



Euroopa Liit  
Euroopa Sotsiaalfond



Eesti tuleviku heaks

## COPYRIGHT AND RELATED RIGHTS ACT

### CHAPTER I

#### General provisions and definitions

##### § 1. Applicability of the Act

(1) This Act applies to works:

- 1) the author of which is a citizen or a permanent resident of the Republic of Estonia;
- 2) first published in the territory of the Republic of Estonia or not published but located in the territory of the Republic of Estonia, regardless of the citizenship or the permanent residence of the creator of the works;
- 3) which must be protected in accordance with an international agreement of the Republic of Estonia.

*Kommenteeritud [CU1]:* Habitual?

*Kommenteeritud [CU2]:* What does this mean? That copies are located in Estonia? What about other unpublished works?

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

*Kommenteeritud [CU3]:* I don't understand what is intended here. This is not a common phrase in international treaties.

(3) This Act applies to performance if:

- 1) the performer is a citizen or a permanent resident of the Republic of Estonia;
- 2) the work is performed in the territory of the Republic of Estonia;
- 3) the performance is recorded on a sound recording which is protected pursuant to subsection (4) of this section;
- 4) the performance which is not recorded on a sound recording is included in a radio or television programme which is protected pursuant to subsection (5) of this section.
- 5) the performance must be protected in accordance with an international agreement of the Republic of Estonia.

(4) This Act applies to sound recordings if:

- 1) the producer of the sound recording is a citizen or a permanent resident of the Republic of Estonia or a legal person located in the Republic of Estonia;
- 2) the sounds were first fixed on a sound recording in the territory of the Republic of Estonia;
- 3) the sound recording was first published in the territory of the Republic of Estonia;

*Kommenteeritud [CU4]:* What about the performers?

4) the sound recording must be protected in accordance with an international agreement of the Republic of Estonia.

(5) This Act applies in respect of a broadcasting service provider if:

- 1) the registered office of the broadcasting service provider is in the territory of the Republic of Estonia;
- 2) the programme is communicated by means of a transmitter which is located in the territory of the Republic of Estonia;
- 3) the programme must be protected in accordance with an international agreement of the Republic of Estonia.

(6) This Act applies to databases if:

- 1) the producer of the database is a citizen or a permanent resident of the Republic of Estonia;
- 2) the producer of the database is a legal person registered pursuant to the law of the Republic of Estonia, having a registered address, management or main place of activities located in the territory of the Republic of Estonia. If the legal person has only a registered address in the territory of the Republic of Estonia, the activities of such legal person must be effectively and permanently connected to the economy of the Republic of Estonia;
- 3) the database must be protected in accordance with an international agreement of the Republic of Estonia.

(7) This Act applies to **previously unpublished works, critical or scientific publications** if:

- 1) the publisher thereof is a citizen or a permanent resident of the Republic of Estonia;
- 2) the publisher thereof is a legal person located in the Republic of Estonia;
- 3) the previously unpublished work, critical or scientific publication must be protected in accordance with an international agreement of the Republic of Estonia.

**Kommenteeritud [CU5]:** What does this mean, and why combine "previously unpublished" [does that mean they currently are published?] with "critical or scientific publications"? Why create a special category?

## § 2. Presumption of rights

(1) The protection of the object of rights by rights prescribed in this Act is presumed, **except if there are apparent circumstances which preclude this.** The burden of proof lies on the person who contests the protection of the object of rights.

**Kommenteeritud [CU6]:** What does this mean? Lack of originality? Lack of point of attachment qualifying the work for protection in Estonia?

(2) The authorship of a person who publishes a work under his or her name or a generally recognised pseudonym of the author shall be presumed until the contrary is proved. The burden of proof lies on the person who challenges authorship.

### Variant 2:

(2) *The authorship of a natural or **legal person** who publishes a work under his or her name or a generally recognised pseudonym of the author shall be presumed until the contrary is proved. The burden of proof lies on the person who challenges authorship.*

**Kommenteeritud [CU7]:** Why would you want to make a "legal person" an "author" (as opposed to a "right holder")?

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

**Kommenteeritud [CU8]:** Should there be a presumption similar to (2) for the publication of an object or related rights under the name(s) of the performer(s)?

(4) The author of a work which is communicated to the public anonymously or under a pseudonym of the author shall enjoy copyright in the work. **Until the moment when the author reveals his or her real**

name and proves his or her authorship, the economic rights of the author are exercised by the person who lawfully published the work.

(5) The person who represents the author in the cases prescribed in subsection (4) of this section shall retain the rights to use the work acquired by the person during the time the person acts as a representative unless otherwise prescribed by an agreement between the person and the author.

### § 3. Copyright, related rights and right of ownership

(1) Copyright in a work shall belong to the author or his or her successor regardless of who has the right of ownership in the economic object in which the work is expressed. The manner in which the economic rights of the author or his or her successor are exercised shall be determined by an agreement between the author or his or her successor and the owner. The provisions of this subsection apply to objects of related rights.

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

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

### § 4. Applying some copyright-related provisions to related rights

Provisions of Chapter II of this Act related to creation of copyright in intermediate stages of creating a work, related to joint authorship and co-authorship, and related to content of rights apply also to related rights, unless prescribed otherwise in Chapter III of this Act.

### § 5. Object of right and holder of right

(1) For the purposes of this Act, "object of right" means works and objects of related rights.

(2) For the purposes of this Act, "holder of right" means authors and holders of related rights.

### § 6. Publication

(1) For the purposes of this Act, "publication of object of right" means publication of object of right or communication thereof to the public.

(2) An object of right is deemed published if the object of right or copies of the object of right, whatever may be the means of manufacture of the copies, are placed, with the consent of the author, at the disposal of the public provided that the availability of such copies has been such as to enable the public to examine or obtain the work (publication of the work in print, offering original copies of the work for sale, distribution, lending and rental of the work and placing the work at the disposal of the public in any other manner for a charge or free of charge. The performance of a dramatic, dramatico-musical, musical or literary work, the presentation of audiovisual works, the public recitation of a literary work, the broadcasting or cable transmission of literary or artistic works, the

**Kommenteeritud [CU9]:** Not sure how to rephrase this, but the author has already exercised some of her economic rights by publishing the work. Also you should probably specify that the rights (or additional rights) are exercised **on behalf of the author** by the person who lawfully published

**Kommenteeritud [CU10]:** Why is this provision necessary?

**Kommenteeritud [CU11]:** Do you mean ownership of a physical copy of the work of authorship? This provision is very confusing.

**Kommenteeritud [CU12]:** What is the purpose of this provision? And since it turns on the consent of the owner of the physical object, it's a matter of contract; does it need to be in the copyright law?

**Kommenteeritud [CU13]:** Why not just say "work" or "work of authorship"?

**Kommenteeritud [CU14]:** All kinds of communications to the public? If so, this is inconsistent with the latter part of sec. 6(2). Do you mean made available to the public in such a way that the members of the public may make copies?

**Kommenteeritud [CU15]:** The "object of right" is an incorporeal thing, it can't be placed at the disposal of the public. Copies of the "object of right" (or of the "work") can be placed at the disposal . . .

exhibition of a work of art and the construction of a work of architecture shall not constitute publication (except in the case of making available to the public).

(3) An object of right is deemed to be communicated to the public if it has been brought to the public by means of any technical device or process in manner specified in § 16 this Act.

### § 7. The public and a place accessible to the public

(1) For the purposes of this Act, “the public” means an unspecified set of persons outside the family and immediate circle of acquaintances.

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

**Kommenteeritud [CU16]:** The meaning of this is unclear

**Kommenteeritud [CU17]:** This is ambiguous, because it could be understood to mean that the device or process has to be specified in sec 16. Sec 16 doesn't really specify, and in any event, given inevitable evolution in devices or processes, it's a bad idea to limit these to what's "specified" in sec.16. the definition should be broad enough to cover future technologies

**Kommenteeritud [CU18]:** This language (perhaps a translation problem?) is VERY PROBLEMATIC. If I make a work available to a very long listserv, or to my thousands of Facebook "friends" the set of persons is "specified." I think you mean "substantial" Otherwise you've too greatly curtailed the concept of "public"

**Kommenteeritud [CU19]:** Specify that "the public" may consist of persons separated in space and/or time?

**Kommenteeritud [CU20]:** Why "individual" access?

## CHAPTER II Copyright

### Division 1. Work

### § 8. Works in which copyright subsists

(1) For the purposes of this Act, “works” means any original results in the literary, artistic or scientific domain which are expressed in an objective form and can be perceived and reproduced in this form either directly or by means of technical devices. A work is original if it is the author's own intellectual creation.

(2) Works in which copyright subsists are, among others:

- 1) written works in the fields of fiction, non-fiction, politics, education, etc.;
- 2) scientific works or works of popular science, either written or three-dimensional (monographs, articles, reports on scientific research, plans, schemes, models, tests, etc.);
- 3) computer programs that shall be protected as literary works. Protection applies to the expression in any form of a computer program;
- 4) speeches, lectures, addresses, sermons and other works which consist of words and which are expressed orally (oral works);
- 5) scripts and script outlines, librettos;
- 6) dramatic and dramatico-musical works;
- 7) musical compositions with or without words;
- 8) choreographic works and entertainments in dumb show;
- 9) films;
- 10) works of painting, graphic arts, typography, drawings, illustrations;
- 11) productions and works of set design;
- 12) works of sculpture;
- 13) architectural graphics (drawings, drafts, schemes, figures, plans, projects, etc.), letters of explanation explaining the contents of a project, additional texts and programs, architectural works of plastic art (models, etc.), works of architecture and landscape architecture (buildings, constructions,

**Kommenteeritud [CU21]:** What do you mean by this?

**Kommenteeritud [CU22]:** Do you mean "fixed"?

**Kommenteeritud [CU23]:** Many lectures also include visual or audiovisual components

**Kommenteeritud [CU24]:** So not "fixed"?

**Kommenteeritud [CU25]:** Audiovisual works? "Films" may be too narrow and technology-specific

**Kommenteeritud [CU26]:** You will protect type fonts?

**Kommenteeritud [CU27]:** What do you intend here?

- parks, green areas, etc.), urban developmental ensembles and complexes;
- 14) works of applied art;
  - 15) works of design and fashion design;
  - 16) photographic works and works expressed by a process analogous to photography, slides and slide films;
  - 17) cartographic works (topographic, geographic, geological, etc. maps, atlases, models);
  - 18) draft legislation;
  - 19) standards and draft standards;
  - 20) opinions, reviews, expert opinions, etc.;
  - 21) derivative works, i.e. translations, adaptations of original works, modifications (arrangements) and other alterations of works;
  - 22) collections of works and information (including databases);
  - 23) other works.

