



Biuro Rzecznika
Małych i Średnich Przedsiębiorców

RMSP-437/2019/WPL

Warszawa, 29 listopada 2019 r.

Pan

Paweł Wołoch

**Przewodniczący Zespołu Roboczego
ds. opłat za korzystanie z praw autorskich
oraz wynagrodzeń nadawców programów
audiowizualnych**

Związek Telewizji Kablowych w Polsce

ul. Traugutta 25

90-113 Łódź

Szanowny Panie Przewodniczący

przekazuję odpowiedzi Ministerstwa Spraw Zagranicznych z dnia 18 listopada 2019 r.
oraz Urzędu Ochrony Konkurencji i Konsumentów z dnia 18 listopada 2019 r. otrzymane
w wyniku podjętej interwencji przez Biuro Rzecznika Małych i Średnich Przedsiębiorców.

z pozdrowieniami

Z up. Rzecznika Małych i Średnich Przedsiębiorców
RADCA RZECZNIKA
Wydział Prawno-Legislacyjny

Marek Woch
Dr n. pr. Marek Woch



Warszawa, dnia 18 listopada 2019 r.

**Ministerstwo
Spraw Zagranicznych**

Departament Polityki Europejskiej

DPE.2132.2.2019 / 2

**Pan Marek Woch
Radca Rzecznika
Biuro Rzecznika Małych
i Średnich Przedsiębiorców**

Szanowny Panie Radco,

W odpowiedzi na Pana pismo z dn. 26 października br. sygn. RMSP-592/2019/WPL uprzejmie przekazuję poniżej informacje dot. organizacji zbiorowego zarządzania w Republice Czeskiej.

Kwestie związane z prawem autorskim w Republice Czeskiej leżą w gestii Ministra Kultury i regulowane są m.in. przepisami ustawy nr. 121/2000 o prawach autorskich i pokrewnych wraz ze zmianami (Zákon č. 121/2000 Sb., o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů). W załączeniu przekazujemy wersję ustawy w j. angielskim. Kwestie dot. zbiorowego zarządzania prawami autorskimi uregulowane są w cz. IV w art. od 95 do 104. Poszczególne tematy są również opisane w j. angielskim w sekcji najczęściej zadawanych pytań na stronie Ministerstwa Kultury (<https://www.mkcr.cz/frequently-asked-questions-953.html?lang=en>). W Republice Czeskiej funkcjonuje 6 organizacji zbiorowego zarządzania:

1. DILIA (www.dilia.cz)
2. OSA (www.osa.cz)
3. INTEGRAM (www.intergram.cz)
4. OOA-S (www.ooas.cz)
5. GESTOR (www.gestor.cz)
6. OAZA (www.oaza.eu)

Ponadto, Minister Kultury prowadzi również listę niezależnych podmiotów zarządzających (obecnie 4 podmioty):

1. Nezávislý správce práv, s.r.o.
2. IS Media s.r.o.
3. Nezávislá kultura s.r.o.
4. Soundreef CZ s.r.o.

W załączeniu przekazujemy otrzymaną z Ministerstwa Kultury RCz informacje dot. wysokości opłat oraz metod ich ustalania dla poszczególnych podmiotów.

Al. J. Ch. Szucha 23
00-580 Warszawa

www.gov.pl/dyplomacja

Z wyrazami szacunku,

Marcin Wilczek

Zastępca Dyrektora

Retransmission of Radio or TV Broadcast				
Collective management organisations	Remuneration rate 2019	Remuneration rate 2020	Method of setting a remuneration rate	Discounts
OSA (authors of musical works containing text or without text, i.e. musical composers and lyricists)	6,45 CZK	6,45 CZK	monthly fee for one plug connector/household	
INTERGRAM (performers and producers of a phonogram and an audiovisual fixation)	4,67 CZK	4,67 CZK + inflation rate in 2019	monthly fee for one plug connector/household	
DILIA (authors of literary, dramatic, dramatico-musical, choreographic works and entertainments in dumb show, as well as authors of scenic music created specifically for the use in a dramatic or choreographic work or a dumb show, as well as dubbing directors)	2,06 CZK	1,71 CZK +inflation rate in 2019	monthly fee for one plug connector/household	
OOA-S (authors of works of art, i.e. paintings, graphic works, sculptures, photographic works and works expressed by a process similar to photography, architectonic works, including urban works, as well as authors of the visual part of audio-visual works, i.e. directors of photography, architects, stage designers and other authors of the visual part of audio-visual works)	1,46 CZK (over 100 000 inhabitants)	1,46 CZK (over 100 000 inhabitants)	monthly fee for one plug connector/household	possibility of quantity discount according to the number of plug connectors in the amount of 5% to 20%
	1,39 CZK (5000 – 100 000 inhabitants)	1,39 CZK (5000 – 100 000 inhabitants)	/according to the size of the settlement (municipality)	
	1,31 CZK (500 – 5000 inhabitants)	1,31 CZK (500 – 5000 inhabitants)		
	1,24 CZK (up to 500 inhabitants)	1,24 CZK (up to 500 inhabitants)		
	+inflation rate in			

	2018	+inflation rate in 2018 and 2019		
OAZA (sound engineers-authors)	0,78 CZK	0,95 CZK	monthly fee for one plug connector	discount from basic rates according to the regions, where the usage takes place, between 5% and 15%

Rates of remuneration are exclusive of VAT.

THE PRIME MINISTER

Hereby makes the following provisions:

Consolidated version of Act No. 121/2000 on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act), as amended by Act No. 81/2005, Act No. 61/2006 and Act No. 216/2006.

COPYRIGHT ACT

The Parliament adopted the following Act of the Czech Republic:

PART ONE

COPYRIGHT AND THE RIGHTS RELATED TO COPYRIGHT

Article 1

Scope of Application

This Act implements the relevant legislation of the European Communities¹⁾ and regulates:

- a) The right of an author to his work;
- b) Rights related to copyright:
 - 1. The rights of a performer to his artistic performance;
 - 2. The right of a producer of a phonogram to his phonogram;
 - 3. The right of a producer of an audiovisual fixation to his fixation;
 - 4. The right of a radio or television broadcaster to his broadcast;
 - 5. The rights enjoyed, in respect of a previously unpublished work, by the person who, after the expiry of copyright protection, for the first time lawfully made the work public;
 - 6. The right of a publisher to remuneration in connection with the making for personal use of a copy of the work published by him;
- c) The rights of a database maker to his database;
- d) Protection of rights under this Act;
- e) Collective management of copyright and of rights related to copyright.

