Draft
26.08.2013

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) which are 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.

(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.

(2.1.) Works are deemed to be made available to the public in several states simultaneously, if they are made available to the public in two or more states within thirty days after the works were first made available to the public.

(2.2.) § 63 of this Act also applies to those nationals of state parties to the Berne Convention for the Protection of Literary and Artistic Works that provide authors who are citizens or permanent (habitual?) residents of the Republic of Estonia with similar protection.

(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 on a phonogram which is protected pursuant to subsection (4) of this section;
4) the performance which is not on a phonogram 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 phonograms if:
1) the producer of the phonogram 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 phonogram in the territory of the Republic of Estonia;
3) the phonogram was first published in the territory of the Republic of Estonia;
4) the phonogram must be protected in accordance with an international agreement of the Republic of Estonia.

Kommenteeri: [vLS1]: *general remark to Art 1: it seems clearer to refer not only to "international agreements" in each paragr., but also to EU law and the EEA Agreement (since "international" agreement is not always understood as including the EU Treaty/EU law), but the non-discrimination clause on basis of nationality should be taken into account in all paragraphs in some way (either by general reference to EU law/EEA Agreement or more specifically)*

Kommenteeri: [vLS2]: *the resale right cannot apply to a state*

Kommenteeri: [vLS3]: *only "citizens" seems closer to the Berne language ("belong to") – or at least "and" rather than "or" should be used*

Kommenteeri: [vLS4]: *though this paragr. is based on 14ter BC, the deleted part could be misunderstood that the protection must be like under Art 14ter, but material reciprocity (allowed by BC) means that it must be like the Estonian protection*

Kustutatud: conforming to Article 14*ter* of the Bern Convention for the Protection of Literary and Artistic Works

(4.1.) If a phonogram was first published/made available to the public in a state that is not a state party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, but within thirty days after the phonogram's first publishing/making available to the public that phonogram was also published/made available to the public in the Republic of Estonia, then that phonogram is deemed to have been first published/made available to the public in the Republic of Estonia.

(5) This Act applies in respect of a television or radio service provider if:
1) the registered office of the television or radio 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 in the meaning of § 34(2) 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.

§ 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.

(2) The authorship of a person who publishes a work under own 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.

(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 a legal successor of the holder of related rights, 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.

(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 own real name and proves own authorship, it is presumed that the author's economic rights are asserted by the person who lawfully published the work.

Kommenteeri: [vLS5]: *why only not in a Rome Conv. state? Logically, it should be in any third state, since this rule anyway refers to situations not covered by Rome ((which is covered by §1(4)4)); in any case, if one mentions Rome, one should also mention any other int. treaty applying (such as WPPT). Systematically, one could even add this paragr. without reference to Rome or any other treaty to §1(4) no 3, then it would be very clear that it applies where a treaty does not apply.*

Kommenteeri: [vLS6]: *for copyright databases, §1(1) applies*

Kommenteeri: [vLS7]: *EU language ist "habitual"*

Kommenteeri: [vLS8]: *you should add agreements concluded by the EU and third countries, as it occurred*

Kommenteeri: [vLS9]: *the Enforcement Directive, art 5, rather requires that it is then presumed that he is the holder of the relevant related right (eg, that he is the performer), but not that he actually owns the rights(the performer may have assigned them)*

Kommenteeri: [vLS10]: *consequently, this should not refer to existence of rights but to the quality is related rights holder*

Kommenteeri: [vLS11]: *systematicall y, this is not a presumption, but admittedly it may be useful to have it here, too, for clarification*

Kommenteeri: [vLS12]: *§2 is on presumptions, and usually/in other laws, this is drafted as a presumption*

Kommenteeri: [vLS13]: *the author can still exercise them (eg towards the publisher), but not assert them to the outside world*

Kustutatud: exercised

(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

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

§ 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 (§10(3.1)), related to joint authorship and co-authorship, and related to content of rights (incl. exhaustion of distribution right) 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. Disclosure

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

(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 holder of right, 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 exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(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 of this Act.

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

(1) For the purposes of this Act, "the public" means a substantial set of persons outside the family and immediate circle of acquaintances.

Kommenteeri: [vLS14]: *not sure when this becomes practically relevant; if someone sells an art work, there is usually no copyright licence for the owner necessary, unless he wants to use it for publications or otherwise in a copyright-relevant manner.Usually, the author retains his copyright and can exercise it as he wants, even after change of ownership of the material. Maybe this sentence should rather be deleted so as to avoid misunderstandings.*

Kommenteeri: [vLS15]: *it is not easy to imagine applying this to related rights, where production is different from authors' creations; this might lead to confusion. Maybe better make a reference exactly where it makes sense, in the related rights chapter*

Kommenteeri: [vLS16]: *this general reference to content will lead to confusion for judges and others who apply the law, since content is already listed for related rights. It is better to be more specific (eg, refer to exhaustion or definitions of the rights (but again, at least for exhaustion, it seems better to make a reference or state the exhaustion rule in context with the relevant related rights (now, it is already stated there, but only for databases, which is also not systematically proper)*

Kommenteeri: [vLS17]: *"substantial" is a bit vague, though the ECJ has said so too, but it is not a condition in the international law;anything that is not private (family or close social acquaintances) should be covered by "public" whether or not they are 5 or 500 persons*

(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.).

Kommenteeri: [vLS18]: *not clear what "individual access" means here – also a private building/ home to which the owner gives access to one friend allows 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.

Kommenteeri: [vLS19]: *it seems better not to refer to "original" results, since this may lead people to confound the European concept with anglo-american "originality", which is quite different from the European concept of "personal intellectual creation". Thus, one could replace "original result" by "own intellectual creation of the author" and then delete the last sentence, since redundant*

(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) audiovisual works;
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, 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 adaptations of works);
22) collections of works and information (including databases).

Kommenteeri: [vLS20]: *in english, derivative works" is mainly used in the anglo-american system; it may be better to say instead: "adaptations" and then delete "adaptations of original works" in the list. If you leave the text as is, though, one should put brackets as indicated for logical reasons*

(3) For the purposes of this Act, "database" means a collection of independent works, data or other material 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, an audiovisual work means any work consisting of orderly related images, whether or not accompanied by sound, intended for use via relevant technical means for the purpose of creating moving images.

Kommenteeri: [vLS21]: *'creating' may be confusing here; maybe it means "...purpose of showing it in form of moving images"?*

§ 9. Results of intellectual activities not protected by copyright

(1) This Act does not apply to the following results of intellectual activities:
1) ideas, processes, systems, methods, mathematical concepts 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, explanatory memoranda of legislation);
4) court decisions;
5) official symbols of the state and insignia of organisations (flags, coats of arms, orders, medals, badges, etc.);
6) facts and data which underlay news of the day;

Kommenteeri: [vLS22]: *it is generally recognized that folklore does not fulfil the conditions of a "work" and thus is usually named "expressions of folklore" (eg Art 2 WPPT)*

Kommenteeri: [vLS23]: *so is it intended that only draft legislation (see §8no18) is protected, but not the memoranda (are they not part of draft legislation)?*

(2) Names of the preparers of explanatory memoranda of legislation must be given upon any use of explanatory memoranda of legislation.

Division 2. Creation and content of copyright

§ 10. Creation of copyright

Kommenteeri: [vLS24]: *In english, "creation" may be associated with the author's creation (work); maybe another expression is better (formation; genesis), also in the title of division and in following paragr.*

(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.

(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.

Kommenteeri: [vLS25]: *Systematicall y, this is on authorship and should go under §18, though it does not hurt here*

Kommenteeri: [vLS26]: *numbering (2) is missing*

(3.1.) The author also incurs copyright in intermediate stages of creating a work (drafts, sketches, plans, figures, chapters, preparatory design economic, etc.) or parts of a work if these are in compliance with the criteria of a work.