(3) For the purposes of this Act, “database” means a collection of independent works, data or other economics arranged in a systematic or methodical way and individually accessible by electronic or other means. The definition of database does not cover computer programs used in the making or operation thereof. In accordance with this Act, databases which, by reason of the selection or arrangement of their contents, constitute the author’s own intellectual creation shall be protected as such by copyright and no other criteria are applied.

(4) For the purposes of this Act, “film” as an audiovisual work means any work consisting of orderly related images, whether or not accompanied by sound, intended for use via relevant technical means.

### § 9. Works not protected by copyright

This Act does not apply to the following results of intellectual activities:

- 1) ideas, images, notions, theories, processes, systems, methods, concepts, principles, discoveries, inventions, and other results of intellectual activities which are described, explained or expressed in any other manner in a work;
- 2) works of folklore;
- 3) legislation and administrative documents (acts, decrees, regulations, statutes, instructions, directives);
- 4) court decisions;
- 5) official symbols of the state and insignia of organisations (flags, coats of arms, orders, medals, badges, etc.);
- 6) news of the day;
- 7) facts and data;
- 8) ideas and principles which underlie any element of a computer program, including those which underlie its user interfaces.

## Division 2. Creation and content of copyright

### § 10. Creation of copyright

(1) The author of a work is the natural person or persons who created the work in the field of literature, arts or science as a result of their creative activity.

**Kommenteeritud [CU28]:** You intend to cover landscape architecture and gardens?

**Kommenteeritud [CU29]:** Without distinction as to their utility?

**Kommenteeritud [CU30]:** Shouldn't this be in the public domain? Along with should enacted legislation, regulations and judicial opinions.

**Kommenteeritud [CU31]:** Why?

**Kommenteeritud [CU32]:** I think there's a translation problem here

**Kommenteeritud [CU33]:** This still may seem format-specific

**Kommenteeritud [CU34]:** ?? “Images” are visual works. What was intended here?

**Kommenteeritud [CU35]:** This is unclear, especially since this text defines a “work” as original results” What was intended?

(2) Copyright shall belong to a legal person only in the cases prescribed in this Act.

(3) The author's copyright in a work is created with the creation of the work. The creation of a work means the moment of expression of the work in any objective form which allows the perception and reproduction or fixation of the work. The author also incurs copyright in intermediate stages of creating a work (drafts, sketches, plans, figures, chapters, preparatory design economic, etc.) if these are in compliance with the criteria of a work.

(4) The registration or deposit of a work or completion of other formalities is not required for the creation or exercise of copyright.

(5) Copyright subsists in works not made available to the public and in works made available to the public

(6) The purpose, value or specific form of expression or fixation is not evaluated as a basis for creation of copyright.

#### § 11. Content of copyright

(1) Moral rights and economic rights constitute the content of copyright.

(2) Moral rights are inseparable from the author's person and non-transferable.

*Kommenteeritud [CU36]:* Can they be inherited?

##### **Variant 2:**

(2) Moral rights are inseparable from the author's person and non-transferable, but may be licensed for use of limited nature and extent.

*Kommenteeritud [CU37]:* What is intended here?

**Variant 3** (in addition to the general clause of subsection (2), pursuant to which moral rights are inseparable from the author's person and non-transferable):

(3) The author may grant consent to not exercise the author's personal rights/forego the execution of the author's personal rights. Such consent/foregoing must be of limited extent, clearly expressed, and informed.

*Kommenteeritud [CU38]:* In writing?

(4) If the author's consent to not exercise the author's personal rights/foregoing of the execution of the author's personal rights is granted/declared for the benefit of a holder of economic rights or a holder of license, then any person to whom a holder of economic rights or a holder of license has granted a right to use the works may refer to that consent/foregoing, unless dictated otherwise by the consent.

*Kommenteeritud [CU39]:* If you're going to legislate the possibility of waiver, maybe better to deem the waiver *intuitu personae* so that a subsequent economic licensee must obtain a new waiver

(3) Economic rights are transferable and the holder of right may grant a permit (license) for use thereof as single rights or a set of rights for a charge or free of charge.

#### § 12. Author's moral rights

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

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

- 2) decide in which manner the author's name shall be designated upon use of the work – as the real name of the author, a fictitious name (pseudonym) or without a name (anonymously) (right of author's name);
- 3) contest any changes and misrepresentations of and other inaccuracies in the work, its title or the designation of the author's name and any assessments of the author or his or her work which are prejudicial to the author's honour and reputation (right of protection of author's honour and reputation);
- 4) decide when the work is ready to be performed in public (right of disclosure of the work);
- 5) supplement and improve the author's work which is made public (right of supplementation of the work);
- 6) request that the use of the work be terminated (right to withdraw the work);
- 7) request that the author's name be removed from the work which is being used.

**Kommenteeritud [CU40]:** Not just performed; the right of disclosure applies to publication (distribution of copies), too

(2) The rights specified in clauses (1) 5), 6) and 7) of this section shall be exercised at the expense of the author.

**Kommenteeritud [CU41]:** Making the author pay for third parties' crediting the work to the author is unreasonable, and can't be what you meant

**Variant 2:**

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

- 1) appear in public as the creator of the work and claim recognition of the fact of creation of the work by way of relating the authorship of the work to the author's person and name upon any use of the work (right of authorship);
- 2) decide in which manner the author's name shall be designated upon use of the work – as the real name of the author, a fictitious name (pseudonym) or without a name (anonymously) (right of author's name);
- 3) contest any changes and misrepresentations of and other inaccuracies in the work, its title or the designation of the author's name and any assessments of the author or his or her work which are prejudicial to the author's honour and reputation (right of protection of author's honour and reputation);
- 4) decide when the work is ready to be performed in public (right of disclosure of the work);
- 5) request that the author's name be removed from the work which is being used.

**Kommenteeritud [CU42]:** Same comment as above

(2) The right specified in clause (1) 5) of this section shall be exercised at the expense of the author.

**Kommenteeritud [CU43]:** Same comment as above

**§ 13. The author's economic rights**

An author shall enjoy the exclusive right to use the author's work, to authorise or prohibit the use of the work by other persons and to receive income from such use of the author's work, except in the cases of free use prescribed in Chapter IV of this Act. The author of the work shall have right to authorise or prohibit:

- 1) reproduction of the author's work (right of reproduction);
- 2) distribution of copies of the author's work ~~or copies thereof~~ (distribution right);
- 3) translation of the author's work (right of translation);
- 4) alteration of the author's work (right of alteration);
- 5) compilation and publication of collections of the author's works and systematisation of the author's works (right of compilation in collections);
- 6) communication of the author's work to the public (right of communication);
- 7) carrying out the author's architectural project, project of a work of design or a work of applied arts, and other projects (right of project).

**Kommenteeritud [CU44]:** The "work" isn't distributed; see earlier comment

**Kommenteeritud [CU45]:** "Adaptation" is the more correct term; see Berne art. 12

**Kommenteeritud [CU46]:** Including the making available to the public of the work in such a way that members of the public may access these works from a place and at a time individually chosen by them

#### § 14. Right of reproduction

(1) "Reproduction" means the making one or several temporary or permanent copies of the work or a part thereof directly or indirectly in any form or by any means.

(2) Reproduction also means the first recording of a work, i.e. the first fixation of a sound, of an impression of sound, or a film to a medium from which it can be perceived and communicated to the public via relevant device.

#### § 15. Distribution right

(1) "Distribution" means the transfer of the right of ownership ~~of in a work or~~ ~~copies thereof of a work~~ or any other form of distribution to the public, including the rental and lending (except for the rental and lending of works of architecture and works of applied art).

(2) The first sale or transfer in some other manner of the right of ownership of a copy of a work by the author or with his or her consent in a Member State of the EU or a state which is a contracting party of EEA Agreement shall exhaust the right specified in this clause and ~~copies that copy~~ of the work may be further distributed in Member States of the EU or states which are contracting parties of EEA agreement without the consent of the author.

(3) An author shall enjoy the exclusive right to authorise or prohibit the rental or lending of copies of ~~his or her works~~ to the public even in the case where the distribution right has been exhausted, except in the cases provided for in § 49 (free lending) of this Act.

(4) Regarding databases, the first sale of a copy of a database in a Member State of the EU or a state which is a contracting party of EEA Agreement shall exhaust the right to control further sales of that copy in Member States of the EU or states which are contracting parties of EEA agreement.

(5) The first sale of a copy of a computer program in a Member State of the EU or a state which is a contracting party of EEA Agreement by the author or with the author's consent shall exhaust the author's right to distribute ~~the that~~ copy of the computer program in Member States of the EU or states which are contracting parties of EEA agreement, except the right to rent the program or its copy.

(6) "Lending" means making ~~a work or~~ ~~copies thereof of a work~~ available for use through establishments which are accessible to the public, for a limited period of time and not for direct or indirect economic or commercial advantage.

(7) "Rental" means making ~~a work or~~ ~~copies thereof of a work~~ available for use, for a limited period of time and for direct or indirect economic or commercial advantage.

#### § 16. Right of communication

(1) For the purposes of this Act, "communication to the public" means transmission, retransmission, public performance, making available to the public, display to the public i.e. exhibition of the work, and other ways of communicating the work to the public.

