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CHAPTER I

DEFINITIONS

ARTICLE 1 - Definitions

For the purpose of this Law, the following terms have the following meaning:

i) “performers” are actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary and artistic works or expressions of folklore;

ii) “author” is the physical person who has created the work;

iii) a “data base” is a collection of works and/or mere data which are systematically or methodically arranged and can be individually accessed, and includes such materials necessary for the operation or consultation of certain databases, such as thesaurus and indexation systems, but excluding computer programs;

iv) “communication to the public” is the transmission by any medium, whether it uses wire or wireless means, of the images or sounds, or both, of a work or an object of neighboring rights in a way that the said images or sounds can be perceived by persons outside the normal circle of a family and that family’s closest social acquaintances at a place or places whose distance from the place where the transmission is started is such that, without the transmission, the images or sounds would not be perceivable at the said place or places, and irrespective of whether the said persons can perceive the images or sounds at the same place and at the same time or at different places and/or at different times.

v) “economic rights” are the rights mentioned in Article 5(1);

vi) “moral rights” are the rights mentioned in Article 6(1);

vii) “public display” is the showing of the original or a copy of the work directly (exposition) or by means of a slide, television image or similar means on a screen, and, in the case of an audiovisual work, the showing of individual still images

nonsequentially, at a place or at places where persons outside the normal circle of a family and that family's closest social acquaintances are or may be present, irrespective of whether they are or may be present at the same place and at the same time, or at different places and/or at different times, and where the work displayed can be perceived without the need for communication thereof to the public within the meaning of item *iv*), above;

viii) a "phonogram" is the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in an audiovisual work;

ix) "public performance,"

- in the case of a work other than an audiovisual work or a phonogram, is the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process,
- in the case of an audiovisual work or any other audiovisual fixation, is the showing of its images in sequence and the making of the sounds accompanying it audible ,
- in the case of a phonogram, is making the recorded sounds audible,

at a place or at places where persons outside the normal circle of a family and that family's closest social acquaintances are or may be present, irrespective of whether they are or may be present at the same place and at the same time, or at different places and/or at different times, and where the performance can be perceived without the need for communication to the public within the meaning of item *iv*), above;

x) "rental" is the making available for use, for a limited period of time and for direct or indirect economic or commercial advantage, the original or a copy of the work or object of neighboring rights;

xi) a "work" is any literary or artistic work under Articles 2(1) or 3(1);

xii) an "audiovisual work" is a work that consists of a series of related images imparting the impression of motion, with or without accompanying sounds, susceptible of being made visible and, where accompanied by sounds, susceptible of being made audible;

xiii) a “collective work” is a work which has been created by two or more physical persons at the initiative and under the direction of a physical person or legal entity with the understanding that it will be disclosed by the latter person or entity under his or its own name and that the identity of the contributing physical persons will not be indicated;

xiv) a “work of applied art” is an artistic creation with utilitarian functions or incorporated in a utilitarian article, whether made by hand or produced on an industrial scale;

xv) a “work of joint authorship” is a work to the creation of which two or more authors have contributed, provided the work does not qualify as a “collective work” under item *xiii)*, above.

xvi) a “photographic work” is the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which such recording is made; a still picture extracted from an audiovisual work shall not be considered “photographic work” but a part of the audiovisual work concerned;

xvii) a “computer” is an electronic or similar device having information-processing capabilities;

xviii) “original” means that the subject matter in question constitute the author’s own intellectual creation;

xix) “lending” is the making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, the original or a copy of the work or object of neighboring rights when it is made through establishments accessible to the public;

xx) the “producer” of an audiovisual work or a phonogram, is the physical person who or legal entity which undertakes the initiative and responsibility for the making of the work or the phonogram;

xxi) a “computer program” is a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform a particular task or achieve a particular result, as well as the preparatory design material for such set of instructions, provided that the nature of the preparatory design material is such that the said set of instructions may be established from it;

xxii) “published” refers to a work or an object of neighboring rights copies of which have been made available to the public in a reasonable quantity for sale, rental, lending or for other transfer of the ownership or the possession of the copies, provided that the making available to the public was effected with the consent of the author or other owner of copyright or the owner of neighboring rights;

xxiii) “broadcasting” is the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also broadcasting; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with his consent;

xxiv) “reproduction” is the making of one or more tangible or intangible copies of a work or an object of neighboring rights in any manner or form.

xxv) “cable retransmission” is the simultaneous, unaltered and unabridged retransmission, by a cable or microwave system for reception by the public of an initial transmission by wire or wireless means, including that by satellite, of broadcast programs intended for reception by the public;

CHAPTER II

COPYRIGHTS

ARTICLE 2 - Works

(1) Literary and artistic works are original productions in the literary and artistic domain and shall include in particular:

(a) books, articles, computer programs--whether in source or object code--and other writings;

(b) speeches, lectures, addresses and other oral works;

(c) dramatic, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;

(d) musical works, with or without accompanying words;

(e) audiovisual works;

(f) works of drawing, painting, sculpture, lithography, engraving and other works of fine art;

(g) photographic works;

(h) works of architecture;

(i) works of applied art;

(j) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) Works shall be protected by the sole fact of their creation and irrespective of their mode or form of expression, as well as of their content, quality and purpose.

Protection shall not be subject to any formalities, such as: registration, marking of copies or other.