Kommenteeri: [vLS27]: *systematicall y, this rather goes with §8(1), but it does not hurt here*

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

Kommenteeri: [vLS28]: *better: formation*

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

Kommenteeri: [vLS29]: *systematicall y, this may also better go under§8(1)*

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

Kommenteeri: [vLS30]: *again, this seems better located in context with §8(1)*

§ 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.

(3) The author may grant consent to not exercise the author's moral rights. Such consent must be in writing and of limited extent. Such consent may be of limited duration, but must not be revocable.

(4) If the author's consent to not exercise the author's moral rights is granted 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, unless dictated otherwise by the consent.

(5) 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 him 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 the author's 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 disclosed (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 upon justified reason 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.

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

(3) Exercising the right specified in subsection (1) clause 6) of this section shall not affect the exercising of rights transferred under the law or under a contract or the exercising of licensed rights.

§ 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. In particular, the author of the work shall have right to authorise or prohibit:
1) reproduction of the author's work (right of reproduction);

Kommenteeri: [vLS31]: *there may be reasons for the author to want to exercise his moral right even after he consented not to exercise it by contract;these reasons may be strong enough to allow revoking the consent (even if author has to pay damages) so that moral rightsare fully respected.*

Kommenteeri: [vLS32]: *"holder of economic rights" is not clear: who would this be?can it be confused with §5(2) where the "holder of rights" is the author or holder of related rights? it seems theonly case where this makes sense is for the holder of a licence; the other term should be deleted (2x)*

Kommenteeri: [vLS33]: *"exclusive" is usually used to mean "right to authorise or prohibit" and thus is used for economic rights, but does not fit for moral rights and should be deleted to avoid this confusion*

Kommenteeri: [vLS34]: *the "which are..." part is not even needed; but if it isleft, it should read : honor "or"reputation – not "and" (see Art 6bis BC) – one should be sufficient. Also, the right is usually understood as right to the integrity of the work rather than the author's honor etc. and could be called "right of integrity"*

Kommenteeri: [vLS35]: *disclosed acc. to the definition in §6 is correct; it must be the right to bring the work in any way to the public, not only in the more limited way of "publication" as defined in §6(2)*

Kustutatud: (published?)

Kommenteeri: [vLS36]: *systematicall y, this could be part of the integrity right, butthen should be spelled out there*

Kommenteeri: [vLS37]: *in other laws, the right to withdraw refers to a licence, not to the "work" as stated in the brackets – better: right of withdrawal" or "right to withdraw a licence". Therefore, it may be good to insert after "use of the work": "by the licensee"*

Kommenteeri: [vLS38]: *otherwise,sub section (1) could be by error changed into or misunderstood as 'clause 1)' also*

Kustutatud: (1)

Kustutatud: this

Kustutatud: (1)

Kommenteeri: [vLS39]: *it is not clear what this means, since if one withdraws a licence, this affects the exercise of the licence (and this is the purpose of withdrawal – to stop the use based on the licence). This seems to contradict no 6)*

Kommenteeri: [vLS40]: *it is essential, according to the Continental European system to which Estonia belongs, that the list is only a list of example for the first sentence. The granting of a broad right for authors, which may imply even unnamed rights, is fundamental in Continental European law; it exists only for authors, but ot for related right holders, who get only ...*

Kustutatud: T

2) distribution, lending and rental of the author's work or copies thereof (distribution right);
3) translation of the author's work (right of translation);
4) adaptation of the author's work (right of adaptation);
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) transmission of the author's work (right of transmission);
8) public performance of the author's work (right of performance);
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).

§ 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 of images and sounds of an audiovisual work to a medium from which it can be perceived, communicated to the public and transmitted via relevant device.

§ 15. Right of distribution

(1) "Distribution" means the transfer of the right of ownership in a work or copies thereof 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, but including lending a computer program if the program itself is not the main object of rental).

(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 the author's 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 subsection (1) of this section with the exception of the rental right and lending right, and this copy of the work may be further distributed (except by rental or lending) in the Republic of Estonia without the consent of the author. In case of databases, the first sale of a copy of the 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 resale and the database may be further sold in the Republic of Estonia 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 the author's works to the public even in the case where the distribution right has been exhausted.

(4) "Lending" means making copies 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.

(5) "Rental" means making copies 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

Kommenteeri: [vLS41]: *systematic point: if defined as in §15(1), it must read "distribution including lending and rental";*

Kommenteeri: [vLS42]: *this is unusual but possible; in respect of the publication, it is probably redundant since covered already by the reproduction and distribution rights*

Kommenteeri: [vLS43]: *this may also be redundant, since it may be considered a reproduction, but it seems useful for clarification*

Kommenteeri: [vLS44]: *for completion and consistency,one should add another subsection referring to the resale right under §63 (e.g.:"The author also enjoys the remuneration right for resalepursuant to § 63", since this is also an economic right of the author, though as remuneration right*

Kommenteeri: [vLS45]: *in english, "representation" is used instead of "impression" (see Art 2 WPPT)*

Kommenteeri: [vLS46]: *to be in parallel with the fix. of" sounds"*

Kustutatud:)

Kustutatud: and

Kommenteeri: [vLS47]: *there are several ways to provide for exhaustion and still make sure the rental right is not touched. Under §49(2), also the lending right is not exhausted for 4 months for these items, so this should also be reflected here, as a limitation to exhaustion (otherwise, one cannot explain §49(2)); similar for the limitations under §49 overall*

Kommenteeri: [vLS48]: *exhaustion always only relates to the specific copy that was sold*

Kustutatud: ies

Kommenteeri: [vLS49]: *the Estonian law can only regulate what happens in Estonia; the rest is regulated by EU law*

Kustutatud: Member State of the EU or the state which are contracting parties of EEA agreement

Kommenteeri: [vLS50]: *see Art 5(c) Database Directive – only the right to sell is exhausted*

Kustutatud: distribution

Kustutatud: distributed

Kustutatud: Member States of the EU

Kommenteeri: [vLS51]: *if you adapt (2) as suggested (excepting rental and* ...

Kommenteeri: [vLS52]: *if the 'work' is made available, it would be making* ...

Kustutatud: a work or

Kustutatud: there

Kustutatud: a work or

Kustutatud: there

(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:
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 a substantial number of persons outside the family and an immediate circle of acquaintances are present, regardless of whether the public actually perceives the work or not;
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) "Communication by satellite" means the act of introducing, under the control and responsibility of the television or radio 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 public is made aware of the means for decrypting the programme by the television or radio service provider or with its consent.
If an act of communication by satellite occurs in a non-EU or non-EEA 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 television or radio 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 television or radio service provider.

(4) "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.

(5) "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.

(6) 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 members of the public may access the work from a place and at a time individually chosen by them.

(7) 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 in the presence of the public or in a place open to the public.