(2) For the purposes of this Act, "communication to the public" also means:

**Kommenteeritud [CU47]:** Important to make clear that the exhaustion applies only to the copy that is distributed and does not entitle the owner of the copy to make further copies

**Kommenteeritud [CU48]:** All kinds of works?

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

**Kommenteeritud [CU49]:** See earlier comment

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

**(3)** "Transmission" means communication of a programme and the object of rights contained therein to the public **in a manner involving transmission over wire or air**.

**Kommenteeritud [CU50]:** How about "by any device or process by which the programme or work are received beyond the place from which they are sent"?

**(4)** "Communication by satellite" means the act of introducing, under the control and responsibility of the broadcasting service provider, the programme-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth. If the programme-carrying signals are encrypted, then there is communication by satellite on the condition that the means for decrypting the broadcast are provided to the public by the broadcasting service provider or with its consent.

**Kommenteeritud [CU51]:** I'm not familiar with satellite retransmissions; does this text track the Satellite Directive?

If an act of communication by satellite occurs in a state which does not provide the level of protection provided for in this Act, then:

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

2) if no uplink station situated in the territory of the Republic of Estonia is used but a broadcasting service provider having its principal establishment in the territory of the Republic of Estonia has commissioned the act of communication by satellite, that act is deemed to have occurred in the Republic of Estonia and the rights provided for in this Act shall be exercisable against the broadcasting service provider.

**(5)** "Satellite" means any communications satellite operating on frequency bands which are reserved for the broadcast of signals for reception by the public or which are reserved for closed, point-to-point communication on the condition that individual reception of those signals is possible under certain circumstances.

**(6)** "Retransmission via cable network" means the **simultaneous, unaltered and unabridged retransmission** by a cable or microwave system **for reception by the public** of an initial transmission, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public.

**Kommenteeritud [CU52]:** What if the programme is altered or time-delayed? It's no longer a cable retransmission? With what consequences for rights?

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

**Kommenteeritud [CU53]:** The definition goes to "performance" not to "public"

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

**Kommenteeritud [CU54]:** Too technologically specific; how about using the language of the WCT?

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

## § 17. Right of alteration

“Alteration of a work” means making adaptations, arrangements, derived works and other alterations of the work, and adding works of other authors to the author’s work.

### Division 3. Persons holding copyright

#### § 18. Initial holding of copyright

(1) The moral and economic rights of an author shall initially belong to the natural person who created the work unless otherwise prescribed by this Act with regard to the economic rights of the author.

(2) Copyright shall belong to a legal person or a state only in the cases prescribed in this Act.

(3) Succession of moral and economic rights of an author shall take place pursuant to the procedure prescribed in Division 4 of Chapter VI of this Act.

#### § 19. Author and producer of film

(1) The author of a film an audiovisual work is the director, the script writer, the cameraman, the designer, the author of dialogue, the author of the musical work specifically created for use in the film.

(2) The producer of an audiovisual work a film is a natural or legal person who financed or managed the creation of the work and whose name is fixed in the audiovisual work film. The producer of an audiovisual work a film does not attain the rights of a producer of a sound recording if the sound recording was first fixed in the audiovisual work film.

(3) Copyright in an audiovisual work a film shall belong to its author or joint or co-authors pursuant to the procedure prescribed in § 20 of this Act.

#### § 20. Joint authorship and co-authorship

(1) A work created as a result of joint creative activity may constitute an indivisible whole (joint authorship) or consist of parts each of which has independent meaning of its own (co-authorship). A part of a work is deemed to have independent meaning if it can be used independently of other parts of the work.

(2) Each co-author of a work shall enjoy copyright in the part of the work with independent meaning created by the co-author and the co-author may use that part of the work independently. Such use shall not prejudice the interests of other co-authors or contradict the interests of joint use by the co-authors of the work.

(3) Relations between joint authors in the exercise of copyright, including the distribution of remuneration, shall be determined by an agreement between the authors. In the absence of such agreement, all authors shall exercise copyright in the work jointly. Remuneration shall be divided between them proportionally to their respective contributions.

**Kommenteeritud [CU55]:** Why have two separate categories?

**Kommenteeritud [CU56]:** Instead of proportionately to the number of contributors, unless the authors have agreed otherwise? Does it really make sense for a court to have to evaluate what was the respective contribution of each putative co-author?

(4) A joint author or a person holding a part of a joint copyright shall not unreasonably or maliciously hinder joint exercise of the copyright.

**Variant 2:**

(3) *Each joint author of a work shall enjoy the right to use the work OR to use the work and to grant third parties non-exclusive licenses for use of the work created under joint authorship.*

(4) *Relations between joint authors in the exercise of copyright, including the distribution of remuneration, shall be determined by an agreement between them. In the absence of such agreement, each of them shall have the right to use the work and to sign non-exclusive license agreements with third parties under market conditions for use of the work. In doing that, they shall divide the received remuneration between them proportionally to their respective contributions.*

**Kommenteeritud [CU57]:** Same problem as indicated earlier

## § 21. Copyright in works created in execution of duties of employment

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

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

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

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

**Variant 2:**

(4) *The author of a work created in the execution of duties may be paid, in addition to his or her pay, remuneration for the use of the work as prescribed in an agreement between the employer and the author.*

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

## Division 4. Duration of copyright

## § 22. Term of protection of copyright

(1) The term of protection of copyright shall be the life of the author and seventy years after his or her death, irrespective of the date when the work is lawfully made available to the public. Where the country of origin of a work, within the meaning of subsection 4 of Article 5 of the Berne Convention on Literary and Artistic Works, is a third country, and the author of the work is not a citizen or permanent resident of the Republic of Estonia, the term of protection of copyright shall run within a period prescribed by the law of the country of origin but may not exceed the term specified in the first sentence of this subsection.

(2) The term of protection of copyright in a work created by two or more persons as a result of their joint creative activity shall be the life of the last surviving author (regarding films: the director, the script writer, the author of dialogue, the author of the musical work specifically created for use in the film) and seventy years after his or her death.

(3) In the case of anonymous or pseudonymous works, the term of protection of copyright shall run for seventy years after the work is lawfully made available to the public. If the author of the work discloses his identity during the above-mentioned period or leaves no doubt as to the connection between the authorship of the work and the person who created the work, the provisions of subsections (1) and (2) of this section apply.

(4) The term of protection of copyright in a work created in the execution of duties shall run for seventy years after the work is lawfully made available to the public. If the work is not made available to the public seventy years after its creation, the term of protection of copyright shall expire seventy years after the creation of the work.

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

(6) The term prescribed in this section begins on the first of January of the year following the year of the death of the author or of the year following the year when the work was lawfully made available to the public or of the year following the year of creation of the work.

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

### **§ 23. Applying the term of protection of rights**

The terms of protection provided for in this Chapter apply to all works which are protected in at least one Member State of the European Union.

### **§ 24. Protection of moral rights of author without term**

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

(2) Regarding works whose term of protection of copyright has expired, the rights specified in subsection (1) of this section shall be protected by the Ministry of Justice.

### CHAPTER III RELATED RIGHTS

*Kommenteeritud [CU58]:* Consider making attribution right "without term" but cut the integrity right off at the expiration of the economic rights?

#### Division 1. Creation and content of related rights

##### § 25. Creation of related rights

(1) A performer, producer of a sound recording, broadcasting service provider, producer of the first fixation of a ~~film~~ audiovisual work, producer of a database, a person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully directs at the public a previously unpublished work, and a person who publishes a critical or scientific publication of a work not protected by copyright shall enjoy related rights in the results created by him or her.

*Kommenteeritud [CU59]:* But wouldn't the critical edition be protected by copyright, as to the editorial value added?

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

##### § 26. Content of performer's rights

(1) For the purposes of this Act, "performer" means an actor, singer, musician, dancer or another person or group of persons who acts, sings, declaims, plays on an instrument or in any other manner performs literary or artistic works or works of folklore or supervises other persons upon the performance of works.

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

##### § 27. Performer's moral rights

A performer shall enjoy the following exclusive rights:

- 1) appear in public as the performer of the work and claim relation of the performance to the performer's person and name upon any use of the performance (right of authorship in performance);
- 2) decide in which manner the performer's name shall be designated upon use of the performance (right of performer's name);
- 3) contest any changes and misrepresentations and other inaccuracies regarding the performance which are prejudicial to the performer's honour and reputation (right of protection of performer's honour and reputation).

##### § 28. Performer's economic rights

(1) An author shall enjoy the exclusive right to use the performer's performance, to authorise or prohibit the use of the performance in such manner by other persons and to receive income from such use of the performer's performance, except in the cases of free use prescribed in Chapter IV of this Act. The performer shall have right to authorise or prohibit:

*Kommenteeritud [CU60]:* Do you mean "A performer"?

- 1) recording a performance which has previously not been fixed onto a record, audio or video tape, on film or in another manner (right of recording);
- 2) the broadcasting of performances by radio, television or satellite, except in the cases where a recording of the performance is broadcast or the performance is retransmitted with the permission of the broadcasting service provider which first broadcast the performance (transmission right);
- 3) communication of a performance to the public by whichever technical means outside the location of the performance except in the cases where a recording of the performance is communicated to the public or the performance is directed at the public by means of radio or television (communication right);
- 4) making the recording of a performance available to the public in such a way that persons may access the performance from a place and at a time individually chosen by them (right of making available);
- 5) use of the sound and image of the performance separately if they are recorded together and form a single whole;
- 6) reproduction of the recording of a performance (reproduction right);
- 7) the distribution of recording to the public, including rental and lending of the recording of a performance (distribution right). The rental right shall transfer to the producer of a film upon the conclusion of a corresponding individual or collective contract for the creation of the film unless otherwise prescribed by contract. The performer shall retain the right to obtain equitable remuneration.

(2) Upon performance of a work in the execution of direct duties, the economic rights of the performer are transferred to the employer unless otherwise prescribed by contract.