ARTICLE 3 - Derivative Works and Collections

(1) The following productions shall also be protected as works:

(a) original translations, adaptations, arrangements and other transformations of works; and

(b) collections of works and collections of mere data (data bases), whether in machine readable or other form, provided that such collections are original by reason of the selection or arrangement of their contents.

(2) The protection of any work referred to in paragraph (1) shall be without prejudice to the protection, if any, of a pre-existing work utilized for the making of, or incorporated in, such a work.

ARTICLE 4 - Subject Matter Not Protected

(1) Copyright protection shall extend to expressions and not to any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if it is or they are expressed, described, explained, illustrated or embodied in a work;

(2) No protection shall extend under this law to any official text of a legislative, administrative or legal nature, as well as any official translation thereof;

ARTICLE 5 - Economic Rights

(1) Subject to the provisions of paragraph (2) and of Articles 7 to 17, the author of, or other owner of copyright in, a work shall have the exclusive right to authorize the following acts:

(a) reproduction of the work;

(b) translation of the work;

- (c) adaptation, arrangement or other transformation of the work;
 - (d) distribution of the original or a copy of the work to the public by sale, rental, lending or by any other form of transferring propriety or possession;
 - (e) public display of the original or a copy of the work;
 - (f) public performance of the work;
 - (g) broadcasting of the work;
 - (h) rebroadcasting or cable retransmission of the work;
 - (i) other communication to the public of the work.
- (2) The provisions of above paragraph (1)(d) shall not be applicable in respect of computer programs where the program itself is not the essential object of the act of distribution.

ARTICLE 6 - Moral Rights

(1) The author of a work, shall, independently of his economic rights, and even where he is not or is no longer the owner of the said rights, have the right

(a) to claim authorship of his work, in particular, the right that his name, as far as practicable, be indicated on the copies, and in connection with any public use, of his work;

(b) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation.

(2) None of the rights mentioned in paragraph (1) shall be transferable during the life of the author but the right to exercise any of those rights shall be transferable by

testamentary disposition of the author or by operation of law pursuant to the death of the author.

(3) The author, and, after his death, the physical person to whom, or the legal entity to which, the right to exercise his moral rights has devolved under paragraph (2), may waive any of the rights mentioned in paragraph (1), provided that such a waiver is in writing and clearly specifies the right or rights waived and the case or cases where the waiver applies.

ARTICLE 7 - Private Reproduction for Personal Purposes

(1) Notwithstanding the provisions of Article 5(1)(a), and subject to the provisions of paragraphs (2) to (6), the private reproduction in a single copy of a published work, where the reproduction is made by a physical person exclusively for his own private and personal use, including such use within the normal circle of his family and its social acquaintances, shall be permitted without the authorization of the author or of other owner of the copyright in the work.

(2) The permission under paragraph (1) shall not extend to the reproduction

(a) of a work of architecture in the form of building or other construction;

(b) where the reproduction is reprographic reproduction, of an entire book, or a substantial part thereof, or of a musical work in graphic form;

(c) of a computer program, except as provided in Articles 12 and 13;

(d) of an electronic data base, except as provided in Article 14;

(e) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or, or other owner of the copyright in, the work.

(3) Where the reproduction referred to in paragraph (1) concerns an audiovisual work or a work embodied in a phonogram, the author or other owner of copyright--

along with the performers and producers of phonograms or their successors-in-title as provided in Article 32(2) shall be entitled to equitable remuneration.

(4) An equitable remuneration shall be paid

(a) by the manufacturer of equipment or material supports normally used for private reproduction for personal purposes of works mentioned in paragraph (3), except where such equipment is, or such material supports are, exported, or

(b) by those who import such equipment or material, except where the importation is by a private person for his personal purposes.

(5) The equitable remuneration, referred to in paragraph (4) of this article, shall be collected by a collective management organization. In the absence of agreement between the representatives of the manufacturers and importers, on the one hand, and the collective management organization, on the other, the amount of the equitable remuneration and the conditions of its payment may be fixed by the arbitration commission of the Copyright Office.

(6) The collective management organization shall distribute the remuneration, referred to in paragraph (5) of this article, to the authors of, or other owners of copyright in, those works mentioned in paragraph (3) in respect of which, under the given circumstances, it may be presumed that they have been the subject of private reproduction mentioned in paragraph (1) and to the performers and producers of phonograms or their successors-in-title mentioned in Article 32(2). In the absence of agreement between the various groups of authors and other owners of copyright and/or performers and producers of phonograms or their successors-in-title concerning the proportions of the shares from the equitable remuneration to be distributed to them, those proportions may be fixed by the arbitration commission of the Copyright Office.

ARTICLE 8 - Quotation

Notwithstanding the provisions of Article 5(1)(a), the reproduction of a short part of a published work, in the form of quotation, in another work, shall be permitted without authorization of the author of, or other owner of the copyright in, the work from which

the quotation is taken, provided that such a reproduction is compatible with fair practice and its extent does not exceed the extent justified by the purpose. The quotation shall be accompanied by the indication of its source and the name of the author if his name appears in the work from which the quotation is taken.

ARTICLE 9 - Free Reproduction for Teaching

(1) Notwithstanding the provisions of Article 5(1)(a), the following acts shall be permitted without the authorization of the author of, or other owner of the copyright in, the work:

(a) the reproduction of a short part of a published work, by way of illustration, in writings or sound or visual recordings for teaching, provided that such reproduction is compatible with fair practice, and its extent does not exceed the extent justified by the purpose;

(b) the reprographic reproduction of a published article or other short work or short extract of a writing, with or without illustrations, for face-to-face teaching in educational institutions whose activities do not serve direct or indirect commercial gain, to the extent justified by the purpose, provided that the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions.