§ 16.1. Right of transmission

"Transmission of a work" means communication of a work as part of a programme to the public in a manner involving transmission over air. Encrypted signals are deemed to be transmitted if means of

Kommenteeri: [vLS53]: *in english, it seems much better to use throughout "broadcasting"since this is used in int. and European law and otherwise for what is defined in §16.1*

Kommenteeri: [vLS54]: *not clear whether retransmission would also only be over the air, like transmission, or also by cable (subsection (5) only defined retransmission via cable network" – this is a bit confusing and should be clarified*

Kommenteeri: [vLS55]: *systematicall y, this should be "works", since this Division is on copyright; as far as the definitions reg. contents also apply to related rights, this is already said in §4 (or rather, as recommended there, should be stated directly in context with the related rights chapter)*

Kommenteeri: [vLS56]: *this looks very complex and mainly defines, in addition to§7, the "public"; maybe it is better to simply state that a "communication is made 'to the public' as defined in §,7 whether or not the public actually perceives the work*

Kommenteeri: [vLS57]: *see previous comment*

Kommenteeri: [vLS58]: *this is a separate right and should be on the same footing as, for ex., transmission and thus be in a new §16.3 (or directly under §16(1)*

Kommenteeri: [vLS59]: *the Directive rather says comparable to those circumstances which apply in the first case*

Kommenteeri: [vLS60]: *insertions: original wording of WCT and InfoSoc Directive*

Kommenteeri: [vLS61]: *it seems more appropriate to follow the generally used wording "to the public"*

Kommenteeri: [vLS62]: *systematicall y, it is not clear why (6) and (7) are parts of §16 but similar definitions are in separate sections (16.1 and 16.2) – should be harmonised*

Kommenteeri: [vLS63]: *so would such communication/broadcasting outside a program be covered by the general communication right? (it should); also, would cable "broadcasting" be also covered by the general commun, right (it should)*

Kommenteeri: [vLS64]: *see comment above on object of rights*

Kustutatud: and the object of rights contained therein

decoding are provided by the television or radio service provider or with the consent of the television or radio service provider for the purpose of communicating thereof to the public.

§ 16.2. Right of performance

A work is deemed performed to the public if it is recited, played, danced, acted or otherwise performed directly or indirectly by means of any technical device or process to the public or in a place open to the public.

§ 17. Right of adaptation

(1) "Adaptation of a work" means making alterations, arrangements, derived works and other adaptations of the work.

(2) The author incurs copyright in the author's work derived from a work of another author.

(3) Creation of a derived work may take place only pursuant to the procedure prescribed in Division 1 of Chapter IV of this Act and only if respecting the rights of the author of the original work.

(4) A person who has created a new work based on a work of another author, where such new work is creatively self-sufficient and independent from the original work, shall incur copyright in that new work. The prerequisite therefor is stating the author's name of the original work, the title (name) of the original work and the source where the original work was published.

(5) Subsection (2) of this section of this Act also applies to works of unknown authors (folklore, anonymous works, etc.) and to works with expired copyright period and to results of intellectual activities which are not subject to this Act (§ 9).

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) 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 of audiovisual work and producer of film

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

(2) The producer of a film is a natural or legal person who financed or managed the production of the audiovisual work and whose name is fixed in the audiovisual work as the producer.

Kommenteeri: [vLS65]: *is more precise and corresponds to internationally used language*

Kustutatud: publicly

Kustutatud: in the presence of

Kommenteeri: [vLS66]: *in english, this is not clear; do you mean that the author of the adaptation enjoys copyright in this adaptation? this is already regulated in §8(2) no 21 and not correctly placed here (same goes for (5)). What should be regulated here is rather that the author of the original work has the exclusive right to authorise or prohibit adaptation*

Kommenteeri: [vLS67]: *IV must be an error*

Kommenteeri: [vLS68]: *see comment above to §9: folklore is not considered a work*

Kommenteeri: [vLS69]: *results, as in §9*

Kustutatud: (objects?)

Kommenteeri: [vLS70]: *although this is legally correct, the focus of Continental European authors' rights legislation is on the author; he and his creation is the reason why we have authors' rights legislation; accordingly, it is better/ consistent with this concept to say "Author and other persons holding copyright", and in the title of §18, "Author"*

Kommenteeri: [vLS71]: *see previous comment*

Kommenteeri: [vLS72]: *following up on the previous comments: a better way would be: The author is the natural person who created the work. The moral and economic rights initially belong to the author unless otherwise prescribed by this Act with regard to the economic right.s*

Kommenteeri: [vLS73]: *just as a reminder: EU law does not prescribe those for authorship, but only for the term of protection. So it would be possible (and consistent with the creator-principle) to state that any creator who contributed creatively to an AV work so that his contribution is in itself protected under the general rules of what is a "work" is an author of an AV work*

Kommenteeri: [vLS74]: *in english this is better, since "creation" is closely related to the author's intellectual activity, which is different from the producer's activity*

Kustutatud: creation

Kommenteeri: [vLS75]: *there could be many names on an av work...he must be recognisable as producer*

(3) Copyright in an audiovisual work shall belong to its author or joint 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 in equal parts.

(4) A joint author or a person holding a part of a joint copyright may request for a justified reason that other joint authors grant their consent for exercise of copyright.

(5) Each joint author may turn to a court or apply other measures to protect the jointly created work and to eliminate a violation of copyright.

(6) Consulting the authors, performing administrative management functions, editing the work, drawing graphs, schemes, etc. and providing other technical assistance to the authors shall not create joint authorship.

§ 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 the author's 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.

(3) An author may use the work created in the execution of the author's direct duties independently for a purpose not prescribed by the duties unless otherwise prescribed by contract. In such case, the author must state the employer's name.

(4) Upon agreement between the employer and the author, the author of a work created in the execution of duties can be paid, in addition to the author's pay (wages), remuneration for the use of the work.

(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.

Kommenteeri: [vLS76]: *except for computer programs, where this is provided in the EU Directive, this presumption against the author (who is already in a regularly weak contractual position) should not be provided; the work is still the author's own work, and he is regularly not paid for the success of the work and its further exploitation; this should be left to the contract. Leaving to the author the rights in his works would even encourage him to write/create more works (e.g., professors and staff at universities) and thus to enrich culture and knowledge. So it is recommended to limit this provision to computer programs*

Kommenteeri: [vLS77]: *same comment as previous one. Even if first subsection stays, this presumption should be rather the other way around (author should in any case be presumed to keep rights for exploitation outside his duties): the employer only has justified interest in exploitation for his purpose (e.g., for a daily journal, publication in the journal but not in a book)*

Kommenteeri: [vLS78]: *again, it should be the rule that the author is paid his royalties from copyright directly (and not only upon agreement and as a "can"),since the success of the work is due to the author's creation/quality of work. In particular as regards statutory remuneration (such as for private copy etc), the InfoSocDirective (also as interpreted by the ECJ in "Painer") acknowledges that this right is granted to the author and must stay with him/he must receive such remuneration; but this should be valid overall*

Kommenteeri: [vLS79]: *same remarks as on (1); also, it is not clear what "public service" is – Would it include universities etc. paid by public money? Could be very (too) broad*

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 the author's death, irrespective of the date when the work is lawfully made available to the public.

(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 audiovisual works: the director, the script writer, the author of dialogue, the author of the musical work specifically created for use in the audiovisual work; regarding musical work: the author of lyrics and the author of music, if both the lyrics and the music are specifically created for use in the musical works containing the relevant lyrical part) and seventy years after the author's 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 the author's identity during the above-mentioned period or the pseudonym 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.

Kommenteeri: [vLS80]: *wording of the Directive – it does not need to be the author who leaves no doubt, but it may be generally know who is behind the pseudonym*

(4) 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.

Kommenteeri: [vLS81]: *may be clearer to say "the term of protection shall expire for each instalment, and this seventy years..."; the important thing here is that the term does not run for the serial as such. Also, it should be clear that a "serial" includes everything named in Art 1(5) Term Directive (maybe list this in the text here, too?)*

(4.1.) Works with independent meaning, incorporated into works created as a result of joint creative activity, into works created in execution of duties of employment and into audiovisual works, and not made available to the public anonymously or under a pseudonym, shall be subject to copyright with the duration prescribed in subsection (1) of this section.

(5) The terms prescribed in this section begin on the first of January of the year following the year of the death of the author in cases prescribed in subsections (1) and (2) or of the year following the year when the work was lawfully made available to the public in cases prescribed in subsections (3)phrase 1 and (4).