¹⁾ Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs.
Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, as amended.
Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.
Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights, as amended.
Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.
Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.
Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art.
Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

TITLE I
COPYRIGHT

VOLUME I

Subject Matter of Copyright

Article 2

Author's work

(1) The subject matter of copyright shall be a literary work or any other work of art or a scientific work, which is a unique outcome of the creative activity of the author and is expressed in any objectively perceivable manner including electronic form, permanent or temporary, irrespective of its scope, purpose or significance (hereinafter referred to as "work"). A work shall be, without limitation, a literary work expressed by speech or in writing, a musical work, a dramatic work or musical-dramatical work, a choreographic work and pantomimic work, a photographic work and a work produced by a process similar to photography, an audiovisual work such as a cinematographic work, a work of fine arts such as a painting, graphic or sculptural work, an work of architecture including an urban design work, a work of applied art, and a cartographic work.

(2) A computer program shall also be considered a work if it is original in the sense that it is the author's own intellectual creation. A database which by the way of the selection or arrangement of its content is the author's own intellectual creation, and in which the individual parts are arranged in a systematic or methodical way and are individually accessible by electronic or other means, is a collection of works. No other criteria shall be applied to determine their eligibility for that protection. A photograph or a work produced by a process similar to photography, which are original in the sense of the first sentence, shall be protected as a photographic work.

(3) Copyright shall apply to the work in its entirety, to its individual developmental phases and to parts of the work, including its title and the names of its characters, if these comply with the conditions stipulated in Paragraph (1) or in Paragraph (2) above, provided that the items are subject to copyright as defined by that paragraph.

(4) A work which is the outcome of the creative adaptation of another work, including its translation into another language, shall also be subject to copyright. This shall be without prejudice to the rights of the author of the adapted or translated work.

(5) A collection like a journal, encyclopaedia, anthology, exhibition, or any other collection of independent works or other elements that by reason of their selection and of the arrangement of the content meet the conditions set out in Paragraph 1 above, is a collection of works.

(6) The items that are not works hereunder, shall include, but are not limited to the theme (subject) of a work as such, the news of the day and any other fact as such, an idea, procedure, principle, method, discovery, scientific theory, mathematical and similar formula, statistical diagram and similar item as such.

Article 3

Public Interest Exceptions in Copyright

Copyright protection shall not apply to:

- a) an official work, such as a legal regulation, decision, public charter, publicly accessible register and collection of its documents, and also any official draft of an official work and other preparatory official documentation including the official translation of such work, Chamber of Deputies and Senate publications, a memorial chronicle of a municipality (municipal chronicles), a state symbol and symbol of a municipality, and any other such works where there is public interest in their exclusion from copyright protection,
- b) creations of traditional folk culture, unless the real name of the author is commonly known and the works are anonymous or pseudonymous (Article 7); such works may only be used in a way that shall not detract from their value.

Article 4

Making Work Public and Publication of Work

- (1) A work is made public by its first authorised public recitation, performance, showing, exhibition, publishing or any other way of making available to the public.
- (2) The work is published by commencing of authorised public distribution of its reproductions.

VOLUME 2

Authorship

Article 5

Author

- (1) Author is the natural person who created the work.
- (2) Author of a collection of works is the natural person who selected and arranged works in a creative way; the rights of authors of works included in the collection shall not be affected thereby.

Article 6

Legal Presumption of Authorship

Author shall be the natural person whose real name is indicated in a usual manner on the work or is indicated with the work in the register administrated by the relevant collective rights manager, unless proven otherwise; this shall not apply in cases where such information is in conflict with other information so indicated. This provision shall also apply if such a name is a pseudonym, provided that the pseudonym used by the author evokes no doubt as to the author's identity.

Article 7

Anonym and Pseudonym

- (1) The identity of an author whose work has in accordance with his expressed will been made public without the indication of his name (anonymous work) or eventually under a pseudonym or under an artistic signature (pseudonymous work), may not be revealed without the consent of the author.
- (2) Until such time as the author of an anonymous or pseudonymous work publicly reveals his identity, the author shall be represented in the exercise and protection of copyright for his work by the person who has made the work public, under that person's name and on the account of the author, unless proven otherwise; the public declaration of the author shall not be necessary if his real name is commonly known.

Article 8

Joint Authors

- (1) The copyright to a work that, until the time of its completion, was created by the creative collaboration of two or more authors as a single work (work of joint authors), shall belong to all the joint authors jointly and severally. Creation of a work by joint authors shall not be prejudiced if the creative contributions to the work by the individual joint authors can be distinguished, unless such contributions are capable of being used independently.
- (2) A joint author shall not be a person who has contributed to the creation of the work merely by providing assistance or advice of a technical, administrative or expert nature or by providing documentation or technical material, or who merely gave the impulse to create the work.
- (3) All the joint authors shall be both authorised and obliged, jointly and severally, in respect of any legal acts related to their joint work.

(4) Joint authors shall decide unanimously about the disposal of their joint work. Should one of the joint authors obstruct, without serious reason, the disposal of the work of joint authors, the remaining joint authors may seek the substitution of his consent in court. Copyright protection of joint authors' work against endangering or infringement may also be sought by an individual joint author independently.

(5) Unless otherwise agreed between the joint authors, the share of each of the joint authors in the joint proceeds from the disposal of copyright in the work of joint authors shall be determined in proportion to the size of their creative contributions; if it is not possible to distinguish these contributions, the shares in the joint proceeds shall be equal.

VOLUME 3

Origin and Content of Copyright

SECTION 1

General Provisions

Article 9

Origin of Copyright

(1) The copyright in a work shall arise at the moment when the work is expressed in any objectively perceivable form.

(2) Copyright in a work shall not become extinct by the destruction of the object through which the work is expressed.

(3) The acquisition of the ownership right or of any other right *in rem* to the object through which the work is expressed shall not imply authorisation to exercise the right to use the work, unless otherwise agreed or unless otherwise stipulated herein. The extension to another person of authorisation to exercise the right to use the work shall not affect the property right or other rights *in rem* to the object through which the work is expressed, unless otherwise agreed or stipulated by special legal regulation.

(4) The owner or any other user of the object through which the work is expressed shall not be obliged to maintain such an object and protect it from destruction, unless otherwise agreed or otherwise stipulated by special legislation or by this Act.

Article 10

Content of Copyright

Copyright shall include exclusive moral rights (Article 11) and exclusive economic rights (Article 12 et seq.).