#### § 29. Joint performance

(1) "Joint performance" means activity specified in subsection 26 (1) of this Act where more than ten performers participate simultaneously.

(2) In case of joint performance, if the performer has not handed over its economic rights with a contract or granted a license for use of the performance, the economic rights shall transfer to the leader of the group.

**Kommenteeritud [CU61]:** What if there is a lead performer and backup musicians who do not regularly perform with the lead singer? Who is the "group" Who is the "leader"?

#### § 30. Producer of sound recording and rights of producer of sound recording

(1) "Sound recording" means fixation of the sound arising from performance of a work or other sound or impression of sound in any other way than in an audiovisual work.

(2) A producer of a sound recording is a natural or legal person on whose initiative and responsibility a first fixation of the sound arising from performance of a work or other sound or impression of sound occurs.

(3) A producer of a sound recording has the exclusive right to authorise or prohibit:

- 1) the direct or indirect, temporary or permanent, partial or total reproduction of the sound recording in any form or by any means (reproduction right);
- 2) the distribution of the sound recording to the public, including rental or lending of copies of the sound recording (distribution right);
- 3) making the sound recording available to the public in such a way that persons may access the sound recording from a place and at a time individually chosen by them (right of making available).

### § 31. Broadcasting service provider and broadcasting service provider's economic rights

(1) Broadcasting service providers are persons within the meaning of §§ 4 and 5 of the Media Services Act (RT I, 06.01.2011, 1; RT I, 25.04.2012, 1).

(2) Broadcasting service providers have the exclusive right to authorise or prohibit:

- 1) retransmission of their programmes (retransmission right);
- 2) recording of their programmes (right of recording);
- 3) reproduction of recordings of their programmes (reproduction right);
- 4) communication of programmes to the public if such communication occurs in places open to the public against payment of an entrance fee (communication right);
- 5) making recordings of their programmes available to the public in such a way that persons may access the programmes from a place and at a time individually chosen by them (right of making available);
- 6) distribution of recordings of their programmes to the public, including rental and lending of recordings of their programmes (distribution right).

(3) The rights provided for in subsection (2) of this section do not depend on whether the programme is communicated or retransmitted by wire or over the air, including by cable network or satellite.

(4) The rights provided for in subsection (2) of this section do not extend to a cable operator who retransmits by cable the programmes of broadcasting service providers.

### § 32. Film and film producer's economic rights

(1) "Films" as objects of related rights mean audiovisual works which conform to criteria of a work or moving images whether or not accompanied by sound which do not conform to criteria of a work.

*Kommenteeritud [CU62]:* I don't understand this: what is intended?

(2) Producers of films have the exclusive right to authorise or prohibit:

- 1) reproduction of the originals or copies of their films (reproduction right);
- 2) distribution of the originals or copies of their films to the public, including rental or lending of copies of their films (distribution right);
- 3) making available the originals or copies of their films in a manner that persons can use the films in the place and at the time of their individual choice (right of making available).

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

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

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

*Kommenteeritud [CU63]:* Same question as above

### § 34. Exhaustion of distribution right

The distribution right prescribed in clause 28 (1) 7), 30 (3) 2), 31 (2) 6) and 32 (2) 2) of this Chapter shall exhaust only if the first sale of the object of related rights occurred in the territory of the European Union by the holder of rights or with consent of the holder of rights, except the right for rental of the work which shall not exhaust.

### § 35. Economic rights of producer of database

(1) "Database" as an object of related rights means a collection of works, data or other economics arranged in a systematic or methodical way and individually accessible by electronic or other means.

*Kommenteeritud [CU64]:* What does this mean? Problem with the translation?

(2) The rights of the producer of a database shall run from the date of completion of the database, which is the date on which the making of the database is completed.

(3) The following is permitted only with the authorisation of the producer of a database: extractions from the database or from a substantial part thereof. "Extraction" means the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

2) re-utilisation of the database or a substantial part thereof. "Re-utilisation" means any form of making available to the public of all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database in a Member State of the EU by the maker of the database or with consent of the maker of the database shall exhaust the right of the producer of the database to control further sales of that copy in the European Union.

(4) Regarding databases being objects of related rights, lending from libraries is not an act of extraction or re-utilisation of a database or a substantial part thereof.

### § 36. Rights and obligations of lawful users of databases

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

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

*Kommenteeritud [CU65]:* ?

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

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

### Division 2. Duration of related rights

### **§ 37. Term of protection of related rights**

**(1)** Related rights shall not expire before the end of a period of fifty years:

- 1) for the performer, as of the first performance. If a recording of the performance is lawfully published or lawfully communicated to the public within this period, the rights of the performer shall expire in fifty years as of the date of such publication or communication to the public, whichever is the earliest;
- 2) for the producer of sound recordings, as of the first fixation of a sound recording. If a recording of the sound recording is lawfully published within this period, the rights of the producer of sound recordings shall expire in fifty years as of the date of the first lawful publication. If, during the term specified in the first sentence, no lawful publication has occurred and the sound recording has been lawfully communicated to the public, the specified rights shall expire in fifty years as of the date of the first lawful communication to the public;
- 3) for the broadcasting service provider, as of the first transmission of a programme, regardless of whether the programme is transmitted or retransmitted by wire or over the air, including by cable network or satellite;
- 4) for the producer of a film, as of the first fixation of the film. If the film is lawfully published or lawfully communicated to the public within this period, the rights of the producer of the first fixation shall expire in fifty years as of the date of such publication or communication to the public, whichever is the earliest.

**(2)** The term specified in subsection (1) commences from the first of January of the year following the year when the acts specified in subsection (1) of this section are performed.

**(3)** The terms of protection prescribed in subsection (1) also apply in respect of holders of related rights who are not citizens of a Member State of the European Union, provided that the Member States grant them protection. Such rights shall expire within a period prescribed by the law of the Member State of which the rightholder is a citizen, but may not exceed the term prescribed in subsection (1), unless otherwise prescribed by an international agreement.

**(4)** Rights of a producer of database shall run for fifteen years starting from the first of January of the year following the date of completion of the database. In case of publishing the database in any manner within the term specified in this subsection, the rights of a producer of database shall run for fifteen years starting from the first of January of the year following the date of publishing the database. If the content of the database significantly changes either qualitatively or quantitatively (including by supplementing or shortening), resulting in the investment made into the database significantly increasing either qualitatively or quantitatively, the rights of the producer of the changed database regarding such changed database shall run for fifteen years starting from making such changes. In that case the start of the term shall be accounted pursuant to the procedure prescribed in the first or the second sentence of this subsection.

### **§ 38. Protection of moral rights of performer without term**

**(1)** The authorship of a performer, the name of the performer and the honour and reputation of the performer shall be protected without a term.

**(2)** Regarding performances whose term of protection of copyright has expired, the rights specified in subsection (1) of this section shall be protected by the Ministry of Justice.

### § 39. Applying the term of protection of rights

The terms of protection provided for in this Chapter apply to all objects of related rights which are protected in at least one Member State of the European Union.

## CHAPTER IV LIMITATION OF COPYRIGHT AND RELATED RIGHTS (FREE USE OF OBJECTS OF RIGHTS)

### § 40. Free use

(1) The substance of free use of objects of rights is limitation of economic rights granted to holders of rights with this Act.

(2) Free use of objects of rights shall not require permission of the holder of rights or payment for the free use, except compensations prescribed in Division 1 of Chapter V of this Act.

### § 41. Conditions of free use

(1) Free use is permitted only in the cases directly prescribed in this Chapter and on the condition that this does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(2) Free reproduction of an object of rights or communication thereof to the public is permitted without the authorisation of the author and without payment of the remuneration, provided that it is sufficiently similar to a case directly prescribed in this Chapter and conforms to the conditions prescribed in subsection (1) of this section.

(3) Free use of an object of rights as prescribed in this Chapter is permissible only if using a lawfully published object or its lawful copy, *except reproduction for personal use and reproduction for educational and scientific purposes.*

#### **Variant 2:**

*Omit from the Copyright Act all references (i.e. subsection (3) above, and the reference to the nature of the source when freely reproducing for personal use in § 43 below) to the requirement of lawful source upon free use on an object of rights, except the requirement for existence of lawful source upon quotation as provided directly by the Bern Convention.*

(4) Any contractual provisions which prejudice the exercise of the options for free use provided for in this Chapter are void.

#### **Variant 2:**

*(4) Any general terms of contracts which prejudice the exercise of the options for free use provided for in this Chapter are void.*

**Kommenteeritud [CU66]:** What does this mean? How much does it expand "certain special cases"? It seems inconsistent with clause (1) which says "only in the cases directly prescribed . . ."

**Kommenteeritud [CU67]:** Why should private copies and educational and research use copies be allowed to be made from illegal sources?? Isn't it a bad idea – and a bad example to students – to allow educators to go to illegal sources to obtain copies??

**Kommenteeritud [CU68]:** Even worse!

**Kommenteeritud [CU69]:** All contracts, or just non-negotiated contracts?

**Kommenteeritud [CU70]:** Does this mean form contracts? If so it's not very clear

**Variant 3:**

(4) Any general terms of contracts which prejudice the exercise of the options for free use provided for in § 43, § 44, clauses 45 2), 4) and 5), § 48 and § 53 of this Chapter are void.

**Variant 4:**

The new Copyright Act does not deal with matters of free use and freedom of contract, i.e. unlimited freedom of contract; the Copyright Act omits the relevant reference (subsection (4)), i.e. the status quo continues in this matter.

**§ 42. Free reproduction as part of a technical process**

A temporary or casual reproduction of an object of rights by a natural or legal person which occurs as an integral and essential part of a technical process and the purpose of which is to mediate the communication of the object of rights in the network between third parties or to make possible the lawful use of the object of rights and which has no independent commercial purpose is permitted.

