three-dimensional works in the field of geography, topography, architecture and other fields of science;
- m) databases;
- n) other works.

(2) Without prejudice to the rights of the author of the original work, derivative works on which one or more works and/or any other pre-existing material are based, shall also be protected by copyright, namely:

- a) translations, adaptations, annotations, musical arrangements and any other transformations of literary, artistic or scientific works, provided that they are results of intellectual creation;

b) collections of literary, artistic or scientific works, databases (encyclopaedias and anthologies, compilations of other materials or data, whether or not they are protected), which, through the choice or arrangement of the material, constitute intellectual creation.

(3) By copyright shall also be protected a component part or other element of the work (including the title or characters of the work) that represents itself an intellectual creation.

(4) Works as well as component parts or other elements of the works specified in paragraph (1) to (3) shall be protected if they are original in the sense that they constitute an intellectual creation of their author.

#### **Article 8. Subject-Matters Not Protected by Copyright**

The following shall not benefit from copyright protection:

a) ideas, theories, scientific discoveries, processes, operating methods or mathematical concepts as such, nor inventions contained in a work, regardless under which modality they were taken over, explained or expressed;

b) normative acts, other administrative, political or judicial acts (laws, court decisions, etc.) and official translations thereof;

c) state symbols and official signs of the State, such as flags, coat-of-arms, decorations, monetary signs, etc.;

d) expressions of folklore;

e) the news of the day and various facts that are a simple information;

f) any material resulting from an act of reproduction of the work of visual art the term of protection of which has expired, unless the material resulting from the act of reproduction is original in the sense that it constitutes the author's own intellectual creation.

g) photographs of letters, documents, documents of any kind, technical drawings.

#### **Article 9. Subject-Matter of Copyright**

Presumption of Authorship and Copyright Protection Symbol

(1) A natural person, under whose name the work is made available to the public for the first time, shall be deemed to be the author.

(2) In the cases expressly provided by law, natural and legal persons, other than the author, may benefit from the protection granted to the author.

(3) If the work has been disclosed to the public in an anonymous form or under a pseudonym that does not allow the author to be identified, the copyright shall be exercised by the natural or legal person who makes it available to the public with the consent of the author, as long as the author does not disclose his/her identity.

(4) In order to inform the public about his/her rights, the copyright holder shall use the copyright protection symbol, indicated according to usage, which will be applied to each copy of the work and which consists of three elements:

- a) the Latin letter “C” enclosed in a circle;
- b) the name or denomination of the exclusive copyright holder;
- c) the year of first publication of the work.

(5) The use of the copyright protection symbol is not a condition for granting a work the protection provided for in this Law.

(6) The author or holder of copyright in a published or unpublished work may register it in the State Register of Subject-Matters Protected by Copyright and Related Rights, during the term of copyright protection.

(7) The entry of the work in the State Register of Subject-Matters Protected by Copyright and Related Rights shall be optional, it does not confer rights and is subject to a fee approved by Government Decision.

(8) The existence and content of a work may be proved by any means of proof, including its inclusion in the repertoire of a collective management organization.

(9) Authors and copyright holders, once their works are included in the repertoire of the collective management organization, may also register their name, denomination or pseudonym, solely for the purpose of making it available to the public.

(10) The entry of works in the State Register of Subject-Matters Protected by Copyright and Related Rights shall be carried out by AGEPI in accordance with the regulation approved by the Government.

#### **Article 10. Copyright Content** **Moral Rights**

(1) The copyright is formed of economic rights and moral rights (non-pecuniary personal rights).

(2) The author of a work shall benefit of the following moral rights:

a) *the right of authorship* - the right to be recognized as the author of his/her work and the right to claim such recognition, inclusively by indicating his/her name on all copies of the published work or by reference to his/her name, as it is customary, in the case of any use of the work, unless this is impossible and when the absence of the obligation to indicate the author's name stems from other provisions of this Law;

b) *the right to be named* — the author's right to decide how his/her name will appear when using his/her work (true name, pseudonym or anonyne);

c) *the right to respect the integrity of the work* - the right to protection of his/her work against any distortion, mutilation or any other derogatory action in relation to the work, which would be prejudicial to the author's honor or reputation;

d) *the right of disclosure of the work* - the right to decide whether the work will be made public, in what manner and when;

e) *the right to withdraw the work* - the right of the author to withdraw his/her work from the commercial circuit, indemnifying the holder of the right of use, if he/she is prejudiced by the exercise of withdrawal.

(3) The right of withdrawal shall not apply to computer programs, audiovisual works, databases and works of architecture.

(4) Moral rights referred to in paragraph (2) let. a)–c) are non-prescriptive and cannot be transferred or waived.

(5) After the author's death, the exercise of his/her moral rights shall be transmitted to the heirs, in accordance with civil law, for an unlimited period of time. If there are no heirs, the exercise of those rights belong to the collective management organization of which the author was a member or belong to the collective management organization with which he/she had a direct connection.

#### **Article 11. Economic Rights**

The author or other copyright holder, with the exception of the author of a computer program whose exclusive economic rights are defined in Article 25 and the author of the database whose exclusive rights are defined in Article 48, has the exclusive right to authorize or prohibit the use of his/her work, including by:

a) reproduction of the work;

b) distribution of the work;

c) rental of the work, with the exception of architectural works and works of applied art;

d) lending of the work;

e) importation of copies of the work for distribution, including copies made with the consent of the author or other copyright holder;

f) communication to the public of the work;

g) making the work available to the public;

h) broadcasting of the work;

i) retransmission by cable of the work;

j) retransmission of the work;

k) making of derivative works (translations, adaptations, arrangements, transformations or modifications of the work).

## **Article 12. Term of Copyright Protection**

(1) The exclusive economic rights referred to in Article 11, 25, 48 and 76 shall be protected throughout the life of the author and for 70 years after his/her death, regardless of the date on which the work was lawfully made available to the public.

(2) The term of protection of an audiovisual work shall end 70 years after the death of the last survivor of the following persons, whether or not they have been designated as co-authors: the main director, the author of the script, the author of the dialogue and the composer of the music created specifically for use in the audiovisual work.

(3) The term of protection of a musical work with text shall expire 70 years after the death of the last survivor of the following persons, whether or not they have been designated as co-authors: the author of lyrics and composer, provided that both contributions have been specifically created for the respective musical composition with text.

(4) The economic rights in the work of applied art shall be protected for 25 years from the date of its creation, with the exception of unregistered industrial designs created for industrial reproduction purposes, which are protected in accordance of Law No. 262/2007 on the Protection of Industrial Designs for 3 years from the date when they were made available to the public for the first time in the Republic of Moldova.

(5) The term of protection, in the case of photographs which fulfil the criteria of originality, shall be calculated in accordance with paragraph (1). No other criteria shall apply to determine whether they are or not eligible for protection.

(6) The economic rights in an anonymous work or a work published under pseudonym, with the exception of the work of applied art, shall be protected for 70 years from the date on which the work was lawfully made available to the public. However, if the pseudonym adopted by the author presents no doubt as to his/her identity or if the author reveals his/her identity during the period referred to in the first sentence, then the term of protection to be applied shall be the term indicated in paragraph. (1).

(7) In the case of collective works, as well as where legal persons are recognized as holders of copyright (computer programs, databases), the terms of protection of economic rights last for 70 years from the date on which the work was lawfully made available to the public, except the case where natural persons who created the work are identified as such in the versions of the work disclosed to the public. This paragraph shall be without prejudice to the rights of identified authors whose identifiable contributions are included in such works and to which paragraph (1) or (2) apply.

(8) Where a work is published in volumes, parts, bundles, numbers or episodes and where the term of protection applies from the moment the work has been lawfully made available to the public, the term of protection shall apply separately for each element.

### **Article 13.** Calculation of the Term of Copyright Protection

(1) The protection of the work, after the author's death or public disclosure, shall run from the generating event, however, the terms provided for in Article 12 shall be computed only starting from 1 January of the year following the generating fact.

(2) Where the copyright belongs jointly to the collaborators of a work, the term referred to in paragraph. (1) shall be computed from the date of death of the last survivor of collaborators.

(3) In the case of works, whose term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public for 70 years after their creation, the protection shall cease.

(4) The conditions for protection provided by this Law shall apply to foreign authors who enjoy protection under this Law, but the term of protection shall expire at the latest on the day on which the protection expires in the State in which these authors are citizens and shall not exceed the conditions laid down in this Law.

(5) Upon expiry of the term of protection of economic rights, the work enters in the public domain. The use of the work in the public domain is permitted without the author's consent and without the payment of any remuneration, provided that the moral rights referred to in Article 10 paragraph. (2) letter a) to c) are observed.

### **Article 14.** Protection of Previously Unpublished Works Entered into the Public Domain

(1) Any person who, after termination of copyright protection, lawfully publishes or lawfully communicates to the public for the first time, a previously unpublished work, shall enjoy protection equivalent to the protection of copyright.

(2) The term of protection of these rights provided in paragraph (1) shall be 25 years from the date on which the work was first lawfully published or lawfully communicated to the public.

### **Article 15.** Protection of Critical and Scientific Publications of Works Fallen into the Public Domain

(1) Any person who, after the expiry of the term for copyright protection, publishes a critical or scientific publication of a work which has fallen into the public domain shall enjoy protection equivalent to that of the authors' economic rights.

(2) The term of protection of the economic rights referred to in paragraph (1) shall be 30 years from the date on which the publication was first lawfully published .

## **Chapter III**

### **SPECIAL PROVISIONS ON COPYRIGHT**

#### **Article 16. Joint Work**

(1) The copyright in the joint work shall belong to its co-authors.

(2) Each of the co-authors shall retain the copyright in the part created by him/her and shall have the right to dispose of it as he/she wishes, provided that this part has a self-supporting character. A component part of the work shall be deemed to be self-supporting if it can be used independently of the other parts of that work.

(3) The relations between the co-authors are usually established on the basis of a contract. In the absence of such a contract, copyright in the work shall be exercised jointly by all the authors, and the remuneration shall be shared with each other in proportion to everyone's contribution, if that can be determined. Where the contribution of each of the co-authors cannot be determined, the remuneration shall be divided into equal shares.

(4) If the work cannot be divided into self-supporting parts, the co-authors may exercise copyright only by mutual agreement.

#### **Article 17. Collective Work**

(1) The natural or legal person on the initiative, on the responsibility, including financial, and under the leadership of which is created and under whose name or denomination a collective work is published (such as encyclopedias, dictionaries and similar collections, newspapers, magazines and other periodicals) shall enjoy the economic rights on that collective work. Those persons shall have the right to indicate their name or denomination or to request such an indication of any use of the collective work in question.

(2) Unless the contract concluded between the authors and the natural or legal person referred to in par. (1) provides otherwise, the authors of the works included in a collective work shall retain their rights, as stipulated by this Law, in their own works and may dispose of them independently of the collective work in which they are included.

#### **Article 18. Derivative work**

(1) Translators and other authors of derivative works shall enjoy copyright in their translations, adaptations, arrangements or other transformations of the work.

(2) The translation or other derivative work may only be made with the consent of the author of the original work. Copyright of the translator or other author of a derivative work shall not prejudice the rights of the author whose original work has been translated, adapted, arranged or otherwise transformed.

(3) The copyright of the translator or other author of a derivative work shall not prevent other persons from performing, with the consent of the author of the original work, the translation or transformation of the same work.

#### **Article 19. Audiovisual work**

(1) Authors (co-authors) of the audiovisual work, in accordance with Article 9 shall be:

a) the principal director (the director);

b) the author of the script (the screenwriter);

c) the author of the dialogue;

d) the composer - the author of any musical work (with or without text) specially created for the audiovisual work;

e) the graphic author for animation works or animation sequences, when the latter represent an important part of the work;

f) other possible authors who have contributed substantially to the performance of the audiovisual work, according to the provisions of the contract between the producer and the director.

(2) Where one of the authors referred to in paragraph (1) refuses to finalize his/her contribution to the audiovisual work or is unable to do so, he/she shall not be able to oppose its use for the purpose of completing the audiovisual work. This author shall be entitled to remuneration for his/her contribution.

(3) Authors of the audiovisual work, other than the main author, may not oppose the disclosure to the public and the specific use in whole or in part, of the final version of the work.

(4) Unless otherwise stated, authors of the audiovisual work, as well as other authors of contributions thereto, retain all rights of use separately for their own contributions, as well as the right to authorize and/or prohibit uses other than the specific use of the work, in whole or in part, such as the use of fragments of the cinematographic work for advertising other than for the promotion of the work.

(5) For the production of an audiovisual work, the written form of the contract between the producer and the main author is mandatory.

(6) The audiovisual work shall be considered finished when the main author and the producer have established, by mutual agreement, the final version. .

(7) Moral rights in the finished work shall be recognized only to the authors established in paragraph (1).

(8) The destruction of the original support of the final version of the audiovisual work in the form of a standard copy is to be prohibited.

(9) Contracts concluded between the authors of the audiovisual work and the producer, unless otherwise stated, shall be presumed, with the exception of authors of specially created music, to assign to the producer the exclusive rights to use the work as a whole, as provided for in Article 11, and the right to authorize dubbing and subtitling, in return for fair remuneration. The provisions of Article 81 shall apply to exclusive rental and lending rights.

(10) In the absence of a provision to the contrary, performers who participated in the production of an audiovisual work shall be presumed to assign to its producer, in exchange for a fair remuneration, the exclusive rights of reproduction, distribution and import, and rental and lending rights in accordance with Article 81.

(11) The producer of the audiovisual work shall have the right to indicate his/her name or denomination or to request such an indication in any use of the work.

(12) Unless otherwise stated, the remuneration for each modality of use of the audiovisual work shall be proportionate to the gross receipts resulted from the use of the work.

(13) Pursuant to the conditions laid down in Article 36, the producer shall be obliged to send to the authors, periodically, the statement of collected receipts after each mode of use. The authors receive their due remunerations either through the producer or directly from the users, or through the collective management organizations, on the basis of the general contracts concluded by them with the users. For the rental right and lending right, authors shall receive the remuneration in accordance with the provisions of Article 81.

(14) If the producer does not complete the audiovisual work within five years from the conclusion of the contract or does not broadcast the audiovisual work within one year of its completion, the co-authors may revoke the contract, in whole or in part, in accordance with Article 39.

## **Article 20. Works of Graphic or Plastic Art. Right of Access**

(1) The author of a work of graphic or plastic art shall have the right of access to see the work, provided that this is necessary for the artistic activity of the author or for the purpose of exercising his economic rights, unless this causes unreasonable harm to the owner or holder of the work. At the same time, the owner is not obliged to deliver the original or a copy of the work to the author.

(2) The creation and use of a work of graphic or plastic art containing a portrait shall be permitted only with the consent of the represented person or his/her successors.

## **Article 21. Photographic Work and Portrait Protection**

(1) The transfer of ownership of the negative or other similar fixation of the photographic work, on the basis of which copies of the work may be made, has the effect, unless otherwise provided for in the assignment agreement, of the transfer of the economic rights to the work, except for the resale right.

(2) In the absence of contractual provisions to the contrary, the photographic work containing the image of the person at whose order the photograph was executed may be published, reproduced and made available to the public by the person in the image.

(3) The creation, reproduction, modification and distribution of a photographic work containing a portrait shall be permitted only with the consent of the represented person or his/her successors, in accordance with the rules of civil law on the right to his/her own image.

(4) In the absence of a contractual clause to the contrary, the consent of the person represented in the photographic work is not required:

a) if the person represented is a professional model and/or has received remuneration to pose;

b) if the person represented is generally known and the photographic work was executed on the occasion of his/her public activities;

c) if the person represented is only a detail of a photographic work presenting a landscape, a group of persons or a public manifestation.

## **Article 22. Work of Applied Art and Work of Architecture**

(1) The protection afforded by this Law to works of applied art (design) shall extend to external appearance of objects, determined by such characteristics as lines, contours, shape, textures, regardless of whether the object is two-dimensional or three-dimensional.

(2) The protection afforded by this Law to works of architecture shall extend to:

a) architectural objects;

b) architectural projects and technical documentation elaborated on their basis;

c) architectural complex projects.

(3) The right of transformation, adaptation and other similar modifications of the work of applied art or architecture shall not extend to modifications that do not change the external appearance of the work.

(4) Regarding works of applied art and architecture:

a) the right to respect the integrity of the work, provided for in Article 10 paragraph (2) letter c), shall not extend to modifications that do not cause the change of the external appearance of the work;

b) with the transmission of architectural projects and architectural complex projects, in order to start construction works, the right to disclosure provided for in Article 10 paragraph (2) letter d) shall be exhausted.

## **Chapter IV**

### **COMPUTER PROGRAMS**

#### **Article 23. Subject-Matter of Protection**

(1) Computer programs are protected by copyright as literary works.

(2) A computer program shall be protected if it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine whether it is eligible for protection.

#### **Article 24. Authorship and Beneficiaries of Protection**

(1) The author of a computer program shall be the natural person or group of natural persons who have created the computer program.

(2) In the case of joint work and collective work, the author shall be determined in accordance with the provisions of Article 16-17.

(3) Unless otherwise provided by contract, economic copyrights in computer programs created by one or more employees in the performance of their duties or following the instructions given by his/her employer shall belong to the employer.

(4) The provisions of Article 35 to 39 shall not apply to the authors of computer programs.

#### **Article 25. Exclusive Rights of the Author of a Computer Program**

(1) The exclusive rights of the author of a computer program shall include the right to do or to authorize:

a) the permanent or temporary reproduction of a computer program by any means and in any form, in whole or in part. In so far as loading, displaying, running, transmission or storage of the computer program requires such reproduction, such acts shall be subject to authorization by the rightholder;

b) the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results of such acts, without prejudice to the rights of the person who alters the computer program;

c) any form of distribution to the public, including the rental, of the original computer program or copies thereof.

(2) The first sale of a copy of a computer program on the territory of the Republic of Moldova by the rightholder or with his/her consent shall exhaust the right to distribute this copy, except for the right to control subsequent rentals of the computer program or a copy thereof.

(3) “Rental” within the meaning of paragraph (1) letter c) means making available for use, for a limited period and for profit-making purposes, a computer program or a copy thereof. This term does not include public loans.

#### **Article 26. Exceptions**

(1) In the absence of express contractual provisions, the uses referred to in Article 25 par. (1) let. a) to b) shall not require the consent of the author or other copyright holder where they are necessary for the use of the computer program by the lawful user in accordance with its intended purpose, including for errors correction

(2) The making of a back-up copy by a person having the right to use the computer program may not be prevented by contract in so far as it is necessary for that use.

(3) A person having a right to use a copy of a computer program shall be entitled, without the consent of the author or other copyright holder, to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the computer program which he is entitled to do.

(4) The provisions of Chapter IX shall not apply to computer programs.

#### **Article 27. Computer Program Use Agreement**

(1) In the absence of a provision to the contrary, a computer program use agreement assumes that:

- a) the user is granted the non-exclusive right to use the computer program;
- b) the user cannot transfer to another person the right to use the computer program.

(2) The transfer of the right to use a computer program shall not imply transfer of copyright in it.

(3) Any provision contrary to Article 28 or contrary to the exceptions provided for in Article 26 par. (2) and (3) shall be null and void.

#### **Article 28. Decompilation**

(1) The consent of the author or other rightholder shall not be required where reproduction of the code and translation of its form are indispensable to obtain the information necessary to achieve the interoperability of a computer program independently created by other authors with other programs, provided that the following conditions are met:

a) those acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorized to do so;

b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in point (a);

c) those acts are confined to parts of the original program which are necessary in order to achieve interoperability.