SECTION 2

Moral Rights

Article 11

(1) The author shall have the right to decide about making his work public.

(2) The author shall have the right to claim authorship, including the right to decide whether and in what way his authorship is to be indicated when his work is made public and further used, provided that the indication of authorship is normal in such use.

(3) The author shall have the right to the inviolability of his work, in particular, the right to grant consent to any alteration of, or other intervention in his work, unless otherwise stipulated herein. Where the work is used by any other person, such use may not be executed in a way that detracts from the value of the work. The author shall have the right of supervision over such other person's compliance with this obligation (author's

supervision), unless the nature of the work or its use implies otherwise, or unless it is not possible to fairly require the user to enable the author to exercise his right to supervision.

(4) The author may not waive his moral rights; these rights are non-transferable and shall become extinct on the death of the author. This shall be without prejudice to the provision of Paragraph (5) below.

(5) After the death of the author no one may arrogate authorship of the work; the work may only be used in a way which shall not detract from its value and, unless the work is an anonymous work, the name of the author must be indicated, provided that such shall be a normal practice. Protection may be claimed by any of the author's kin^{1a)}. They shall maintain this authorisation even if the protection of the copyright-related economic rights expired. Such protection may at any time also be claimed by legal persons associating authors or by the relevant collective rights manager hereunder (Article 97).

SECTION 3

Economic Rights

Article 12

Right to Use the Work

(1) The author shall have the right to use his work in its initial form or in a form adapted by another person or otherwise modified, whether separately or in a collection or connection with any other work or elements, and to grant authorisation on a contractual basis to any other person to exercise that right; the other person may use the work without such authorisation only in the cases stipulated herein.

(2) This right of the author shall not extinct with the granting of the authorisation under Paragraph (1) above; the author only has, within the scope arising out of the contract, to suffer another person's intervention in his right to use the work.

(3) The author shall have the right to demand of the owner of the object through which the work is expressed to make such an object available to him where this is necessary for the exercise of copyright in accordance with this Act. This right may not be applied contrary to the legitimate interests of the owner; the owner shall not be obliged to render such an object to the author; the owner shall be obliged, however, to make a photograph or any other reproduction of the work at the request and expenses of the author and hand it over to the author.

(4) The right to use a work shall mean:

- a) The right to reproduce a work (Article 13),
- b) The right to distribute an original or a copy of the work (Article 14),
- c) The right to rent an original or a copy of the work (Article 15),
- d) The right to lend an original or a copy of the work (Article 16),
- e) The right to exhibit an original or a copy of the work (Article 17),
- f) The right to communicate the work to the public (Article 18), including, but not limited to:
 1. The right to perform the work live or from a fixation, and the right of transmitting the performance of the work (Articles 19 and 20),
 2. The right to broadcast the work (Article 21),
 3. The right to retransmit of the broadcast of the work (Article 22),
 4. The right of performing the broadcast of the work (Article 23).

(5) The ways of use of the work pursuant to Paragraph (4) are defined, for the purposes of this Act, by the provisions of Articles 13 to 23. A work may also be used in other way than the ways specified in Paragraph 4 (in other than in paragraph 4 specified ways).

Article 13

Reproduction

(1) The reproduction of a work shall mean the making of temporary or permanent, direct or indirect reproductions of the work or any part thereof by whatever means and in whatever form.

^{1a)} Article 116 of the Civil Code.

(2) A work may be reproduced, in particular, in the form of a printed, photographic, audio, visual or audiovisual reproduction, in the form of erecting a work of architecture or in the form of any other three-dimensional reproduction, or in an electronic form, including both its analogue and digital expression.

Article 14
Distribution

(1) The distribution of the original or copies of a work shall mean making the work available in a tangible form by sale or other transfer of ownership of an original or to a copy of the work, including their offer for such purposes.

(2) The author's distribution right, in the territory of a member state of the European Communities or any other Party to the Agreement on the European Economic Area, to the original or copy of a work, is exhausted by the first sale or any other first transfer of ownership to such an original or a copy of a work in a tangible form, that was performed by the author or with the author's consent in the territory of a member state of the European Communities or any other Party to the Agreement on the European Economic Area; rental right to the work and lending right to the work shall remain unaffected.

Article 15

Rental

The rental of the original or a copy of a work shall mean making the work available in tangible form for the purpose of direct or indirect economic or commercial advantage by providing the original or a copy of the work for a limited period of time.

Article 16

Lending

The lending of the original or a copy of a work shall mean making the work available in tangible form through an establishment which is accessible to the public not for the purpose of direct or indirect economic or commercial advantage by providing the original or a copy of the work for a limited period of time.

Article 17

Exhibition

The exhibition of the original or reproduction of a work shall mean making the work available in a tangible form by making it possible to view or perceive in any other way the original or reproduction in particular of a work of fine arts, a photographic work, a work of architecture including an urban design work, a work of applied art, or a cartographic work.

Communication to the Public

Article 18

General Provisions

(1) The communication of a work to the public shall mean making the work available in an intangible form, live or from a recording, by wire or wireless means.

(2) The communication of the work to the public pursuant to Paragraph (1) shall also mean making the work available in such a way that members of the public may access it from a place and at a time individually chosen by them, especially by using a computer network or similar network.

(3) The communication of the work to the public shall not mean the mere operation of a facility enabling or ensuring such communication.

(4) The author's right to communicate the work to the public shall not be exhausted by communicating it to the public as specified in Paragraphs 1 and 2.

Article 19

Live Performance of a Work and its Transmission

(1) The live performance of the work shall mean making available the work performed live by a performer, including, but not limited to, a live-recited literary work, live-performed musical work with or without words or of a dramatic or musical-dramatical, choreographic or pantomimic work performed live on stage.

(2) Transmission of the live performance of a work shall mean making simultaneously available the live performance of the work by means of a loudspeaker, screen or similar device located beyond the space of the live performance, with the exception of the uses of the work pursuant to Articles 21 to 23.

Article 20

Performance of Work from Fixation and Transmission Thereof

(1) The right to perform a work from a fixation shall mean making the work available from an audio or audiovisual fixation by means of a technical device, with the exception of the uses of the work in accordance with Articles 21 to 23.

(2) Transmission of the performance of a work from a fixation shall mean making the work available simultaneously by means of a loudspeaker, screen or similar device located beyond the space of the performance.

Article 21

Broadcasting

(1) Broadcasting the work shall mean making the work available by means of radio or television or any other means of making of the work available designated to the communication the sounds or images and sounds or the representations thereof by wire or wireless, including transmission by cable or by satellite, by the original broadcaster.