Kustutatud: s

Kommenteeri: [vLS82]: *this case does not exist in the previous subsections*

Kustutatud: or of the year following the year of creation of the work

Kustutatud: (2),

(6) 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 or the EEA, 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 subsections (1) – (5) of this section.

Kommenteeri: [vLS83]: *see Term Directive (refers to Article 1/all authors' rights durations)*

(7) The terms of protection prescribed in this section shall apply to all works protected in at least one Member State of the European Union.

§ 24. Protection of moral rights of author without term

Kommenteeri: [vLS84]: *in english, it would read better/be clearer to say "perpetual protection of moral rights of author"(or, at the end, "for an unlimitedperiod")*

(1) The rights of authorship of a certain work, the name of the author and the honour and reputation of the author under § 12(1) nos 1) – 3) shall be protected without a term.

Kommenteeri: [vLS85]: *better be specific/clear through this insertion*

(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

Division 1. Creation and content of related rights

§ 25. Creation of related rights

(1) A performer, producer of a phonogram, television and radio service provider, producer of a film, producer of a database, a person who, after the expiry of copyright protection, for the first time lawfully publishes, lawfully directs or lawfully transmits 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 that person.

(2) The exercise of related rights does not limit the exercise of copyright by the author.

(3) The Government of the Republic or the Minister of Justice authorised by the Government of the Republic shall inform the Commission of the European Communities of every intent to establish new related rights, stating the main reasons for establishment thereof and the planned term of protection thereof.

§ 26. Definition of performer and 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 expressions of folklore or supervises other persons upon the performance of works.

(2) Performers shall enjoy moral and economic rights in the performance of works as determined in §§ 27 and 28.

§ 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 reputation (right of protection of performer's reputation).

§ 28. Performer's economic rights

(1) A performer shall enjoy the exclusive right to use, as set out in this subsection, the performer's performance, to authorise or prohibit the use of the performance in such manner by other persons and to

Kommenteeri: [vLS86]: in english: better: Formation/genesis

Kommenteeri: [vLS87]: see previous comment

Kommenteeri: [vLS88]: the Directive does not include anyone who "directs" – should be deleted; also, it states "or lawfully communicates to the public"but your use of "transmission" is limited to over the air broadcasting, which would be wrong here. So "transmits" must be replaced with "communicates to the public"

Kommenteeri: [vLS89]: to avoid confusion with a "work" (creation) , it is better to use "produced"

Kommenteeri: [vLS90]: see similar comments above

Kommenteeri: [vLS91]: this is possible, but unusual and potentially very broad (e.g., would it be a teacher of the performer, or a stage organizer/supervisor? It should be clear that it is only someone who has an artistic impact on the performance itself)

Kustutatud: works

Kommenteeri: [vLS92]: this addition is useful to make sure only those rights as in these §§s are granted, unlike for authors, who enjoy a general exploitation right even in unnamed uses (see comment above on §13)

Kommenteeri: [vLS93]: exclusive should be deleted (see also comment on §12 (1) above)

Kommenteeri: [vLS94]: performershi p would be better, since performer is not an "author"(defined as the creator of the work) in the performance

Kommenteeri: [vLS95]: for Art 5 WPPT, reputation is sufficient, there should not be an additional condition

Kommenteeri: [vLS96]: cf comment on §12 : maybe rather "integrity right"

Kustutatud: honour and

Kustutatud: honour and

Kommenteeri: [vLS97]: at least the right under §§ 59, 61 and 65 are also economic rights; I see the systematic approach of putting all remuneration rights together, but then at least a reference should be added in §28ins a new (3) stating that the performer also enjoys the statutory remuneration rights under§§ 59, 61 and 65 (the other remuneration rights are of a different nature, connected to contract law)

Kommenteeri: [vLS98]: this is to clarify that only the rights listed here are granted to the performer

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:
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 transmitting of performances, except in the cases where a recording of the performance is transmitted or the performance is retransmitted with the permission of the television or radio service provider which first transmitted 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);
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 be deemed transferred to the producer of film upon the conclusion of a corresponding individual or collective contract for the production of the audiovisual work unless otherwise prescribed by contract. The performer shall retain the unwaivable 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 of the performers participating in the performance shall transfer to the leader of the group.

§ 30. Producer of phonogram and economic rights of producer of phonogram

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

§ 31. Television and radio service provider and television or radio service provider's economic rights

Kommenteeri: [vLS99]: *if you want to be consistent, it should read "or the performance has been transmitted" (=broadcast)*

Kommenteeri: [vLS100]: *more accurately: members of the public (see Directive, 10 WPPT)*

Kommenteeri: [vLS101]: *it should be drafted in the same way as for producers, see §30(3)*

Kommenteeri: [vLS102]: *the producer does not "create"*

Kustutatud: creation

Kommenteeri: [vLS103]: *as in Rental Directive*

Kommenteeri: [vLS104]: *this is as such not compliant with the Rental Directive, which prescribes conditions in Art 2(5) (version of 1992) or 2(7), including the unwaivable remuneration right, both for rental (and then only for film contracts) and (see Recital 19) also for the rights under Chapter II thereof (see also comment by S. von Lewinski in Walter/von Lewinski. European Copyright (2010)pt 6.109 ff). Plus, it is doubtful whether such presumption of transfer is at all permitted under the Directive*

Kommenteeri: [vLS105]: *Art 8 Rome Convention rather speaks of "representation", which is less than transfer of rights; presumption of transfer seems a harsh restriction for the performers*

Kommenteeri: [vLS106]: *representation (see WPPT-language)*

Kommenteeri: [vLS107]: *see previous comment*

(1) Television and radio 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) Television and radio service providers have the exclusive right to authorise or prohibit:
1) retransmission of their programme or programmes (retransmission right);
2) recording of their programme or programmes (right of recording);
3) reproduction of recordings of their programme or programmes (reproduction right);
4) communication of their programme or 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 programme or programmes available to the public in such a way that persons may access the programme or programmes from a place and at a time individually chosen by them (right of making available);
6) distribution of recordings of their programme or programmes to the public (distribution right).

Kommenteeri: [vLS108]: *rental and lending rights must not be provided for braodcasting organizations, see closed list of right holders (and commentary in the above book) in Art 2(1) Rental Directive (version of 1992)*

Kustutatud: , including rental and lending of recordings of their programmes

(3) The rights provided for in subsection (2) of this section do not depend on whether the programme is transmitted 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 programme or programmes of television or radio 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 which do not conform to criteria of a work, whether or not accompanied by sound.

Kommenteeri: [vLS109]: *the transferred part applies to both alternatives*

Kustutatud: whether or not accompanied by sound

(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 members of the public may access the films from the place and at the time of their individual choice (right of making available).

Kommenteeri: [vLS110]: *though this is from the Directive, the Directive is wrong in this respect, it should be "first fixations of films", or simply "their films" instead of "originals or copies of", since a "copy" is usually understood as hard copy, but if a hard copy is made available, it is the distribution right which applies (the making available right covers an non-tangible use)*

Kustutatud: persons

Kommenteeri: [vLS111]: *see original wording in WPPT and Directive*

Kustutatud: can use

Kustutatud: in

§ 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, lawfully communicates to the public or lawfully transmits 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, communicated to the public or transmitted.

(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.

§ 34. Definition of database and economic rights of producer of database

(1) A producer of database is a person who has made an investment of significant kind, value or amount for collection, acquisition, verification, systematisation or making available of the data comprising that database's content.

Kommenteeri: [vLS112]: *the english expression may not be perfect; it should be clear that the Estonian corresponds to Art 7(1) of the Database Directive*

(2) "Database" as an object of related rights means a collection of works, data or other material arranged in a systematic or methodical way and individually accessible by electronic or other means. The definition of database shall not include the computer program needed for making or displaying the database.

(3) 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.