(2) The provisions of paragraph (1) shall not permit the information obtained through its application:

a) to be used for purposes other than to achieve the interoperability of the independently created computer program;

b) to be transmitted to third persons, except where necessary for the interoperability of the independently created computer program;

c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

(3) The provisions of paragraph (1) and (2) shall not apply if it causes damage to the author or other copyright holder or to the normal use of the computer program.

## **Chapter V**

### **TRANSFER OF THE COPYRIGHT AND RELATED ECONOMIC RIGHTS RIGHT OF USE OF COPYRIGHT AND RELATED RIGHTS SUBJECT-MATTERS**

#### **Section 1**

#### **Transfer of copyright and related economic rights**

#### **Article 29. Arrangements for the Transfer of Copyright and Related Economic Rights**

(1) The author or holders of copyright or related rights may transfer in whole or in part the economic rights by assignment contract, as well as by succession.

(2) The transfer of rights on a contractual basis shall not apply to rights to which authors or holders of copyright and related rights may not oppose to the generated use.

(3) Where authors and rightholders benefit, by operation of law, from compulsory remuneration, they may not oppose the uses which give rise to it.

(4) After the author's death, the rights provided for in Articles 11 and 76 shall be transferred to the heirs, according to the civil law, for the period provided for in Article 12. If there are no heirs, the exercise of these rights shall revert to the collective management organization of which the author was a member or the collective management organization with which he/she was directly connected.

(5) After the computer program author's death, the economic rights in it shall be transferred to the heirs, according to the civil legislation, for the period provided for in Article 12.

(6) After the interpreter's death, the exercise of the economic rights referred to in Article 42 shall be transferred to the heirs, according to the civil law, for the period provided for in Article 46. If there are no heirs, the exercise of these rights shall revert to the collective management organization of which the interpreter was a member or the collective management organization with which he/she was directly connected, or to the collective management organization with the largest number of members, in that field. The remuneration collected in this case shall be considered as deductions for the purpose of financing activities for social, cultural and educational purposes.

### **Article 30. Contract for Assignment of Copyright and Related Economic Rights**

(1) Under a contract for the assignment of copyright and related economic rights, the author or holder of copyright or related rights (assignor) transfers his/her economic rights to another person (assignee).

(2) The assignment may be limited to certain rights, for a given territory and for a certain duration.

(3) The author or holder of copyright or related rights may no longer use the work or other subject-matter in the manner, within the time limit and for the territory agreed with the assignee, nor may transfer that right to another person.

(4) The transfer by contract of one of the economic rights of the author or holder of copyright and related rights shall have no effect on their other rights, unless otherwise agreed in the assignment contract.

(5) In the case of the transfer by contract of the right to reproduce a work, it is presumed that the right to the distribution of copies of such work has also been transferred, except for the rights to import, unless otherwise provided for in the contract.

(6) The contract on assignment of economic rights must provide for the economic rights transferred, the duration and extent of the use, and the remuneration of the holder of copyright and related rights. The absence of any of these provisions shall entitle the interested party to request the termination of the contract.

(7) The contract on assignment, which has as its subject-matter the economic rights regarding the totality of the author's future works, whether nominated or not, shall be null and void.

(8) The existence and content of the contract on assignment of economic rights can only be proved by its written form. Exceptions are contracts with the object of using works in newspapers and other periodicals.

## **Section 2. Authorization of the Use of Works and Other Protected Subject-Matters**

### **Article 31. User Agreement**

(1) The author or holder of copyright or related rights may, by agreement, authorize other persons to use their protected works or other subject-matters.

(2) In the case of a user agreement, the author or the holder of the copyright or related rights may use the work or other subject-matter and authorize other persons to use the same protected works or subject-matters.

(3) The user agreement must be concluded in writing and must provide for the following mandatory elements, under penalty of nullity:

a) the way of using the protected work or other subject-matter;

b) the validity term;

c) the territory of action of the law;

d) the amount of the remuneration or the basis for its calculation for each way of using the protected work or other subject-matters;

e) the conditions and the term of payment of the remuneration.

(4) The terms of the use agreement which contravene the provisions of this Law shall be considered void and the conditions laid down in this Law shall apply instead.

### **Article 32. License Agreement**

(1) The collective management organization shall grant users the right to use protected works and other subject-matter from the repertoire managed by it through the conclusion of a license agreement.

(2) The license agreement must be concluded in writing and must provide for the following mandatory elements:

a) the contracting parties;

b) the ways of using the work or other subject-matter;

c) the validity term;

d) the territory of action of the law;

e) the conditions and time limits for payment of the remuneration due by the user;

f) penalties and facilitations according to methodologies approved under the conditions of Articles 99-102.

## **Chapter VI**

### **CONTRACTS IN THE FIELD OF COPYRIGHT AND RELATED RIGHTS**

#### **EQUITABLE REMUNERATION IN CONTRACTS FOR THE EXPLOITATION OF WORKS AND OTHER PROTECTED SUBJECT-MATTERS**

## **Section 1**

### **Contracts in the Field of Copyright and Related Rights**

#### **Article 33. Aspects of Copyright and Related Rights in Employment Contracts**

(1) In the absence of a contractual provision to the contrary, for works created in the performance of the duties specified in the individual employment contract, the economic rights belong to the author of the created work, however, the author may authorize the use of the work by third parties only with the consent of the employer and with his reward for contributing to the costs of creation. The use of the work by the employer within the scope of the activity does not require authorization of the author's employee.

(2) If the individual employment contract contains a provision within the meaning of paragraph (1), it shall provide for the term for which the economic rights of copyright were transferred. In the absence of an indication of the term, it shall be three years from the date of delivery of the work.

(3) After the expiry of the term provided for in paragraph (2), in the absence of a contractual provision to the contrary, the employer shall be entitled to require the author to pay a reasonable proportion of the income arising from the use of his/her work in order to compensate for the costs incurred by the employer for the creation of the work by the employee in the course of his/her duties.

(4) Upon expiry of the term mentioned in paragraph (2) the author's economic rights shall be vested in the author.

(5) The author of a work created under an individual employment contract retains the exclusive right to use the work as part of his/her creation as a whole.

(6) In the case of a performance or execution by a performer, in the context of an individual employment contract, the economic rights referred to in Article 42, which are transferred to the employer, must be expressly provided for in the individual employment contract.

(7) The author of the work created in the performance of his/her duties shall not be entitled to prohibit his/her employer from publishing it or otherwise making it accessible to the public.

(8) When using the work created in the performance of duties, the author's name shall be indicated where this is actually possible. The employer shall also have the right to request that his/her name or denomination be indicated in any use of the work.

#### **Article 34. Order Contract**

(1) In case of an order contract for future works, in the absence of a contractual provision to the contrary, the economic rights shall belong to the author.

(2) The order contract for a future work must include both the term of delivery and the term for acceptance of the work.

(3) The person ordering the work shall have the right to terminate the contract if the work does not meet the conditions laid down. In the event of termination of the contract, the amounts collected by the author shall remain with him/her. If, in order to create a work which has been the subject-matter of an order contract, preparatory works have been carried out, the author shall be entitled to reimbursement of the costs incurred.

## **Section 2**

### **Equitable Remuneration in Contracts for the Exploitation of Works and Other Protected Subject Matters**

#### **Article 35. Principle of Appropriate and Proportionate Remuneration**

(1) When authorizing, in accordance with Article 31, the use of works or other protected subject-matters or assigning their exclusive rights pursuant to Article 30, authors and performers shall be entitled to receive appropriate and proportionate remuneration in relation to:

- a) the actual or potential economic value of the rights;
- b) their contribution, evaluated quantitatively and qualitatively, to the whole of the work or other protected subject-matters;
- c) market practices;
- d) the use of the work.

(2) In implementing the principle set out in paragraph (1), account shall be taken of the principle of contractual freedom and that of a fair balance of rights and interests of the parties, with mechanisms such as collective bargaining being used.

(3) The payment of a lump sum may constitute an appropriate and proportionate remuneration. The lump sum may be applied in specific cases, taking into account the characteristics of the musical, audiovisual and editorial cultural sectors, provided that they do not operate to the detriment of authors and performers, by comparison with the remuneration set as a percentage of the income.

(4) The application of the provisions of paragraph (1) does not constitute a prohibition for authors and performers to authorize non-commercial uses, as well as free uses of the works or other protected subject-matters, done through non-exclusive licenses.

#### **Article 36. Transparency Obligation**

(1) Authors, performers or their representatives shall receive on a regular basis, and at least once a year, depending on the particularities of the musical, audiovisual and editorial sectors, up-to-date, relevant and comprehensive information on the exploitation of their works and performances from the holders of the user agreement, the assignees or their successors in title.

(2) The information referred to in paragraph (1) shall include the remuneration due, all modes of exploitation, all revenues generated, including promotional revenues, and shall enable the economic value of the rights in question to be assessed effectively.

(3) Authors, performers or their representatives shall, upon request, receive information additional to that specified in paragraph (1) and (2), if the holders of the user agreement or the assignees, as the first contractual partners, do not hold the requested information and the rights relating to the exploitation of the works and performances have been subcontracted. The holders of the user agreement or the assignees shall provide information on the identity of the subcontractors. Any request to subcontractors shall be addressed directly or indirectly through the contractual partner of the author or the performer.

(4) The transparency obligation:

a) shall be proportionate and effective in ensuring a high level of transparency in the sectors referred to in paragraph (1);

b) is limited to reasonable information, provided in cases where the administrative burden is not disproportionate to the revenue from the exploitation of rights assigned or authorized by the author or performer.

(5) The obligation set out in paragraph (1) shall not apply:

a) where the contribution of the author or performer is not significant having regard to the overall work or performance, unless the author or performer requires the information for the exercise of his/her right under Article 37.

b) in the case of collective management organizations, where the provisions of Article 95 paragraph (1) and (2) are applicable;

c) where the use has ceased or the author or performer has authorized the use of protected works or other subject-matters without remuneration to the general public.

(6) The significant personal contribution referred to in paragraph (5) shall be determined on the basis of factors such as:

a) the direct impact on the success of the work or performance;

b) the contribution could be replaced by that of another author or performer, without affecting the commercial success of the work or performance.

(7) In case of exploitation of works and performances which are the subject of or are based on collective bargaining agreements or contracts, the transparency rules of the relevant collective bargaining agreement or contract shall apply, on condition that those rules meet the criteria provided for in paragraphs (1) to (4).

(8) If the holders of the user agreement or assignees breach their obligation of transparency for two consecutive years, the author or performer may request revocation of the agreement or assignment.

(9) Requests for the information referred to in paragraphs (1) to (3) may be made on behalf of and for authors and performers by the collective management organizations, in accordance with the mandate given for this purpose.

#### **Article 37. Contract Adjustment Mechanism**

(1) In the absence of agreements or collective bargaining agreements providing for a mechanism comparable to that set out in this Article appropriate and fair remuneration from the authorized person, assignee or their successors in title, when the remuneration originally agreed turn out to be disproportionately low compared to all subsequent relevant revenues derived from the exploitation of the works, or performances.

(2) Paragraph (1) shall not apply to collective management organizations where the provisions of Article 95 paragraph (1) and (2) are applicable.

(3) The requests for contract adjustment can be formulated on behalf of and for authors and performers by the collective management organizations according to the mandate granted in this regard.

#### **Article 38. Alternative Dispute Resolution Procedure**

(1) Disputes concerning the transparency obligation under Article 36 and the contract adjustment mechanism under Article 37 may be subject to a procedure submitted for examination to the Mediation Committee or to the Arbitration specialized in the field of intellectual property, which functions in the way established by the Government.

(2) The provisions of paragraph (1) do not restrict the right of the parties to address the issue to the court.

(3) The requests provided for in paragraph (1) can be formulated on behalf of and for authors and performers by the collective management organizations according to the mandate granted in this regard.

(4) Any contractual provision which impedes the observance of Articles 36 to 37 shall be void.

#### **Article 39. Right of Revocation**

(1) The author or performer may revoke in whole or in part the agreement or contract for the assignment of the economic rights referred to in Article 30 to 31 where:

a) the holder of the agreement or the assignee does not exploit the work, performance or execution, in accordance with the provision of the contract;

b) the exploitation is minimal or does not comply with the standards referred to in paragraph (3) of this Article;

(2) Where the holder of the user agreement or the assignee fails to comply with the obligations agreed in relation to all the economic rights and types of exploitation granted or assigned, the author or performer may request partial revocation.

(3) The revocation mechanism provided for in paragraph (1) shall apply in accordance with the characteristics and reasonable exploitation standards of the musical, audiovisual and editorial sectors (minimum threshold of published copies, reprint conditions, etc.) and the different categories of works executions and performances.

(4) In the case of works executions and performances involving more than one author or performer, the importance of the individual contribution and the legitimate interests of all authors and performers affected by the individual application of the revocation mechanism shall be taken into account.

(5) The revocation provided for in paragraph (1) may not be requested before the expiry of two years from the date of conclusion of the agreement or assignment contract. In the case of works in daily publications, this period shall be three months, and in the case of periodicals - one year. The author or performer shall notify the holder of the user agreement or the assignee and set an appropriate deadline by which the authorized or assigned rights are to be exploited. After the expiry of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the agreement or assignment contract.

(6) The provisions of paragraph (1) shall not apply if the lack of exploitation of the rights is predominantly due to his own fault, the act of a third party, a force majeure or justifying impediment or circumstances that the author or the performer can reasonably be expected to remedy t.

(7) Any contractual provision derogating from the revocation mechanism provided for in paragraph (1) shall be enforceable only if it is based on a collective bargaining agreement or contract.

## **Chapter VII**

### **RIGHTS RELATED TO COPYRIGHT**

#### **Article 40. Scope of Related Rights**

(1) Related rights shall be exercised without prejudice to copyright.

(2) The recognition and protection of related rights shall not be subject to compliance with any formality. In the absence of proof to the contrary, the natural person or the legal entity whose name or denomination appears on a fixation of a performance, on a phonogram, on a videogram or on the fixation of a broadcast, in the usual manner, shall be deemed to be the performer, producer of phonogram or videogram or, radio and TV broadcasting organization, respectively.

(3) In order to inform the public of their rights, performers, producers of phonograms or videograms and radio and TV broadcasting organizations may indicate, on each copy or packaging of a phonogram, a videogram, an audiovisual recording (fixation), a broadcast, the symbol of protection of related rights, as usual, consisting of three elements:

- a) the Latin letter “P” enclosed in a circle;
- b) the name or denomination of the holder of exclusive related rights;
- c) the year of first publication of the performance, phonogram, videogram, broadcast.

(4) The rights of the performer shall be protected in accordance with this Law if:

- a) he/she is a citizen of the Republic of Moldova;
- b) the performance or execution takes place on the territory of the Republic of Moldova;
- c) the performance or execution was fixed on a phonogram or videogram in accordance with the provisions of paragraph (5);
- d) the performance is not fixed on a phonogram or videogram, but it is included in a broadcast of the radio and TV broadcasting organization in accordance with the provisions of paragraph (6).

(5) The rights of the producer of phonograms or videograms shall be protected in accordance with this Law if the producer of the phonogram or videogram is a citizen of the Republic of Moldova or a legal entity with permanent headquarters in the Republic of Moldova;

(6) The rights of the radio and TV broadcasting organization shall be protected in accordance with the provisions of this Law if the organization in question has its permanent headquarters in the Republic of Moldova and broadcasts programmes from a transmitter situated in the Republic of Moldova.

(7) The right of distribution of performers, producers of phonograms, producers of videograms and radio and TV broadcasting organizations shall be exhausted with the first sale or other transfer of the right of ownership of the performance, phonogram, videogram or printing of the broadcast on the territory of the Republic of Moldova.

(8) The related rights of performers, producers of phonograms or videograms and foreign radio and TV broadcasting organizations shall be protected in accordance with the provisions of international treaties to which the Republic of Moldova is a party.

(9) The provisions of Article 9 paragraph (5)– (10) shall apply *mutatis mutandis* to subject-matters of related rights.

#### **Article 41. Moral Rights of Performers**

(1) The performer shall enjoy the following moral rights in respect of his/her performance:

- a) the *right of paternity* - the right to claim recognition of the authorship of one’s performance or execution, except where omission is dictated by the manner of the use;
- b) the *right to be named* — the right to require that his/her name or pseudonym be mentioned or communicated whenever the performance or execution is used;

c) *the right to respect the integrity of performance* - the right to object to any distortion, falsification or other modification of his/her performance which would be prejudicial to his/her reputation, taking due account of the nature of the audiovisual recording (fixation).

(2) The rights referred to in paragraph (1) are non-prescriptive and shall not be subject to any waiver or alienation.

(3) After the performer's death, the exercise of his/her moral rights shall be transferred to the heirs, in accordance with civil legislation, for an unlimited period of time. If there are no heirs, the exercise of the said rights rests with the collective management organization, member of which the performer was or with which he was directly connected.

#### **Article 42. Exclusive Economic Rights of Performers**

(1) The performer shall enjoy the exclusive right to authorize or prohibit the following:

a) the fixation of his/her performance or execution;

b) the reproduction of his/her fixed performance or execution;

c) the distribution of his/her fixed performance or execution;

d) the rental of the fixed performance or execution;

e) the lending of the fixed performance or execution;

f) the importation of the fixed performance or execution;

g) the broadcasting and communication to the public of his/her performance or execution, except where the performance has already been fixed or broadcast, including in the case of audiovisual fixations, in which case they are only entitled to equitable remuneration;

h) the making available to the public of his/her fixed performance or execution, in such a way so that it can be accessed, by the public from a place and at a time individually chosen by it;

i) the retransmission by cable of his/her fixed performance or execution;

j) the retransmission of his/her performance or execution.

(2) Contracts concluded between performers and producers of audiovisual fixations, unless otherwise stated, are presumed to give the producer the exclusive rights referred to in paragraph (1) letter b) to d), g) and h) in audiovisual fixed performances and executions in return for equitable remuneration.

(3) For the purpose of exercising the exclusive rights to the authorization provided for in paragraph (1), performers who collectively participate in the same performance or execution, such

as members of a musical group, choir, orchestra, ballet or theatrical band, shall mandate, in writing, a representative from among themselves, , with the consent of a majority of the members.

(4) The director, conductor and soloists shall be exempted from paragraph (3).

(5) Where a performer has, by assignment contract, transferred to a producer of phonograms, videograms or audiovisual works his/her rental and lending right provided for in paragraph (1) letter d) and e), the performer shall retain the right to equitable remuneration, on which the parties shall agree by mutual agreement.

(6) If the commercial rental has not contributed to the large-scale production of copies of fixed audiovisual performances which substantially compromise the exclusive right of reproduction, the performers shall retain the exclusive right to authorize or prohibit the right referred to in paragraph (1) letter d).

#### **Article 43. Rights of Phonogram Producers**

The phonogram producer shall enjoy the exclusive right to authorize or prohibit the following:

- a) the reproduction of his/her own phonograms, by any means and in any form;
- b) the distribution of his/her own phonograms;
- c) the rental of his/her own phonograms;
- d) the lending of his/her own phonograms;
- e) the importation for the purpose of marketing on the domestic market of legally produced copies of their phonograms;
- f) the broadcasting and communication to the public of his/her own phonograms, except those published for commercial purposes, in which case it is entitled only to equitable remuneration;
- g) the making available to the public of his/her own phonograms, in such a way that they can be accessed by the public from a place and at a time individually chosen by it;
- h) the retransmission by cable of his/her own phonograms;
- i) the retransmission of his/her own phonograms.