(2) In this Act, satellite shall mean any satellite working on the frequency bands that are:

- a) Reserved, under specific legal regulations in the telecommunications area, for the transmission of signals to be received by the public; or
- b) Reserved for closed communication from one point to another, provided that the circumstances of the individual reception of the signals are comparable to the circumstances referred to in clause a) above.

(3) Broadcasting by satellite pursuant to Paragraph (1) shall mean that sounds, or sounds and images, or their expressions intended for reception by the public, are put into an uninterrupted chain of communication leading to the satellite and down towards the earth under the control and responsibility of the broadcasting organisation. Where the signals carrying signs, sounds or images are encoded, the broadcasting shall fall within the definition pursuant to Paragraph (1) if the broadcaster has facilitated, or has given consent to the facilitation of public access to decrypting device.

(4) Broadcasting a work as specified in Paragraph (1) above shall also mean making the work available through simultaneous, unabridged and unaltered broadcasting of the work by radio or television, if carried out by the same broadcaster.

(5) Broadcasting a work by satellite occurs in the territory of a member state of the European Communities or any other party to the Agreement on the European Economic Area if, under the control and responsibility of the broadcaster, the signals carrying sounds, or sounds and images, or their expression intended for reception by the public, are put into an uninterrupted chain of communication leading to the satellite and down towards the earth.

(6) If satellite broadcasting is carried out in the territory of a state that does not provide a level of copyright protection comparable to or higher than that provided by this Act, such satellite broadcasting shall be considered to have occurred in the territory of a member state of the European Communities or any other party to the Agreement on the European Economic Area, where:

- a) the station from which the signal carrying sounds, or sounds and images, or their expression intended for reception by the public, are transmitted to the satellite; or
- b) the broadcaster has its registered office, unless the circumstances specified in clause a) above exist.

The right in respect of satellite broadcasting can be applied in relation to the person operating the station in accordance with clause a) above or the broadcaster referred to in clause b).

(7) If the signals carrying sounds, or sounds and images, or their expression intended for reception by the public, are put into an uninterrupted chain of communication leading to the satellite and down towards the earth in the territory of a state that does not provide a level of copyright protection comparable to or higher than that provided by this Act, and if at the same time the station from which the broadcasting is being executed is not located in the territory of any other member state of the European Communities, then the satellite broadcasting of the work shall be deemed to have occurred in the territory of that member state of the European Communities where the managing bodies are located of the broadcaster upon whose initiative the broadcasting takes place. The rights hereunder may then be applied in relation to such a broadcaster.

Article 22

Retransmission of Broadcast

(1) The retransmission of the broadcast of a work shall mean making the work available by the simultaneous, unabridged and unaltered transmission of the radio or television broadcast of the work, wireless or by wire, if this is executed by an entity other than the original broadcaster of such broadcast.

(2) Cable retransmission of the broadcast of a work shall mean the radio or television broadcasting of the work in accordance with Paragraph (1) if it is executed by cable or microwave system. The provisions of Article 21 Paragraph (3), second sentence, shall apply *mutatis mutandis*.

(3) Enabling reception of a simultaneous, unabridged and unaltered radio or television broadcast on the receivers of the same building, or of adjacent buildings, which are functionally or spatially attached, via common house aerials, shall not be deemed as exploitation of the work, provided that only terrestrial unencoded analogue broadcasts can thus be received and that common reception is not used for the purposes of direct economic or commercial benefit.

Article 23

Performing Broadcast

Performing the broadcast of a work shall mean that the work broadcast by radio or television is made available by means of a facility technically capable to receive such broadcasts. Making the work available by means of facilities technically capable to receive broadcasts to guests accommodated within the provision of accommodation services shall not be considered, under Article 18 Paragraph (3), as performance of broadcast reception where such facilities are located in the rooms intended for private use by the accommodated persons. Making the work so available to patients to whom health care is provided in health care and medical facilities shall also not be considered, within the meaning of Article 18 Paragraph 3, as performance of a broadcast work.

SECTION 4

Other Economic Rights

Article 24

Resale right (Droit de suite)

(1) Where the original work of art that has been transferred by its author to the ownership of another person is subsequently sold for a purchase price of EUR 1,500 or more, the author shall be entitled, in respect of any resale of the work, to royalty as set out in the Annex to this Act, provided that a gallery operator, auctioneer or any other person who consistently deals in works of art (hereinafter the "dealer") takes part in such sale as a seller, purchaser or intermediary.

(2) The persons liable to pay the royalty under Paragraph (1) above to the relevant collective rights manager shall be the seller and the dealer jointly and severally. The collective rights manager shall allow the liable persons to inspect the Register referred to in Article 100 (1) (e).

(3) The original work of art as referred to in Paragraph (1) above shall mean any original work of art, including, but not limited to, a picture, a drawing, a painting, a collage, a sculpture, an engraving, a lithography or any other work of graphic art, a photograph, a tapestry ceramics, an item of glassware and author jewellery, provided that they were created by artist himself or they are copies considered to be original works of art. Copies that are deemed to be original works of art are such copies as were made in limited numbers by the author himself or under his authority and are numbered, signed or otherwise duly authorised by the artist. The right to royalty as referred to in Paragraph (1) above shall not apply to works of architecture in the form of a building.

and works of applied art, unless they display the features of the original of a work of art, and to the manuscripts of composers and writers.

(4) The right to royalty as referred to in Paragraph (1) above shall not apply to the first resale if the seller obtained the original work of art directly from the author less than three years before that resale and if the purchase price of the original work, when resold, does not exceed EUR 10,000.

(5) For the purposes of exercising the right referred to in Paragraph (1) above and for the calculation of the appropriate royalty, the purchase price shall be understood as the price net of value added tax.

(6) The author and the collective rights managers are entitled, for a period of three years of the sale, to be provided by the dealer with any information that may be essential for securing the payment of the royalty under Paragraph (1). The dealer who takes part, as specified in Paragraph (1) above, in the sale of the original work of art shall notify such sale to the relevant collective rights manager not later than by the end of January of the calendar year that follows the year in which the sale took place. The notification referred to in the preceding sentence shall contain specification of the originals of the works of art and information concerning the actual selling price. The royalty, based on the collective rights manager's settlement, shall fall due in a period which shall not be shorter than 30 days, unless otherwise agreed between the collective rights manager and the dealer.