(2) On any copy made under paragraph (1), its source and the name of the author shall be indicated, as far as practicable.

ARTICLE 10 - Free Reprographic Reproduction by Libraries and Archives

Notwithstanding the provisions of Article 5(1)(a), any library or archive whose activities do not serve direct or indirect gain may, without the authorization of the author of, or other owner of copyright in, the work, make a single copy of the work by reprographic reproduction in the following events:

(a) where the work reproduced is a published article or other short work or short extract of a writing, with or without illustrations, and where the purpose of the reproduction is to satisfy the request of a physical person, provided that the library or archive is satisfied that the copy will be used solely for the purpose of study,

scholarship or private research, and the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions; or

(b) where the making of such a copy is in order to preserve and, if necessary (in the event that it is lost, destroyed or rendered unusable), replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable, provided that it is impossible to obtain such a copy under reasonable conditions, and the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

ARTICLE 11 - Free Use for Informatory Purposes

Notwithstanding the provisions of Article 5(1)(a), (d), (g), (h) and (i), the following acts shall be permitted, without the authorization of the author of, or other owner of copyright in, the work, subject to the obligation to indicate, as far as practicable, the source and the name of the author:

(a) the reproduction in a newspaper or other periodical and the broadcasting, rebroadcasting, cable retransmission or other communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character; this permission shall not apply where the right to authorize reproduction, broadcasting, rebroadcasting, cable retransmission or other communication to the public is expressly reserved by the author, or other owner of copyright, of the work;

(b) the reproduction, broadcasting, rebroadcasting, cable retransmission or other communication to the public, for the purpose of reporting current events, of short excerpts of a work seen or heard in the course of such an event, to the extent justified by the said purpose;

(c) the reproduction in a newspaper or other periodical, and the broadcasting, rebroadcasting, cable retransmission or other communication to the public of a political speech, a lecture, address or other work of similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified by the purpose of providing current information.

ARTICLE 12 - Free Reproduction and Adaptation of Computer Programs

(1) Notwithstanding the provisions of Article 5(1)(a) and (c), the reproduction in one copy or the adaptation of a computer program shall be permitted, without the authorization of the author or other owner of copyright, by the lawful acquirer of a copy of that computer program, provided that the copy or adaptation is necessary

(a) for the use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has been acquired, including correction of errors in the program; or

(b) for the replacement of the lawfully owned copy of the computer program in the event that the lawfully acquired copy of the computer program is lost, destroyed or rendered unusable.

(2) Notwithstanding the provisions of Article 5(1)(a), the lawful user of a computer program shall be entitled, without the authorization of the author or other owner of copyright, to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program, if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

(3) No copy or adaptation mentioned in paragraph (1) shall be used for any purpose other than the ones determined in paragraph (1), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

(4) The acts permitted under item (b) of paragraph (1) and under paragraph (2) may not be prevented by contract.

ARTICLE 13 - Free Decompilation of Computer Programs

(1) Notwithstanding the provisions of Article 5(1)(a) and (c), the authorization of the author or other owner of copyright shall not be required where reproduction of the code of a computer program or the translation of its form are indispensable to obtain

the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

(a) these acts are performed by the licensee or by another person having the 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 permitted to reproduce or translate;

(c) these acts are confined to the parts of the original program which are necessary to achieve interoperability.

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

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

(b) to be given to others, except when 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 permission under paragraphs (1) and (2) shall not extend to the reproduction of computer programs in cases where reproduction would conflict with a normal exploitation of the computer program or would otherwise unreasonably prejudice the legitimate interests of the author of, or other owner of copyright, in the program.

(4) The reproduction and translation permitted under paragraphs (1) to (3) may not be prevented by contract.

ARTICLE 14 - Free Use of Data Bases

(1) Notwithstanding the provisions of Article 5(1), the authorization of the author of, or other owner of rights in, a data base shall not be required if any of the acts listed in Article 5(1) is done by the lawful user of a data base or a copy thereof, provided that such acts are necessary for the purposes of access to the contents of the data base and the normal use of the contents by the lawful user of the data base.

(2) Where the lawful user is authorized to use only part of the data base, paragraph (1) shall apply only to that part.

(3) The acts permitted under paragraph (1) may not be prevented by contract.

ARTICLE 15 - Distribution After First Sale

(1) The right to authorize distribution provided for in Article 5(1)(d), subject to paragraph (2), shall cease to exist in respect of the original or a copy of the work which has been sold or its property has been otherwise transferred, in Andorra or in any country with which Andorra has established a customs union agreement for the kind of product in which the copy of the work is embodied, by the author or other owner of copyright, or with his authorization.

(2) The right of the author or other owner of copyright to authorize rental of the original and copies of the work shall not be exhausted with the sale of the original or a copy concerned.

ARTICLE 16 - Free Display

Notwithstanding the provisions of Article 5(1)(e), the public display of the original or a copy of a work shall be permitted without the authorization of the author or other owner of copyright

(a) in respect of a direct public display (exposition) of a work, if the work has been sold or its property has been otherwise transferred to a physical person or legal entity about whom or which the author or other owner of copyright knew--or had sufficient reason to know--that such direct display (exposition) is part of his or its customary activities, or if the work has been published and a copy published is displayed;

(b) in any other case where the public display does not conflict with a normal exploitation of the work and does not otherwise unreasonably prejudice the legitimate interest of the author or other owner of copyright.