**Kommenteeritud [CU71]:** Maybe better just to take the text of art 5.1 of the InfoSoc directive?

**§ 43. Free reproduction for purposes of personal use**

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

**Kommenteeritud [CU72]:** Regardless of source? Any kind of work?

**Kommenteeritud [CU73]:** Private copying without remuneration is contrary to the InfoSoc Directive art. 2(b) and probably violates the 3-step-test. Also inconsistent with art 59.(1), which does provide for remuneration with respect to sound recordings and audiovisual works

**Variant 2:**

(1) A work may be reproduced by a natural person for the purposes of personal use without the authorisation of its author and without payment of remuneration on the condition that such activity is not carried out for commercial purposes, unless the work is reproduced from a clearly unlawful source.

(2) The following shall not be reproduced for the purposes of personal use:

- 1) works of architecture and landscape architecture;
- 2) electronic databases;
- 3) computer programs, except the cases prescribed in §§ 54 and 55 of this Act;
- 4) sheet music by photocopying.

**Kommenteeritud [CU74]:** Why these particular examples?

**Kommenteeritud [CU75]:** What about digital scanning?

(3) The limitation prescribed in clause 4) of subsection (2) of this section shall extend to legal persons.

**§ 44. Free translation for purposes of personal use**

An object of rights may be translated by a natural person for the purposes of personal use on the condition that such activity is not carried out for commercial purposes.

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

The following is permitted for a natural or legal person:

- 1) making summaries of and quotations from a lawfully published work to the extent justified by the purpose, on the condition of referencing the name of the author of the used work, the name of the work and the source of publication, except if such referencing is impossible;

2) the use of an object of rights for the purpose of teaching and scientific research to the extent justified by the purpose, on the condition of referencing the name of the author of the used work, the name of the work and the source of publication, except if such referencing is impossible, and on the condition that such use is not carried out for commercial purposes.

*Kommenteeritud [CU76]:* What about lawful source?

**Variant 2:**

2) reproduction of an object of rights, communication thereof to the public and distribution thereof for the purpose of teaching and scientific research to the extent justified by the purpose, on the condition of referencing the name of the author of the used work, the name of the work and the source of publication, except if such referencing is impossible, and on the condition that such use is not carried out for commercial purposes.

**Variant 3:**

2) the use of an object of rights (or: reproduction, communication to the public and distribution thereof) for the purpose of teaching and scientific research to the extent justified by the purpose in educational and scientific institutions, on the condition of referencing the name of the author of the used work, the name of the work and the source of publication, except if such referencing is impossible, and on the condition that such use is not carried out for commercial purposes.

3) for the purpose of reporting current events, the reproduction in the press and communicating to the public of works seen or heard in the course of an event, to the extent justified by the purpose, in the form and to the extent required by the purpose of reporting current events, on the condition of referencing the name of the author of the used work, the name of the work and the source of publication, except if such referencing is impossible;

4) reproduction of an object of rights for the purposes of a judicial procedure or insurance of public security and to the extent justified by those purposes;

5) the reproduction, distribution and communication to the public of an object of rights in the interests of disabled persons in a manner which is directly related to their disability on the condition that such use is not carried out for commercial purposes. Works created especially for disabled persons may not be reproduced, distributed and made available without the authorisation of the holder of rights;

6) the use of an object of rights in a caricature, parody or pastiche to the extent justified by such purpose.

**§ 46. Casual inclusion of object of rights in other material**

**Casual-Incidental** reproduction of a lawfully published object of rights and communication thereof to the public within other material, and distribution of such material shall be deemed free use.

**§ 47. Free use of object of rights for demonstration and repair of device**

Reproduction of an object of rights and communication thereof to the public in relation with demonstration or repair of devices shall be deemed free use.

*Kommenteeritud [CU77]:* Why is communication to the public necessary to make repairs of a device?

**§ 48. Free use by public archives, museums or libraries**

(1) A public archive, museum or library has the right to reproduce a work included in the collection thereof in order to:

*Kommenteeritud [CU78]:* And non profit?

- 1) replace an object of rights which has been lost, destroyed or rendered unusable;
- 2) make a copy to ensure the preservation of a copy of the object of rights;
- 3) replace a copy of an object of rights which belonged to the permanent collection of another library, archives or museum if the object of rights is lost, destroyed or rendered unusable;
- 4) digitise a collection for the purposes of preservation;
- 5) make a copy for a natural person for the purposes specified in § 43 of this Act;
- 6) make a copy on the order of a court or a state agency for the purposes prescribed in clause 45 4) of this Act.

*Kommenteeritud [CU79]:* MUCH too broad. IF this is inspired by section 108(d)(1) it goes WAY beyond it

(2) The provisions of clauses (1) 1) – 3) of this section apply in the case when acquisition of another copy of the object of rights is impossible.

(3) A public archive, museum or library has the right to use an object of rights included in the collection thereof for the purposes of an exhibition or the promotion of the collection to the extent justified by the purpose.

(4) A public archive, museum or library has the right, on order, to make available objects of rights in their collections on the spot through special equipment.

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

#### § 49. Free lending

(1) A library has the right to lend out objects of rights in its collection, on the condition that it does not occur for commercial purposes.

(2) The lending out of a sound recording is permitted in case four months have passed since the start of the distribution of such sound recording in Estonia. The said time-limit can be shortened with the consent of the holder of rights.

(3) The lending out of a film is permitted only in case the holder of rights permits it.

(4) A library providing services to an educational institution operating in a field of study of film arts or music is entitled to lend out a film and a sound recording for teaching and scientific research without the consent of the holders of rights and without the time-limit set out in subsection (2) of this section.

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

It is permitted for a natural person to reproduce works of architecture, works of visual art, works of applied art or photographic works which are permanently located in places open to the public, by any means except for mechanical contact copying, and to communicate such reproductions of works to the public except if the work is the main subject of the reproduction and it is intended to be used for direct commercial purposes.

*Kommenteeritud [CU80]:* What is this?

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

The reproduction and communication to the public of reproductions of works of architecture in real estate advertisements to the extent justified by the purpose is permitted for a natural person.

#### § 52. Free public performance

The public performance of works in the direct teaching process in educational institutions by the teaching staff and students on the condition that the audience consists of the teaching staff and students or other persons (parents, guardians, caregivers, etc.) who are directly connected with the educational institution where the work is performed in public.

#### § 53. Ephemeral recording of works by broadcasting service provider

(1) A broadcasting service provider may make ephemeral copies of works which the broadcasting service provider has the right to transmit on the condition that such copies are made by the means of the broadcasting service provider's own facilities and used for its own specified programmes.

(2) Ephemeral copies prescribed in this section shall not be destroyed if they have considerable value in terms of cultural history. In such case, the copies shall be preserved, without the authorisation of the holder of rights, in the archives of the broadcasting service provider as objects of rights of solely documentary character. Objects of rights to be preserved in the archives shall be decided on by the broadcasting service provider or, in the case of a dispute, by the State Archivist.

#### § 54. Free use of computer programs

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

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

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

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

#### § 55. Free decompilation of computer programs

(1) The lawful user of a computer program may reproduce and translate a computer program without the authorisation of the author of the program and without payment of additional remuneration if

*Kommenteeritud [CUB1]:* But if possession of the program is transferred, the backup copy has to be transferred with it.

these acts are indispensable to obtain information necessary to achieve the interoperability of a program created independently of the original program with other programs provided that the following conditions are met:

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

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

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

#### **§ 56. Free use of database**

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

#### **§ 57. Limitation of rights of producer of database**

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

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

## **CHAPTER V COMPENSATIONS AND RIGHTS FOR ADDITIONAL REMUNERATION**

### **Division 1. Compensations**

#### **§ 58. Purpose of compensation**

In cases and on conditions prescribed in this Division, the holder of rights is entitled to compensation for limitation of his or her economic rights in free use of the object of rights.

#### § 59. Compensation for reproduction of films and sound recordings of works for private use

(1) The author as well as the performer of the work and the producer of sound recording have the right to obtain compensation for reproduction of the film or the sound recording of work for private use occurring on the basis of § 43 of this Act.

*Kommenteeritud [CU82]:* But not the producer of the audiovisual work?

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

*Kommenteeritud [CU83]:* Is this inconsistent with clause (1) which includes producers of sound recordings?

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

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

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

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

*Kommenteeritud [CU84]:* Why only natural persons?

(7) The compensation shall be repaid on the storage media and recording devices:

1) which, due to their technical characteristics, do not enable the reproduction of audiovisual works and sound recordings of works as single copies;

*Kommenteeritud [CU85]:* What does this mean?

2) exported or transported from Estonia into the Community customs territory;

3) which are used in the course of the activities specified in the articles of association of the undertaking;

*Kommenteeritud [CU86]:* What does this mean?

4) which are used in an activity in the case of which the result of the main activity of the person who makes the recording requires the manufacture of an audio or video recording as an intermediate stage;

5) which are intended for recording activities in educational and research institutions for the purpose of teaching or scientific research;

6) used for making recordings for the benefit of disabled persons.

(8) A collective management organisation shall repay the compensation to the persons specified in subsection (7) of this section within six months after submission of a corresponding written application.

(9) The amount of the compensation is:

1) 3 per cent of the value of the goods in the case of recording devices;

2) 8 per cent of the value of the goods in the case of storage media.

(10) Compensation shall be distributed among authors, performers and producers of sound recordings according to the use of works and sound recordings.

**Kommenteeritud [CU87]:** What about audiovisual works?

(11) The compensation shall be distributed on the basis of a distribution plan for the preparation of which the Minister of Justice shall appoint a committee every year, which is proportionally comprised of collective management organisations representing the authors, performers and producers of sound recordings and a representative of the Ministry of Justice.

**Kommenteeritud [CU88]:** And audiovisual works?

(12) Part of the compensation may also be paid to organisations for the development of music and film culture and in order to finance educational and research programmes or for use thereof for other similar purposes, but only in an amount not exceeding 10 per cent of the compensation subject to distribution.

(13) The Minister of Justice shall approve the distribution plan not later than three months after the end of the budgetary year, having previously obtained the approval of the representatives of authors, performers and producers of sound recordings.