Article 25

Right to Remuneration in Connection with Reproduction of Work for Personal Use and for Legal Person's Own Internal Use

(1) For works that were made public and may be reproduced:

- a) for personal use by a natural person or for the own internal use by a legal person or a sole trader (Articles 30 and 30a), using a device for making printed reproductions on paper or other similar base; or
- b) for personal use by a natural person (Article 30) on the basis of an audio, audiovisual or any other fixation or broadcasting by the transfer thereof by means of a device to blank record carriers,

the author is entitled to remuneration in connection with such reproduction of the work.

(2) The person liable to pay remuneration pursuant to Paragraph (1) shall be:

- a) the producer of the devices for making reproductions of fixations, importer of such devices from third countries (hereinafter the "importer") or consignee of such devices from member states of the European Communities (hereinafter the "consignee");
- b) the producer, importer or consignee of technical devices for making printed reproductions;
- c) the producer, importer or consignee of blank record carriers;
- d) the carrier or forwarder *in lieu* of the liable person pursuant to Paragraphs (a) to (c), unless that person informed the relevant collective rights manager without undue delay upon written request about the details necessary for the identification of the importer, consignee or producer;
- e) the provider of paid reproduction services, in the case of printed reproductions; provider of paid reproduction services shall also mean the person who makes available, for a consideration, the device for making printed reproductions.

(3) Entitlement to remuneration to be paid by the persons defined in Paragraph (2) (a) to (d) in connection with the reproduction of a work for individual use shall pertain to the author at the time of the import, receiving or first sale of:

- a) Device for making reproductions of fixations;
- b) Device for making printed reproductions;
- c) Blank record carriers.

(4) Entitlement to the remuneration to be paid by the persons defined in Paragraph (2) (b) shall depend on the probable number of devices designated for making print reproductions of works under Article 30a. For the calculation of the amount of the remuneration in respect of the devices designated for making print reproductions, the probable number of these devices is set at 20 %. The remuneration is calculated on the basis of the average price of the device exclusive of the value added tax.

(5) Entitlement to the remuneration to be paid by the persons defined in Paragraph (2) (c) shall depend on the probable number of the print reproductions of works made in accordance with Article 30a. The rules set out in Points 6 and 7 of the Annex hereto shall apply to the calculation of remuneration in respect of the print reproductions made.

(6) The persons referred to in Paragraph (2) above shall submit to the relevant collective rights manager – always in summary for half of the calendar year and not later than by the end of the following calendar month – information on the facts relevant for setting the amount of the remuneration, including, but not limited to, information on the type and number of the sold, imported or received devices for making reproductions of fixations, devices for making printed reproductions, and the blank record carriers, and also on the total number of the printed reproductions made by the devices for providing paid reproduction services.

(7) The Ministry of Culture (hereinafter the “Ministry”) shall issue a Decree to define the types of devices to make print reproductions and the types of blank record carriers on which a remuneration is to be paid in accordance with Paragraph (1) above and also to define amount of the lump-sum remuneration depending on the type of device for making the printed reproductions and types of blank record carriers. This Decree shall also define types of devices for making reproductions of fixations on which a remuneration is to be paid in accordance with Paragraph (1) above; level of this remuneration is indicated in the Annex to this Act.

(8) Remuneration shall not be paid where the devices referred to in Paragraph (3) (a) and (b) are exported or consigned for resale or where blank record carriers are exported or consigned for resale. Also, remuneration shall not be paid in the case of devices and blank record carriers if these are intended only to be used within the Czech republic for the reproduction of works on the basis of licence agreements by persons who use them so in the course of their own activities.

SECTION 5

Common Provisions for Economic Rights

Article 26

(1) Economic rights may not be waived by the author; such rights are not transferable and are not subject to the execution of a decision; this provision shall not apply to claims arising from such economic rights.

(2) Economic rights are inheritable. Where the economic rights to the work are inherited by more than one heir, their mutual relations to the work shall be governed, *mutatis mutandis*, by Article 8 (3) and (4). If such economic rights are inherited by the State or the economic rights escheat to the State, then such rights shall be exercised by the State Fund of Culture of the Czech Republic²⁾ in its own name, and, in the case of audiovisual works, by the State Fund of the Czech Republic for Support and Development of Czech Cinematography.³⁾ The incomes of the State from the exercise of the economic rights, as exercised by the mentioned state funds, shall be treated as the revenue of those state funds.

(3) In the event of termination of the legal existence of a legal person that inherited the economic rights to a work, and there is no successor in title, such rights shall escheat to the State. Provisions of Paragraph 2, second and third sentence, shall apply *mutatis mutandis*.

(4) The provisions of this Act concerning the author shall also apply to his heirs, or to the state, if the inheritance escheats to it according to Paragraphs 2 and 3, unless nature of such provisions indicates otherwise.

SECTION 6

Duration of Economic Rights

Article 27

(1) Unless stipulated otherwise, economic rights shall run for the life of the author and 70 years after his death.

(2) If a work has been created as the work of joint authors, the period of duration of economic rights shall be calculated from the death of the last surviving author.

(3) Economic rights to an anonymous and pseudonymous work shall run for 70 years from the time when the work was lawfully made public. Where the real name of the author of the anonymous or pseudonymous work is commonly known, or if the author declares his identity in public [Article 7 (2)] during the course of the term pursuant to the first sentence, the duration of economic rights to such work shall be governed by Paragraph (1), and in the case of joint authors also by Paragraph (2). Provisions of this Paragraph shall also apply to a collective work (Article 59), except in cases where the authors who created such a work are indicated as authors with the

²⁾ Act No.239/1992 on the State Fund of Culture of the Czech Republic

³⁾ Act No.241/1992 on the State Fund of the Czech Republic for Promotion and Development of Czech Cinematography, as amended by Act No.273/1993

work or on the work when it is made accessible to the public; in such cases the duration of the economic rights in respect of a collective work is governed by the provisions of Paragraph (1) or (2) above.

(4) In the case of a work where the death of the author is not decisive for the calculation of the period of duration of economic rights, and where the work has not been made public within 70 years from its creation, the economic rights shall expire at the end of this period.

(5) The period of duration of economic rights to an audiovisual work shall be calculated from the death of the last surviving of the following persons: the director, author of screenplay, author of the dialogues and composer of the music specifically created for use in the audiovisual work.

(6) If the publication of a work is decisive for the start of the period of duration of economic rights, and the work is being published over a certain period of time in volumes, parts, instalments, issues or episodes, the period of duration of the economic rights shall run for each such item of the work separately.

(7) The period of duration of economic rights shall be calculated always from the first day of the year following the year in which the event decisive for its calculation occurred.