#### **Article 44. Rights of Videogram Producers**

The producer of videograms shall enjoy the exclusive right to authorize or prohibit the following:

- a) the reproduction of his/her own videograms, by any means and in any form;
- b) the distribution of the original or copies of his/her own videograms;

- c) the rental of his/her own videograms;
- d) the lending his/her own videograms;
- e) the importation for the purpose of marketing on the domestic market of his/her own videograms;
- f) the broadcasting and communication public of his/her own videograms;
- g) the making available to the public of his/her own videograms, in such a way that they can be accessed by the public from a place and at a time individually chosen by it;
- h) the retransmission by cable of his/her own videograms;
- i) the retransmission of his/her own videograms.

#### **Article 45. Rights of Radio and TV Broadcasting Organizations**

(1) Radio and TV broadcasting organizations shall have the exclusive right to authorize, with the obligation for the authorized person to mention the names of the organizations, or to prohibit the following:

- a) the fixation of their own radio or television broadcasts and program broadcasting services, whether transmitted by wire or wireless means, including by cable or satellite;
- b) the reproduction by any means and in any form of their own radio or television broadcasts and program broadcasting services fixed on any medium, whether transmitted by wire or wireless means, including by cable or satellite;
- c) the distribution of their own broadcasts and radio or TV program broadcasting services fixed on any medium;
- d) the importation, for marketing on the internal market, of their own broadcasts and radio or television program broadcasting services fixed on any medium;
- e) the retransmission or reissuance of their own broadcasts and radio or television program broadcasting services by wireless means, by wire, by cable, by satellite or by any other similar means, as well as by any other means of communication to the public, including retransmission on the Internet;
- f) the communication to the public of their own broadcasts and radio or television program broadcasting services in places accessible to the public against payment of an entrance fee;
- g) the rental of their own broadcasting and radio or television program broadcasting services fixed on any medium;
- h) the lending of their own broadcasts and radio or television program broadcasting services fixed on any medium;

i) the making available to the public of their own broadcasts and radio or television program broadcasting services fixed on any medium, whether by wire or wireless means, including cable or satellite, in such a way that they can be accessed by the public from a place and at a time chosen individually by it.

(2) The right provided for in paragraph (1) letter a) shall not be provided for a cable distributor if it is limited to the retransmission by cable of broadcasts of radio and television broadcasting organizations.

#### **Article 46. Terms of Protection of Related Rights and the Right to Supplementary Remuneration**

(1) The rights of performers shall be protected for 50 years from the date of performance or execution, with the following exceptions:

a) if a fixation of the performance, otherwise than in a phonogram is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first publication or the first communication to the public, whichever is the earlier;

b) if a fixation of the performance in a phonogram is lawfully published or lawfully communicated to the public within this period, the rights shall expire 70 years from the date of the first such publication or the first such communication to the public, whichever is the earlier;

c) in the case of fixed audiovisual performances or executions, the rights shall expire 50 years from the end of the year in which the performance was fixed.

(2) The rights of producers of phonograms shall be protected for 50 years from fixation, with the following exceptions:

a) if the phonogram is lawfully published during this period, the rights shall expire 70 years from the date of the first such publication;

b) if no lawful publication has taken place during the period mentioned in letter a), and the phonogram is lawfully communicated to the public during this period, the rights shall expire 70 years from the date of the first such communication to the public.

(3) If, 50 years after the phonogram was lawfully published or, failing such publication, 50 years after it was lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them, the performer may terminate the contract on assignment by which he has transferred his rights in the fixation of his performance to a phonogram producer. The right to terminate the contract on assignment may be exercised if the producer, within one year from the notification by the performer of his intention to terminate the contract on assignment, fails to carry out both of the aforementioned acts of exploitation. This right to terminate may not be waived by the performer.

(4) Where a phonogram contains the fixation of the performances of a plurality of performers, they may terminate their contracts on assignment in accordance with the law. If the contract on assignment is terminated pursuant to paragraph (3), the rights of the phonogram producer in the phonogram shall expire.

(5) Where a contract gives the performer a right to claim a single remuneration, he/she shall be have the right to obtain an annual supplementary remuneration from the phonogram producer for each full year immediately following the 50th year after the phonogram was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public. The right to obtain such annual supplementary remuneration may not be waived by the performer.

(6) The overall amount to be set aside by the phonogram producer for payment of the annual supplementary remuneration referred to in paragraph (5) shall correspond to 20 % of the revenue which the phonogram producer has derived, during the year preceding that for which the said remuneration is paid, from the reproduction, distribution and making available of the phonogram, following the 50th year after it was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public.

(7) The phonogram producers are required on request to provide to performers who are entitled to the payment of the annual supplementary remuneration referred to in paragraph (5) any information which may be necessary in order to secure payment of that remuneration.

(8) The right to annual supplementary remuneration, in accordance with paragraph (5), shall be exercised by the collective management organization, in accordance with the provisions of Article 70 paragraph (2) letter i).

(9) Where a performer is entitled to recurring payments, neither advance payments nor any contractually defined deductions shall be deducted from the payments made to the performer following the 50th year after the phonogram was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public.

(10) The rights of the videogram producer shall be protected for 50 years from the date of fixation of the videogram. However, if the videogram was lawfully published or communicated to the public during this period, the rights of the videogram producer shall be protected for 50 years from the date of the earliest of those actions.

(11) The rights of the radio and television broadcasting organization shall be protected for 50 years after the first transmission of a broadcast by this organization, regardless of whether the broadcast is transmitted by wire or wireless, including by cable or satellite.

(12) The terms of protection provided for in this Article shall run from 1 January of the year following that in which the action having legal significance took place, on the basis of which the time limit is calculated.

(13) If the term of protection of economic rights in a subject-matter of related rights in the country of origin is longer than the terms of protection provided for by this Law, the rules of this Law shall apply, and if this term is shorter, the rules of the law of the country of origin shall apply.

(14) The conditions of protection provided for by this Law shall apply to foreign holders of related rights who enjoy protection under this Law, but the term of protection shall expire no later than the day on which the protection expires in the State in which those holders are nationals or in which they have their principal place of business and shall not exceed the conditions laid down in this Law.

(15) Related rights shall, within the limits of the remaining part of the terms of protection provided for in paragraph (1)-(11), be transferred to the successors in title of the performer, the producer of phonograms, the producer of videograms and the radio and TV broadcasting organization.

(16) Upon expiry of the term of protection of the subject-matters of related rights, they shall fall into the public domain. The use of subject-matters of related rights in the public domain shall be permitted without the consent of the holders of related rights and without payment of any remuneration, provided that the moral rights of the performers are respected.

## **Chapter VIII**

### **DATABASES**

#### **Article 47. Scope and Subject-Matter of Protection**

(1) The provisions of this Chapter concern the legal protection of databases in any of their forms.

(2) Databases which, by reason of the selection or arrangement of their contents constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.

(3) The copyright protection of databases shall not extend to their contents and shall be without prejudice to the rights and terms of protection subsisting in those contents themselves.

(4) The protection provided for in this Chapter shall not apply to:

- a) fixation of an audiovisual, cinematographic, literary or musical work;
- b) compilation of several fixations of musical executions on a CD;
- c) computer programs used in the manufacture or operation of databases accessible by electronic means.

(5) Any contractual provision contrary to Article 49 paragraph (1), paragraph (4) and (5), Article 51 paragraph (2) shall be null and void.

#### **Article 48. Author of Database.**

Restricted Acts.

(1) The author of a database shall have the exclusive right to carry out or to authorize the following acts in relation to the database:

- a) temporary or permanent reproduction by any means and in any form, in whole or in part;
- b) translation, adaptation, arrangement and any other alteration;
- c) any form of distribution of the database or of copies thereof;
- d) communication to the public;
- e) reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).

(2) The first sale in the Republic of Moldova of a copy of the database by the rightholder or with his/her consent shall exhaust the right to control resale of that copy within the Republic of Moldova.

(3) The provisions of Articles 16 and 17 shall apply accordingly.

(4) Any violations of the rights referred to in paragraph (1) shall be, where appropriate, sanctioned administratively or penally.

(5) Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other protected subject-matters are hosted. Such measures shall not go beyond what is necessary to achieve that objective. .

#### **Article 49. Rights and Obligations of the Lawful User**

(1) The performance by the lawful user of a database or of a copy of any of the acts referred to in Article 48 paragraph (1) which is necessary for the purposes of access to the contents of the databases and normal use of the contents by the lawful user shall not require the authorisation of the author of the database. To the extent to which the lawful user is authorized to use only part of the database, this paragraph shall apply only to that part.

(2) The provisions of Article 48 paragraph (1) shall not apply:

- a) in the case of reproduction for private purposes of a non-electronic database;
- b) where there is use for the sole purpose of teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
- c) where there is use for the purposes of public security or for the purposes of administrative or judicial procedure;
- d) where other exceptions to copyright provided for by this Law, including in the case provided for in Article 58, without prejudice to points a) to c) of this Article.

(3) The provisions of paragraph (1) and (2) may not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with normal exploitation of the database.

(4) A lawful user of a database which is made available to the public in whatever manner may not perform acts which conflicts with normal use of the database or unreasonably prejudice the legitimate interests of the producer of the database.

(5) legitimate lawful user of a database which is made available to the public in whatever manner may not cause prejudice to the holder of a copyright or related right in respect of the works or other protected subject-matters contained in the database.

**Article 50.** The "*Sui generis*" Right. Subject-Matter of Protection

(1) The producer of a database who proves that he has made qualitatively and/or quantitatively a substantial investment in obtaining, verification or presentation of its contents shall be entitled to prohibit the extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of that database.

(2) Public lending of a database is not an act of extraction or re-utilization.

(3) The right referred to in paragraph (1) may be transferred by a user agreement and shall apply irrespective of the eligibility of that database or its contents for protection by copyright or by other rights. Protection of the database under the right provided for in paragraph (1) shall be without prejudice to rights existing in respect of its contents.

(4) The repeated and/or systematic extraction and/or re-utilization of insubstantial parts of the contents of the database accompanied by acts contrary to a lawful exploitation of that database or which unreasonably prejudice the legitimate interests of the producer of the database shall not be permitted.

**Article 51.** Exceptions to the *Sui Generis* Right

(1) The lawful user of a database which is made available to the public in whatever manner may, without the consent of the producer of the database, extract and re-utilize a substantial part of its contents in the following cases:

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

b) extraction for the purposes of study or research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

c) extraction and/or re-utilization in order to ensure public security or to ensure the proper conduct and reflection of parliamentary, administrative or judicial procedures;

d) extraction or re-utilization in accordance with the provisions of Article 58.

(2) The producer of a database which is made available to the public in whatever manner shall not prevent its lawful user from extracting and re-utilizing insubstantial parts of its contents, for any purposes whatsoever. Where the lawful user is authorized to extract or re-utilize only part of the database, the provisions of this paragraph shall apply only to that part.

**Article 52. Duration of Protection of *Sui-Generis* Right**

(1) The right of the producer of a database provided for in Article 50 shall take effect from the date of completion of the database. It shall cease to be effective 15 years from 1 January of the year following the completion of the database.

(2) If the database is made available to the public in whatever manner before expiry of the period provided for in paragraph (1), the term of protection by the right of the producer of the database shall expire 15 years calculated from 1 January of the year following the date when the database was first made available to the public.

(3) Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which denotes a substantial new investment, evaluated qualitatively or quantitatively, shall allow the grant of a term of protection specific to the database resulting from that investment.

**Article 53. Beneficiaries of Protection under the *Sui Generis* Right**

Foreign citizens and commercial companies/enterprises formed in accordance with the legislation of foreign countries shall be entitled to obtain a *sui generis* right in a database from the Republic of Moldova.

## **Chapter IX**

### **EXCEPTIONS AND LIMITATIONS TO THE EXERCISE OF COPYRIGHT AND RELATED RIGHTS**

**Article 54. General Application Criteria**

The exceptions and limitations to the exercise of copyright and related rights provided for in this Chapter shall apply only in certain special cases which do not contravene to the normal use of works or other protected subject-matters and do not prejudice the legitimate interests of authors or rightholders.

**Article 55. Temporary acts of reproduction**

Temporary acts of reproduction, which are transient or incidental and which are an integral and essential part of a technological process and the sole purpose of which is to enable a transmission in a network between third parties by an intermediary, or a lawful use of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right.

## **Article 56. Limitations to the Reproduction Right**

(1) In the case of reproduction right, the following shall be allowed without the consent of the author or other holder of copyright or related rights, but with the payment of compensatory remuneration:

a) reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of scores, in accordance with Article 72;

b) reproductions on any medium made by a natural person for private use and for purposes that are neither directly nor indirectly commercial, in accordance with Article 71;

c) reproductions of broadcasts made by non-profit social institutions, such as hospitals or prisons, on condition that the rightholders receive fair compensation.

(2) Author's consent and payment of any remuneration shall not be required in respect of:

a) specific acts of reproduction made by public libraries, educational establishments or museums, or by archives, which are not for direct or indirect commercial or economic advantages;

b) ephemeral recordings of works made by radio or television broadcasting organizations through the use of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary value, be permitted ;

**Article 57. Exceptions and Limitations to the Right of Reproduction, Right of Broadcasting, Right of Communication to the Public and Right of Making Available to the Public**

(1) The reproduction, broadcasting, communication to the public and making available to the public of the following acts shall be permitted without the consent of the author or rightholder and without payment of any remuneration in the following cases:

a) use for the sole purpose of illustration for the educational process or scientific research, to the extent justified by the non-commercial purposes to be achieved;

b) uses, for the benefit of persons with disabilities, which are directly related to the disability, of a non-commercial nature, to the extent required by the specific disability, without prejudice to the obligations laid down in Article 58;

c) reproduction by mass media, communication to the public or making available of published articles on current economic, political or religious topics or of some radio or television broadcast works or other subject-matter of the same character, in cases where such uses are not expressly reserved and/or use of works or other subject-matter for broadcasting of current events, to the extent justified by the informatory purposes;

d) use of quotations for the purpose of criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, and that their use is in accordance with fair practice, and to the extent justified by certain specific purposes;

e) use for the purposes of public security or to ensure the proper performance of administrative, parliamentary or judicial proceedings;

f) use of political speeches, as well as extracts of public lectures or similar works or other subject-matter to the extent justified by the informatory purpose to be achieved;

g) use during religious celebrations or official celebrations organized by a public authority;

h) use of works, such as works of architecture or sculpture, intended for permanent location in public places;

i) incidental inclusion of a work or other subject-matter in another material;

j) use for the purpose of the advertising the public exhibitions or sales of works of art, to the extent necessary to promote the event, excluding any other commercial purposes;

k) use in the case of caricatures, parodies or pastiches;

l) use in the case of demonstration or repair of equipment;

m) use of an artistic work in the form of a building or a drawing or plan of a building for the purpose of reconstructing that building;

n) use, by communication or making available to the public, for the purpose of research or private study, by means of special terminals on the premises of institutions referred to in Article 56 paragraph (2) letter a) of works or other subject-matter not subject to purchase or licensing terms which are contained in their collections .

(2) In the cases referred to in paragraph (1) letter a), c), d) and f), the source and name of the author must be indicated, unless this proves impossible. In the case of works of graphic or plastic, photographic or architectural art, the location of the original must also be mentioned.

## **Article 58. Exceptions for the Benefit of Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled**

(1) The reproduction, distribution, communication to the public, broadcasting, making available to the public, rental and lending of a work for the benefit of persons who are blind, visually impaired or otherwise print disabled and of a non-commercial nature shall be permitted, without the consent of the author or rightholder and without payment of any remuneration, for the purpose of:

a) making by a beneficiary person or a person acting on his/her behalf of an accessible format copy of a work or other subject-matter protected by copyright or related rights to which the beneficiary person has lawful access for the exclusive use of the beneficiary person;

b) making by an authorized entity of an accessible format copy of a work or other subject-matter protected by copyright or related rights to which the beneficiary person has lawful access or communication to the public, making available to the public, distribution or lending an accessible format copy to a beneficiary person or another authorized entity on a non-profit basis for the exclusive use by a beneficiary person.

(2) For the purpose of making an accessible format copy of a work or other subject-matter, the limitation of the right of reproduction shall also apply to:

a) any act which is necessary to change, convert or adapt a work or other subject-matter in such a way as to produce an accessible format copy that makes it possible for beneficiary persons to access that work or subject-matter;

b) providing the necessary means to navigate information in an accessible format copy;

c) changes that may be required in cases in which the format of a work or of other subject-matter is already accessible to certain beneficiary persons while it might not be accessible to other beneficiary persons, due to different impairments or disabilities, or different degrees of such impairments or disabilities.

(3) Each accessible format copy made in accordance with paragraph (1) shall respect the integrity of the work or other subject-matter, with due consideration given to the changes required to make the work or other subject-matter accessible in the alternative format.

(4) The exception provided for in paragraph (1) may not be limited or removed by contract.

## **Article 59. Obligations of Authorized Entities**

(1) An authorized entity referred to in Article 58 paragraph (1) letter b) shall have the following obligations:

a) to distribute, communicate and make available accessible format copies only to beneficiary persons or other authorized entities;

b) to discourage the unauthorized reproduction, distribution, communication to the public or making accessible to the public of accessible format copies;

c) to ensure and respect the integrity of works and other subject-matter of protection and of accessible format copies thereof, and to maintain records of such operations;

d) to publish and update, on its website or through other online or offline channels, information on how it complies with its obligations laid down in letter (a) to (c);

e) to comply with the legal provisions regarding the processing of personal data of beneficiary persons.

(2) An authorized entity shall provide the following information in an accessible way, on request, to beneficiary persons, other authorized entities or rightholders:

a) the list of works or other subject-matter of protection for which it has accessible format copies, specifying the available formats;

b) the name and contact details of the authorized entities with which it has engaged in the exchange of accessible format copies .

(3) In order to exercise the task referred to in Article 4 paragraph (1) letter o), the authorized entities shall communicate to AGEPI, 5 working days before carrying out the activity referred to in Article 58 paragraph (1) letter b), their names and contact details.

## **Chapter X**

### **TECHNICAL PROTECTION MEASURES AND RIGHTS MANAGEMENT INFORMATION**

#### **Article 60. Obligations as to Technical Measures**

(1) Authors, performers, producers of phonograms or audiovisual recordings, radio or television broadcasting organizations and database producers shall have the right to establish technical measures for the protection of the rights recognized by this Law.

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

(3) Notwithstanding the legal protection provided for in paragraph (1) of this Article, in the absence of voluntary measures taken by rightholders, including agreements between rightholders and other parties involved, rightholders shall be required to make available to the beneficiaries of the exceptions and limitations specified in Article 56 paragraph (2) letter a) and b), Article 57 paragraph (1) letter a), b) and e) and Article 58 the means of benefiting from the said exceptions and limitations, to the extent necessary to benefit from that exception or limitation in cases where the beneficiary has legal access to the protected work or subject matter concerned.

(4) The provisions of paragraph (3) shall not apply to protected works or other subject-matters made available to the public on the basis of contractual terms.

(5) The technical measures applied voluntarily by rightholders, including those applied in implementation of voluntary agreements and the technical measures applied in implementation of the measures adopted by the Republic of Moldova shall enjoy the legal protection provided for in paragraph (1).

(6) The provisions of this Article shall not apply to technical protection measures used in connection with computer programs.

#### **Article 61. Obligations Concerning Rights Management Information**

(1) The following acts carried out knowingly and without the necessary permission shall be prohibited:

a) the removal or alteration of any rights management information in electronic format;

b) the distribution, importation for the purpose of distribution, broadcasting, communication to the public or making available to the public of works or other subject-matter protected under this Law, from which rights management information in electronic format has been removed or altered without permission, if the person knows, or has reasonable grounds to know, that by doing so he is inducing, enabling, facilitating or concealing an infringement of a copyright or any other related rights as provided by law, or of the *sui generis* right provided for in Article 50.

(2) The provision of relating to the rights management information of shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of a work or other subject-matter provided for by this Law.