ARTICLE 17 - Obligatory Collective Management of the Exclusive Right of Cable Retransmission

(1) Notwithstanding the provisions of Article 5(1)(h), the exclusive right to authorize cable retransmission may only be exercised through the collective management organization established according to article 34.1).

(2) Where the author or other owner of copyright has not transferred the management of his right to authorize cable retransmission to the collective management organization established according to article 34.1), this collective management organization shall be deemed to be mandated to manage his rights.

ARTICLE 18 - Duration of Copyright

(1) Subject to the provisions of paragraphs (2) to (7), the economic and moral rights shall be protected during the life of the author and for seventy years after his death.

(2) In the case of a work of joint authorship, the economic and moral rights shall be protected during the life of the last surviving author and for seventy years after his death.

(3) In the case of a collective work, the economic and moral rights shall be protected for seventy years from the date on which the work was first lawfully made available to the public or, failing such an event within seventy years from the making of the work, from its making. In the event that a collective work subsequently is published with the indication of the names of the persons who created the work, the provisions of paragraph 1) and 2) of this article shall apply.

(4) In the case of an audiovisual work, the economic and moral rights shall be protected during the life of the following persons and for seventy years after the death of the last of them to survive: the principal director, the author of the scenario, the

author of the dialogue and the composer of music specifically created for the audiovisual work.

(5) In the case of a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for seventy years from the date on which the work was first lawfully made available to the public, provided that, where the pseudonym adopted by the author leaves no doubt as to his identity, or, before the expiration of the said period, the author's identity is revealed or is no longer in doubt, the provisions of paragraph (1) or paragraph (2) shall apply, as the case may be.

(6) Provisions of paragraph 3 shall apply, *mutatis mutandis* in cases where, under this law, a legal person is considered to be the author. Provided that if the natural persons who have created the work are identified as such in the versions of the work which are made available to the public, the provisions of paragraph 1) and 2) of this article shall apply.

(7) In the case of works, published in volumes, parts, installments, issues or episodes, where the duration of protection is calculated from the time when the work was lawfully made available to the public,¹ the duration shall be calculated for each such item separately.

(8) Every period provided for in this Article is calculated from the first day of January of the year following the event which gives rise to them.

ARTICLE 19 - Authorship and Original Ownership of Economic Rights

(1) Subject to the provisions of paragraphs (2) to (6), the original owner of economic rights is the author who has created the work.

(2) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights.

(3) In respect of a collective work, the physical person or legal entity at the initiative and under the direction of whom or which the work has been created shall be deemed the author of the work.

(4) In respect of a work created by an employee in the execution of his duties or following the instructions given by his employer, the employer shall be deemed the author of the work, unless provided otherwise in a written contract.

(5) In respect of an audiovisual work, the producer, the principal director and the composer of music specifically created for the audiovisual work shall be deemed its co-authors.

(6) The co-authors of an audiovisual work, as established by paragraph 5 of this article, shall retain an unwaivable right to obtain an equitable remuneration for rental of the original and copies of such a work. This right to obtain an equitable remuneration may only be exercised through a collective management organization.

ARTICLE 20 - Presumption of Authorship and of Representation of the Author

The physical person whose name is indicated on a work in the usual manner as the author shall, in the absence of proof to the contrary, be presumed to be the author of the work. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

ARTICLE 21 - Representation of rights in audiovisual works

(1) Unless otherwise agreed, a production contract signed between the producer of the audiovisual work and the principal director shall be considered as including a mandate to exercise the exploitation rights of the audiovisual work, granted to the producer by the principal director.

(2) Pre-existing works or adapted works shall be solely governed by contractual agreements between the producer and the owner of the rights.

ARTICLE 22 - Assignment of Economic Rights

Economic rights, subject to the provisions of Article 24, shall be assignable. As a result of the assignment, the assignee becomes the owner of the economic rights assigned.

ARTICLE 23 - Licenses

(1) The author or other owner of copyright may grant non-exclusive or exclusive licenses to others to carry out, or to authorize the carrying out of, certain specified acts covered by his or its economic rights.

(2) A non-exclusive license shall entitle the licensee to carry out the act concerned concurrently with the author or other owner of copyright and concurrently with any other possible non-exclusive licensees.

(3) An exclusive license shall entitle the licensee to carry out the act concerned to the exclusion of all others, including the author or other owner of copyright.

ARTICLE 24 - Form of Assignment and Exclusive License

Any assignment of an economic right, and any grant of an exclusive license, shall be valid only if it is the subject of written contract.

ARTICLE 25 - Alienation of the Original or a Copy of a Work

If the author or other owner of copyright alienates the original or a copy of the work, he or it shall not be deemed, unless provided otherwise in the contract on the alienation, to have assigned any economic rights, or to have granted any license for carrying out any acts covered by such economic rights.

CHAPTER III

NEIGHBORING RIGHTS

ARTICLE 26 - Acts Requiring Authorization of Performers

(1) Subject to the provisions of paragraphs (2) and (3) and of Article 32, a performer shall have the exclusive right to authorize any of the following acts:

(a) the broadcasting or other communication to the public of his performance, except

- i) where the broadcasting or the other communication is made from a fixation of the performance, other than a fixation made under the terms of Article 32.1); or
- ii) where the performance is itself already a broadcast performance or a performance which is communicated to the public by wire;

(b) the fixation of his unfixed performance;

(c) the direct or indirect reproduction, in any manner or form, of his performance:

- i) fixed in a phonogram, or
- ii) fixed without his authorization.