(14) The Minister of Justice shall appoint a collective management organisation as the collector of compensation and the organisation has the right to deduct expenses related to the collection and payment of compensation from the compensation collected. The collector of compensation shall submit to the Ministry of Justice a written report of collection and payment of compensation and deductions made, by January 31 of each year.

(15) The collective management organisation which is appointed as the collector of compensation has the right to obtain necessary information from customs authorities and statistical organisations and manufacturing and importing organisations and sellers. The information submitted is confidential and the collector of compensation has the right to use and disclose the information only in connection with the collection of compensation.

(16) The Government of the Republic shall establish by a regulation:

- 1) the procedure for payment of compensation to compensate for private use of films and sound recordings of works and the list of storage media and recording devices;
- 2) the procedure for application for the compensation specified in subsection (12) of this section.

**Variant 2:**

*Compensation for private use of films and sound recordings of works is abandoned, the Copyright Act does not contain the relevant regulation, i.e. reproduction for private use will also remain under exclusive control of the holder of rights (permission has to be asked for every copy to be made of a film or other work).*

**Variant 3:**

**§ 59. Compensation for reproduction of films and sound recordings of works for private use**

(1) The author as well as the performer of the work and the producer of sound recording have the right to obtain compensation for reproduction of the film or the sound recording of work for private use occurring on the basis of § 43 of this Act.

**Kommenteeritud [CU89]:** But not the producer of the audiovisual work?

(2) Calculation of the compensation to be paid to the author as well as the performer of the work and the producer of sound recording is based on the damages caused to the holder of rights via the free use specified in subsection (1) of this section.

**Kommenteeritud [CU90]:** But not audiovisual works?

(3) Compensation is paid by the Ministry of Justice.

**Kommenteeritud [CU91]:** How is that to be calculated?

(4) Compensation is paid to the collective management organisation that exercises the right of the holder of rights specified in subsection (1) of this section.

(5) The Government of the Republic adopts the distribution rates of compensation specified in subsection (1) of this section and the bases and procedure for the calculation of damage compensation specified in subsection (2) of this section.

**Variant 4:**

**§ 59. Compensation for reproduction of films and sound recordings of works for private use**

(1) The author as well as the performer of the work and the producer of sound recording have the right to obtain compensation for reproduction of the film or the sound recording of work for private use occurring on the basis of § 43 of this Act.

(2) Calculation of the compensation to be paid to the author as well as the performer of the work and the producer of sound recording is based on the damages caused to the holder of rights via the free use specified in subsection (1) of this section.

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

(4) The amount of the compensation is:

1) 3 per cent of the value of the goods in the case of recording devices;

2) 8 per cent of the value of the goods in the case of storage media.

(5) Compensation is paid to the collective management organisation that exercises the right of the holder of rights specified in subsection (1) of this section.

(6) The Government of the Republic adopts the payment procedure of compensation specified in subsection (1) of this section and the list of recording devices and storage media for which the remuneration is to be paid.

(7) The Government of the Republic adopts the bases and procedure for the calculation of damage compensation specified in subsection (2) of this section.

**Kommenteeritud [CU92]:** But not the producer of the audiovisual work?

**Kommenteeritud [CU93]:** Again, how calculated?

**§ 60. Compensation for photocopying of works**

(1) Authors and publishers are entitled to receive compensation for photocopying of their works in the cases specified in § 43 and clause 45 2) of this Act.

(2) For the purposes of this Act, “photocopying” means a manner of reproducing a work, resulting in an exact copy of the work on paper or similar medium, made by any photographic method or other method with similar mode of operation. Making an enlarged or reduced copy of a work in such manner shall also be deemed photocopying.

(3) The amount of compensation payable to the author is calculated on the basis of the state budget funds allocated for compensations in the financial year and the number of the names of works registered in the database of national bibliography.

(4) The amount of compensation payable to the publisher is calculated on the basis of the state budget funds allocated for compensations in the financial year and the number of the names of works with an ISBN and ISSN number published during ten calendar years preceding submission of the application.

(5) The compensation is paid by a legal person who represents the authors or authors’ organisations and determined by the Minister of Justice.

**Kommenteeritud [CU94]:** What about digital copying?

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

(7) The Government of the Republic shall establish the rates of distribution of the compensation prescribed in subsection (1) of this section between the authors and publishers of fiction and scientific and educational literature and the procedure for payment of compensation.

#### **§ 61. Compensation for lending copies of works, performances and sound recordings from libraries**

(1) Authors, performers and producers of sound recordings are entitled to receive compensation for lending of their objects of rights on the conditions specified in § 49 of this Act.

(2) The amount of compensation payable to the author, performer and producer of sound recording is calculated on the basis of the state budget funds allocated for compensations in the financial year and the number of lendings registered electronically in public libraries for the calendar year.

(3) Compensation shall be paid to the author on the basis of an application which is in written format or in a format which can be reproduced in writing, except in the case set out in subsection (5) of this section.

(4) In order to pay the compensation to the author, the Government of the Republic shall establish by a regulation:

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

(5) The remuneration to the author of a film and the author of a musical work, the performer of a musical works and the producer of a sound recording is paid via the collective management organisation representing them.

(6) The remuneration is paid by a legal person determined by the Minister of Culture.

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

(8) The upper limit of the remuneration payable on the grounds of subsection (3) of this section shall be four times the average gross wages of the preceding year in Estonia as reported by Statistics Estonia.

### **Division 2. Additional rights to remuneration**

#### **§ 62. Right to remuneration**

Additional rights to remuneration allow the holder of rights to obtain remuneration for the usage manners specified in this Division which are not guaranteed as exclusive rights and which are not subject to compensation for limitation of economic rights.

### **§ 63. Author's right to remuneration for resale of original work of art**

**(1)** The author of an original work of art has the right to receive a remuneration based on the sale price each time when the work is sold after the first transfer of the right of ownership in the work.

**(2)** The right specified in subsection (1) of this section shall apply to acts of sale involving salesrooms, art galleries or dealers in works of art as sellers, buyers or intermediaries.

#### **Variant 2:**

*(2) The right specified in subsection (1) of this section shall apply to all acts of sale involving professionals of the arts market, for example salesrooms, art galleries or dealers in works of art as sellers, buyers or intermediaries.*

**(3)** For the purposes of this section, "original work of art" means works of visual art such as paintings, graphics, sculptures, installations, works of applied art and photographs, provided they are made by the artist himself or herself or are copies which have been numbered, signed or otherwise authorised him or her.

#### **(4) Rates of remuneration:**

- 1) 5 per cent for the portion of the sale price up to 50,000 euros;
- 2) 3 per cent for the portion of the sale price from 50,001 to 200,000 euros;
- 3) 1 per cent for the portion of the sale price from 200,001 to 350,000 euros;
- 4) 0.5 per cent for the portion of the sale price from 350,001 to 500,000 euros;
- 5) 0.25 per cent for the portion of the sale price exceeding 500,000 euros.

**(5)** The remuneration for the resale of an original work of art shall not exceed 12,500 euros.

**(6)** The remuneration specified in subsection (1) of this section shall not be applied if the sale price is less than 64 euros.

**(7)** For a period of three years after the resale, the author and the collective management organisation have the right to require from the person who arranged the resale to furnish the information necessary in order to secure payment of royalties in respect of the resale.

**(8)** The remuneration specified in subsection (1) of this section shall be paid within thirty days as of the date of resale.

**(9)** The author has the right to receive the remuneration specified in subsection (1) of this section for a period of three years after the resale.

### **§ 64. Author's and performer's right to remuneration for rental**

**(1)** Where an author has transferred the author's economic rights to a producer of film or granted a licence to rent the work, or where such transfer of rights or granting of license is presumed, the author shall retain the right to obtain equitable remuneration from the commercial lessor. An agreement to waive the right to obtain equitable remuneration is void.

(2) Where a performer has transferred the performer's right or granted a licence to rent the sound recording, film or copy thereof, or where such transfer of right or granting of license is presumed, the performer shall retain the right to obtain equitable remuneration from the commercial lessor. An agreement to waive the right to obtain equitable remuneration is void.

**§ 65. Right of producer of sound recording and performer to remuneration for use of sound recording**

(1) If a sound recording published for commercial purposes or a copy thereof is used for communication to the public in any other manner besides a way that persons may access the sound recording from a place and at a time individually chosen by them, the performer and the producer of the sound recording have the right to obtain equitable remuneration from each person communicating the sound recording to the public for each such communication to the public.

(2) The remuneration is paid as a one-time fee in equal parts to the performer and the producer of the sound recording, unless otherwise prescribed by agreement between them.

**CHAPTER VI  
COMMON CLAUSES**

**Division 1. Use of object of rights**

**§ 66. Transfer of rights and authorisation to use object of rights**

(1) Objects of rights shall be used by other persons only in the case of the holder of rights transferring his or her rights or on the basis of an authorisation granted with a license agreement except in the cases of free use of the object of rights prescribed in this Act.

(2) Upon use of an object of rights on the basis of an authorisation granted by the holder of rights with a license agreement, the provisions of the Law of Obligations Act concerning licence agreements apply to the author's contract unless otherwise provided by this Act.

(3) Upon use of an object of rights on the basis of the holder of rights transferring his or her moral and economic rights, the provisions of the Law of Obligations Act concerning sales agreements apply to the author's contract unless otherwise provided by this Act.

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

(5) Transfer of rights or granting an authorisation by the holder of rights with a license agreement may be restricted to specific rights or parts of rights, to purpose of using the object of rights, to time limit, territory, extent, ways, means of using the object of rights, etc.

**§ 67. Format of author's contract**

(1) An author's contract under which the author or his or her legal successor transfers his or her economic rights to the other party shall be entered into in written form and signed by the author or successor in title. If the requirement of written form is not followed, the transaction is void.

**Variant 2:**

(1) An author's contract under which the economic rights of the holder of rights are transferred to the other party shall be entered into in written form and signed. If the requirement of written form is not followed, the transaction is void.