### **Chapter XI**

#### **USE OF PROTECTED CONTENT BY ONLINE CONTENT-SHARING SERVICE PROVIDERS**

##### **Article 62. Online Content-Sharing Service Provider**

(1) An online content-sharing service provider shall perform an act of communication to the public, or an act of making available to the public, when he gives the public access to protected works or other subject-matters uploaded by its users.

(2) The acts of communication to the public and of making available to the public of the contents provided for in paragraph (1) shall also include the reproductions necessary to perform these acts, so that the online content-sharing service provider does not have to obtain a user agreement or to enter into a license contract for these reproductions.

(3) An online content-sharing service provider shall obtain, in accordance with Article 31 or Article 32, an authorization from the authors, performers, producers of phonograms and videograms, as well as radio and television broadcasting organizations or conclude a license contract in order to communicate to the public or make available to the public the protected works or other subject-matters. Taken into account the principle of contractual freedom, authors and rightholders shall not be obliged to authorize online content-sharing service providers by an authorization or license contract.

(4) The authorization or license contract provided for in paragraph (3) shall also cover acts of communication to the public or making available to the public carried out by users of the online

content sharing services when they are not acting in the exercise of a commercial activity or where their activity does not generate significant revenues with respect to the relevant acts that are the subject of the authorization or license contract granted to the online service provider. There should be no presumption in favor of online content-sharing service providers that their users have obtained all relevant rights.

(5) Where an online content-sharing service provider performs an act of communication to the public or an act of making available to the public under the conditions laid down in this Law, the limitation of liability provided for in Article 17 paragraph (1) of Law No. 284/2004 on Electronic Commerce shall not apply.

(6) The provisions of paragraph (5) of this article shall not affect the provisions of Article 17 paragraph (1) of Law No. 284/2004 on Electronic Commerce, which continues to apply to services that have a technical, automatic and passive character and that are outside the scope of this law.

(7) The mechanism of exemption from liability provided for in Article 17 paragraph (1) of Law No. 284/2004 and that provided for in Article 63 of this Law shall not apply to service providers whose main purpose or one of the main purposes is to engage or facilitate piracy in the field of copyright and related rights.

### **Article 63. Liability for Unauthorized Acts**

(1) If no authorization is granted under the conditions of Article 31 or Article 32, online content-sharing service providers shall be liable for unauthorized acts of communication to the public, including making available to the public, of copyright-protected works or other subject-matter.

(2) The liability referred to in paragraph (1) shall not be engaged where the service providers demonstrate the cumulative fulfilment of the following conditions:

a) made best efforts to obtain an authorization;

b) made best efforts to ensure the unavailability of protected works and other subject-matter for which the rightholders have provided relevant and necessary information in advance;

c) acted expeditiously, upon receiving a sufficiently substantiated notice from the rightholders or their representatives, to disable access to, or to remove from their official websites, the notified protected works or other subject-matter, and made best efforts to prevent their future uploads in accordance with letter (b).

(3) In the case of providers who have made their services available to the public (from the Republic of Moldova) for less than three years, the liability regime provided for in this Article shall not be engaged where they demonstrate the cumulative fulfilment of the following conditions:

a) made best efforts to obtain an authorization;

b) acted expeditiously, upon receiving a sufficiently substantiated notice, to disable access to protected works and other subject-matter or to remove them from their websites.

(4) In the case of service providers referred to in paragraph (3), where the average number of monthly unique visitors exceeds 5 million, calculated on the basis of the previous calendar year, the liability provided for in this Article shall not be incurred where they demonstrate, in addition to fulfilling the conditions set out in paragraph (3), that they undertook actions to prevent further uploads of the notified protected works and other subject-matter for which the rightholders have provided relevant and necessary information.

(5) The liability referred to in paragraph (2) to (4) shall be without prejudice to the remedies provided for in cases other than those relating to liability for copyright violation and to the possibility of courts or public authorities to issue judicial and, respectively, administrative acts.

#### **Article 64. Obligations for Results of Online Content-Sharing Service Providers**

(1) In determining whether online content-sharing service providers have complied with their obligations laid down in Article 63 paragraph (2) and in the light of the principle of proportionality, the following elements shall be taken into account:

- a) the type, the audience and the size of the service and the category of protected works or other subject matter uploaded by the users of the service;
- b) the availability of suitable and effective means and their costs for service providers.

(2) The assessment of whether service providers made efforts to obtain an authorization in accordance with Article 63 paragraph (2) letter a), paragraph (3) letter a) and paragraph (4) must be carried out on a case-by-case basis, taking into account the principle of proportionality and elements such as:

- a) market-specific practices in different sectors;
- b) calling on collective management organizations and negotiating in good faith, in accordance with the provisions of Article 99 paragraph (2), specifying the criteria that the service providers use to identify and remunerate the licensed content;
- c) consultation of national registers and other specific national records, administered by AGEPI, in accordance with data protection rules.

(3) The assessment of whether service providers have made efforts to ensure the unavailability of protected works and other subject-matter, in accordance with Article 63 paragraph (2) letter b) and paragraph (4) and to prevent future uploads thereof, in accordance with Article 63 paragraph (2) letter c) and paragraph (4) shall be carried out on a case-by-case basis, taking into account the principle of proportionality and the practices used to ensure the unavailability of unauthorized content.

(4) Without prejudice to their own business secrets, online content-sharing service providers shall provide rightholders, on request, with adequate and specific information on:

a) the functioning of the practices used to ensure the unavailability of the unauthorized content. Such information may include a description of the type of technologies used to recognize content such as digital fingerprinting, hashing, watermarking, use of metadata, keyword search or a combination of different technologies, information on the providers of such technologies (internal solutions developed by providers or third-party services), the average level of efficiency and any updates or changes to those tools;

b) the use of content covered by the authorizations that rightholders have granted to service providers. Such information should include revenues generated by service providers and usage data, without being detailed and individualized for each individual work or other subject-matter. In the case of the conclusion of a license contract with the collective management organizations, online content-sharing service providers shall comply with the reporting in accordance with Article 99 paragraph (5) letter a).

(5) Notices of rightholders or their representatives, sent on the basis of Article 63 paragraph (2) letter c), paragraph (3) letter b), shall:

a) be precise and duly substantiated in such a way as to enable service providers to take an informed decision and with all due diligence as to the content to which the notice relates, in particular whether or not such content is to be regarded as illegal content;

b) to explain the reasons why the author of the notice considers the content to be illegal;

c) to clearly indicate where the respective content is located.

(6) The obligation of cooperation provided for in Article 63 paragraph (2) letter b) and c) does not constitute a general obligation of supervision and does not lead to the identification of individual users nor to the processing of personal data.

## **Article 65.** Cooperation between Online Content-Sharing Service Providers and Rightholders

(1) The cooperation between online content-sharing service providers and rightholders shall not result in the prevention of the availability of protected works or other subject-matter uploaded by users, which do not infringe copyright and related rights, including where such protected works or other subject-matter are covered by an exception or limitation.

(2) Legitimate uses, which do not infringe the copyright or related rights, within the meaning of paragraph (1), may include:

a) uses permitted under Article 57 letter h) and i);

b) uses of persons having rights in the content they upload or uses covered by the authorization pursuant to Article 62 paragraph (3);

c) protected works and other subject-matter belonging to the public domain;

d) uses of content where originality or any other requirement relating to the protection is not respected.

(3) When uploading and making available content generated by online content-sharing services, users may rely on any of the following exceptions or limitations:

a) quotations, criticisms, reviews;

b) use for the purpose of caricature, parody or pastiche.

(4) Online content-sharing service providers shall be required to inform their users in their terms and conditions that they can use protected works and other subject-matter under the exceptions or limitations provided for in paragraph (2) letter a) and paragraph (3).

(5) Where online content-sharing service providers use content recognition technologies, in order to establish the uses that may fall under the exceptions and limitations provided for in paragraph (2) and (3), criteria shall be taken into consideration such as:

a) length or size of the identified content used for uploading;

b) proportion of the corresponding content identified in relation to the entire uploaded material;

c) degree of change of the work.

(6) The criteria referred to in paragraph (5) shall be applied taking into account the type of content uploaded, the business model and the risk of generating significant economic damages for the rightholders.

(7) Users may address to the competent courts to invoke the use of an exception or limitation to copyright and related rights.

## **Article 66. Resolution of Complaints**

(1) Online content-sharing service providers shall be obliged to establish an effective and expeditious complaint resolution mechanism that is available to users in the event of disputes concerning disabling of access to or removal of protected works or subject-matter uploaded by them from online content-sharing services.

(2) Rightholders' requests with the object of disabling access to their protected works or other subject-matter or removing them from online content-sharing services shall be additionally reasoned in relation to the content of the notices provided for in Article 64 paragraph (5).

(3) Complaints referred to in paragraph (1) shall be processed without undue delay and resolved through a free and easy-to-use mechanism, such as the development of online forms that are easy to fill in and submit.

(4) Decisions to disable access or remove the uploaded content shall be subject to review to determine whether or not the use is lawful and whether or not the protected works or other subject-matter should or should not be restored.

(5) Disputes concerning disabling access to protected works or subject-matter or those concerning their removal from online content-sharing services may be subject to mediation or settlement in courts, under the conditions of common law.

## **Chapter XII**

### **MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS**

#### **Article 67. General Provisions**

(1) Authors and holders of copyright and related rights may exercise their economic rights individually (individual management) or through collective management organizations (collective management) under the terms of this Law.

(2) The exercise of economic rights on an individual basis gives the rightholder the opportunity to revert to specialized intermediaries, natural or legal persons, in order to be represented.

(3) Management of copyright and related rights involves granting of licenses to users, monitoring the use of rights, enforcement of copyright and related rights, collection of rights revenue derived from exploitation of rights, distribution and payment of the amounts due to rightholders.

(4) Collective management may be carried out only for works previously disclosed to the public, and collective management of related rights may only be carried out for previously fixed or broadcasted performances, as well as for phonograms or videograms previously disclosed to the public.

(5) Authors and holders of copyright and related rights may not assign the economic rights recognized by this Law to collective management organizations.

#### **Article 68. Rights of the Author or Holder of Copyright or Related Rights**

(1) The author or holder of copyright or related rights shall have the following rights set out in the statute of the collective management organization:

a) to authorize a collective management organization of his/her choice to manage his/her rights, categories of rights or types of protected works and other subject-matter, irrespective of the nationality, residence or domicile of rightholders. Unless the collective management organization has objectively justified reasons to refuse management, it shall be obliged to manage such rights, categories of rights or types of works and other subject-matter, provided that their management falls within the scope of its activity;

b) to authorize non-commercial uses of any rights, categories of rights or types of protected works and other subject-matter by user agreement ;

c) to terminate the authorization of the collective management organization to manage rights, categories of rights or types of works and other subject-matter or to withdraw any rights, categories of rights or types of works and other subject-matter of its choice,, with reasonable notice not exceeding 6 months. The collective management organization may decide that such termination or withdrawal shall take effect only at the end of the financial year;

d) to receive the remuneration payable to him/her for the use of his/her creations which occurred before the termination or withdrawal of the authorization for the collective management organization took effect under the conditions referred to in letter c).

(2) A collective management organization shall not restrict the exercise of rights provided for in paragraph (1) letter c) and d) by requiring, as a condition for the exercise of those rights, that the management of rights, categories of rights or types of protected works and other subject-matter which are subject to the termination or the withdrawal be entrusted to another collective management organization.

(3) When authorizing a collective management organization to manage his/her rights, the author or rightholder shall give his/her written consent for each right, category of rights or type of protected works and other subject-matter.

(4) A collective management organization shall inform the author or rightholders of their rights under paragraph (1) to (3), as well as of any conditions attached to the right set out in paragraph (1) letter b), before obtaining their consent to its managing any right, category of rights or type of works and other protected subject-matter.

#### **Article 69. Rights of the Author or Holder of Copyright Who Is Not a Member of the Collective Management Organization**

The author or rightholder who is not a member of a collective management organization but who has a direct legal relationship with it, by law or by way of other contractual arrangement, shall have the following rights:

a) to communicate with the collective management organization by any means, including electronic means, for the purpose of exercising the rights from the use of which they are entitled to receive remuneration;

b) to be informed, on request, about the works, types of protected works or other subject-matter, the rights they manage directly or through representation agreements and the territories covered;

c) to be informed of the main conditions of representation agreements between collective management organizations, including their duration and the cost of the services provided;

d) to receive, in writing and in reasoned way, a reply to the complaints, in particular as regards the management of rights and the termination or withdrawal of rights, membership

requirements, collection of due amounts, distribution and payment of remuneration, deductions applied, in accordance with the procedures established by the collective management organization.

## **Section 1**

### **Mandatory Collective Management**

#### **Article 70. Subject-Matter of Management**

(1) Mandatory collective management involves the management of copyright and related rights only through the collective management organization designated as collector, pursuant to Article 103.

(2) The following rights shall be mandatory collectively managed:

a) right to compensatory remuneration for private copying, in accordance with the provisions of Article 71;

b) right to compensatory remuneration for reprographic reproduction, in accordance with the provisions of Article 72;

c) right of performers and producers of phonograms to a single equitable remuneration for radio broadcasting and communication to the public of phonograms published for commercial purposes, in accordance with the provisions of Article 73;

d) right of performers to equitable remuneration for radio broadcasting and communication to the public of audiovisual fixed performances;

e) right to retransmission by cable, in accordance with the provisions of Article 74;

f) right to retransmission, according to Article 75;

g) right of resale, in accordance with provisions of Article 76;

h) right to equitable remuneration for public lending, in accordance with the provisions of Article 77;

i) right of performers to annual supplementary remuneration, in accordance with Article 46 paragraph (5).

(3) For the categories of rights referred to in paragraph (2), collective management organizations shall also represent the rightholders who have not given them a mandate, the repertoire being deemed to be extended.

#### **Article 71. Compensatory Remuneration for the Private Copy**

(1) The compensatory remuneration for the private copy shall be fixed both for the compensation of authors and other rightholders, as well as for performers and producers of audiovisual works, videograms and phonograms, whose works, performances, audiovisual works,

videograms and phonograms may be reproduced on any equipment and physical media by a natural person solely for personal use, without seeking any direct or indirect commercial advantage.

(2) The beneficiaries cannot waive the right to compensatory remuneration for the private copy. .

(3) The compensatory remuneration referred to in paragraph (1) shall be paid by natural and legal persons who import or manufacture the equipment and physical media which may be used to make such reproductions.

(4) The list of equipment and physical media for which compensatory remuneration for private copy is paid, identified in accordance with the Combined Nomenclature of Goods, approved by Law No. 172/2014, is set out in the Annex to this Law.

(5) The compensatory remuneration for private copy shall be equal to 0,3% for the equipment and physical media, calculated from:

a) the statistical value of imported equipment and physical media - for importers;

b) the production price of equipment and physical media, excluding value added tax - for manufacturers.

(6) Compensatory remuneration shall not be paid in respect of the equipment and physical media referred to in paragraph (4), if they:

a) are imported by a natural person exclusively for personal use within the limits laid down by customs legislation;

b) are placed under a suspensive customs procedure;

c) have a professional purpose and cannot be used in household conditions.

(7) The subjects referred to in paragraph (3) shall pay the compensatory remuneration to the collective management organization designated with the right to collect the compensatory remuneration.

(8) Within 15 days of the end of each quarter:

a) Customs Service communicates to AGEPI the list of importers of equipment and physical media referred to in paragraph (4) imported in the previous quarter, indicating for each importer the identification data (name and IDNO) and the statistical value.

b) manufacturers shall communicate to AGEPI on the basis of a self-declaration the data on the equipment and physical media put up for sale in the previous quarter, with an indication of their production price.

(9) Within 15 days of receipt of the data referred to in paragraph (8) letter a) to b), AGEPI shall transmit them to the collective management organization designated with the right to collect the compensatory remuneration.

(10) The collective management organization designated with the right to collect the compensatory remuneration shall collect the compensatory remuneration for all authors, holders of copyright and holders of related rights, shall distribute it and pay it in accordance with the conditions laid down in the methodology developed pursuant to the provisions of Articles 99 to 101.

(11) Importers and manufacturers of equipment and physical media which may be used for private copies and the collective management organization designated with the right to collect compensatory remuneration shall be administratively liable for non-performance or improper performance of its obligations relating to the payment and distribution of compensatory remuneration.

## **Article 72. Compensatory Remuneration for Reprography**

(1) The compensatory remuneration for reprography is due for the equipment and physical media designed for making copies and on which reproductions of written or graphically expressed works can be made, regardless of whether the process used is analogue or digital.

(2) The compensatory remuneration referred to in paragraph (1) shall be fixed both for the compensatory remuneration of authors and publishers, whose works and publications may be presumed to have been reproduced in the manner provided for in paragraph (1).

(3) The compensatory remuneration referred to in paragraph (1) shall be paid by:

- a) natural and legal persons who import or manufacture the equipment used for reprography;
- b) copying centers using the equipment referred to in paragraph (1).

(4) The list of equipment and physical media for which compensatory remuneration is paid, identified in accordance with the Combined Nomenclature of Goods, approved by Law No. 172/2014, shall be approved by the Government.

(5) The compensatory remuneration for reprography shall be equal to 1%, calculated from:

- a) the statistical value of equipment – for importers;
- b) the production price of equipment, excluding value added tax – for manufacturers;
- c) the price per page of the copies made – for the subjects referred to in paragraph (3) letter b).

(6) The provisions of Article 71 paragraph (2) and paragraph (6) to (11) shall apply *mutatis mutandis*, including for users of reprographic equipment specified in paragraph (3) letter b) of this Article.

**Article 73.** Right of Performers and Producers of Phonograms to a Single Equitable Remuneration for Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes

(1) Performers and producers of phonograms shall be entitled to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes or reproductions thereof by broadcasting or by any means of communication to the public,.

(2) The amount of the single equitable remuneration shall be determined by methodologies, in accordance with the procedure laid down in Articles 99 to 101.

(3) The right to a single equitable remuneration referred to in paragraph (1) shall be exercised through a collective management organization. The collection of remuneration shall be carried out in accordance with the conditions laid down in Article 103.

(4) In determining the amount of remuneration and establishing other conditions for the payment of equitable remuneration for the actions specified in paragraph (1), the beneficiary collective management organizations shall conclude an agreement, which shall be submitted to AGEPI. If they do not submit their agreement to AGEPI within 30 days from the date of entry into force of the methodologies referred to in paragraph (2), the remuneration shall be divided equally between the two categories of beneficiaries.

**Article 74.** Cable Retransmission Right

(1) Authors and holders of copyright and related rights shall exercise their right of cable retransmission exclusively through a collective management organization.

(2) Where an author or rightholder has not entrusted the management of his/her rights to a collective management organization, the organization which manages rights of the same category shall be deemed to be mandated to manage his/her rights. Where more than one collective management organization exists in the same area, the rightholder shall be free to choose between them. The claim of rights by this rightholder can be made within a period of 3 years from the date of notification.

(3) The amount of the remuneration relating to copyright and related rights shall be determined within a single methodology, established in accordance with the provisions of Articles 99 to 101.

(4) The Parties referred to in Article 100 shall commit to conduct in good faith negotiations on the authorization of cable retransmission and shall not impede or obstruct their pursuit without due justification.

(5) In the event of failure to conclude a protocol on the methodology, in accordance with the provisions of Article 101, either Party may appeal to the Mediation Board established by AGEPI, before initiating another out-of-court settlement of the dispute or before appealing to the court.

(6) The provisions of paragraph (1) shall not apply to rights exercised by radio or television broadcasting organizations in respect of their own broadcasts and programme services, irrespective

of whether the rights concerned belong to them or have been assigned to them by other holders of copyright or related rights. In this case, the exercise of the right of cable retransmission by a radio or television broadcasting organization shall be carried out by means of contract concluded with the operator of the cable network.