(d) the distribution of the fixation of his performance fixed in a phonogram and/or copies of it to the public by sale, rental, lending or by any other form of transferring property or possession;

(e) the making available to the public of his performance fixed in a phonogram, 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.

(2) The right of distribution under paragraph (1)(d), except for the rental of the fixation or its copies, shall be exhausted in respect of any fixation of a performance or a copy of it which has been sold or its property has been otherwise transferred by or with the authorization of the performer or his successor-in-title, in Andorra or in any country with which Andorra has established a customs union agreement for the kind

of product in which the fixation or its copy are embodied. The exclusive right of the performer to authorize the rental of the fixation or a copy of a phonogram continues to exist after the sale of the fixation or the copy of phonogram.

(3) The rights under this Article shall be protected from the moment in which the performance takes place until the end of the fiftieth calendar year following the year when the performance takes place. However, if a fixation of a performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire at the end of the fiftieth calendar year following the year when the first such an event takes place.

ARTICLE 27 - Moral Rights of Performers

The provisions of Article 6 concerning the moral rights of authors in respect of their works shall apply *mutatis mutandis* for performers in respect of their live aural performances or performances fixed in phonograms. The moral rights of performers shall be protected for the period provided for in Article 26(3).

ARTICLE 28 - Acts Requiring Authorization of Producers of Phonograms

(1) Subject to the provisions of paragraph (2) and Article 32, the producer of a phonogram shall have the exclusive right to authorize any of the following acts:

- (a) the direct or indirect reproduction of the phonogram, in any manner or form;
- (b) the distribution of the phonogram and copies of it to the public by sale, rental, lending or by any other form of transferring property or possession;
- (c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

(2) The right of distribution provided in above item (b) of paragraph (1), shall be exhausted where the first sale in the Principality of Andorra or, in any country with which Andorra has established a customs union agreement including the kind of product in which the phonogram or its copies are embodied., is made by the rightholder or with his consent, except for the rental of the phonogram and its copies.

(3) The rights under paragraph (1) shall be protected from the making of the phonogram until the end of the fiftieth calendar year following the year of making. However, if a phonogram is lawfully published or lawfully communicated to the public within this period, the rights shall expire at the end of the fiftieth calendar year following the year when the first such an event takes place.

ARTICLE 29 - Equitable Remuneration for Use of Phonograms

(1) If a phonogram published for commercial purposes, or a copy of such a phonogram is used for broadcasting, rebroadcasting, cable retransmission or for other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the phonogram shall be paid to the producer by the physical person who, or the legal entity which, carries out such an act.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under paragraph (1) shall be paid by the producer to the performer or performers.

(3) The right to equitable remuneration under this Article shall subsist during the same period as the rights granted in Articles 26 and 28 respectively.

(4) For the purpose of this article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.

ARTICLE 30 - Acts Requiring Authorization of Broadcasting Organizations and of Organizations Communicating their Own Programs by Wire

(1) Subject to the provisions of Article 32, a broadcasting organization, or an organization which communicates its own program to the public by wire, shall have the exclusive right to authorize any of the following acts:

(a) the rebroadcasting of its broadcast, or the broadcasting or rebroadcasting of its program communicated by wire;

(b) the cable retransmission of its broadcast, or its program communicated by wire;

(c) the fixation of its broadcast, or its program communicated by wire;

(d) the reproduction of a fixation of its broadcast, or its program communicated by wire;

(e) the distribution to the public of its broadcast, or its program communicated by wire, by sale, rental, lending or by any other form of transferring property or possession

(2) The right of distribution provided in item (e) of paragraph (1), except for the rental of the fixation and copies thereof, shall cease to exist in relation to a fixation of a broadcast, or a program communicated by wire, and any copy of it which has been sold or its property has been otherwise transferred by the broadcasting organization, or the organization communicating its program by wire, or its successor-in-title, or with the authorization of such an organization or its successor-in-title, in any country. The exclusive right of the broadcasting organization, or the organization communicating its own programs by wire, to authorize rental of its broadcast, or its program, and copies of it, continues to exist after the sale of fixation or a copy of it.

(3) The rights under this Article shall be protected from the moment when the first broadcasting, or communication by wire, takes place, until the end of the fiftieth calendar year following the year when the first such an event takes place.

ARTICLE 31 - Acts Requiring Authorization of Publishers of Previously Unpublished Works

(1) Any person who, after the expiry of copyright protection, for the first time publishes or communicates to the public a previously unpublished work shall benefit from a protection equivalent to the economic rights of the author.

(2) The rights under paragraph (1) shall be protected from the publication or communication to the public until the end of the twenty-fifth calendar year following the year when the first such an event takes place.

ARTICLE 32 - Limitations on the Protection of Neighboring Rights

(1) Subject to the provisions of paragraphs (2) and (3), the provisions of Articles 26 to 31 shall not apply where the acts referred to in those Articles are related to

- (a) use by a physical person exclusively for his own personal purposes;
- (b) use of short excerpt for reporting current events to the extent justified by the purpose of providing current information;
- (c) use solely for the purpose of face-to-face teaching or for scientific research;
- (d) cases where, under Chapter II, a work may be used without the authorization of the author or other owner of copyright,

(2) Performers and producers of phonograms, and their successors-in-title, shall be entitled to equitable remuneration for reproduction of their performances fixed in phonograms, and, their phonograms, respectively, for the use mentioned in above item (a) of paragraph (1). Concerning this right to obtain equitable remuneration the provisions of Article 7(4) to (6) apply *mutatis mutandis*.