(2) An author's contract under which the right to unidentified manners of use of the object of rights is transferred shall be entered into in written form. If the requirement of written form is not followed, the transaction is void.

**Kommenteeritüd [CU95]:** This is confusing. If the manners or use are unidentified, what purpose does the writing serve? Do you mean that the contract cannot grant unspecified rights? That rights beyond those specified can't be granted unless there's a clause specifically covering additional unspecified rights? Or does this clause go to rights over forms of exploitation not known at the time of conclusion of the contract?

**§ 68. Content of author's agreement**

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

- 1) a description of the object of rights (format, volume and name of the object of rights, etc.);
- 2) transferable rights or rights concerning which authorisation is granted under a license agreement, type of licence agreement and the right to grant a sublicense;
- 3) manner of use of the object of rights and the territory where the object of rights is to be used;
- 4) the term of the author's contract;
- 5) term of commencement of use of the object of rights which shall not exceed one year starting from the moment when the holder of rights hands over the object of rights to the user, unless otherwise prescribed by contract;
- 6) size and calculation manner of the remuneration (percentage of the sales price of or profit from the object of rights, specific fixed amount, etc.), and the time limit and procedure for paying the remuneration.

(2) An author's contract where one party is a person who entered into the contract in the course of his or her economic or professional activities is presumed to prescribe remuneration. Parties of an author's contract entered into outside of economic and professional activities shall follow each tradition that they have agreed to follow and each practice that has occurred in the relations between them.

(3) If a condition of the author's contract is not specified with precision, the content of the author's contract is determined according to the purpose of the author's contract.

**Kommenteeritüd [CU96]:** What about new forms of exploitation? Excluded? Covered only if specified?

**§ 69. Personal performance of author's contract**

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

**§ 70. Rights transferred to users of works by virtue of author's contract**

If an author's contract on the use of a literary or artistic work for the creation of a film is concluded, the user of the work has the right to communicate the film to the public at the cinema, on television, by cable or by other technical means, to dub the work into other languages, to provide it with subtitles and to reproduce and distribute the work, unless otherwise prescribed by the contract. The author has the right to obtain equitable remuneration for the rental of the work pursuant to subsection 61 (1) of this Act. The provisions of this subsection do not apply to musical works.

## **Division 2. Collective exercise of rights**

### **§ 71. Collective management organisation**

**(1)** Holders of rights have the right to establish collective management organisations. A collective management organisation established in Estonia shall be a non-profit association which is founded, operates or is dissolved pursuant to the Non-profit Associations Act (RT I 1996, 42, 811; RT I 2010, 9, 41) with the specifications arising from this Act.

**(2)** For the purposes of this Act, collective management organisations established in any legal form in another Member State of the EU or a state which is a contracting party of EEA Agreement and conforming to the criteria of a collective management organisation shall also be deemed collective management organisations which are entitled to exercise the rights of rightholders collectively also in cases of compulsory and extended collective management.

**(3)** Collective management organisations shall exercise and protect in courts and other institutions the economic and moral rights of its members and under the relevant agreement also other holders of rights pursuant to the procedure prescribed in their articles of association and membership or agency contracts, including exercising and protecting such rights of rightholders that are exercised collectively by the collective management organisation.

**(4)** A collective management organisation has the right to obtain any necessary information in any format concerning the use of objects of rights from all legal persons in public law and private law and from all natural persons.

**(5)** In order to represent a holder of rights being a citizen of the Republic of Estonia or any Member State of the EU or any state which is a contracting party of EEA Agreement, a collective management organisation shall conclude a contract for representation under same conditions as contracts concluded with other holders of rights represented by that collective management organisation.

### **§ 72. Principles of activities of collective management organisations**

**(1)** In the course of its activities, a collective management organisation:

- 1) gives its consent to use of an object of rights;
- 2) determines the amount of remuneration for the use of the object of rights with a decision of its management body or other body, conducting the relevant negotiations if necessary;
- 3) collects and pays to the holders of rights represented by the organisation the remuneration for the use of the object of rights.

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

(3) The provisions of subsection (2) of this section shall not apply in case of the holder of right transferring his or her rights to a third party.

(4) In cases of violation of rights of rightholders bringing about liability under penal law, a collective management organisation is entitled to represent all authors and holders of related rights without authorisation, except cases of violating the retransmission right of a broadcasting service provider committed in a cable network.

### **§ 73. Mandatory exercise of rights by collective management organisations**

(1) Exercise of rights by collective management organisations is mandatory:

- 1) upon cable retransmission of an object of right pursuant to subsection 16 (5) and § 65 of this Act;
- 2) upon satellite transmission of an object of right, except a film, if the broadcasting service provider transmits the work to the public via satellite and at the same time also via a land-based system pursuant to subsection 16 (4) and § 65 of this Act;
- 3) upon obtaining remuneration for rental of a work or a performance pursuant to § 64 of this Act;
- 4) upon obtaining remuneration for each sale of an original work of art pursuant to § 63 of this Act;
- 5) upon obtaining remuneration for reproduction of films and sound recordings of works for private use pursuant to § 59 of this Act;
- 6) upon obtaining compensation for lending copies of works, performances and sound recordings from libraries pursuant to § 61 of this Act;
- 7) upon obtaining compensation for photocopying of works pursuant to § 60 of this Act;
- 8) upon use of a film or a radio or television programme pursuant to subsection 84 (7) of this Act.

(2) The provisions of subsection (1) of this section pertaining to exercise of right of retransmission via cable network do not apply in case of television and radio programmes.

(3) If the holder of the right does not conclude a contract with a collective management organisation for the exercise of the rights specified in subsection (1) of this section, the organisation representing a dominating majority of holders of rights of the same category is authorised to represent the rightholder. If there are several aforementioned collective management organisations, the rightholder is free to choose which of the organisations is authorised to manage the rightholder's rights.

(4) A rightholder represented pursuant to subsection (3) of this section has the same rights and obligations as the rightholder who is represented by a collective management organisation pursuant to a membership contract or another corresponding contract.

(5) Under a contract between a user of rights and a collective management organisation, a rightholder represented pursuant to subsection (3) of this section may claim the rightholder's rights and performance of obligations corresponding to the rights within three years as of the date of use of the object of rights.

(6) Remuneration collected by a collective management organisation and not paid out in due time pursuant to subsection (5) of this section may be used by the collective management organisation for common interests of rightholders of the same category.

(7) In case of exercising the right of retransmission via satellite, the holder of right represented by a collective management organisation pursuant to the procedure provided for in this section has at any time the right to demand that the representation be terminated and to exercise his or her rights either individually or collectively.

#### § 74. Extended collective exercise of rights

(1) A user of rights in a field, who has concluded an agreement with a collective management organisation for using the rights in Estonia, may make a proposal to the collective management organisation to conclude an extended collective license agreement for the same field of use, covering the rights of all rightholders in the same category.

(2) In the case specified in subsection (1) of this section, if the holder of the right has not concluded a membership or representation contract with a collective management organisation for the exercise of the right, the organisation representing a dominating majority of holders of rights of the same category is legally authorised to represent the rightholder.

*Kommenteeritud [CU97]:* What does this mean? 51% or more?

(3) A rightholder represented pursuant to subsection (2) of this section has the same rights and obligations as the rightholder who is represented by a collective management organisation pursuant to a membership contract or another corresponding contract.

(4) A rightholder represented pursuant to subsection (2) of this section may claim the rightholder's rights and performance of obligations resulting from the agreement between the collective management organisation and the user of right within three years as of the date of use of the object of rights.

(5) A rightholder represented by a collective management organisation pursuant to the procedure provided for in this section has at any time the right to demand that the representation be terminated and to exercise his or her rights either individually or collectively.

### Division 3. Digital exercise of rights

#### § 75. Technological measure

(1) Holders of rights may, in order to protect their rights, add technological measures to a work or object of related rights. If using such technological measures, the holders of rights shall note the usage manners of the object of rights which are allowed, restricted and prohibited by the technological measures.

*Kommenteeritud [CU98]:* What does this mean?

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

*Kommenteeritud [CU99]:* Or not authorized by law?

(3) With the help of technological measures, the rightholders control the use of protected objects of rights through the application of an access control or protection process which achieves the protection objective (such as encryption, scrambling or other transformation or a copy control

mechanism). The technological measures voluntarily applied by the rightholders, including those applied in the implementation of voluntary agreements, shall enjoy protection.

(4) In the cases of free use of the objects of rights permitted by § 43, § 44, clauses 45 2), 4) and 5), § 48 and § 53 of this Act, the rightholder shall apply such measures to the object of rights which allow the entitled persons to freely use the object of rights to the extent necessary for the free use in the cases prescribed by law on the condition that entitled persons have legal access to the protected object of rights. If the person entitled to freely use the object of rights and the rightholder fail to reach an agreement on application of the corresponding measures within a reasonable period of time, the person entitled to freely use the object of rights has the right to address the copyright committee under the conditions set out in § 82 of this Act.

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

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

#### § 76. Information on exercise of rights

(1) Holders of rights ~~rights~~ may add information on the exercise of rights to published works or objects of related rights.

*Kommenteeritud [CU100]:* What about authors?

(2) For the purposes of this Act, "information on the exercise of rights" is any information presented by the rightholders that defines the object of rights or the terms of its use and identifies the holder of rights; figures and codes containing such information are also deemed to be information on the exercise of rights.

(3) Subsection (1) of this section applies only if information on the exercise of rights accompanies the object of rights or is presented at same time with its communication to the public.

#### Division 4. Succession of rights

##### § 77. Succession of copyright and related rights

(1) Succession of copyright and related rights shall be intestate succession or shall be effected pursuant to the testamentary disposition of the bequeather according to the general provisions of the Law of Succession Act.

(2) The economic rights and moral rights specified in clauses 12 (1) 3) – 4) and subsection 27 (3) of this Act shall transfer to an intestate successor of copyright and related rights for the term of protection of the respective right unless otherwise prescribed by a testamentary disposition.