(7) where the radio or television broadcasting organization and a cable operator fail to conclude the contract referred to in paragraph (6), either party may request mediation.

(8) Mediators may submit proposals to the parties concerned. It shall be assumed that all the parties accept the mediator's proposal if none of them expresses its opposition within a period of 3 months from the notice. Notice of the proposal and of any opposition thereto shall be served on the parties concerned in accordance with the applicable rules concerning the notification of legal documents.

(9) Mediators shall be so selected that their independence and impartiality are beyond reasonable doubt. The mediation procedure referred to in paragraph (7) shall be conducted in accordance with the Regulation approved by the Government.

#### **Article 75. Right of Retransmission of Radio and Television Programmes**

(1) Acts of retransmission of programmes must be authorized by the authors and rightholders owning the exclusive right of communication to the public. Authors and holders of copyright or related rights may exercise their rights to authorize or prohibit a cable retransmission only through a collective management organization.

(2) Where some authors or rightholders have not entrusted the management of their rights to a collective management organization, the organization which manages rights of the same category shall be automatically deemed to be the manager of their rights. Where more than one collective management organization exists in the same area, the rightholder shall be free to choose between them.

(3) An author or holder shall have the same rights and obligations resulting from an agreement between an operator of a retransmission service and a collective management organization or organizations that act pursuant to paragraph (2), as rightholders who have mandated that collective management organization or organizations. Claims of rights by these rightholders may be made within a period of 3 years from the date of the retransmission.

(4) The provisions of paragraph (1) to (3) shall not apply to the rights of retransmission exercised by a radio or television broadcasting organization in respect of its own transmissions, irrespective of whether the rights concerned are its own or have been transferred to it by other rightholders. In this case, the exercise of the right of cable retransmission by a radio or television broadcasting organization shall be carried out by means of contract concluded with the operator of the retransmission services.

(5) Negotiations between radio and television broadcasting organizations and operators of retransmission services on the authorization for retransmission shall be conducted in good faith.

(6) The Parties may appeal to the Mediation Board where:

a) no protocol on negotiated methodologies is concluded between the collective management organizations and the operators of retransmission services , in accordance with the provisions of Article 101;

b) no contract regarding authorization for retransmission of broadcasts is concluded between the radio or television broadcasting organization and the operator of a retransmission service .

(7) In determining the reasonable conditions for granting authorization for retransmission and setting the remuneration, account shall be taken of the economic value of the use of the rights concerned, including the value allocated to the means of retransmission.

#### **Article 76. Resale Right**

(1) The author of an original work of art shall have the right to receive a share of the net selling price obtained for any resale of the work, subsequent to the first transfer the work by the author (resale right ), as well as the right to be informed on the location of his/her work.

(2) The resale right is an inalienable right, which cannot be waived, even in advance. This right shall be transferred by inheritance, in accordance with civil law, being protected in accordance with the term laid down in Article 12 paragraph (1).

(3) The resale right shall apply to all acts of resale of an original work of art, involving as sellers, buyers or intermediaries, dealers in works of art, including auction organizers, salesrooms, art galleries, shops, etc.

(4) The payment term and other conditions for the management of the resale right shall be regulated in the methodology developed in accordance with the provisions of Articles 99 to 101.

(5) Where the resale of the original has been carried out by means of a public auction, an art gallery or any other art dealer, the organizer of the public auction, the owner of the art gallery or the art dealer together with the seller shall be liable for payment of the amount due under the resale right .

(6) For the purposes of this Article, original works of art mean works of plastic or graphic art (pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs), provided they are made by the artist himself or are copies considered to be original works of art. Copies of original works of art which have been made in a limited number by the author himself or with his consent (usually numbered, signed or otherwise authenticated by him) shall be considered to be original works of art.

(7) The resale right does not apply to works of applied art and works of architecture.

(8) The amount due under paragraph (1) shall be calculated according to the following rates, without exceeding the equivalent of EUR 12 500:

a) 5 % for the portion of the sale price up to the equivalent of EUR 3 000 inclusive;

b) 4 % for the portion of the sale price from the equivalent of EUR 3001 to the equivalent of EUR 50 000 inclusive;

c) 3 % for the portion of the sale price from the equivalent of EUR 50 000,01 to the equivalent of EUR 200 000 inclusive;

d) 1 % for the portion of the sale price from the equivalent of EUR 200 000,01 to the equivalent of EUR 350 000 inclusive;

e) 0.5 % for the portion of the sale price from the equivalent of EUR 350 000,01 to the equivalent of EUR 500 000 inclusive;

f) 0.25 % for the amount exceeding the equivalent of EUR 500 000.

(9) The provisions of paragraph (8) shall not apply where the sale is less than the equivalent of EUR 100.

(10) The resale right referred to in paragraph (1) may only be exercised through a collective management organization for economic rights.

(11) Within a period of 3 years from the date of resale, the holder of the resale right or the collective management organization representing his/her interests shall have the right to require from any person referred to in paragraph (3) to furnish any information that may be necessary in order to secure payment of the amounts due for resale. The information obtained may not be used for any purpose other than for collective management of rights.

(12) The seller shall communicate to the author and to the collective management organization the information referred to in paragraph (1), within two months from the date of sale, responsible for deduction of percentages or portion of the sale price, without adding other taxes.

(13) The owner of the original work of art cannot restrict the author of the disposed work from performing the reproduction of the work and its display in a personal exhibition.

(14) Foreign natural or legal persons shall benefit from equal treatment with that of citizens of the Republic of Moldova in respect of resale right, provided that they also benefit from similar treatment in the respective states.

#### **Article 77. Right to Equitable Remuneration for Public Lending**

(1) No authorization shall be required from the author or the copyright holder for lending by libraries, but it entitles him/her to an equitable remuneration. This right cannot be waived.

(2) The equitable remuneration provided for in paragraph (1) shall not be due where the lending is made through libraries in educational institutions, defined in accordance with Law No. 160/2017 on Libraries.

(3) The amount of the remuneration shall be determined by Government Decision, and their collection shall be carried out in accordance with the provisions of Articles 103 and 104.

## **Section 2**

### **Extended Collective Management**

#### **Article 78. Subject-Matter of Management**

(1) Extended collective management involves extending the effects of a license granted to users by a representative collective management organization, as provided for in paragraph (6) on behalf of those rightholders who are its members, or who otherwise entrusted it with the management of their rights, also to those rightholders who are neither its members, nor have entrusted it otherwise with the management of their rights.

(2) Rightholders may withdraw their works or other subject-matter from the system referred to in paragraph (1), by a notice to the collective management organization, within the time limits laid down in Article 68 paragraph (1) letter c).

(3) The following rights shall be subject to extended collective management:

a) right of communication to the public of musical, literary, scientific and graphic or plastic works, as well as videograms, with the exception of communication to the public in cinemas;

b) right of broadcasting musical, literary, scientific and graphic or plastic works;

c) right of communication to the public via satellite.

(4) The mechanism of granting collective licenses with extended effect shall apply only to the rights provided for in paragraph (3) and shall be without prejudice to the provisions of Article 70.

(5) The provisions of the license granted under paragraph (4) by the representative collective management organization, in accordance with the mandates received from its own members, for the use of their repertoire, shall also apply to rightholders who have not given a mandate or have not authorized that collective management organization, subject to compliance with the following guarantees:

a) the collective management organization, on the basis of its mandates, is representative for the rightholders, the relevant category of protected works or other subject-matter and the rights which are the subject of a license for the territory of the Republic of Moldova;

b) all rightholders shall be guaranteed equal treatment, including as regards the conditions of the license;

c) rightholders who have not mandated the licensing organization may, at any time and effectively, exclude their works or other subject-matter from the licensing mechanism established in accordance with this Article;

d) appropriate advertising measures shall be undertaken, as from a reasonable period of time before the works or other subject-matter are to be used under the license, to inform rightholders of the possibility that the the collective management organization may grant licenses for works or other subject-matter, when granting licenses in accordance with this Article, and the possibilities of the

rightholders referred to in letter c). Advertising measures must be effective without the need to inform each rightholder individually.

(6) Within 30 days of receipt of the notice provided for in paragraph (2), the collective management organization shall inform users of the exclusion of those works and subject-matter from the managed repertoire, issues new licenses from which those works and subject-matter are excluded and updates the ongoing licenses by the end of the 30-day period. The exclusion shall not affect the remuneration due to authors and rightholders for uses made under licenses concluded by the collective management organizations prior to receipt of the notice.

(7) At least 30 days before the works or other subject-matter are used under the license, collective management organizations shall publish on their official website information on the licensing and possibilities of rightholders referred to in paragraph 5 letter c).

(8) In cases where rightholders do not comply with the notification procedure or collective management organizations do not comply with the advertising measures, the uses are validly made.

(9) The provisions of Article 69 shall apply to the licensing mechanism provided for in paragraph (4) and (5).

(10) The designation of the collective management organization to manage the rights provided for in paragraph (3) of this Article shall be made by decision of the Director General of AGEPI, in accordance with Article 103.

#### **Article 79. Communication to the Public by Satellite**

(1) Radio and television broadcasting organizations, which have as their subject of activity the communication to the public of some programmes by satellite, must carry out their activities in compliance with copyright and related rights protected by this Law.

(2) Where broadcast and programme-carrying signals are broadcasted in a codified format, their introduction into a communication chain shall be considered as communication to the public, if the device for decoding the broadcast is made available to the public by the respective organization or with its consent.

(3) The responsibility of communication to the public if the carrying signals are transmitted by an organization located outside the Republic of Moldova and which does not ensure the level of protection provided for by this Law, shall be ensured as follows:

a) if the signals are transmitted to the satellite from an uplink station, the responsibility shall rest with the person who, located on the territory of the Republic of Moldova, uses the station;

b) if there is no use of an uplink station, but communication to the public was authorized by an organization with its headquarters in the Republic of Moldova, the responsibility shall rest with the organization that authorized it.

(4) Authors and rightholders may authorize communication to the public by satellite to a radio and television broadcasting organization only by means of a contract concluded either through a collective management organization or individually.

(5) The framework contract concluded between a collective management organization and a radio or television broadcasting organization for the communication to the public by satellite of a category of works belonging to a particular field may also be extended to rightholders who are not represented by the collective management organizations, if such communication to the public by satellite simulcasts a terrestrial broadcast by the same broadcasting organization. The unrepresented rightholder shall, within the time limits laid down in Article 68 paragraph (1) letter c), have the possibility of excluding the extension of the framework contract by means of an individual or collective contract.

(6) The provisions of paragraph (5) shall not apply to audiovisual works.

### **Section 3**

#### **Optional Collective Management**

##### **Article 80. Subject-Matter of Management**

(1) The following rights may be optionally collectively managed:

- a) right to reproduce musical works on phonograms or videograms;
- b) right to reproduce literary, scientific works and works of graphic or plastic art;
- c) rights of reproduction, distribution, rental and making available to the public, belonging to performers in the case of audiovisual fixed performances or executions;
- d) right to lend, except for the public lending provided for in Article 77;
- e) right to equitable remuneration reserved to authors and performers after the transfer of exclusive rental or lending rights.

(2) For the categories of rights referred to in paragraph (1), collective management organizations shall only represent rightholders who have authorized them to manage their rights, categories of rights or types of works and other protected subject-matter.

(3) In order to manage the rights referred to in paragraph (2), the collective management organizations shall develop methodologies within the scope of the managed repertoire or negotiate the licenses directly with users.

**Article 81. Right to Equitable Remuneration Reserved to Authors and Performers after Assigning Their Exclusive Rental or Lending Rights**

(1) Where an author or performer has transferred, by contract on assignment, his/her exclusive rental or lending rights to a producer of phonograms, videograms or audiovisual works, he/she shall retain the right to obtain an equitable remuneration. .

(2) The right to obtain an equitable remuneration cannot be waived by authors or performers, in their capacity of beneficiaries.

(3) Authors and performers will receive the due remuneration either directly from the producers, according to the contracts concluded with them, or from the users, only through the collective management organizations, according to the contracts between the beneficiaries of the remuneration and the producers.

## **Section 4**

### **Collective Management Based on a Special Mandate**

#### **Article 82. Collective Management Based on a Special Mandate**

The rights recognized by this Law, with the exception of those falling under mandatory collective management, extended collective management and optional collective management, may be managed through collective management organizations only within the limits of the special mandate granted by rightholders.

## **Chapter XIII**

### **ORGANIZATIONS FOR COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS**

#### **Section 1**

##### **Establishment, Functioning and Endorsement of Collective Management Organizations**

#### **Article 83. Establishment and Functioning of Collective Management Organizations**

(1) Collective management organizations have the status of non-profit association, and shall be established through the free association of rightholders, for the main purpose of managing copyright or related rights on behalf of and for the collective benefit of rightholders, owned or controlled by its members.

(2) Collective management organizations shall be created separately for the management of rights, categories of rights or types of protected works and other subject-matter of distinct categories of holders.

(3) Collective management organizations shall carry out their activities in accordance with this Law, other relevant normative acts of the Republic of Moldova, on the basis of their own statute,

within the limits of the powers delegated to them by the rightholders and the approval decision issued by AGEPI, pursuant to this Law.

(4) Collective management organizations may not have as object of their activity the use of protected repertoire for which they have received a collective management mandate, in accordance with this Law. They may not be transferred or assigned copyright and related rights or the use of these rights.

(5) Collective management organizations shall not be entitled to conduct commercial activity or use the works and subject-matter of related rights entrusted to them for management.

**Article 84. Endorsement of Collective Management Organizations**

(1) In order to organize and function as collective management organization, AGEPI, by decision of the Director General, shall endorse the association having legal personality, being registered in accordance with the provisions of the legislation, having its headquarters in the Republic of Moldova and cumulatively meeting the following conditions:

- a) members of the association are exclusively the subjects of copyright or related rights;
- b) founders of the association do not have the capacity of founders of another collective management organization functioning for the same field/same rights;
- c) the association's field of activity is the collective management of copyright or related rights;
- d) the statute of the association corresponds to the requirements of this Law;
- e) the association has a current account in a banking institution;
- f) the association has the economic capacity for collective management and has the human and material resources necessary to manage the entrusted repertoire;
- g) the association allows, according to the procedures expressly provided for in its statute, the access of holders who are interested in entrusting them with the full or partial management of rights, categories of rights, types of protected works or other subject-matter;
- h) the association submits to AGEPI the repertoire of works, performances, phonograms or videograms belonging to their own members. The repertoire shall be submitted in the format established by order of the Director General of AGEPI and shall contain at least the name of the author, the name of the rightholder, the title of the work, the identification elements of performers, phonograms and videograms.

(2) In order to confirm that the conditions specified in paragraph (1) are met, the organization shall submit to AGEPI relevant documents and information, which shall not be returned.

(3) AGEPI shall refuse the endorsement of the association that does not meet the cumulative conditions specified in paragraph (1) and/or does not submit the relevant documents and information according to paragraph (2).

(4) The decisions referred to in paragraph (1) shall be issued within 15 days from the request and published in the Official Gazette of the Republic of Moldova within 5 days of issuance.

(5) The endorsed collective management organization shall be subject to AGEPI control, in accordance with Article 106.

(6) The decision on endorsement of the collective management organization may be challenged in the manner laid down by the Administrative Code.

(7) The decision on endorsement grants the organization the right to manage the rights provided for in Article 80 of rightholders who are members of the collective management organization or the rights provided for in Article 82.

#### **Article 85. Statute of the Collective Management Organization**

(1) The statute of the collective management organization shall contain provisions on:

a) conditions under which is carried out the management of rights for holders of such rights, on the basis of the principle of equal treatment;

b) membership conditions and the grounds for refusal to grant membership, as well as the conditions for the termination of such membership;

c) rules governing the exercise of the rights to participate and vote in the General Assembly of members;

d) conditions for the revocation of the management authorization and the withdrawal of any rights, categories of rights, types of protected works or other subject-matter;

e) members' rights and obligations in relation to the collective management organization;

f) weight of the vote cast by the members within the General Assembly;

g) modality of establishing and paying the membership fee and contributions, in case these are provided for to be paid by members;

h) structure and powers of the management and control bodies responsible for the functioning of the collective management organization, as well as the manner in which the members of these bodies are appointed, removed and remunerated;

i) rules applicable to the distribution of the collected remuneration, in proportion to the actual use of the repertoire of rightholders, as well as those applicable to collected remuneration for which the actual use cannot be established;

j) minimum level from which the payment may be made if the allocated amounts are lower than management costs;

k) method and conditions for the use of amounts which could not be distributed, as well as those not claimed;

l) modalities for verification of economic and financial management by members;

m) modalities for determining the management fee;

n) general rules on the use of rights revenue and income arising from the investment of rights revenue;

o) appropriate and effective mechanisms for the participation of its members in the collective management organization's decision-making process . The representation of the different categories of members in the decision-making process shall be fair and balanced;

p) other binding provisions under the legislation in force.

(2) Any proposal to amend the statute shall be subject to endorsement by AGEPI, two months before the General Assembly of the collective management organization during which the change is to be approved. AGEPI shall issue the endorsement within 15 working days from the request. If it is negative, the endorsement has to be substantiated.

(3) Within one month from the date of the General Assembly during which the amendment was approved, the collective management organization has the obligation to submit the amendment of the statute, the endorsement and the decision of the General Assembly to the competent authority, in order to register it. The decision on the registration of amendments to the statute shall be submitted to AGEPI within 5 days from the date of its issuance.

(4) Any amendment to the statute made and registered with the competent authority without the endorsement of AGEPI shall be null and void.

#### **Article 86. Member of the Collective Management Organization**

(1) Members of the collective management organization may be authors and rightholders, other collective management organizations and associations of rightholders, if they fulfil the membership requirements laid down in the statute, which shall be based on objective, transparent and non-discriminatory criteria. In cases where a collective management organization refuses to accept a request for membership, it shall provide the rightholder, within 30 calendar days of the date of submission of the request, with a reasoned response.

(2) The member of the collective management organization shall have the right to communicate with it, by any means, including electronic means, and to request, in person or through a representative, any information relating to the exercise of his/her rights arising from membership.

(3) Membership of the collective management organization shall not be inherited.

(4) The collective management mandate shall be granted directly by the author or the holder of copyright or related rights by a written contract.

(5) The exercise of the collective management entrusted by the contract of mandate may not in any way restrict the economic rights of the author or rightholder.

(6) The collective management organization may refuse the membership if the holder:

a) does not provide proof for the claimed rights;

b) does not submit the repertoire of works, artistic performances, phonograms, videograms and other subject-matter;

c) does not indicate which property rights, types of protected works or other subject-matter chooses to be managed by the collective management organization;

d) is a member of another collective management organization for the same rights on the same works, performances, phonograms, videograms and other subject-matter for which he/she requests management;

e) has previously lost membership of the collective management organization through exclusion;

f) has been sentenced, by a court decision which has become final, to the criminal penalty with a fine or imprisonment for offences provided for by the intellectual property legislation.

(7) If the situation provided for in paragraph (6) letter f) occurs after accession, the collective management organization may decide whether to maintain or terminate membership.

(8) The statute of collective management organizations may include other grounds for refusing membership, provided that they are objective, transparent and non-discriminatory. The refusal to grant membership shall be justified in writing.

## **Section 2**

### **Management, Control and Supervisory Bodies of the Collective Management Organization**

#### **Article 87. Organizational Structure of the Collective Management Organization**

(1) The organizational structure of the collective management organization comprises the following bodies:

a) General Assembly;

b) Board;

c) Director General;

- d) Censor or the Committee of Censors;
- e) Special Standing Committee on Access to Information;
- f) Supervisory Board.