SECTION 7

Work in Public Domain and Making the Work in Public Domain Public for the First Time

Article 28

(1) A work for which the period of duration of economic rights has expired may be utilised by anybody without any further provision; this shall be without prejudice to the provisions of Paragraph (2) and of Article 11 (5), first sentence.

(2) Whoever first makes public a still unpublished work for which the period of duration of economic rights has already expired shall be entitled to exclusive economic rights to the work thus made public as would have been enjoyed by the author of the work if the economic rights to the work were still in effect.

(3) The right pursuant to Paragraph (2) shall run for 25 years from making the work public. The provisions of Article 27 (7) shall apply *mutatis mutandis*.

Volume 4

Exceptions and Limitations to Copyright

SECTION 1

General Provisions

Article 29

(1) Copyright exceptions and limitations shall only be applied in certain special cases specified herein and only if the use of a work in such special cases shall not conflict with the normal exploitation of the work and shall not unreasonably prejudice the legitimate interests of the author..

(2) Free uses and compulsory licences, except official and reporting licences (Article 34), licence for a school work (Article 35 3), licence for temporary reproductions (Article 38a), licence for photographic portrait (Article 38b) and licence for immaterial accessory exploitation of the work (Article 38c), shall only apply to works that have been made public.

SECTION 2

Free Uses and Compulsory Licences

Article 30

Free Uses

(1) Not considered as exploitation of a work under this Act shall be its use for personal needs by a natural person without seeking to achieve direct or indirect economic benefit, unless otherwise specified herein.

(2) Copyright shall therefore not be infringed by anybody who for his own personal use makes a fixation, reproduction or imitation of a work.

(3) Unless otherwise stipulated herein, use under this Act shall also cover the cases where a computer program or an electronic database is used to serve a natural person to meet his personal needs or a legal person or sole trader for their own internal use, including the making of reproductions of such works for such needs and uses; use under this Act shall likewise cover the cases where a reproduction or imitation of a work of architecture is made in the form of a building also to serve a natural person for his personal use or a legal person or sole trader for their own internal use (Article 30a) and where a fixation of an audiovisual work is made while it is performed from a fixation or during its transmission (Article 20) also to meet the personal needs of a natural person.

(4) A reproduction or imitation of a work of fine arts made from a natural person's personal use in accordance with Paragraph (1) above shall always be visibly designated as such.

(5) A reproduction made for personal use by a natural person in accordance with Paragraph (1) above may not be used for any purpose other than indicated therein.

(6) The provision contained in Paragraph (1) shall be without prejudice to the provisions of Articles 25, 43 and 44.

Article 30a

Reproduction on Paper or Other Similar Base

(1) Copyright is not infringed by:

- a) a natural person who for its own personal use,
- b) a legal person or a sole trader who for their own internal use,
- c) anybody, who upon order, for personal use by a natural person,
- d) anybody, who upon order, for a legal person's or a sole trader's own internal use

makes a printed reproduction of a work on paper or other similar base by the photographic technique or by any other process with similar effects, except where a printed reproduction is made of the musical notation of a musical work or musical – dramatical work and where – in cases under Clauses (c) and (d) above – the remuneration is paid in a regular and timely manner in accordance with Article 25.

(2) Provisions of Article 30 (4) to (6) shall apply *mutatis mutandis*.

Article 30b

Copyright is not infringed by anybody who uses a work to the necessary extent in connection with the demonstration or repair of a equipment for a customer.

Article 31

Quotations

(1) Copyright is not infringed by anybody who:

- a) In his own work uses to a justified extent excerpts from works of other authors which were made public;
- b) Uses excerpts from a work, or small works in their entirety, for the purposes of critique or review related to such a work and for the purposes of scientific or technical work and such use being made to the extent complying with fair practices and required by the specific purpose;
- c) Uses the work while teaching for illustration purposes or during scientific research, without seeking to achieve direct or indirect economic or commercial advantage and without exceeding the extent adequate to the given purpose;

however, if possible, the name of the author, unless the work is an anonymous work, or the name of the person under whose name the work is being introduced in public and the title of the work and source, shall always be indicated, .

(2) Copyright shall likewise not be infringed by anybody who makes further use of excerpts from a work, or small works in their entirety, as referred to in Paragraph (1) (a) or (b); provisions of Paragraph (1) after the semicolon shall apply *mutatis mutandis*.

Article 32

Promotion of Exhibition of Works of Art and Sale Thereof

(1) Copyright shall not be infringed by anybody, who for the purposes of promoting an exhibition or sale of originals or reproductions of works of art, uses such works to the extent necessary for the promotion of such an event and shall not use them in any other way for direct or indirect economic or commercial advantage. If usual, the name of the author, unless the work is an anonymous work, or the name of the person under whose name the work is being introduced in public, the title of the work and source shall always be indicated.

(2) In accordance with Paragraph (1) above, the catalogue of the exhibited works may be used further.

Article 33

Use of a Work Located in Public Place

(1) Copyright is not infringed by anybody who records or expresses by drawing, painting, graphic art, photography or film a work permanently located on a square, in a street, in a park, on a public route or in any other public place; copyright shall likewise not be infringed by anybody who further uses a work so expressed, rendered or recorded. If possible, the name of the author (unless the work is an anonymous work) or the name of the person under whose name the work is being introduced in public, the title of the work and its location shall be indicated.

(2) The provisions of Paragraph (1) shall not apply to making a reproduction or imitation of a work of architecture in the form of erecting a building and to the reproduction and distribution of a work in the form of a three-dimensional reproduction.

Article 34

Official and Reporting Licences

Copyright is not infringed by anybody who uses:

- a) to a justifiable extent a work on the basis of law for purposes of public security, for court or administrative proceedings or for any other official purpose, or for parliamentary procedures and for taking minutes thereof;
 - b) a work within the course of reporting on current events to an extent adequate to the informative purpose;
 - c) to a justifiable extent, a work in periodical press or in broadcasting or in any other mass media providing the reporting on current political, economic or religious matters that have already been published via any other mass communication media – or the translation thereof; a work so borrowed or the translation thereof may also be used otherwise; however, a work may not be so borrowed or further used if such borrowing or further use is explicitly forbidden;
 - d) a political speech or passages of a public lecture or similar works, to an extent adequate to the informative purpose; this shall be without prejudice to the author's right to the use of such works in collection;
- in cases under b) to d), the name of the author (unless the work is an anonymous work) or the name of the person under whose name the work is being introduced in public, shall always be indicated; the title of the work and the source shall also be indicated, unless this is impossible in cases under b) and d).