(3) The provisions of Article 17 shall apply, *mutatis mutandis*, to the rights of performers, producers of phonograms, broadcasting organizations, organizations communicating their own programs by wire, and publishers of previously unpublished works, provided that Article 17 shall not apply to the rights exercised by a broadcasting organization in respect of the cable retransmission of its own broadcast.

ARTICLE 33 - Assignment of Economic Rights and Licenses

The provisions of Articles 22 to 25 apply *mutatis mutandis* also in respect of the assignment of, and licenses granted on the basis of, neighboring rights.

CHAPTER IV
COLLECTIVE MANAGEMENT OF
COPYRIGHT AND NEIGHBORING RIGHTS

ARTICLE 34 - Establishment and Incorporation of the Collective Management Organization

- (1) A single Collective management organization fulfilling the tasks mentioned in Article 35 shall be established by Law in the form of a public corporation.
- (2) The Administration Board of the public corporation established according to paragraph 1 has to include a representation of authors or other owners of copyright as well as representatives of owners of neighboring rights in the proportions established according to the bylaws of the public corporation.

ARTICLE 35 - Tasks of the Collective Management Organization

The collective management organization, on behalf of, and on the basis of the authorization by, the authors and other owners of copyright and/or owners of neighboring rights who or which are its members or whom or which it otherwise represents in particular, on the basis of agreements with foreign collective management organizations, may fulfill the following tasks:

- (a) to give authorization to third parties to carry out acts covered by the exclusive economic rights administered;
- (b) to collect fees for authorizations mentioned in item (a) and equitable remuneration where this Law provides for such remuneration;
- (c) to distribute the fees and equitable remuneration thus collected among the authors and other owners of copyright and/or owners of neighboring rights concerned;
- (d) to take any legal action necessary for the enforcement of the rights managed by it;

(e) to carry out any other acts authorized, in keeping with Article 36, by the authors and other owners of copyright and/or owners of neighboring rights, or by the bodies representing them, whose exclusive economic rights or rights to equitable remuneration are managed.

ARTICLE 36 - Methods of Operation of the Collective Management Organization

Decisions about the methods and rules of collection and distribution of fees and equitable remuneration and about other important aspects of collective management shall be taken by the Administration Board of the public corporation, provided by Article 34, according to its bylaws.

ARTICLE 37 - Obligations of Users of Works towards the Collective Management Organization

Those who carry out acts authorized by the collective management organization, or acts for which, although authorization is not needed, equitable remuneration is to be paid to a collective management organization, shall

(a) facilitate the monitoring, by the representatives of the collective management organization, of the acts authorized or for which equitable remuneration is to be paid;

(b) if required, give the collective management organization all information available to them concerning the acts carried out in respect of the works and/or objects of neighboring rights concerned.

ARTICLE 38 - Supervision of the Collective Management Organization

The collective management organization shall at least furnish the Government with a copy of each one of the following documents:

(a) any amendment to its statutes or the methods and rules mentioned in Article 36;

(b) any bilateral or multilateral contract concerning the administration of rights of foreign authors and other foreign owners of copyright and/or foreign owners of neighboring rights;

(c) any resolution of the Administration Board;

(d) the yearly balance sheet, annual report and auditor's report concerning the operation of the collective management organization.

CHAPTER V
ACTIONS FOR INFRINGEMENT OF THE RIGHTS OF
THE OWNER OF THE COPYRIGHT OR NEIGHBORING RIGHT;
PROCEDURE

ARTICLE 39 - Right to Bring Action; actions; procedure

1) Violation of any exclusive economic right, right of remuneration or moral right established by this Law, as well as any abuse committed in respect of technical means according to article 44, constitutes an infringement of the rights of the owner of the copyright or the neighboring right. Any infringement of the rights protected under this law, shall make the infringer liable to civil and/or criminal prosecution.

2) The owner of the copyright or the neighboring right may institute the appropriate civil and/or criminal proceedings before the judicial authorities against any person who infringes his rights, in particular:

- (a) to obtain an injunction ordering the infringer to cease the violation of the rights of the owner of the copyright or the neighboring right;
- (b) to obtain an adequate compensation for damages;
- (c) to obtain an order for the disposal outside the channels of commerce or the destruction without compensation, of infringing goods as well as of materials and implements, predominantly used for the creation of infringing goods.

(3)

- (a) Unless the exclusive license contract provides otherwise, any exclusive licensee may request the owner of the copyright or the neighboring right to institute Court proceedings for any infringement of the rights of owner of the copyright or the neighboring right, who must specify the relief desired.
- (b) Such exclusive licensee may, if he proves that the owner of the copyright or the neighboring right refused or failed to comply with the request within the period prescribed by the Regulations, institute such proceedings on his own behalf after notifying the owner of the copyright or the neighboring right of his intention. The owner of the copyright or the neighboring right may join in the proceedings.

(c) Where before the expiry of the period referred to in subparagraph (b), the exclusive licensee proves that immediate action is necessary to avoid substantial harm, he may institute the proceedings mentioned in that subparagraph immediately.

(d) Any licensee may join in any proceedings instituted by the owner of the copyright or the neighboring right, in order to secure adequate relief for any injury suffered by him as a result of the infringement, without prejudice to the proceedings that such licensee may institute on his own.