(2) The collective management organization may also include in its organizational structure other bodies, the powers of which, other than those of the bodies referred to in paragraph (1), are provided for in the statute.

(3) The management, control and supervisory bodies that are part of the organizational structure of the collective management organization shall be obliged to act within its activity in a rational, prudent and appropriate manner, using administrative and accounting procedures, as well as reliable control mechanisms.

(4) By decision of the General Assembly, persons or members of the bodies referred to in paragraph (1) letter b) to f) may be remunerated in accordance with the provisions of the statute.

#### **Article 88. General Assembly**

(1) The supreme governing body of collective management organizations is the General Assembly of members, which meets ordinary and extraordinary.

(2) Ordinary meetings of the General Assembly shall be convened when the interests of the collective management organization so require, but not less than once a year, only after the submission of financial statements of the collective management organization, for the previous calendar year, in accordance with legal provisions.

(3) The General Assembly shall be convened by the Board, which shall notify the members of the collective management organization at least 30 days before the date of the General Assembly by publishing information on the date, time, place and agenda of the General Assembly, the draft decisions to be adopted, on the official website and/or by any other means of mass communication, including electronically.

(4) If the statutory quorum is not met on the date set for the General Assembly, the next General Assembly shall be reconvened after 15 days. The decisions of the reconvened General Assembly shall be taken by a simple majority of the members who cast their vote.

(5) Within the period provided for in paragraph (3), any member shall have the right to consult, at the premises of the collective management organization and by electronic means:

- a) the annual transparency report;
- b) the annual reports drawn up by the Director General, the Board, the internal committees and the Censor or the Committee of Censors, as the case may be;
- c) the text and the reasons for each draft decision to be submitted for the approval of the General Assembly;

d) the situation regarding the categories of users, number of notifications, number of payers in each category and the total amount collected from each category;

e) the situation of disputes;

f) any transaction or rescheduling of payment of users approved by the Board.

(6) The extraordinary General Assembly shall be convened by the Board on its own initiative, at the request of the Director General, the Censor or the Committee of Censors or at the request of at least one third of the total number of members of the organization.

(7) The General Assembly shall decide on the following issues:

a) the changes to the statute;

b) the rules on the collection and distribution of amounts due to rightholders;

c) the rules on the use of non-distributable amounts, without bringing prejudice to the right of the rightholder to claim such amounts from the collective management organization in accordance with the general limitation period established by the legislation;

d) the rules on the use of rights revenue and of any income arising from the investment of rights revenue;

e) the rules on the establishment of the management fee withheld to rightholders, including its amount;

f) the risk management policy;

g) the approval of any acquisition, sale or hypothecation of immovable property;

h) the approval of proposals for borrowing, granting loans or providing security for loans;

i) the approval of the annual transparency report;

j) the appointment or removal of the Director General, the review of his/her general activity, the approval of remuneration and other pecuniary or non-pecuniary benefits;

k) the election and removal of the members of the Board and the Censor or, as the case may be, the Committee of Censors, the approval of their internal operating regulations, as well as the remuneration and other pecuniary benefits;

l) the selection of the person(s) referred to in Article 96 paragraph (3);

m) the approval of the reports of the Director General, the Board and the Censor or the Committee of Censors, as the case may be;

n) the approval of reorganization (by merger, dismembering or transformation) or dissolution of the collective management organization, the setting-up of branches and subsidiaries;

o) any other aspects related to the activity of the collective management organization.

(8) The General Assembly may delegate the powers referred to in paragraph (7) letter f) to h) and n), by a decision or by a provision of the statute, to the body exercising the supervisory function.

(9) All members of the collective management organization shall have the right to participate in, and the right to vote at, the General Assembly of members, including by electronic means, with the collective management organization being obliged to ensure the possibility of participation and voting. The collective management organization may authorize the limitation of the right of the members of the collective management organization to participate in, and to exercise their voting rights at, the General Assembly of members, on the basis of one or both of the following criteria:

a) duration of membership;

b) amounts received or due to a member,

provided that they are determined and applied in a fair and proportionate manner, are laid down in the statute and are made publicly available in accordance with Article 85 paragraph (1) letter c) and Article 95 paragraph (4) letter a).

(10) Every member of a collective management organization shall have the right to appoint any other person or entity as a representative to participate in, and vote at the General Assembly on his behalf, provided that such appointment does not result in a conflict of interest. The proxy granted to the representative shall be valid for a single General Assembly. At the General Assembly of members, the representative shall enjoy the same rights as those to which the appointing member would be entitled. The representative shall cast votes in accordance with the instructions issued by the appointing member.

(11) Decisions adopted by the General Assembly shall be binding and may be challenged in accordance with the legislation.

(12) Collective management organizations shall submit to AGEPI, within 5 days after the General Assembly:

a) the annual transparency report;

b) the annual report of the Censor or the Committee of Censors, as the case may be;

c) the list of members and updated repertoire;

d) the representation agreements with similar organizations abroad;

e) the annual individual statements of the Director General, the members of the Board and the Supervisory Board;

f) the decisions adopted at the General Assembly.

(13) The documents referred to in paragraph (12) letter a), c) and e) shall be submitted to AGEPI, in the format established by the order of the Director General of AGEPI.

#### **Article 89.** Board and Director General of the Collective Management Organization

(1) The Board is the permanent governing body of the collective management organization, which shall be subordinated to the General Assembly. The powers of the Board are laid down in the statute of the collective management organization.

(2) The Director General shall be the person appointed by the Board and elected by the General Assembly. The Director General may not be a member of the Board.

(3) The powers and responsibilities of the Director General, as well as the duration of his/her mandate, are set out in the statute of the collective management organization.

(4) The Director General and the members of the Board shall present to the General Assembly an annual individual declaration containing the following information:

a) any interests in the collective management organization;

b) any remuneration received in the preceding financial year from the collective management organization, including in the form of pensions, benefits and other pecuniary and non-pecuniary benefits;

c) any amounts received in the preceding financial year as a rightholder from the collective management organization ;

d) any existing or potential conflict between any personal interests and those of the collective management organization or between obligations owed to the collective management organization and any duty owed to any other natural or legal person.

#### **Article 90.** Censor and Committee of Censors of the Collective Management Organization

(1) The Censor shall carry out control over the economic and financial activity of the collective management organization, including the appropriateness and legality of the use of its financial means.

(2) If the number of members of a collective management organization exceeds 100 members, a Committee of Censors formed of 3 members shall be set up.

(3) In accordance with the provisions of Article 88 paragraph (12) letter b), the Censor or, as the case may be, the Committee of Censors, shall submit annually a report of the activity of the collective management organization, which shall be approved by the General Assembly and published on the official website of the organization. In order to carry out the control, the Censor or the Committee of Censors shall have the right to ask the Board and the Director General for any data

relating to the activity of the organization during a specific period, to take note of all the acts, documents relating to its activity.

(4) The Censor or, as the case may be, the Committee of Censors shall notify the General Assembly if it finds facts contrary to the law or the statute of the organization and which have caused or may cause considerable harm to the activity of the organization and its members.

(5) The following may not be a Censor or member of the Committee of Censors:

- a) the Director General and the members of the Board of the organization;
- b) the spouse, affinities and relatives of the Director General/ members of the Board up to and including the fourth degree.

#### **Article 91. Special Standing Committee on Access to Information**

(1) The Special Standing Committee on Access to Information composed of 3 members who are not employed and are not members of the management and supervisory bodies of collective management organizations shall be appointed by the General Assembly.

(2) Members of collective management organizations and collective management organizations on whose behalf they manage rights under a representation agreement who consider that their right of access to the requested information has been violated, may within 3 days, refer the matter to the Special Standing Committee on Access to Information. The Committee shall be obliged to reply within 7 days to the member who made the referral.

(3) The Special Standing Committee on Access to Information shall draw up an annual report on its work, which shall be submitted to the General Assembly and published on the official website of the organization.

#### **Article 92. Supervisory Board**

(1) For the purpose of continuously monitoring the activity carried out by both the collective management organization and the Director General, a Supervisory Board shall operate at the level of each collective management organization, which shall consist of an odd number of members and shall meet regularly, at least once a year.

(2) The Supervisory Board may include:

a) members of the collective management organization, provided that fair and balanced representation is ensured;

b) persons who have legal or economic experience of at least 5 years in the field of copyright and related rights, as well as a good reputation in this field;

c) rightholders who are not directly represented by the collective management organization.

(3) The Supervisory Board shall have at least the following powers:

a) to exercise the powers delegated to it by the General Assembly of members, including under Article 88 paragraph (8);

b) to monitor the activities and the performance of the duties of the persons referred to in Article 89, including the implementation of the decisions of the General Assembly of members and, in particular, of the general policies referred to in Article 88 paragraph (7) letter b) to e).

(4) Each member of the Supervisory Board shall be obliged to complete and present to the General Assembly an annual individual statement. The provisions of Article 89 paragraph (4) shall apply *mutatis mutandis* also to the members of the Supervisory Board.

(5) The Supervisory Board shall draw up an annual report on its activities, which shall be submitted for approval to the General Assembly and published on the official website of the organization.

### **Section 3**

#### **General Rights and Obligations of the Collective Management Organization**

##### **Article 93. General Rights of the Collective Management Organization**

The collective management organization shall have the following general rights:

a) to be mandated by authors or holders of copyright and related rights to manage rights, categories of rights or types of works and other subject matter;

b) to provide expert assistance to its members and to represent them in legal proceedings, within the limits of the subject-matter of activity;

c) to request from users' information and documents at their disposal necessary to determine the amount of remuneration they collect, as well as information held by them on the works used, indicating the rightholders, with a view to their distribution and payment;

d) to conclude, on behalf of its members, representation agreements with other similar collective management organizations abroad;

e) to monitor, by any means, the activity of users, free of charge and without additional authorization from them, in order to supervise the use of their own repertoire, and may also request for this purpose information of public interest held, according to the law, by the competent public institutions;

f) to carry out any other legal actions and acts necessary for the protection and enforcement of those rights, including in their own name, within the limits of the powers granted to it by the rightholders;

g) to request their members to update the repertoire according to statutory provisions.

##### **Article 94. General Obligations of Collective Management Organizations**

The collective management organization shall have the following general obligations:

a) to act in the interests of the rightholders whose rights they manage, without imposing on them obligations which are not objectively necessary for the protection of their rights and interests or for the effective management of their rights;

b) to use the information and documents received from users only for the purpose of collection, distribution and payment of remuneration. The use of information or documents for purposes other than those provided for in this Law, without the prior consent of the user, is prohibited;

c) to grant licenses to users, in accordance with Article 32, for the use of works or subject-matter of related rights, prior to the use of the protected repertoire. Collective management organizations shall respond to their request within 30 days, requesting, where appropriate, any other necessary information and providing each other with all necessary information. Licensing conditions shall be based on objective and non-discriminatory criteria. If the collective management organization refuses to grant the license, it shall give reasons for refusal in writing;

d) to collect the remunerations owed by users for the use of works and other subject-matter, distribute them and regularly, diligently and accurately pay them, within the time limit laid down in Article 97 paragraph (1) letter c), in proportion to their actual value and use;

e) to develop methodologies for the fields of activity, to be negotiated with users, in accordance with Article 99 to 101;

f) to keep and continuously update the databases with the list of members and repertoires;

g) to ensure transparency of collective management activity in relation to its members, public authorities and users;

h) to ensure correspondence with members, users and collective management organizations with whom it has concluded representation agreements, by any means, including electronic means;

i) to respond in writing to complaints, in particular regarding the management of rights, revocation of mandate or withdrawal of rights, membership requirements, collection of amounts owed to authors or rightholders, deductions and distribution thereof;

j) to ensure equal treatment of users, its members, including holders whose rights they manage under a representation agreement, as regards the management fee and the rules on the collection, distribution and payment of remuneration, as well as any information related to the management of their rights;

k) to provide members with the necessary conditions for participation and voting in the General Assembly, in real time, by any means, including electronic means;

l) to ensure that their members and control and monitoring authorities have access to information on any aspect of the activity of collecting amounts owed by users, their distribution and payment;

m) to protect the interests of its members in terms of the management of rights, due to the use of its own repertoire outside the territory of the Republic of Moldova, by concluding representation agreements with similar organizations abroad;

n) to make available to members and collective management organizations on whose behalf they manage rights under a representation agreement an effective and rapid mechanism for the examination of complaints, in particular as regards the authorization to manage rights and the revocation or withdrawal of rights, the membership requirements, the collection, distribution and payment of amounts due to rightholders, deductions made. The collective management organization shall respond in writing to complaints. If the collective management organization refuses a complaint, the reply must be substantiated.

## **Section 4**

### **Transparency in the Activity of the Collective Management Organization**

#### **Article 95. Transparency in the Activity of Collective Management Organizations**

(1) Collective management organizations shall be required to make available, at least once a year, to each rightholder to whom they have attributed rights revenue or for whose benefit they have made payments in the reference period, the following information:

a) any contact details which the rightholder has authorized the collective management organization to use in order to identify and locate the rightholder;

b) the revenue derived from attributed rights;

c) the amounts paid by the collective management organization to the rightholder, with a breakdown per category of rights managed and per type of use;

d) the period during which the uses took place for which the amounts were attributed and paid to the rightholder, unless objective reasons relating to reporting by users prevent the collective management organization from providing this information ;

e) the management fee deducted, as well as any deductions made for other purposes (social, cultural, etc.);

f) any rights revenue attributed which is outstanding for any period.

(2) Collective management organizations shall have the obligation to make at least the following information available, at least once a year, including by electronic means, to collective management organizations on whose behalf they manage rights under a representation agreement, for the period to which the information relates:

a) the rights revenue attributed, the amounts paid by the collective management organization with a breakdown per category of rights managed and per type of use for the rights it manages under a representation agreement, as well as any rights revenue attributed which is outstanding for any period ;

b) the management fee deducted, as well as any other deductions established under the representation agreement;

c) information on any licenses granted or refused with regard to protected works and other subject-matter covered by the representation agreement;

d) decisions adopted by the General Assembly of members in so far as those decisions are relevant to the management of the rights under the representation agreement.

(3) A collective management organization shall, as part of the examination of a duly substantiated request, make at least the following information available by electronic means and without undue delay to any collective management organization on whose behalf it manages rights under a representation agreement or to any rightholder or to any user:

a) the protected works or other subject-matter it represents, the rights it manages, directly or under representation agreements, and the territories covered;

b) in the situation where, due to the scope of activity carried out by the collective management organization, such works or other subject-matter cannot be determined, the types of protected works or other subject-matter it represents, the rights it manages and the territories covered.

(4) The collective management organization shall publish on its official website at least the following information, ensuring that it is continuously updated:

a) the statute;

b) the membership terms and the terms of termination of authorization to manage rights, if these are not included in the statute;

c) standard licensing contracts and standard applicable tariffs, including discounts;

d) the list of the persons who administer the organization;

e) the general policy on distribution of amounts due to rightholders;

f) the general policy on management fee;

g) the general policy on deductions from rights revenue and from any income arising from the investment of rights revenue, with the exception of management fee, including deductions made for the purpose of funding certain social, cultural and educational activities;

h) a list of the representation agreements concluded and the names of the collective management organizations with which those representation agreements have been concluded;

- i) the general policy on the use of non-distributable amounts;
- j) the complaint handling and dispute resolution mechanism.

**Article 96. Annual Transparency Report**

(1) The annual transparency report shall be drawn up by the collective management organization within 8 months following the end of that financial year and shall be published on the official website of the collective management organization, where it shall remain available to the public for a minimum of 5 years.

(2) The annual transparency report shall contain at least the following information:

- a) financial statements, an income and expenditure account and a cash-flow statement;
- b) a report of the activities of the previous financial year;
- c) information on refusals to grant licenses;
- d) a list of management bodies;
- e) information on the total value of amounts paid to the Director General, members of the Board, members of internal committees, and on other benefits granted to them;
- f) a special report which must contain at least information on the amounts deducted for social, cultural and educational purposes, with a breakdown per category of rights managed and per sources of collection, and the type of their use;
- g) information on the remuneration collected, with a breakdown per category of rights managed and per sources of collection;
- h) financial information on the management fee containing at least data on actual costs, with a breakdown per categories of rights managed and, where costs are indirect and cannot be attributed to one or more categories of rights, justifications thereof, including the income arising from bank placements and deposits of the fee;
- i) information on the resources used to cover the expenses related to the collection, distribution and payment of remuneration;
- j) financial information on the total amount attributed and the total amount paid to rightholders, with a breakdown per categories of rights managed and per type of use, including the dates on which payments were made, with their breakdown per collection/distribution period;
- k) financial information on the total amount collected and not distributed, and on the total amount attributed and not paid to rightholders, with a breakdown per category of rights managed and per sources of collection, indicating the periods during which those amounts were collected, the reasons for the delays and the manner of recording the amounts;

l) financial information on non-distributable amounts and type of their use;

m) financial information on the amounts received from other collective management organizations with which they are in legal relationships provided by this Law, as well as the management fee and other deductions from those amounts, with a breakdown per categories of rights, per sources of collection and per collective management organizations;

n) financial information on the amounts collected, distributed and paid to other collective management organizations with which they are in legal relationships provided by this Law, as well as the management fee and other deductions from those amounts, with a breakdown per categories of rights, per sources of collection and per collective management organizations, indicating the collection/distribution period;

o) financial information on the amounts collected, distributed and paid directly to rightholders, with a breakdown per category of rights, per type of use and indicating the collection/distribution period.

(3) The information referred to in paragraph (2) shall be subject to an audit by one or more persons empowered by law to audit the financial statements, while the audit report, including any qualifications thereto, shall be reproduced in full in the annual transparency report.

## **Section 5**

### **Exercise of Collective Management**

#### **Article 97. Rules on the Distribution of Remuneration**

(1) Collective management shall be exercised in accordance with the following rules:

a) the decisions on the methods and rules for collecting remuneration from users, those on their distribution among rightholders, as well as those on other more important aspects of collective management, must be taken by the members, within the General Assembly, according to the statute;

b) the remunerations collected by collective management organizations are not and cannot be assimilated to their income, except for the management fee established in accordance with the rules adopted pursuant to Article 98;

c) the amounts due to rightholders and other collective management organizations shall be distributed and paid regularly and accurately, as soon as possible but no later than 9 months from the end of the financial year in which the remuneration was collected, unless such time limits cannot be complied with, for objective reasons such as: special documentation with a view to identifying rightholders, reporting by users, identification of rights, matching of information on works and other subject-matter on the one hand, and rightholders on the other, and where the amounts allocated individually are lower than management costs. The other collective management organizations, or, where they have as members entities representing rightholders, those members, shall distribute and pay the amounts due to rightholders as soon as possible but no later than 6 months from receipt of those amounts, unless objective reasons relating in particular to reporting by users, identification of

rights, rightholders or matching of information on works and other subject-matter on the one hand, and rightholders on the other hand prevent collective management organizations or, where applicable, their members from meeting that deadline ;

d) the amounts resulting from the placement of unclaimed and non-distributable remunerations, those in bank deposits or obtained from other operations carried out within the limits of the object of activity, as well as those obtained as damage or compensation as a result of violation of copyright or related rights shall be due and distributed to rightholders and shall not constitute income of collective management organizations.

(2) Where rightholders could not be identified or located and the amounts due to rightholders cannot be distributed and paid within the time limit laid down in paragraph (1) letter c), and the exception to that deadline does not apply, those amounts shall be entered separately in the accounts of the collective management organization.

(3) Collective management organizations must act in good faith and take all necessary measures to identify and locate the rightholders, to distribute and pay their due amounts. To this end, collective management organizations will verify the databases on the list of members and repertoire, including other similar domestic and foreign organizations, as well as any other relevant information to which they have access.