(4) The following is permitted with the authorisation of the producer of a database:
1) 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 all or a substantial part of the contents of a database available to the public 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 Republic of Estonia.

(5) 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.

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 performance. If a recording of the performance in any manner except in a phonogram is lawfully published, lawfully communicated to the public or lawfully transmitted within a period of fifty years after the first performance, the rights of the performer shall expire in fifty years as of the date of the first lawful publication, the first lawful communication to the public or the first lawful transmission, whichever is the earliest. If a recording of the performance in a phonogram is lawfully published, lawfully communicated to the public or lawfully transmitted within a period of fifty years after the first performance, the rights of the performer shall expire in seventy years as of the date of the first lawful publication, the first lawful communication to the public or the first lawful transmission, whichever is the earliest;
2) for the producer of phonograms, as of the fixation of a phonogram. If the phonogram is lawfully published within a period of fifty years after the fixation, the rights of the producer of phonograms shall expire in seventy years as of the date of the first lawful publication. If, during a period of fifty years after the fixation, no lawful publication has occurred and the phonogram has been lawfully communicated to the public or lawfully transmitted, the rights of the producer of phonograms shall expire in seventy years as of the date of the first lawful communication to the public or lawful transmission;
3) for the television or radio service provider, as of the first transmission of a programme, regardless of whether the programme is transmitted by wire or over the air, including by cable network or satellite;
4) for the producer of films, as of the fixation of the film. If the film is lawfully published, lawfully communicated to the public or lawfully transmitted within this period, the rights of the producer of the first fixation shall expire in fifty years as of the date of such publication, communication to the public or transmission, whichever is the earliest.

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

Kommenteeri: [vLS113]: *systematic point: the definition (in general, "For the purposes of this ACT") is already in §8(3, so one could delete it); at the same time, it does not hurt to repeat it*

Kommenteeri: [vLS114]: *language: it seems more consistent with other rights or related right holders to say: The producer of a database has the exclusive right to authorize or prohibit*

Kommenteeri: [vLS115]: *as above for copyright: Estonia can only regulate the situation in Estonia*

Kommenteeri: [vLS116]: *here you mention the exhaustion, but not for other related rights; it may be clearer to mention it as it applies to each related right explicitly rather than having the general reference in §4, which is not accurate (for ex., exhaustion of the broadcaster'S right must also cover rental and lending, but exhaustion of distribution right of the other related right not, plus the one for databases here, which is still differently worded in the Directive*

Kustutatud: European Union

Kommenteeri: [vLS117]: *see Directive; any individual performance is separately protected*

Kustutatud: first

Kommenteeri: [vLS118]: *see Directive; as regards a particular phonogram, there is only one fixation; any fixation occurring after the first one is a reproduction, so only "fixation" is sufficient and clearer*

Kustutatud: first

Kustutatud: first

Kustutatud: first

Kommenteeri: [vLS119]: *text only refers to (first) transmission, see also Directive*

Kustutatud: or retransmitted

Kommenteeri: [vLS120]: *as above; there is no second fixation of the same film (it would be a reproduction)*

Kustutatud: first

Kustutatud: s

(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 or EEA, provided that the Member States grants them protection. Such rights shall expire within a period prescribed by the law of the country of which the holder of rights 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 is significantly changed, 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 the making of 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.

(5) The terms of protection prescribed in this section shall apply to all objects of related rights protected in at least one Member State of the European Union.

Kommenteeri: [vLS121]: *when implementing this EC provision, one should replace "Member State" by Estonia"; however, the Estonian law itself should decide explicitly whether it wants to grant protection to non-EU/EEA related rights owners outside of any treaty obligation at all (and this is regulated in §1 of this Law) (for ex., there is no obligation for related rights of film producers, scientific editions etc.), so this provision (Art 7(2) phr 1 Term Directive 1993)must be implemented differently, for ex. by stating "provided that the Rep. of Estonia grants protection under § 1"*

Kustutatud: Member State

Kustutatud: s

§ 38. Protection of moral rights of performer without term

Kommenteeri: [vLS122]: *see comment to §12:in english better "perpetual protection....instead of "without term"*

(1) The rights of authorship of a performer, the name of the performer and the reputation of the performer under § 27 shall be protected without a term.

Kommenteeri: [vLS123]: *see comment to §27 above*

Kustutatud: honour and

Kommenteeri: [vLS124]: *see previous comment*

(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.

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 establishment of exceptions and limitations of economic rights granted to holders of rights with this Act.

Kommenteeri: [vLS125]: *in english, this drafting sound strange; maybe better: Objects of rights may be freely used pursuant to the exceptions and limitations established in Chapter to economic rights granted to holders of rights"*

Kustutatud: t

Kustutatud: o

(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 object of rights and does not unreasonably prejudice the legitimate interests of the holder of rights.

(1.1.) Free use of computer programs is permitted only in the cases prescribed in §§ 54 and 55 of this Act.

(2) 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. Such free use of an object of rights made available to the public is permissible, unless the object of rights being used originates from a clearly unlawful source.

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

(4) Any terms of contracts which prejudice the exercise of the options for free use provided for in subsections 54 (2) and (3), subsections 55 (1) and (2), § 56 and subsections 57 (2) and (3) of this Act are void.

§ 42. Free reproduction as part of a technical process

(1) 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 significance is permitted.

(2) Subsection (1) of this section shall not extend to computer programs and databases.

§ 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.

(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.

§ 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, on the condition of referencing the person of the holder of rights if stated on the object of rights, the name of the object of rights and the source of publication, except if such referencing is impossible:
1) making summaries of and quotations for review, criticism and similar purposes from an object of rights to the extent justified by the purpose;

Kommenteeri: [vLS126]: *a similar provision shoud be added reg. databases, which are also specifically regulated under the Database Directive (art 6 and 9)*

Kommenteeri: [vLS127]: *by this specification, it is clarified that still sentence 1 applies and only those free uses set out in this Chapter, reg. a lawfully published object, are permitted also reg. sentence 2*

Kustutatud: F

Kommenteeri: [vLS128]: *this seems a very strong interference with the principle of freedom of contract, which may not on all cases be justified, though it is recognized that it only applies to standard terms; the Directives only provide this for special circumstances of relations between right holders re computer programs and databases and their special relation to clients/lawful users; many European countries do not follow such restrictions of contractual freedom. This should be reconsidered in view of fundamental freedoms (of contracting)*

Kommenteeri: [vLS129]: *see Art 5(1) InfoSoc Dir.*

Kustutatud: purpose

Kommenteeri: [vLS130]: *not clear whether you mean "private use" as in the Directive and as in §59 which refers back to §43; it seems it must read private use*

Kommenteeri: [vLS131]: *seems to contradict § 59 and the Directive*

Kommenteeri: [vLS132]: *private use here also seems more appropriate; "personal" is less precise and a bit vague*

Kommenteeri: [vLS133]: *this seems too restrictive and should be deleted; moral rights are fully valid also where limitations to economic rights apply; for ex., the name may be otherwise known, even if not stated on the copy; the outer limit is only that such referencing is objectively impossible (what is impossible anyway cannot be an obligation) – so this restriction here (if stated..) should be deleted*

Kommenteeri: [vLS134]: *see the Directive; only in case of such purposes may quotation be free; it also better explains the correct words "justified by the purpose"*

2) reproduction of an object of rights, communication thereof to the public, transmission thereof and distribution thereof for the purpose of teaching and scientific research to the extent justified by the purpose, on the condition that such use is not carried out for commercial purposes.
3) reproduction and processing of an object of rights for the purpose of text mining and data mining, 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.
4) for the purpose of reporting current events, the reproduction in the press, communicating to the public or transmission 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;
5) the 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;
6) the reproduction, distribution, communication and transmission 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 and to the extent required by the specific disability. Works created especially for disabled persons may not be reproduced, distributed, transmitted and made available without the authorisation of the holder of rights;
7) the use of an object of rights in a caricature, parody or pastiche to the extent justified by such purpose.