(4) Civil actions derived from the violation of the rights of the owner of the copyright or the neighboring right must be instituted within a period of five years from the date when the owner of the copyright or the neighboring right or, where appropriate, the exclusive licensee, has obtained knowledge of the infringement and of the identity of the alleged infringer.

(5) The Judicial Authority shall order the losing party to pay the winning party its legal costs, including appropriate counsel fees, unless the Judicial Authority considers the case as doubtful

ARTICLE 40 - Damages

(1) Infringement of the rights of the owner of the copyright or the neighboring right shall entail the liability of the infringer thereof, who shall be bound to compensate the owner of the copyright or the neighboring right, and where appropriate the licensee, for damages where the infringer knew or had reasonable grounds to know that he was engaged in an infringing activity.

(2) The amount of damages shall reflect not only actual losses suffered by the owner of the copyright or the neighboring right or, where appropriate, by the licensee, but also lost profits calculated at the discretion of the injured party on the basis of either:

(a) the profits which the owner of the copyright or the neighboring right or, where appropriate, the licensee, would have derived from the use of the copyright or the neighboring right had the infringement of his rights not occurred; or

(b) the profits realized by the infringer as a result of the infringement.

ARTICLE 41 - Provisional Measures.

(1) The Judicial Authority may, as a provisional measure, prohibit by injunction the continuing infringement of the rights of the owner of the copyright or the neighboring right, or order the provision of guarantees to ensure, where appropriate, compensation for the owner of the copyright or the neighboring right or for the exclusive licensee and order action to be taken to preserve relevant evidence in regard to the alleged infringement.

(2) The application for an injunction or for the ordering of guarantees established on above paragraph 1) shall be allowed only where the action on the merits appears to be founded and is brought within a brief time period following the day on which the owner of the copyright or the neighboring right or, where appropriate, the exclusive licensee became aware of the circumstances that gave rise to it. The Judicial Authority may make the grant of the injunction subject to the provision by the plaintiff of such guarantees as will indemnify the defendant for any prejudice suffered by him if the action is eventually judged unfounded.

(3) The measures established in paragraph (1) above may be ordered ex parte, in particular where any delay would be likely to cause irreparable harm to the injured party, or where there is a demonstrable risk of evidence being destroyed.

(4) Where, according to above paragraph (3), a provisional measure has been ordered ex parte, the defendant shall be notified without delay by the Judicial Authority. The notified party shall have the right to apply for a review of the order and the Court shall decide without further proceedings whether the measure ordered shall be confirmed, modified or revoked. When this decision is reached by the Judge (*Battle*), it shall be appealable.

(5) Where the owner of the copyright or the neighboring right or, where appropriate, the exclusive licensee, has failed to bring the principal action within 20 working days or 31 calendar days from the date when the owner of the copyright or the neighboring right or, where appropriate, the exclusive licensee, received notification of the provisional measure, whichever is longer, or within any other period established by the Judicial Authority that granted the provisional measure, such provisional measure

shall be null and void as of right, without prejudice to any damages that may be claimed by the party affected by the provisional measure.

(6) Where a provisional measure is revoked or ceases to have effect or where it is subsequently found that there is no actual or threatened infringement of the copyright or the neighboring right, the Judicial Authority may, upon request of the defendant, order the applicant to pay appropriate compensation to the defendant for any injury caused by the measure, including appropriate counsel fees.

(7) Subject to the conditions of any provisional measure established by this article, the owner of the copyright or the neighboring right or, where appropriate, the exclusive licensee, shall be entitled to cause the Judicial Authority, assisted by experts that it has selected, to carry out in any place either a detailed description, with or without the taking of samples, or the actual seizure of the goods that he alleges to be in violation of his rights.

ARTICLE 42 - Withholding at Customs

(1) Subject to the conditions of any provisional measure established by article 41, the owner of the copyright or the neighboring right or, where appropriate, the exclusive licensee has the right to request the Judicial Authority to order the customs administration to withhold goods, even in transit, regarded by the said owner or the exclusive licensee as infringing his rights.

(2) The Judicial Authority, the person having made the request referred to in paragraph 1) above and the party declaring the withheld goods shall be informed without delay, by the customs administration, of the withholding measure that it has implemented.

(3) In the specific case of a withholding at customs, the time period established by article 41.(5) for any provisional measure, shall be of ten working days following the date on which the person who filed the request referred to in paragraph (1) above received the notification of the withholding according to paragraph (2) above. In appropriate cases, this time-limit may be extended by another ten working days by the Judicial Authority.

(4) The person who filed the request referred to in paragraph 1) above may, through judicial order, obtain from the customs administration the communicate of the names and addresses of the sender, the importer and the consignee of the merchandise withheld, and also its quantity.

(5) The person who filed the request referred to in paragraph 1) above and the importer shall have the right to inspect the withheld goods, subject to compliance with the due security measures established by the Judicial Authority to protect the withheld goods.

(6) Provisions of article 41.4 second and third sentences shall apply, *mutatis mutandis*, to any withholding at customs

ARTICLE 43 - Jurisdiction

1) Without prejudice to the provisions of article 7.5) and 6) and to the other provisions of this Chapter V, the civil or, eventually, criminal Judicial Authority shall have jurisdiction for any dispute between private parties concerning a copyright or a neighboring right, in particular for:

(a) any request for the order of provisional measures;

(b) any action for infringement of a copyright or a neighboring right;

(c) any action concerning the right to a copyright or a neighboring right, the ownership or assignment of a copyright or a neighboring right or a license contract;

2) All civil actions brought under this Law in front of the ordinary jurisdiction shall be prosecuted according to "*el procediment abreuja*" (summary procedure).