Article 35

Use of Work as Part of Civil and Religious Ceremonies or as Part of Official Events Organised by Public Authorities or during School Performances, and Use of School Work

(1) Copyright is not infringed by anybody who uses a work during civil or religious ceremonies or during official events organised by public authorities, provided that this is not done for the purpose of any direct or indirect economic or commercial advantage.

(2) Copyright is not infringed by anybody who uses a work during school performances performed exclusively by the pupils, students or teachers of the school or of the school-related or educational establishment, provided that this is not done for the purpose of any direct or indirect economic or commercial advantage.

(3) Copyright is not infringed by a school or school-related or educational establishment if they use for teaching purposes or to meet their own internal needs a work created by a pupil or student as a part of his school or educational assignments ensuing from his legal relationship to his school or the school-related or educational establishment (school work), provided that this is not done for the purpose of any direct or indirect economic or commercial advantage.

(4) The provision of Article 31 (1) of the sentence following the semicolon shall apply, *mutatis mutandis*, to Paragraphs (2) and (3).

Article 36

Limitation of Copyright to Collection of works

Copyright to a collection of works shall not be infringed by the legitimate user of the collection of works if he uses such work for the purposes of accessing its content and for the normal exploitation of its content.

Article 37

Library Licence

(1) Copyright is not infringed by a library, archive, museum, gallery, school, university and other non-profit school-related and educational establishment⁴⁾:

- a) if it makes a reproduction of a work for its own archiving and conservation purposes, and if such a reproduction does not serve any direct or indirect economic or commercial purpose;
- b) if it makes a reproduction of a work whose reproduction has been damaged or lost, provided that it is possible to verify with the exertion of reasonable effort that it is not being offered for sale, or a print reproduction of a minor part of the work, if such part has been damaged or lost; it may also lend such a lawfully made reproduction in accordance with Paragraph (2) below;
- c) if it makes available a work, including the making of a reproduction needed for such availability, which constitutes a part of its collections and the use thereof is not subject to purchase or licensing terms, except the communication of the work in the way specified in Article 18 (2), to members of the public by dedicated terminals located on its premises, such a work being so made available exclusively for the purposes of research or private study of such members of the public, provided that such members of the public are prevented from making reproductions of the work; this is without prejudice to the provisions of Article 30a (1) (c) and (d);
- d) if it lends the originals or reproductions of defended degree theses, dissertations, doctoral and post-doctoral theses to on -the-spot reference use, provided that it shall do so exclusively for the purposes of research or private study, and also provided that the author did not exclude such use.

(2) Copyright is not infringed by a person referred to in Paragraph (1) above where such a person lends the originals or reproductions of published works, if the remuneration that is due to the authors from the person indicated in the Annex to this Act is paid in the amount also indicated in that Annex. The author shall not be entitled to the remuneration if the published works are lent hereunder to on-the -spot reference user if the originals or reproductions of the published works are lent by school and university libraries, the National Library of the Czech Republic, the Moravian Land Library in Brno, the State Technical Library, National Medical Library, the Comenius National Pedagogical Library, Library of the Institute of Agricultural and Food Information, Library of the National Film Archive and the Library of the Parliament of the Czech Republic.

(3) Provisions of Paragraph (2) above shall not apply to the reproductions of works recorded in audio or audiovisual form, unless such works are lent to on-the-spot reference use. The person referred to in Paragraph (1) shall in such a case of lending prevent the possibility of making reproductions of the lent work fixed in audio or audiovisual fixation.

⁴⁾ Act No. 257/2001 on Libraries and on the Conditions of the Provision of Library and Information Services (the Library Act), as amended; Act No. 122/2000 on the Protection of Collections of Museum Nature and on Amendment to Certain Other Acts, as amended; Act No. 499/2004 on Archives and the Filing Service and on Amendment to Certain Other Acts, as amended; Act No. 561/2004 on Pre-school, Elementary, Secondary, Higher-level Professional and Other Education (the School Act), as amended; Act No. 111/1998 on Universities and on Amendment to Certain Other Acts (the University Act), as amended.

(4) Copyright is not infringed by a person referred to in Paragraph (1) above who, for the purpose of offering to lend and make available the content of its collections, uses a reproduction of a work or any part of it that was contained on the envelope, also possibly including indication of the thematic content of the work in the catalogue of the collections; such a catalogue of collections may also be made available to the public, provided that the possibility of making reproductions of the work is prevented, where such a reproduction might be used for direct or indirect economic or commercial advantage. The person referred to in Paragraph 1 above shall always indicate in the collection catalogue the name of the author, if possible, unless the work is an anonymous work, or the name of the person under whose name the work is being introduced in public.

(5) The person referred to in Paragraph 1 above shall upon request, if such a request may fairly be posed, submit information on the number of loans to the relevant collective rights manager, as well as the information the collective rights manager may need to be able to allocate the remuneration, and shall always do so in a summarised manner for the entire year not later than by the end of the subsequent calendar month.

Article 38

Licence for Disabled

(1) Copyright is not infringed by anybody who:

- a) exclusively for the benefit of people with disability and not for the purpose of direct or indirect economic or commercial advantage, makes a reproduction or has a reproduction made of a published work to the extent required by the specific disability; a reproduction so made may also be distributed and communicated by the same person, unless this is done for the purpose of direct or indirect economic or commercial advantage;
- b) exclusively for the benefit of people with vision disability and not for the purpose of direct or indirect economic or commercial advantage, provides the verbal expression of the visual component and adds it to the audio component of an audiovisual recording of an audiovisual work; the audio component of the audiovisual recording of an audiovisual work may also be reproduced, distributed and communicated by the same person, unless this is done for the purpose of direct or indirect economic or commercial advantage.

(2) Copyright is not infringed by the person referred to in Article 37 (1), if the originals or reproductions of published works are lent to meet the needs of people with disability in connection with their disability.

(3) Provisions of Article 30 (5) shall apply *mutatis mutandis*.

Article 38a

Licences for temporary Reproductions

(1) Copyright is not infringed by anybody who performs temporary acts of reproduction of works that are transient or incidental and represent an integral and essential part of a technological process which have no any independent economic significance, and whose sole purpose is to enable:

- a) Transmission of the work by an intermediary between third parties through a computer network or any other similar network; or
- b) Lawful use of the work.

(2) If the author grants permission, on a contractual basis, for the broadcasting of his work, his copyright shall not be infringed by the radio or television broadcaster that makes an ephemeral recording, using its own facilities for his own broadcasting.