(4) Within 3 months after the expiry of the period laid down in paragraph (1) letter c), the collective management organization shall make available information on protected works and other subject matter for which one or more rightholders have not been identified or located to:

a) the rightholders that it represents or the entities representing rightholders, where such entities are members of the collective management organization;

b) all collective management organizations with which it has concluded representation agreements.

(5) The information referred to in paragraph (4) shall include, where available, the following:

a) the title of the protected work or other subject-matter;

b) the name of the rightholder;

c) the name of the publisher or producer;

d) any other relevant information available which could facilitate the identification of the rightholder.

(6) Where it is impossible to identify and locate rightholders after taking the actions referred to in paragraph (3) to (5), the collective management organization shall make the information referred to in paragraph (5) available to the public at the latest one year after the expiry of the 3-month period provided for in paragraph (4).

(7) The amounts due to rightholders which cannot be distributed within 3 years from the end of the financial year in which the revenue was collected, provided that the collective management organization has taken all necessary measures to identify and locate rightholders, those amounts shall be deemed non-distributable.

(8) After the expiry of the general limitation period of 3 years from the date of notification, within which rightholders have the right to claim those amounts, the General Assembly of the members of the collective management organization shall decide on the use of the non-distributable amounts.

(9) The notification of unclaimed amounts shall be made in writing and electronically, including on the collective management organization's official website, within 6 months from the end of the financial year and shall contain at least the following information:

- a) the title of the protected work or other subject-matter;
- b) the name of the rightholder;
- c) the name of the user and the date of use;
- d) any other information which could facilitate the identification of the rightholder.

(10) Where a collective management organization invests rights revenue or any income arising from the investment of rights revenue, it shall do so in the best interests of the rightholders whose rights it represents, in accordance with the policy on the use of rights revenue and income arising from the investment of rights revenue, the risk management policy and compliant with the following rules:

- a) the General Assembly shall ensure that the investment is made in the sole interest of its members;
- b) the assets shall be invested in a manner to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
- c) the assets shall be properly diversified in order to avoid excessive reliance on any particular asset and accumulations of risks in the portfolio as a whole.

(11) A collective management organization shall keep separate in its accounts:

- a) rights revenue and any income arising from the investment of rights revenue;
- b) any own assets it may have and income arising from such assets, from management fee or from other activities;
- c) unclaimed amounts, recorded and kept by the organization in separate analytical accounts for 3 years from the date of notification.

#### **Article 98. Management Fee**

(1) Where an author or holder of copyright or related rights authorizes a collective management organization to manage his/her rights, it shall be obliged to provide the rightholder, by any means, including electronic means, with information on the management fee and other deductions from the rights revenue and from any income arising from the investment of rights revenue, before obtaining his/her consent to the management of his/her rights.

(2) Deductions referred to in paragraph (1) shall be reasonable in relation to the services provided by the collective management organization to rightholders, including, where appropriate, the services referred to in paragraph (4), and shall be established on the basis of objective criteria.

(3) The management fee shall not exceed the justified documented costs incurred by the collective management organization for the purpose of managing copyright and related rights. The requirements applicable to the use and the transparency of the use of amounts deducted as management fee or offset in respect of this fee shall apply to any other deductions made in order to cover the costs of managing copyright or related rights.

(4) A collective management organization shall not apply any deductions, other than in respect of the management fee, from the rights revenue derived from the rights it manages on the basis of a representation agreement, or from any income arising from the investment of that rights revenue, unless the other collective management organization that is party to the representation agreement expressly consents to such deductions.

(5) Where the statute provides for the possibility for a collective management organization to carry out activities for social, cultural or educational purposes funded through deductions from rights revenue, they shall be carried out on the basis of fair criteria, in particular as regards access to, and the extent of, those services.

(6) The management fee shall be deducted for each managed right, as follows:

a) for mandatory collectively managed rights – in accordance with the provisions of Article 70, as well as for extended collectively managed rights – according to Article 78. The fee deducted by the collective management organization designated as collector and the beneficiary organizations may not cumulatively exceed 30 % of the amounts distributed to each;

b) for rights managed collectively on an optional basis – in accordance with Article 80. The fee owed by its own members shall be deducted by the collective management organization at the time of the distribution and shall not exceed 30 % of the amounts distributed individually;

c) for rights managed on the basis of a special mandate – in accordance with Article 82. The fee shall be established by the collective management organization on a contractual basis, respecting equal treatment, in accordance with the provisions of Article 94 letter j).

## **Section 6**

### **Negotiation of Methodologies**

#### **Article 99. Initiation of the Procedure for Negotiating Methodologies**

(1) The remuneration due to rightholders, as well as the conditions for collection and payment, shall be determined by collective management organizations and users in the contents of the negotiated methodologies.

(2) Collective management organizations and users shall negotiate in good faith and provide each other with all necessary information.

(3) In order to initiate the procedures for negotiating methodologies, collective management organizations, users or their representative associations referred to in Article 100 paragraph (2) letter b) and c) must submit a request to AGEPI, accompanied by:

a) the list of the parties, the identification elements and proof of their notification for negotiation;

b) the draft methodology and tariffs.

(4) Failure to submit a list or to submit an incomplete list, as well as the lack of proof of notification, shall lead to refusal of the request to initiate negotiation procedures.

(5) The draft methodology is subject to the endorsement of AGEPI. The endorsement shall be given within 10 working days of the date of submission of the request, in case when methodologies meet the following conditions:

a) comprise the following mandatory elements: the subject matter of the regulation, the manner in which remuneration is divided into each category of rightholders, the amount of remuneration due, expressed as a percentage or a lump sum, the basis for calculating the remuneration, payment periods, late payment penalties, discounts granted to paying users, information and documents available to users necessary to determine the amount of remuneration, as well as the time limit and format for reporting on the use of protected works and other subject-matter. When deciding on the reporting format, optional industry standards shall be taken into account, as far as possible;

b) granting of licenses is not conditioned by the users' acceptance of additional services which, by their nature or in accordance with the legal provisions, are not related to the subject-matter of licenses;

c) provisions of the draft methodology shall comply with the provisions of this Law.

(6) In the case of compensatory remuneration provided for in Article 71 and 72, in addition to the conditions laid down in paragraph (5) letter a) of this Article, the methodology must also include the procedure used for recorded copies (audio, audiovisual, digital, analogue).

(7) The percentage or lump sum remuneration shall not be the subject of the endorsement referred to in paragraph (5).

(8) The methodology concluded without endorsement or in breach of the endorsement of AGEPI shall be null and void.

#### **Article 100. Procedure for Negotiating Methodologies**

(1) The methodologies shall be negotiated within a committee established by the order of the AGEPI Director General, issued within 10 working days from the date of submission of the request referred to in Article 99 paragraph (3) and notified to the parties.

(2) The Committee on Negotiation of Methodologies shall consist of:

a) one representative of each endorsed collective management organization, who operates for a creative field and for a category of rights;

b) one representative of the collective management associations of users at national level, and one representative of the first 3 major users, notified by the requesting entity, established on the basis of turnover, provided that it is declared to AGEPI under their own responsibility. Public institutions, including public radio and television broadcasting organizations, which are part of the negotiation committee, shall be exempted from the declaration of the turnover;

c) one representative of the representative users' associations at local level or, in their absence, one representative of 2 local users notified by the requesting entity and which submit to AGEPI the agreement on the participation in the respective committee.

(3) Depending on the proposal received for issuing the order to establish the negotiation committee, AGEPI shall convene and designate in the negotiating committee any entity having a legitimate interest.

(4) The order to establish the negotiation committee shall be communicated to the parties, together with the draft methodology submitted by the requesting entity.

(5) The negotiation of methodologies shall be carried out in accordance with the timetable established by the parties to the negotiation committee, for a maximum period of 90 days from the date of establishment of the committee.

(6) The methodology shall be negotiated taking into account the following main criteria:

a) the category of rightholders, the types of works and other subject-matter and the field for which the negotiation is conducted;

b) the category of users represented in the negotiations by the representative associations or other users designated to negotiate;

c) the repertoire managed by the collective management organization, for its own members, as well as for members of other similar foreign organizations, on the basis of reciprocity agreements;

d) the proportion of the use of the repertoire managed by a collective management organization;

e) the proportion of uses for which the user has fulfilled payment obligations through direct user agreements with rightholders;

f) the revenues obtained by users from the activity that uses the repertoire for the use of which methodologies are negotiated;

g) the European practice on the results of negotiations between users and collective management organizations.

(7) In the case of rights which are mandatory collectively managed, in accordance with Article 70, tariffs and methodologies shall be negotiated without taking into account the criteria laid down in paragraph (6) letter c) and e), the repertoires being considered as extended repertoires.

(8) In the case of extended collectively managed rights, the methodologies shall be negotiated with the presentation of the list of authors and rightholders who have opted to exclude protected works and other subject-matter from the mechanism provided for in Article 78.

#### **Article 101. Negotiation of Remuneration**

(1) Collective management organizations may request in negotiations, from the same category of users, either lump sum remuneration or percentage remuneration, only if and to the extent that protected works or other subject-matter for which copyright or related protected rights are used, are within the protection provisions laid down by law.

(2) The lump sum and percentage remunerations shall be determined from the revenue generated by the activity in which the repertoire of the collective management organization is used.

(3) In the absence of revenue, lump sum or percentage remuneration shall be reported to the expenditure incurred by use.

(4) The remuneration referred to in paragraph (2) shall be reasonable in relation to the economic value and weight of the use of the rights concerned, taking into account the characteristics and scope of the use of the works and other subject-matter, as well as the economic value of the service provided by the collective management organization.

(5) Collective management organizations shall not impose unfair remuneration or any other unfair licensing conditions on users and shall not apply unequal remuneration or other unequal conditions to equivalent services in relation to users;

(6) For the radio broadcasting activity, collective management organizations may claim only percentage remuneration, differentiated by direct proportionality to the share of the use by each user – a radio or television broadcasting organization – of the repertoire collectively managed in this activity.

(7) The lump sum remunerations may be amended annually, starting from the first month of the year following the year in which the methodologies were published, by the collective management organizations on the basis of the inflation index established at national level. These amendments shall be submitted to AGEPI, with further publishing in the Official Gazette of the Republic of Moldova within 5 days from the date of submission. The changes shall become effective from the month following the publication.

(8) The arrangements of the parties of the negotiation committee shall be recorded in a protocol which, together with the negotiated methodologies, shall be submitted to AGEPI within 3 days from its signature. The protocol and the methodologies shall be published in the Official Gazette of the Republic of Moldova within 10 days from the date of submission.

#### **Article 102. Status of Methodologies**

(1) The methodologies established in accordance with the provisions of this Law shall be enforceable against all users in the field for which the negotiation took place and no discounts may be granted in the payment of remuneration due, other than those provided for in the published methodologies.

(2) Methodologies shall not be enforceable against users who, at the time of the start of the methodologies' negotiation procedure, are in the process of direct negotiation of a license agreement or have already concluded such negotiations with the collective management organizations.

(3) Collective management organizations, users or their representative associations may submit a new request to initiate procedures for negotiation of methodologies only after 3 years from the date of publication of their final format in the Official Gazette of the Republic of Moldova.

(4) Until the new methodologies are published, the old methodologies remain valid.

### **Section 7**

#### **Collector and Common Collection Structure**

**Article 103.** Designation of the Collector in the Case of Mandatory Collective Management of Rights or Through Extended Collective Management

(1) The collection of remunerations due to authors and holders of copyright and related rights for rights under mandatory collective management of rights or through extended collective management shall be carried out by the collective management organization designated as collector or common collection structure, by decision of the AGEPI Director General, which shall be published in the Official Gazette of the Republic of Moldova.

(2) The decision to designate the collector is based on a proposal from the collective management organizations endorsed for the same field/same rights, submitted by a joint request to AGEPI within 30 days from the establishment of a new collective management organization, which contains the name of the collective management organization proposed to be designated as collector of remunerations.

(3) The designated collector shall conclude with all beneficiary collective management organizations an agreement setting out the criteria for collecting, distributing and paying remuneration, the management fee and the information which the collector and the beneficiary organizations are to provide each other, in good faith, during its application. It shall be submitted to AGEPI within 30 days of the date of adoption of the decision on the designation of the collector and shall contain the following:

a) information on the collection of remuneration, respectively: gross amount collected with a separate indication of VAT; the period during which the respective amount was collected and the period from which it originates; interest, penalties and the period from which they arise; amounts recovered or paid late, other than penalties, indicating the period from which they originate;

b) criteria for sharing remuneration between collective management organizations (collector and beneficiaries);

c) information on the distribution of remuneration, respectively: gross amount distributed; gross amount distributed to rightholders represented by the beneficiary collective management organization, both from the total amount collected and from the total amount distributed, after deduction of the fee;

d) the modality of recording and justifying the management fee deducted by the collective management organization designated as collector, which may not exceed the amount set out in Article 98 paragraph (6) letter a), respectively the management fee retained by the collector from the gross amount allocated to the beneficiary organization, the amount being indicated both as percentage and as absolute value, as well as the modality of use of the fee;

e) obligation of beneficiary collective management organizations to provide the collector with all the information necessary for granting licenses and collecting remuneration, including the list of members and the repertoire;

(4) The information referred to in paragraph (3) shall be communicated to the beneficiary organizations with a breakdown per each managed right, per each distribution made to them.

(5) If the collective management organizations do not submit the proposal referred to in paragraph (2), AGEPI shall decide on the designation of the collector from among the endorsed collective management organizations, taking into account which of the endorsed collective management organizations cumulatively meets the following conditions:

a) has a monitoring programme for the use of protected works and other subject-matter and a remuneration distribution system;

b) is representative, taking into account the number of members and the degree of use of the managed repertoire, as evidenced by user reports;

c) has the necessary human and material resources to ensure the collection of remuneration, with a minimum level of expenditure.

(6) If the collector and the beneficiary collective management organizations cannot agree on the conclusion of the agreement referred to in paragraph (3), the parties may apply to the Mediation Committee or to the Arbitration specialized in the field of intellectual property, set up by AGEPI.

(7) The collective management organization designated as collector shall have the following obligations:

- a) to issue the license, on behalf of all beneficiary collective management organizations;
- b) to ensure transparency of collection activities and related expenditure in the relations with the beneficiary collective management organizations;
- c) to record in separate analytical accounts both the amounts collected and the amounts resulting from the placements of unclaimed and non-distributable remunerations, in bank deposits or obtained from other operations carried out within the scope of the activity, as well as those obtained as compensation in the result of the violation of copyright or related rights;
- d) to record separately the collection costs and justify them with appropriate documents/information;
- e) to submit, on request, to the beneficiary collective management organizations, information on the activity carried out.

(8) The collector shall be designated for a period of 3 years. The conditions and criteria set out in this Article shall be fulfilled and complied with throughout the entire duration of the collection activity.

(9) After the deadline provided for in paragraph (8), the collective management organization may again be designated as a collector under the conditions of Article 103, after verifying that the conditions and criteria laid down in this Article are met and complied with.

(10) Failure or non-compliance with the obligations, conditions or criteria laid down in this Article, by the collective management organization designated as collector, shall entail the revocation of the decision to designate the collector, as well as administrative, civil or criminal liability, as appropriate.

(11) The revocation of the decision to designate the collector shall be ordered by the decision of the AGEPI Director General, which shall be published in the Official Gazette of the Republic of Moldova.

(12) The collective management organization for which the decision referred to in paragraph 1 has been revoked, may no longer be designated as collector for a period of 5 years from the date of publication of the decision provided for in paragraph (11).

(13) AGEPI shall ex officio designate the single collector where there is only one collective management organization on a right provided for in Article 70 paragraph (2) and/or Article 78 paragraph (3).

#### **Article 104. Common Collection Structure**

(1) Collective management organizations may establish, with the endorsement of AGEPI, common collection structures for one or more of the rights provided for in Article 70, Article 78, Article 80 and Article 82.

(2) The common collection structures have the status of public associations and carry out their activity in accordance with the provisions of this Law, within the limits of the powers granted by the founders, which involve:

- a) granting of licenses for the use of protected works and other subject-matter and the repertoire of founding collective management organizations;
- b) collection of remuneration in accordance with licenses granted to users;
- c) distribution of collected remuneration to the beneficiary collective management organizations, in accordance with the provisions of the agreement between them;
- d) summoning users in the court for the use of works and other subject-matter, and the repertoire of the beneficiary collective management organizations in the absence of a license, or for failing to pay the remuneration according to the license obtained.

(3) The common collection structures are set up to make the collection of remuneration more efficient, being funded by the beneficiary collective management organizations, within the limits of their own management fee.

(4) The amounts collected by the common collection structure shall be distributed to the beneficiary collective management organizations, which are responsible for the distribution and payment of remuneration to rightholders.

(5) In order to obtain the endorsement referred to in paragraph (1), the collection structure shall comply with the following conditions:

- a) to be established by at least two collective management organizations;
- b) to provide proof of possession of the means necessary for the collection of remuneration;
- c) to present the agreement with the founding collective management organizations on the modality of distribution of the collected remuneration and the fee.

(6) After verification of compliance with the conditions laid down in paragraph (5), the collection structure may be designated as a collector, pursuant to the agreement of the collective management organizations founding the collection structure, which manage the same category of rights or rightholders, by decision of the AGEPI Director General, which shall be published in the Official Gazette of the Republic of Moldova. The agreement shall be concluded in written form and submitted to AGEPI.

(7) The provisions of Article 103 paragraph (3) letter b), d), e) and paragraph (8) to (12), and Article 106 and Article 107 shall also apply *mutatis mutandis* to common collection structures.

(8) Where the collection structure is designated as a collector under the conditions of paragraph (6) for rights under mandatory collective management or extended collective management, where an author or a rightholder does not have the status of member of any collective management organization, the power to distribute the corresponding remuneration shall rest with the representative collective management organization for the category of rights and rightholders.

## **Article 105. Rights and Obligations of Users**

(1) Users shall have the following rights:

a) to turn to the endorsed management organizations to obtain the license for the use of works and/or other subject-matter of related rights, prior to their use;

b) to request information from collective management organizations regarding the managed repertoire, the remuneration to be paid, as well as other licensing conditions;

c) to participate in the negotiation of methodologies, in accordance with the procedure provided for in Article 100;

d) to appeal to the Mediation Committee or the Arbitration specialized in the field of intellectual property in order to resolve any possible conflicts with the collective management organizations.

(2) Users shall have the following obligations:

a) to request the consent of the author or rightholder or licensee from the collective management organization for the use of protected works and/or other subject-matter prior to their use;

b) to use only protected works and/or subject matter for which they have obtained the consent or license of use;

c) to pay to the author, rightholder or collective management organization, as the case may be, the corresponding remuneration for the use of protected works and/or other subject-matter;

d) to provide the collective management organization, in written or electronic form approved by AGEPI, with the report on the use of works and subject-matter of related rights, within the deadlines set out in the methodologies;

e) to provide the collective management organization with the information and documents that are necessary for the collection of rights revenue and for the distribution and payment of amounts due to authors or rightholders;

f) to enforce the moral rights of authors and rightholders of protected works and other subject-matter used.

## **Section 8**

### **Control of the Activity of Collective Management Organizations**

#### **Article 106. Control of the Activity of Collective Management Organizations**

(1) The control of the activity of collective management organizations shall be carried out by AGEPI, with the possibility of attracting, as appropriate, specialists/experts from outside, according to the procedures established by the order of the Director General of AGEPI.

(2) The control procedure and the documents to be submitted by collective management organizations shall be determined by Government Decision.