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

(4) The Ministry of Culture has the right to use the remuneration received in the exercise of the rights for payment of a scholarship.

(5) On the grounds of subsection (4) of this section, a scholarship can be paid to a student whose study activities or creative activities are related to the field of creativity of the bequeather of the rights, with the purpose of supporting such activities and professional development.

(6) The Minister of Culture shall establish the procedure for applying for and payment of the scholarship by a regulation.

(7) The Minister of Culture shall establish the amount of the scholarship by a directive.

(8) Expenses pertaining to organising the collection of the remuneration can be deducted from the remuneration received in the exercise of the rights transferred to the state by way of succession.

#### **Division 5. Orphan work**

*The regulation of orphan works in the European Union is provided by Directive 2012/28/EU on certain permitted uses of orphan works.<sup>1</sup> Pursuant to Article 9 (1), the Directive must be transposed in the Member States of the EU by 29 October 2014. A couple of months<sup>2</sup> is not enough time for presenting comprehensively analysed normatives having passed final consultations with various related and interested parties, therefore the report prepared about orphan works contains an initial short insight into some of the possible solutions in transposing the directive into domestic law. Still, in order to prepare the report, the author has asked for initial input of various memory institutions with most relevance to the directive's field of governing (Estonian Film Archives, the National Archives of Estonia, Estonian Public Broadcasting, etc.), via the National Library of Estonia.*

*As the end of the ongoing codification project (September 2014) largely coincides with the deadline for transposing the orphan works directive, the legislation transposing the directive can be prepared in parallel with other codification stages. It is known that the Ministry of Justice plans the draft transposing the directive to be completed in the 4<sup>th</sup> quarter of 2013.*

## **CHAPTER VII LIABILITY**

### **§ 78. Pirated copies and trading in pirated copies**

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

(2) "Pirated copy" means also a copy of an object of rights which has been reproduced in a foreign state with the authorisation of the holder of rights but which is distributed or is going to be distributed in Estonia without the authorisation of the holder of rights.

<sup>1</sup> Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299/5, 27. 10.2012).

<sup>2</sup> Considering the time from Directive 2012/28/EL entering into force in October 2012 until the deadline for presenting legislation offering solutions for the problems mapped in the codification project i.e. 01.01.2013.

(3) "Trading in pirated copies" means the sale, rental, offer for sale or offer for rental of pirated copies and the storage, possession and distribution of pirated copies for commercial purposes.

*Kommenteeritud [CU101]:* What about their making available?

#### **§ 79. Removal or alteration of information on exercise of rights**

(1) Removal or alteration of electronic information on the exercise of the rights of authors or holders of related rights, if committed as a commercial activity for the purpose of gaining profit, is punishable by a fine of up to 100 fine units.

*Kommenteeritud [CU102]:* What are these?

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

#### **§ 74. Violation of moral rights of author or performer**

*The Ministry of Justice has proposed to repeal § 81<sup>3</sup> of the current Copyright Act because authorship violation is criminalised in § 219 of the Penal Code. The latter includes both violations of moral rights and violations of economic rights, thus there is no need to prescribe separate misdemeanour liability for violation of moral rights. Additionally, civil liability can be applied to violations of economic rights.*

#### **Variant 2:**

#### **§ 80. Violation of moral rights of author or performer**

- (1) Violation of the moral rights of an author or performer, similarly violation of the authorship of an author or performer if the right to authorship in the work or performance has expired, is punishable by a fine of up to 300 fine units.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

#### **§ 81. Violation of economic rights of rightholder**

*The Ministry of Justice has proposed to repeal § 81<sup>4</sup> of the current Copyright Act because authorship violation is criminalised in § 219 of the Penal Code. The latter includes both violations of moral rights and violations of economic rights, thus there is no need to prescribe separate misdemeanour liability for violation of moral rights. Additionally, civil liability can be applied to violations of economic rights.*

#### **§ 82. Evasion of payment of remuneration prescribed by the Copyright Act**

*The Ministry of Justice has proposed to repeal § 81<sup>5</sup> of the current Copyright Act because non-payment of remuneration is substantially a non-performance of an obligation under civil law and is thus subject to civil liability (payment together with interest).*

#### **§ 83. Proceedings**

*The Ministry of Justice has proposed to repeal § 81<sup>6</sup> of the current Copyright Act.*

## **CHAPTER VIII IMPLEMENTATION OF ACT**

### **§ 82. Copyright committee**

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

- 1) monitor compliance of the level of protection of copyright and related rights with the international obligations assumed by the Republic of Estonia;
- 2) analyse the practice of implementation of legislation regarding copyright and related rights;
- 3) make proposals to the Government of the Republic for amendment of legislation regarding copyright and related rights and for accession to international agreements;
- 4) resolve, at the request of the parties pursuant to the procedure set out in the Conciliation Act, disputes related to copyright and related rights by way of conciliation of the parties;
- 5) resolve, by way of conciliation of the parties pursuant to the procedure set out in the Conciliation Act, the applications submitted pursuant to subsection 75 (4) of this Act concerning measures applicable to allow the free use of objects of rights in certain cases. If, in order to resolve the corresponding rights, a party has applied to the copyright committee, the parties are required to enter into negotiations through the committee and conduct the negotiations in good faith. The parties shall not prevent or hinder negotiations without valid justification;
- 6) perform other functions assigned to the committee by the Government of the Republic.

**(2)** The copyright committee is a conciliation body within the meaning of § 19 of the Conciliation Act. The provisions of the Conciliation Act with the specifications arising from this Act apply to proceedings conducted by the copyright committee. In the resolution of a dispute by the copyright committee, the membership of the committee shall be such that its independence and impartiality is beyond reasonable doubt. If necessary, independent experts from outside the committee shall be invited to participate in its work by an order of the Minister of Justice.

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

**(1)** In the cases specified in §§ 73 and 74 of this Act, a collective management organisation and a user are required to enter into and conduct negotiations in good faith. The parties shall not prevent or hinder negotiations without valid justification.

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

**(3)** If a collective management organisation and a user are unable to reach an agreement, one or both parties have the right to call upon the assistance of a conciliator for the resolution of the dispute. The copyright committee or one or several persons who have been selected by the parties and who comply with the conditions set out in § 3 of the Conciliation Act may act as conciliators. The provisions of the Conciliation Act with the specifications arising from this Act shall apply to such proceedings.

**§ 84. Use of works, performances, sound recordings, films, and radio and television programmes created before 12 December 1992**

**(1)** This Act also extends to works, performances, sound recordings, films, and radio and television programmes created before 12 December 1992.

**(2)** The moral and economic rights of the author and the performer of a work created in the period of 16 June 1940 to 12 December 1992 belong to the author and the performer.

**(3)** The rights of the producer of a film created in the period of 16 June 1940 to 12 December 1992 belong to the producer of the film or his or her legal successor; the economic rights of a broadcast service provider belong to Estonian Public Broadcasting.

**(4)** The economic rights of the author and the performer of a film created in the period of 16 June 1940 to 12 December 1992 belong to the producer of the film or his or her legal successor.

**(5)** The economic rights of the author and the performer of a radio or television programme created in the period of 16 June 1940 to 12 December 1992 belong to Estonian Public Broadcasting.

**(6)** Subsections (4) and (5) of this section do not apply to literary works of fiction, musical works and performances thereof contained in a film or a radio or television programme.

**(7)** The author and the performer of a film or a radio or television programme created in the period of 16 June 1940 to 12 December 1992 are entitled to receive remuneration for use of that film or radio or television programme from the producer of the film or his or her legal successor and from Estonian Public Broadcasting.

**(8)** The remuneration specified in subsection (7) of this section is paid to the author and the performer who were active at the producer of the film or at a predecessor of Estonian Public Broadcasting under an author's contract.

**(9)** The remuneration specified in subsection (7) of this section can be collected only via a collective management organisation.

**(10)** The right of claim to remuneration specified in subsection (7) of this section persists for 3 years after the use of the recording of film or radio or television programme.

**(11)** The economic rights of the performer of joint performance of a musical work recorded in the period of 16 June 1940 to 12 December 1992 belong to the legal successor of the producer of the sound recording.

**(12)** Subsection (11) of this section shall not be applied if at least 50% of the joint performers exercise the right via a collective management organisation.

**(13)** The requirements applied for use of objects of rights specified in subsection (1) of this section do not extend to cases where their use occurred before 12 December 1992.

**Variant 2:**

**§ 84. Use of works, performances, sound recordings, films, and radio and television programmes created before 12 December 1992**

*(1) This Act also extends to works, performances, sound recordings, films, and radio and television programmes created before 12 December 1992.*

*(2) The economic rights of the author and the performer of a film created before 12 December 1992 belong to the author and the performer.*

*(3) The rights of the producer of a film created before 12 December 1992 belong to the producer of the film or his or her legal successor; the economic rights of a broadcast service provider belong to Estonian Public Broadcasting.*

*(4) The requirements applied for use of objects of rights specified in subsection (1) of this section do not extend to cases where their use occurred before 12 December 1992.*

**Variant 3:**

**§ 84. Use of works, performances, sound recordings, films, and radio and television programmes created before entry into force of this Act**

*(1) This Act also extends to works, performances, sound recordings, films, and radio and television programmes created before 12 December 1992.*

*(2) The requirements applied for use of objects of rights specified in subsection (1) of this section do not extend to cases where their use occurred before 12 December 1992.*

**§ 85. Use of objects of rights created in the period of 12 December 1992 - XX.XX.XXXX (entry into force of this Act)**

*(1) Use of objects of rights created in the period of 12.12.1992-XX.XX.XXXX (entry into force of this Act) is subject to requirements (provisions) valid at the time of their creation.*

*(2) Use of objects of rights specified in subsection (1) of this section after XX.XX.XXXX (entry into force of this Act) is also subject to requirements (provisions) valid at the time of their creation.*

**Variant 2:**

*(2) Use of objects of rights specified in subsection (1) of this section after XX.XX.XXXX (entry into force of this Act) is subject to requirements (provisions) of this act.*

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