3) Notwithstanding the provisions of paragraph 1) above, parties may submit the case to arbitration, in particular, when it refers to cases established by article 7.5) and 6)

ARTICLE 44 - Measures, Remedies and Sanctions against Abuses Committed in Respect of Technical Means

(1) The following acts shall be considered abuses in respect of technical means:

(a) the manufacture, importation, distribution and other offering to the public of any device or component thereof or service, the purpose or foreseeable effect of which is to circumvent, remove or to facilitate the circumvention or removal of any device or means intended to prevent or inhibit the unauthorized exercise of any of the rights under this Law

(b) the manufacture, importation for distribution to the public by sale or rental, and such distribution, of any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, by those who are not entitled to receive the program.

(c) the removal or alteration of any electronic rights management information without any authority as well as the distribution, importation for distribution, broadcasting, communication or making available to the public, without authority, of works, performances, copies of fixed performances or phonograms knowing that rights management information has been removed or altered without authority

(2) In the application of the provisions of this Law any illicit device and means mentioned in above paragraph (1) shall be assimilated to infringing copies of works and objects of neighboring rights.

CHAPTER VI

SCOPE OF APPLICATION OF THE LAW

ARTICLE 45 - Scope of Application relative to literary and artistic works

The provisions of this Law on the protection of literary and artistic works shall apply to the following cases:

(a) works of authors or other original owners of copyright who are nationals of or are incorporated under the laws of Andorra, or have their headquarters or their residence in Andorra;

(b) works first published in Andorra, irrespective of the nationality or residence of their authors, including works first published in another country but also published in Andorra within thirty days.

(c) audiovisual works, the producer of which has his headquarters or his residence in Andorra; and

(d) works of architecture erected in Andorra and other artistic works incorporated in a building or other structure located in Andorra.

ARTICLE 46 - Other scopes of application

(1) The provisions of this Law on the protection of performers shall apply to the following cases:

(a) performers who are nationals or residents of Andorra;

(b) performers who are not nationals or residents of Andorra but whose performances

(i) take place on the territory of Andorra; or

- (ii) are incorporated in phonograms that are protected under this Law;
or
- (iii) have not been fixed in a phonogram but are carried by broadcasts or original programs communicated by wire qualifying for protection under this Law.

(2) The provisions of this Law on the protection of phonograms shall apply to the following cases:

- (a) phonograms the producers of which are nationals of or are incorporated under the laws of Andorra, or have their headquarters or their residence in Andorra;
- (b) phonograms in the case of which the first fixation of the sounds was made in Andorra;
- (c) phonograms that were first published in Andorra, irrespective of the nationality or residence of their producers, including phonograms first published in another country but also published in Andorra within thirty days.

(3) The provisions of this Law on the protection of producers of audiovisual fixations in respect of their fixations apply, *mutatis mutandis*, in the same cases as those mentioned in paragraph (2).

(4) The provisions of this Law on the protection of broadcasts and programs communicated to the public by wire shall apply to the following cases:

- (a) broadcasts of broadcasting organizations and programs of organizations communicating to the public their own programs by wire, the headquarters of which are situated in Andorra; and
- (b) broadcasts transmitted from transmitters and programs communicated by wire from a place, situated in Andorra.

(5) The provisions of this Law on the protection of publishers of previously unpublished works shall apply to publishers who are nationals of, or have their

headquarters or their residence in Andorra or are incorporated under the laws of Andorra.

ARTICLE 47 - Scope of application by virtue of international agreements

The provisions of this Law shall apply, by virtue of any international agreement on the subject matter to which Andorra is party, to:

- a) works that are to be protected in Andorra by virtue of, and in accordance with, such agreements
- b) to performers who, and to producers of phonograms, producers of audiovisual works, broadcasting organizations, organizations communicating their own program by wire, and publishers of previously unpublished works who or which, are to be protected by virtue of, and in accordance with, such agreements.

ARTICLE 48 - Territory of Andorra

Whenever there is a reference in this Law to the territory of Andorra, such reference shall be interpreted as a reference to any other territory to which it shall apply by virtue of, and in accordance with, any international agreement to which Andorra is party.

TRANSITIONAL PROVISION

(1) The protection provided for under the present Law applies also to works and subject matters of neighboring rights which were in existence at the moment of entry into force of the Law and have not yet fallen into public domain due to the expiry of the term of protection which was previously granted.

(2) The protection provided for under the present Law further applies to works and subject matters of neighboring rights which were in existence at the moment of the effective accession by the Principality of Andorra to an international agreement governing the protection of copyright or neighboring rights provided that on such a date the work or subject matter of neighboring rights has not fallen into public domain in its country of origin due to the expiration of the term of protection and has not fallen into public domain through the expiry of the term of protection which was previously granted

DEROGATORY PROVISION

The Literary and artistic property “*decret*” of june 25th 19971 is completely derogated when this Law enters into effect.

Any other prior provision, of equal or lower level, is equally derogated as far as it is in opposition to the content of this Law.

FIRST FINAL PROVISION

On a proposal by the Minister of the Presidency, the Government shall, within a maximum of six months, draw up the Regulations for the implementation of this Law.

SECOND FINAL PROVISION

This Law shall come into effect on the date of its publication in the BOPA (Butlletí Oficial del Principat d'Andorra).

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