Kommenteeri: [vLS135]: *general remark (applying throughout this law):you often say "communication to the public and transmission", which is not consistent with § 16(1)according to which communication includes transmission. This is a general systematic/consistency point to think about*

Kommenteeri: [vLS136]: *this exception to the reproduction right is not covered by Art 5 of the InfoSoc Directive and thus not permitted/should be deleted*

Kommenteeri: [vLS137]: *make sure this fully corresponds to the criteriain Art 5(3)c) (e.g.," informatory purpose" etc.)*

Kommenteeri: [vLS138]: *see InfoSoc Directive 5(3)b)*

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

Casual reproduction of a lawfully published object of rights, communication or transmission 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, communication thereof to the public or transmission thereof in relation with demonstration or repair of devices shall be deemed free use.

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

(1) A public archive, museum or library is permitted to reproduce a work included in the collection thereof in order to:
1) replace an object of rights which has been lost, destroyed or rendered unusable;
2) make a copy to ensure the preservation of the object of rights;
3) replace an object of rights which belonged to the permanent collection of another library, archive 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.

(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.

Kommenteeri: [vLS139]: *limitations of authors' rights are defenses/permissions, not rights*

Kustutatud: has the right

Kommenteeri: [vLS140]: *it is doubtful whether this complies with the three-step test(Art 5(5) Directive etc.; preservation should only play a role in individual cases where the existing copy is about to get lost/be in decay. Digitisation of entire collections is a strong interference with authors' right, due to the vulnerability/easy use beyond the purpose of such digital copies, and thus the core of protection. This should be subject to author's authorization*

Kommenteeri: [vLS141]: *4 or rather 5?*

(3) A public archive, museum or library is permitted 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 is permitted, 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 public library is permitted to lend out objects of rights in its collection, on the condition that it does not occur for commercial purposes, subject to subsection (2).

(2) The lending out of a phonogram or audiovisual work is permitted in case four months have passed since the start of the distribution of the phonogram in Estonia. The said time-limit can be shortened with the consent of the holders of rights.

(3) A library providing services to an educational institution operating in a field of study of film arts or music is permitted to lend out audiovisual works and phonograms for teaching and scientific research 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.

§ 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 and displaying of works without the authorisation of its author and without payment of remuneration is permitted in the direct teaching process for illustration of teaching in educational institutions by the teaching staff and students of those educational institutions or for the same purpose in a library, museum or archive, on the condition of referencing the name of the author of the used work and 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 in the direct teaching process.

§ 53. Ephemeral recording of works by television and radio service provider

Kustutatud: has the right

Kustutatud: has the right

Kommenteeri: [vLS142]: *the additional requirements of Art 5(3)n InfoSoc Directive must also be listed as conditions here, in order to comply with the directive (in particular: purpose of research or private study/to individual members/only if use not covered by a licence/purchasing terms*

Kommenteeri: [vLS143]: *reference to §61 should be made here*

Kustutatud: has the right

Kommenteeri: [vLS144]: *systematic point: lending is defined earlier in this lawas non-commercial, so the last words are redundant (but don't harm)*

Kommenteeri: [vLS145]: *Needed to make relation to (2) clear, which is an exception to free use for four months as specified in (2)*

Kommenteeri: [vLS146]: *it should be clarified that this applies to all objects included in a phonogram/AV work, namely, authors of works fixed on the phonogram, performers thereof and producers of phonogrmas, and for the AV work the different authors of the AV work, authors of other works incorporated therein (eg, music not specifically created for the AV work but other music used in it) and the film producer as related rights holder*

Kustutatud: entitled

Kommenteeri: [vLS147]: *see Directive Art 5(3)a)*

Kommenteeri: [vLS148]: *see comment above to" 45 at beginning (comment 132)*

Kustutatud: if stated on the work

Kommenteeri: [vLS149]: *add: to the extent justified by non-commercial purpose (see Art 5(3)a) InfoSoc Dir.*

(1) A television or radio service provider may make ephemeral copies of works which the television or radio service provider has the right to transmit on the condition that such copies are made by the means of the television or radio service provider's own facilities and used for its own specified programme or 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 television or radio 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 television or radio service provider or, in the case of a dispute, by the State Archivist.

Kommenteeri: [vLS150]: *under the Directive rather: "exceptional documentary character"*

§ 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 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.

Kommenteeri: [vLS151]: *rather insofar as (=to the extent that), like in Directive*

(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 the lawful user does so while performing any act of loading, displaying, running, transmitting or storing the program which the lawful user 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 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 protected by copyright

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 that person is authorised to use only part of the database, this section shall only apply to the corresponding part of the database or of a copy thereof.

§ 57. Limitation of rights of producer of database, and rights and obligations of lawful users of a database protected by related rights

(1) 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 of publication of the database 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.

Kommenteeri: [vLS152]: *consistency: otherwise, the draft uses "producer"; should always be the same term*

(2) A lawful user of a database which is lawfully made available to the public in whatever manner may extract and re-utilise for any purposes any quantitatively or qualitatively unsubstantial parts of the database. If that person is authorised to use only part of the database in the manner prescribed in this subsection, this subsection shall only apply to the corresponding part of the database.

(3) A lawful user of a database which is lawfully made available to the public in whatever manner shall not harm the copyright or related rights incurred regarding the works or other material contained in the database.

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 as determined in the relevant sections is entitled to compensation for limitation of the economic rights of the holder of rights in free use of the object of rights.

Kommenteeri: [vLS153]: *reference inserted, since it are not always all holders of related rights (as it would be under the definition of the law), for ex §59 is correctly limited to some of them*

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

(1) The author as well as the performer of the work and the producer of phonogram have the right to obtain fair compensation for reproduction of the audiovisual work 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 the phonogram is based on the damage caused to the holder of rights via the free use specified in subsection (1) of this section.

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

(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 compensation specified in subsection (2) of this section.

§ 60. Compensation for photocopying of works

(1) Authors and holders of copyright (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 is determined by the Minister of Justice.

(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 phonograms from libraries

Kommenteeri: [vLS154]: *as in Directive; many European laws require "equitable remuneration", which would be even more adequate*

Kommenteeri: [vLS155]: *legally, damage can only be caused in case of infringement, which is not possible in case of free use like here. The Directiev says "harm" (not "damage", which is different (means rather some general disadvantage). Also, it only mentions this as one of many, and only as a possible factor for calculating the compensation. It is not recommended to use this factor (which traditionally has never been used in other European systems of private copy remuneration), since it will be very difficult measure a "harm/disadvantage". it is better to recognise the compensation as one paid as a counterweight for the use and its value*

Kommenteeri: [vLS156]: *private copy remuneration is a private right based on the use of private property/intellectual property. It is only logical that payment must be done by those who make the use and, where this is not directly possible (as here where one cannot charge easily private users), those industries which benefit from selling copying devices and media. However, the State/Ministry is not the correct debtor in a private law issue, since it is not the user here (unlike for public libraries of the state).*

Kommenteeri: [vLS157]: *it is very unusual and inconsistent with the nature of the right as a private right that the government interferes with what should be a matter for the right owners (ie, to decide on how to distribute money between right owners, and what to offer as the tariffs*

Kommenteeri: [vLS158]: *see coment above on "damage"*

Kustutatud: damage

Kommenteeri: [vLS159]: *this is confusing given the definition in §5(2) (which includes authors). Better say "licencees (publishers)"*

Kommenteeri: [vLS160]: *if the law limits compensation to "photocopying" in this narrow definition, it must not permit, in §43, 45 et alia, reproduction for private purposes in other media (esp. electronic ones), or it has to introduce also an artic ...*

Kommenteeri: [vLS161]: *similar remark as to §59: this is a private right, to be paid by private users/the related device/equipment industry; compensation must not depend on the state budget, but ...*

Kommenteeri: [vLS162]: *see previous remark*

Kommenteeri: [vLS163]: *'to' a legal person?*

Kommenteeri: [vLS164]: *traditionally , this job is (and should be) done by collecting societies by the right owners, who have all the know-how for collective ...*

Kommenteeri: [vLS165]: *see remark on §59(5)*

(1) Authors, performers, producers of phonograms and producers of films 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, producer of phonogram and producer of film 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 an audiovisual work and the author of a musical work, the performer of a musical works, the producer of a phonogram and the producer of a film 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 the Statistical Office.