(3) AGEPI shall perform once a year the overall control of the activity of the collective management organization. During the period between two general annual controls, AGEPI shall have the right to carry out special controls on the basis of complaints submitted by rightholders, including members of the organization and users, or from other relevant sources, which contain information that gives rise to reasonable doubts as to the compliance of the organization's activity with the provisions of this Law, of other relevant normative acts and of its own statutes.

(4) The annual and special control performed by AGEPI shall be carried out only with the prior notification of the controlled collective management organization, at least 5 working days before it is carried out.

(5) The controlled collective management organization shall be obliged to ensure, at the initiation of the control and during its duration, the presence of the Director General or the representative.

(6) As a result of each control referred to in paragraph (3) of this Article, AGEPI shall draw up the control act, which shall contain the conclusions of the Control Committee relating to the violations found.

(7) Within 5 days of the communication of the control act, the collective management organization may formulate observations on the conclusions of the control, accompanied by additional supporting documents, if they have not been submitted during the control. The observations shall be annexed to the control act and the Control Committee shall examine them and shall communicate their acceptance or refusal within 10 days of receipt.

(8) In case of detection of irregularities, based on the conclusions contained in the control act, AGEPI shall grant the collective management organizations a time line for solving irregularities and shall communicate the control act to the General Assembly of the controlled collective management organization, which will debate it during the first ordinary meeting.

**Article 107.** Violation by the Collective Management Organization of the Provisions of this Law

(1) Where it is found that the collective management organization does not comply with the obligations imposed by this Law, with the exception of those whose violation is punishable by administrative or criminal penalties, AGEPI shall order one of the following measures:

a) grants the collective management organizations a deadline for removing the irregularities identified in their activity;

b) revokes the decision to designate the collector for failure to comply with the obligations provided for in Article 103 paragraph (7);

c) suspends the activity of the collective management organization for a period comprised between 6 months and 1 year, in the event of failure to comply in due time limit with the measures ordered in accordance with letter a);

d) revokes the decision on endorsement in case of non-compliance with the obligations laid down in Article 84 paragraph (1).

(2) The measures provided in accordance with paragraph (1) letter a) shall be clear, precise and with an indication of the legal basis.

(3) Decisions issued by AGEPI pursuant to paragraph (1) may be challenged under the terms of the Administrative Code.

(4) The measure provided for in paragraph (1) letter c) shall cease on the expiry of the time limit, provided that the obligations for the non-compliance for which it has been ordered have been fulfilled. If these obligations have not been fulfilled, the decision on endorsement shall be revoked.

(5) The suspension of the activity of the collective management organization and the revocation of the decision to endorse it shall be without prejudice to the status of a non-commercial organization, conferred by Law No 86/2020 on Non-Profit Organizations.

(6) AGEPI shall verify the enforcement of the measures ordered on the basis of the documents and information submitted by the collective management organization within the time limits granted under paragraph (1).

#### **Article 108. Disputes between the Parties**

(1) Disputes between collective management organizations, members of collective management organizations, rightholders or users of protected works and other subject-matter with regard to the provisions of this Law may be submitted for examination to the Mediation Committee or to the Arbitration specialized in the field of intellectual property.

(2) The provisions of paragraph (1) shall not restrict the right of parties to bring an action before the court.

### **Chapter XIV**

#### **ENFORCEMENT OF RIGHTS MEASURES, PROCEDURES AND REMEDIES**

#### **Article 109. Infringement of Rights**

(1) The infringement of the rights recognized and protected by this Law shall entail civil, administrative or criminal liability, as the case may be.

(2) The measures, procedures and remedies set out in this Chapter are intended to ensure compliance with the rights and obligations provided for in this Law. They shall be applied in a fair and equitable manner, shall not be unnecessarily complicated or costly and shall entail reasonable time limits so as not to cause undue delays.

(3) The enforcement of measures, procedures and remedies shall be effective, proportionate and dissuasive, shall avoid the creation of obstacles to legal trade and provide protection against their abusive use.

(4) The procedural provisions laid down in this Law shall be supplemented by those of common law.

#### **Article 110. Action in Relation to Infringement of Rights**

(1) Natural or legal persons who have claims regarding the use of works and subject-matter protected by copyright or related rights or other rights protected by this Law shall have the right to initiate actions before the competent court or to bring proceedings before another authority for the enforcement of the measures, procedures and remedies provided for in this Chapter.

(2) The following persons shall be entitled to seek application of the measures, procedures and remedies set out in this Chapter:

a) the authors, holders of copyright and related rights or authorities empowered to protect their rights;

b) other persons benefiting of such rights, especially licensees;

c) organizations for collective management of copyright and/or related rights;

d) professional organizations and other representatives of holders of copyright and related rights and licensees.

(3) For the purpose of applying the measures, procedures and remedies provided for in this Chapter, it shall be sufficient that the name of the author or the holder of the copyright is mentioned on the work or other protected subject-matter in order for them, unless proven otherwise, to be regarded as such, and consequently to be entitled to institute proceedings against infringement of rights.

(4) The provisions of paragraph (3) shall apply *mutatis mutandis* to the holders of related rights with regard to their protected subject-matter.

#### **Article 111. Measures for Preserving Evidence**

(1) Until an action is brought before court, the competent court may, at the request of the claimant who presents accessible and sufficient evidence to support his/her claims that his/her rights have been infringed or are about to be infringed, order provisional measures to preserve evidence, subject to the protection of confidential information,.

(2) Measures for preserving evidence may include the detailed description, with or without the taking of samples, or seizure of the infringing goods, and, where appropriate, the materials and

instruments used in the production and/or distribution of these goods and the documents relating thereto.

(3) The measures provided for in paragraph (1) may be ordered subject to the lodging by the claimant of a security or an equivalent assurance intended to ensure compensation for any damage caused to the defendant.

(4) The procedure for applying assurance measures for preserving evidence shall be used by the court or other competent authority in accordance with the respective provisions of the Code of Civil Procedure.

(5) The measures referred to in paragraph (1) shall be taken, if necessary, without the defendant having been heard, in particular where any delay is likely to cause irreparable harm to the claimant or where there is a risk of destruction of evidence. The court injunction shall be brought to the attention of the affected party immediately after the execution of the measures at the latest.

(6) A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the notification of the measures, whether they shall be modified, revoked or confirmed.

(7) Measures for preserving evidence shall, upon request by the defendant who retains the right to claim compensation, be revoked or cease to have effect, if the claimant does not bring an action before the court within 20 working days from the date of pronouncing the conclusion on preservation of evidence.

(8) Where the measures provided for in paragraph (1) are revoked or lapse due to any act or omission by the claimant, or where it is subsequently found that there has been no infringement or imminence of infringement of copyright, related rights or other rights protected by this Law, the court may order the claimant, upon request of the defendant, to pay a compensation corresponding to the damage caused.

#### **Article 112.** Presentation and Preservation of Evidence in Action in Relation to Infringement of Rights

(1) At the request of a party which has presented sufficient and reasonable evidence to support its claims, as well as information that certain evidence is under the control of the opposing party, the court may order that such evidence be presented by the other party, subject to the protection of confidential information.

(2) Where the infringement is committed on a commercial scale, the court may order, at the request of a party, the submission of banking, financial or commercial documents, which are under the control of the opposing party, subject to the protection of confidential information.

#### **Article 113.** Right of Information

(1) In the context of an action referring to the infringement of a right provided for by this Law and in response to a justified and reasonable request of the claimant, the competent court may order that information on the origin and distribution networks of the goods or services infringing a right

provided for by this Law be provided by the person who has infringed the rights or any other person who:

- a) was found in possession of the pirated goods on a commercial scale;
- b) was found to be using on a commercial scale services infringing the rights provided by this Law;
- c) was found to be providing on a commercial scale products or services used in activities infringing the rights provided by this Law;
- d) was indicated by the person referred to in letter. a), b) or c) as being involved in the production, selling, manufacture, distribution or rental of pirated goods or access control pirated devices or the provision of products or services infringing the rights protected by this Law.

(2) The information referred to in paragraph (1) shall, as appropriate, comprise:

- a) the names and addresses of the producers, distributors, suppliers, previous holders of the goods or services, as well as the wholesalers and retailers;
- b) information on the quantities of goods or services produced, manufactured, delivered, received or ordered, as well as their price.

(3) The provisions of paragraph (1) and (2) shall apply without prejudice to other legal provisions which:

- a) grant the rightholder rights to receive more detailed information;
- b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
- c) govern responsibility for misuse of the right of information;
- d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph (1) to recognize his/her direct participation or that of close relatives in an infringement of copyright, related rights or other rights protected by this Law;
- e) govern the protection of confidentiality of information sources or the processing of personal data.

#### **Article 114. Preserving Measures in Actions in Relation to Infringement of Rights**

(1) If an infringement or imminence of an infringement of the rights provided for in this Law has been found, the court may, at the request of the claimant, namely:

- a) issue against the defendant and/or intermediaries an injunction intended to prevent any imminent infringement of a right, to forbid, on a provisional basis and subject to a recurring pecuniary sanction where provided for by this Law, the continuation of the alleged infringements of

that right , or to require the lodging of guarantees intended to ensure the compensation to the claimant;

b) order the seizure or confiscation of the goods suspected of infringing a right provided by this Law, so as to prevent their introduction or distribution in the commercial circuits.

(2) Within the meaning of paragraph (1), intermediaries shall mean access providers who provide users only with access to Internet, without offering other services such as e-mail, FTP or file sharing services or without exercising control, *de jure or de facto*, over the services which users use.

(3) In the event of an infringement committed on a commercial scale, the competent court may order, if the injured party demonstrates the existence of circumstances likely to endanger the recovery of damages, the action of seizure of the movable and immovable property of the person who is supposed to have infringed the rights, including the blocking of his/her bank accounts and other assets. To that end, the competent court may request the submission of t bank, financial or commercial documents or access to the relevant information.

(4) The measures referred to in paragraph (1) shall, where appropriate, be taken without the defendant having been heard, in particular where any delay would cause irreparable damage to the claimant, or where there is a risk of destruction of evidence. The court injunction shall be immediately brought to the attention of the affected party, immediately after the execution of the measures at the latest.

(5) A review, including a right to be heard, shall take place upon request of the affected parties with a view to deciding, within a reasonable period after the notification of the measures, whether they should be modified, revoked or confirmed.

(6) The preserving measures shall, upon request of the defendant who retains the right to claim compensation, be revoked or shall cease to have effect, if the claimant fails to bring an action on the merits of the case within 20 working days from the date of pronouncing the decision on preservation of evidences.

(7) Where the measures referred to in paragraph (1) are revoked or lapse due to any act or omission by the claimant, or where it is subsequently found that there has been no infringement or imminence of infringement of copyright, related rights or other rights protected by this Law, the court may order the claimant, upon request of the defendant, to pay a compensation corresponding to the damage caused.

(8) The court may order the measures provided for in paragraph (1) and (3) subject to the lodging by the claimant of a security or equivalent assurance intended to ensure compensation for any damage caused to the defendant, as provided for in paragraph (7).

#### **Article 115. Corrective Measures**

(1) Without exempting him/her from any damages due to the rightholder as a result of the infringement and without compensation of any sort, the court may order, at the request of the claimant, that appropriate measures be taken with regard to goods that it has found to be infringing a

right provided for by this Law and, where appropriate, with regard to materials and equipment which have been used in the creation or manufacture those goods. Such measures shall include:

- a) temporary withdrawal from the commercial circuit;
- b) definitive removal from the commercial circuit; or
- c) destruction.

(2) The measures referred to in paragraph (1) shall be carried out at the expense of the defendant, unless particular reasons are invoked for not doing so.

(3) In examining the request for corrective measures, the court will be guided by the principle of fairness, taking into account the seriousness of the infringement, the corrective measures ordered as well as the interests of third parties.

#### **Article 116. Ensuring the Enforcement of the Court Decision**

(1) Where a court decision is taken finding an infringement of copyright, related rights or other rights protected by this Law, the court may issue an injunction, ordering the defendant or intermediary to terminate any action constituting an infringement of those rights. To this end, the court may require the lodging by the defendant of an appropriate security or equivalent guarantee.

(2) Non-compliance with the decision referred to in paragraph (1) shall, where appropriate, be subject to a recurring pecuniary penalty with a view to ensuring compliance.

#### **Article 117. Alternative Measures**

In appropriate cases and at the request of the person liable to be subject to the measures provided for in this Chapter, the court may order pecuniary compensation to be paid instead of applying the provisional measures provided for by this Law, if all of the following conditions are met:

- a) that person acted unintentionally or without negligence;
- b) execution of the measures to be established would cause that person disproportionate harm if compared to the act committed;
- c) pecuniary compensation is reasonably satisfactory.

#### **Article 118. Damages**

(1) At the request of the persons referred to in Article 110 paragraph (2), the competent court shall order the person who has infringed a right provided for by this Law and who knowingly or with reasonable grounds to know, engaged in an infringing activity, to pay the defendant damages appropriate to the actual prejudice suffered by him/her as a result of the infringement of his/her right.

(2) When the competent court sets the damages:

a) it shall take into account all appropriate aspects, such as the negative economic consequences, in particular lost profits, which the injured party has suffered, any unfair profits made by the person who committed the infringement of the rights and, where appropriate, elements other than economic factors, such as the non-material prejudice caused to the rightholder by the infringement of his/her rights; or

b) as an alternative to a), it may decide, where appropriate, to set damages as a lump sum on the basis of elements such as at least the amount of remunerations or rights which would have been due if the person who has infringed the rights had requested authorization to use the right provided for by this Law.

(3) Where the person did not knowingly, or with reasonable grounds to know, engage in infringing activity, the court may order the recovery of profits or the payment of damages, which may be pre-established.

#### **Article 119.** Publication of Court Decisions

(1) In legal proceedings instituted for infringement of copyright, related rights or other rights protected by this Law, the court may order, at the request of the claimant and at the expense of the person who has infringed the rights, appropriate measures for the dissemination of the information concerning court decisions, including displaying it or publishing it in full or in part.

(2) The competent court may also order additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

#### **Article 120.** Violation of Provisions on Technical Protection Measures and Rights Management Information

(1) It shall be prohibited the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components, or the provision of services which:

a) are promoted, advertised or marketed for the purpose of non-compliance;

b) have only a limited commercial significant purpose or use other than non-compliance; or

c) are primarily designed, produced, adapted or performed for the purpose of enabling and facilitating the non-compliance with any effective technical measures.

(2) In the event of violation of the provisions relating to the technical protection measures provided for in Article 60 and to the rights management information provided for in Article 61, whether or not it ended in the infringement of copyright, related rights or other rights protected by this Law, the same measures, procedures, remedies and penalties as provided for in this Chapter and the relevant normative acts for the infringement of copyright, related rights or other rights protected by this Law shall apply.

(3) In the case of counterfeit copies and equipment used for the purpose of counterfeiting, the measures, procedures, remedies and penalties referred to in paragraph (2) shall also apply *mutatis mutandis* to the equipment, products, components provided for in paragraph (1).

#### **Article 121. Social and Legal Protection of Authors and Rightholders**

(1) Equipment, drawings, mockups, manuscripts and any other similar goods which serve directly to create a work giving rise to a copyright cannot be the subject of enforcement proceedings.

(2) Remuneration due to authors and performers as a result of the use of works and other protected subject-matter shall enjoy the same protection as wages, including in the sense that it can only be pursued in enforcement proceedings under the same conditions as wages.

(3) Court decisions on the receipt of remuneration shall be enforced immediately after the pronouncement if the court deems it necessary.

### **Chapter XV**

#### **FINAL AND TRANSITIONAL PROVISIONS**

#### **Article 122. Final Provisions**

(1) This Law shall enter into force within one month from the date of publication in the Official Gazette of the Republic of Moldova, with the exception of the provisions of Article 77, which shall enter into force on 1 January 2025.

(2) Within 6 months from the date of entry into force of this Law, the Government shall:

a) develop and submit to the Parliament proposals on bringing the legislation into force in accordance with this Law;

b) bring its normative acts in accordance with this Law and ensure the elaboration of the normative acts necessary for its implementation;

c) ensure the revision and repeal of the normative acts which are contrary to this Law.

(3) On the date of entry into force of this Law, the Law No. 139/2010 on Copyright and Related Rights (Official Gazette of the Republic of Moldova, 2010, No. 191-193, Article 630), as amended, shall be repealed.

(4) In Article 7 of Law No. 114/2014 on the State Agency on Intellectual Property (Official Gazette of the Republic of Moldova, 2014, No. 282-289, Article 600), as amended, paragraph (2) shall be amended as follows:

in letter a), the word “intellectual” shall be replaced by the word “industrial” and the word “intellectual” shall be replaced by the word “industrial”;

in letter o), the word “industrial” shall be replaced by the word “intellectual”;

letter r) shall be repealed;

letter s) shall have the following wording:

“s) approve the establishment of collective management organizations and common collection structures;”

the paragraph shall be supplemented by points (t) to (w) with the following wording:

“t) designate the collector in case of rights managed mandatory collectively or through extended collective management;

u) perform annual and special controls of the activity of the collective management organizations and common collection structures;

v) monitor the functioning of collective management organizations and common collection structures;

w) issue, on behalf of the State, certificates on the registration of subject-matters of copyright and related rights in the State Register of Subject-Matters Protected by Copyright and Related Rights.”

### **Article 123. Transitional Provisions**

(1) Within 3 months from the date of entry into force of this Law, collective management organizations which, on the date of entry into force of this Law, carried out their activities in accordance with the provisions of Law No. 139/2010 on Copyright and Related Rights, shall:

a) bring their statutes in accordance with the provisions of Article 85 and, under the conditions laid down therein, register the statutory amendments with the competent body;

b) be re-endorsed by AGEPI in accordance with the provisions of Article 84.

(2) The tariffs in force set out in the licensing agreements with users shall apply until 31 December 2022

(3) Until the conditions laid down in paragraph (1) of this Article are fulfilled, collective management organizations which, on the date of entry into force of this Law, carried out their activity in accordance with the provisions of Law No. 139/2010 on Copyright and Related Rights, shall continue to operate under the terms of the endorsements and decisions issued by AGEPI on the basis of Law No. 139/2010 on Copyright and Related Rights.

(4) Where the time limit and conditions provided for in paragraph (1) have not been complied with:

a) the collective management organizations lose their status as a collective management organization, which is established by decision of the Director General of AGEPI;

b) all licenses issued to users shall become null and void.

(5) After the expiry of the time limit provided for in paragraph (2) of this Article, the tariffs established in accordance with the methodologies negotiated and approved under the conditions of Articles 99 to 101 shall apply.

(6) The protection provided for in this Law shall apply to protected works and other subject-matter created before the entry into force of this Law, or which, on the date of entry into force of the Law, fulfil the criteria for protection established under the provisions of this Law, except for the case when such enforcement will affect contracts concluded or rights granted/conferred previously/until that date.

(7) This law is without prejudice to any acts concluded under the conditions of Articles 30 and 31 of Law No. 139/2010 on Copyright and Related Rights or any rights acquired by succession.

**VICE-CHAIRMAN OF THE PARLIAMENT      Mihail POPȘOI**

**No. 230. Chisinau, 28 July 2022.**

Annex

**List of Equipment and Physical Media  
for Which Compensatory Remuneration shall be Paid for Private Copy**

<b>No.</b>	<b>Equipment/Physical Media</b>	<b>Codes</b>
1	MP3 Player	852713100
2	PC/Tablets	847130000, 847141000
3	Set-top box	852871190, 852871910, 852871150
4	Smartphone	851712000
5	E-reader	854370050
6	Game consoles	950450000
7	Smartwatch	910212000
8	CD/DVD	852341, 852380100
9	SSD/HDD	847170500
10	USB drive, Memory cards (SD, MicroSD, MiniSD, etc.)	852351100