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 pursuant to Chapter IV of this Act.

§ 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 all acts of sale involving professionals of the arts market, for example salesrooms, art galleries or general 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

Kommenteeri: [vLS166]: *to whom?*

Kommenteeri: [vLS167]: *relation with (5) not clear: is (3) not subject to collective administration, and if so, why not? why is there different treatment then?the money may come out of the state budget (as public libraries are maintained by public money) but can still be administered by collecting societies*

Kommenteeri: [vLS168]: *see remark on §59(5)*

Kommenteeri: [vLS169]: *not clear whether this relates to payment by government or payment by collecting society*

Kommenteeri: [vLS170]: *to comply with Art 1 Resale Directive, it should be added that this right is inalienable and cannot be waived*

Kommenteeri: [vLS171]: *it should be stated who is liable for payment according to Art 1(4) Resale Directive(the seller, etc., see that provision).*

artist himself or herself or are copies which have been numbered, signed or otherwise authorised by him or her.

(4) Rates of remuneration:
1) 5 per cent of the sale price, if the sales price is up to 50,000 euros;
2) 3 per cent of the sale price, if the sales price is from 50,001 to 200,000 euros;
3) 1 per cent of the sale price, if the sales price is from 200,001 to 350,000 euros;
4) 0.5 per cent of the sale price, if the sales price is from 350,001 to 500,000 euros;
5) 0.25 per cent of the sale price, if the sales price exceeds 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 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 according to § 22.

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

Where an author or a performer has transferred the author's or the performer's economic rights to a producer of a film or a producer of a phonogram or granted a licence to rent the work, or where such transfer of rights or granting of license is presumed, the author and 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 phonogram and performer to remuneration for use of phonogram

(1) If a phonogram published for commercial purposes or a copy thereof is used for communication to the public or for transmission, the performer and the producer of the phonogram have the right to obtain equitable remuneration from each person using the phonogram for communicating it to the public or for transmitting it.

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

(3) Subsections (1) and (2) of this section shall not apply if a phonogram published for commercial purposes is made available to persons in the place and at the time of their individual choice.

§ 65.1. Right of performer to additional remuneration

Kommenteeri: [vLS172]: *it may be clearer to state that the relevant collective management org. (if is functions well) is responsible for managing this right (even if it is also said in §73*

Kommenteeri: [vLS173]: *see Art 8 Resale Directive*

Kustutatud: of three years after the resale

Kommenteeri: [vLS174]: *not clear whether the remuneration right shall apply to all economic rights or just rental (as still in the title). The rental Directive obliges to extend this right for performers to all rights that are covered by a presumption of transfer (see comment to §28(2) above), so it would be correct to replace "rental" in title with "economic rights". It would be consistent to do the same also for authors, who are in a similar (weak) contractual position*

Kommenteeri: [vLS175]: *if collective management societies exist in the relevant fields and function well, it may be good to provide also that this right to remuneration can only be administered by such society*

Kustutatud: the phonogram

Kustutatud: the phonogram

Kommenteeri: [vLS176]: *"one-time" is misleading: for each communication, there must be remuneration, so it must be recurring remuneration, e.g. each year or each quarter of a year; the word "single"remuneration in the Directive only means that the user only needs to make one common payment, including the amounts for the performers and for the producers, instead of paying two amounts separately for each group. So, it is better to use a word like "common feein equal parts to ...."*

Kommenteeri: [vLS177]: *correct; at the same time, you might add(maybe under subsection 1) that a "published phonogram" in the meaning of § 65 is also a phonogram that was only put on the internet to be made available there, but not published in the traditional sense (see Art 15(4) WPPT)*

Kommenteeri: [vLS178]: *although mandatory collective administration is stated in § 73, it may be useful to state it also here in § 65.1, with reference to 73.*

(1) If the performer and the producer of phonogram have entered into a contract under which the performer has transferred to the producer of phonogram his or her rights to use of the performance (heretofore a contract of transfer) for a one-time remuneration or without a remuneration, the performer shall be entitled to obtain from the producer of phonogram annual additional remuneration for every full year after a period of fifty years from the lawful publishing of the phonogram, or if no such publication occurs, after a period of fifty years from the phonogram's lawful communication to the public or lawful transmission. An agreement under which the performer waives his or her right to obtain annual additional remuneration is void.

Kustutatud: f

(2) In order to pay the annual additional remuneration prescribed in subsection (1) of this section, the producer of phonogram shall allocate twenty percent of the revenue that the producer of phonogram has earned in the year prior to remuneration-paying from reproduction, distribution and making available of such phonograms which were lawfully published fifty years ago or, if they have not been published in this period, then were lawfully communicated to the public or lawfully transmitted fifty years ago.

(3) The producer of phonogram shall provide the performer entitled to annual additional payment prescribed in subsection (1) of this section upon that performer's request with any information which may be necessary for securing the payment of the aforementioned remuneration.

(4) If the performer is entitled to obtain regular remuneration under a transfer contract, that remuneration shall not be reduced by prepayments or contractual deductions after a period of fifty years from the lawful publishing of the phonogram, or if no such publication occurs, after a period of fifty years from the phonogram's lawful communication to the public or lawful transmission.

(5) The obligation prescribed in subsection (2) of this section shall not apply to enterprises that had less than 100 euros of turnover in the year prior to remuneration-paying from reproduction, distribution and making available of such phonograms which were lawfully published or if they have not been published then lawfully communicated to the public or lawfully transmitted fifty years ago.

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 the rights of the holder of 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 economic rights of the holder of 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.

§ 66.1. Court action of a holder of license upon violation of the exclusive right of a holder of rights

(1) The holder of license shall have the right to file a court action also in case of other persons violating the exclusive right of a holder of rights.

(2) The right prescribed in subsection (1) may be limited or excluded with a license contract.

(3) The holder of license shall inform the holder of license about the intent to file a court action.

§ 67. Format of author's contract

(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. 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.

§ 68. Content of author's agreement

The following shall be prescribed 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 sublicence;
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) the term of commencement of use of the object of rights;
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.

§ 69. Personal performance of author's contract

In the case of an author's contract for the creation or production 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.

Kommenteeri: [vLS179]: *creation should (in english) only be used in context with authors*

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.

§ 70.1. Performer's right to cancellation of contract

(1) If, after a period of fifty years from the lawful publishing of the phonogram on which a performance is recorded, or if no such publication occurs, after a period of fifty years from the phonogram's lawful communication to the public or lawful transmission, the producer of phonogram does not offer a sufficient amount of copies of the phonogram for sale or does not make the phonogram available to the public by a cable network or without cable in such a way that members of the public may access the phonogram from a place and at a time chosen by them, the performer may cancel the transfer contract. The performer shall have the right to cancel the transfer contract if the producer of phonogram fails to perform at least one of the conditions prescribed in the previous sentence of this subsection within one year after the performer's notice of intent to cancel the transfer contract pursuant to the first sentence of this subsection.

Kommenteeri: [vLS180]: *insertion to make it clear that we talk about a protected performance of the performer on the phonogram*

Kustutatud: and

Kommenteeri: [vLS181]: *th eDirective explicitly says "both"*

(2) If the phonogram contains a recording of the performance of several performers, the performer may separately from other performers cancel the transfer contract which was separately entered into. A transfer contract which was jointly entered into may be cancelled by the person prescribed in subsection 29 (1) of this Act or pursuant to § 20 of this Act.

(3) If the transfer contract has been cancelled pursuant to subsections (1) or (2) of this section, the rights of the producer of phonogram to that phonogram shall end.

(4) An agreement to waive the right to cancellation of transfer contract is void.

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 holders of rights 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 holders of rights 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 a holder of right, that holder of right cannot exercise such rights by own means.

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

(4) In cases of violation of rights of holders of rights, a collective management organisation is entitled to represent all authors and holders of related rights without authorisation.

§ 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 an audiovisual work, if the television or radio 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 audiovisual works 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 phonograms 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 an audiovisual work or a radio or television programme or programmes pursuant to subsection 84 (7) of this Act;
9) upon use of a performance pursuant to § 65.1 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.

Kommenteeri: [vLS182]: *not clear: does it mean that the holder of rights first has to (and can)withdraw his rights from the CMO and then transfer it to a third person, or only that (2) does not apply if the holder has beforehand transferred the rights to a third person (so that he cannot anymore transfer it to the CMO)?*

Kommenteeri: [vLS183]: *CMOs should manage all aspects of the remuneration right under §65, not only cable retransmission and satellite broadcasting, but general communication and transmission/broadcasting (as is the rule in most other countries; also the requirement of a "single" remuneration for both performers and producers can best be realised by a common CMO for both groups, for all aspectsof that right*

Kommenteeri: [vLS184]: *wrong number*

Kommenteeri: [vLS185]: *not clear – what would be left?cable retransmission regularly only concerns TV and radio? or is cable retransmission different from retransmission over dable network*

(3) If a holder of 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 that holder of rights. If there are several aforementioned collective management organisations, the holder of rights is free to choose which of the organisations is authorised to manage the rights of the holder of rights.

(4) A holder of rights represented pursuant to subsection (3) of this section has the same rights and obligations as the holder of rights 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 holder of rights represented pursuant to subsection (3) of this section may claim the rights of a holder of rights and the performance of obligations corresponding to those rights within three years as of the date of use of the object of rights.

Kommenteeri: [vLS186]: *contents of this subsection is not very clear (maybeit is a question of drafting)*

(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 holders of rights 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 the rights of the holder of rights either individually or collectively.

§ 74. Extended collective exercise of rights

(1) A user of rights in a certain 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 holders of rights in the same category.

Kommenteeri: [vLS187]: *the law itself should specify in which cases the extended coll. licence is to be permitted; this is quite a restriction of authors'/other right holders' rights and therefore should not be only up to the user's decision, but the legislature*

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

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

(4) A holder of rights represented pursuant to subsection (2) of this section may claim the rights of the holder of rights and the 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 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 the rights of the holder of right either individually or collectively.

(6) In the case prescribed in subsection (5) of this section, the representation of the holder of rights shall end from the first of January of the year following the presenting of a claim pursuant to the procedure prescribed in this section. The presentation of the claim and the end of representation of the holder of right shall be separated by a period of at least three months.

Division 3. Digital exercise of rights

§ 75. Technological measure

Kommenteeri: [vLS188]: *in context of this section, sanctions (and knowldege requirements) acc. to Art 6(1) and (2) InfoSoc Directive are missing*

(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.

(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.

(3) With the help of technological measures, the holders of rights 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 holders of rights, 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 holder of rights shall apply such measures to the object of rights which allow the beneficiary persons to freely use the object of rights to the extent necessary for the free use in the cases prescribed by the provisions above on the condition that beneficiary persons have legal access to the protected object of rights. If the person permitted to freely use the object of rights and the holder of rights fail to reach an agreement on application of the corresponding measures within a reasonable period of time, the person permitted 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.

Kommenteeri: [vLS189]: *no 4) is not covered by Art 6(4) InfoSoc Directive and should not be in this list; rather it should be number 6)*

Kustutatud: entitled

Kustutatud: law

Kustutatud: entitled

Kustutatud: entitled

Kustutatud: entitled

(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 members of the publiccan access them from a place and at a time individually chosen by them.

Kustutatud: persons

Kustutatud: use

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

§ 76. Information on exercise of rights

Kommenteeri: [vLS190]: *it may be better to add directly here the sanctions (now in §79) or at least to make a reference to there, for easier usability*

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

(2) For the purposes of this Act, "information on the exercise of rights" is any information presented by the holders of rights that identifies 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.

Kustutatud: defines

(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 or transmission.

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 provisions of the Law of Succession Act.

(2) The economic rights and the right to exercise the 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 transferred to the state by way of succession, 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

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.

Kommenteeri: [vLS191]: *it is not clear for what this section is usable; what is needed in addition is a provision on sanctions (eg, "Any persons trading in pirated copies is liable to fine of...(etc)*

(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.

(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.

§ 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.

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

Kommenteeri: [vLS192]: *the acts described in Art 7(1) b) InfoSoc Directive are missing and should be added, as well as knowledge requirements and the further conditions at the end of 7(1). Also, even if there is no commercial activity or purpose of profit, there should be a sanction (maybe of a different kind)*

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 objects of rights created before 12 December 1992

(1) This Act also extends to objects of rights created before 12 December 1992.

(2) The economic rights of the author and the performer of am audiovisual work created in the period before 12 December 1992 belong to the authors and the performer.

Kommenteeri: [vLS193]: *why not also other works?*

(3) The rights of the producer of an audiovisual work produced in the period before 12 December 1992 belong to the producer of the film or the producer's legal successor; the economic rights of a television or radio service provider belong to Estonian Public Broadcasting.

Kustutatud: created

(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.

(5) The provisions of §§ 65.1, 70.1, clauses 37 (1) 1) and 2) and clause 73 (1) 9) of this Act shall apply to recordings and phonograms of performances which are related to performer's rights and rights of the producer of phonogram that were still protected on 1 November 2013 under the law as of 31 October 2011 that was in force before the aforementioned provisions entered into force, and to recordings and phonograms of performances which are made after 31 October 2011.

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

Kommenteeri: [vLS194]: *the contents of this provision is not clear; usually, "old" works etc (created until entry in to force of new law) are subject to the new law as regards future uses (uses after entry into force of new law); also subsection 2 is not easily to understand*

(1) Use of objects of rights created or produced 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/production.

(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/production.

§ 86. Extension and amendment of transfer contract entered into before 1 November 2013

(1) Unless clearly provided otherwise in the contract, a contract stated in subsection § 70.1 (1) of this Act, entered into before 1 November 2013, shall remain in force after entry into force of §§ 65.1, 70.1, clauses 37 (1) 1) and 2) and clause 73 (1) 9) of this Act.

(2) A transfer contract under which the performer of the work is entitled to regular income and which has been entered into before 1 November 2013, may be amended after a period of fifty years from the lawful publishing of the phonogram, or if no such publication occurs, after a period of fifty years from the phonogram's lawful communication to the public or lawful transmission.

§ 87. Belonging of rights upon end of activities of a legal person holder of rights

(1) If a legal person holder of rights terminates its activities (is dissolved), the copyrights and related rights which belonged or were licensed to that legal person shall return to the author or the holder of related rights from whom they were transferred to the legal person that terminated its activities.

(2) If a legal person is dissolved in a bankruptcy proceeding, provisions of the Bankruptcy Act shall apply to copyrights and related rights included in the bankruptcy estate.

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