Article 38b

Licence for Photographic Portrait

Copyright is not infringed by anybody who makes a reproduction of a photographic work that is his own portrait and that he commissioned to be made for a consideration; a reproduction made in this way may also be used by the portrayed person for non-commercial purposes, unless such use is forbidden.

Article 38c

Incidental Use of a Work

Copyright is not infringed by anybody who uses a work incidentally, in connection with an intended primary use of another work or element.

Article 38d

Licence to Works of Applied Art and Works of Architecture

Copyright is not infringed by anybody (who):

- a) leases, lends or exhibits the original or reproduction of a work of applied art expressed in its applied form or an work of architecture expressed in the form of erecting a building;
- b) designs or executes to a necessary extent a change to a completed building in which an work of architecture is expressed, and provided that the value of such work is preserved; if justified by the importance of the work of architecture and if such a request may fairly be posed, such a person shall notify his intention in advance to the author and shall upon request provide the author with the documentation of the building, including pictures that show the state before the changes.

Article 38e

Licences for Social Facilities

Copyright is not infringed by a health-care or social institution that was founded or established for non-commercial purposes, particularly hospitals and prisons, which make reproductions of broadcasted works and perform such reproduced works to the persons located in such institutions to the extent adequate to the purpose of this licence. This shall be without prejudice to the right to remuneration under Article 25.

Article 39

Use of an Original or a Reproduction of Work of Fine Arts or of a Photography or a Work Expressed in Manner Analogous to Photography by its exhibition

Copyright is not infringed by the owner of, or a person who borrows from the owner, the original or reproduction of a work of fine arts or of a photographic work or of a work produced by a process similar to photography, who exhibits such work or provides such work for exhibition free of charge, unless such use was banned by the author during the transfer of ownership to such an original or reproduction of the work, and the owner or borrower were aware of or must have been aware of the ban particularly because of the inscription of the ban in the register maintained for that purpose by the collective rights manager.

VOLUME 5

Copyright Protection

Article 40

(1) An author whose rights have been infringed or whose rights have been exposed to danger of infringement may claim, in particular:

- a) Recognition of his authorship;
- b) Prohibition of the exposure of his right, including impending repetition of exposure, or of the infringement of his right, including, but not limited to, the prohibition of the unauthorized production, unauthorized commercial sale, unauthorized import or export of the original or reproduction or imitation of his work, unauthorized communication of the work to the public, as well as its unauthorized promotion, including advertising and other forms of campaigns;
- c) Disclosure of details concerning the way and extent of unauthorised use, the origin of the illicitly made reproduction or imitation of his work, the way and extent of the use thereof, the price thereof, the price of the service related to the unauthorised use of the work, and the identity of the persons involved in the unauthorised use, also including the persons for whom such reproductions or imitations were designated for the purpose of the provision thereof to a third party; the author may claim his right to information under

this provision from the person who infringed or exposed his right and also, in particular, from the person who:

1. possesses or possessed an illicitly made reproduction or imitation of the author's work for the purpose of direct or indirect economic or commercial advantage;
 2. makes or made use, for the purpose of direct or indirect economic or commercial advantage, of any service that infringes or infringed the author's right, or that exposes or exposed it to danger;
 3. provides or provided, for the purpose of direct or indirect economic or commercial advantage, a service used within activities that infringe or infringed the author's right, or that expose or exposed it to danger;
 4. has been identified by a person referred to under Items 1, 2 or 3 above as a person involved in the obtaining, production or distribution of a reproduction or imitation of the work or as a person involved in the provision of services that infringe the author's right, or that expose it to danger;
- d) Remedying the consequences of the infringement of his right, including, but not limited to:
1. recall of the illicitly made reproduction or imitation of the work, or the device, product or component referred to in Article 43 (2) from channels of commerce or any other use;
 2. definitive removal from channels of commerce, and destruction, of the illicitly made reproduction or imitation of the work, or the device, product or component referred to in Article 43 (2);
 3. destruction of the illicitly made reproduction or imitation of the work, or the device, product or component referred to in Article 43 (2);
 4. destruction or removal of the materials and tools used exclusively or for the most part for producing the illicitly made reproduction or imitation of the work, or the device, product or component referred to in Article 43 (2);
- e) Adequate satisfaction for the non-financial damage, in particular, in the form of:
1. apology
 2. pecuniary satisfaction, if any other satisfaction proves unsatisfactory; the amount of the pecuniary satisfaction shall be determined by a court, which shall take into account, in particular, the gravity of the damage incurred and the circumstances in which the infringement of the right occurred; this shall not preclude an agreement to settle mutual obligations;
- f) Ban on the provision of the service used by third parties to infringe the author's right or expose it to danger.

(2) The measures under Paragraph (1) (d) have to be proportionate to the gravity of the infringement of the right and shall be imposed with respect to the interests of third parties particularly consumers and persons acting in good faith.

(3) The court may recognise in its judgment the right of the author, whose claim has been acquitted, to publicize the decision at the expenses of the unsuccessful party and, depending on circumstances, also determine the scope, form and way of such publication.

(4) The claim for damages and for unjust enrichment pursuant to a special law shall remain unaffected; *in lieu* of the actual loss of profit, the author may claim compensation for the loss of profit in an amount that would have been normally paid for obtaining the respective licence at the time of unauthorised disposition of the work. The amount of unjust enrichment gained on the part of whoever unlawfully disposed of the work without being granted the necessary licence shall be deemed to be double the remuneration that would have been awarded under normal conditions at the time of unauthorised disposition of the work.

Article 41

Where the author grants another person exclusive authorisation to exercise the right to use the work, or where such a person enjoys the exercise of economic rights on a statutory basis, the right to lodge claims in accordance with Article 40 (1) (b) to (d) and (2) and (3) shall only pertain to the person whose exclusive authorisation acquired thus by contract or by statute has been exposed to danger or infringed; the entitlement of the author to make the remaining claims, as well as in this context the claim pursuant to Article 40 (2), shall remain unaffected.

Article 42

(1) The author may require the customs authorities and the authorities responsible for the state statistical service to provide him with information on the content and extent of imports or receiving of a commodity that:

- a) is a reproduction of his work or an audio, audiovisual or any other fixation of such work;
- b) is intended to serve as a carrier for the making of such a reproduction (blank record carrier);

- c) is a device for making audio or audiovisual or other fixations or printed copies; or
- d) is a device, product or component defined in Article 43 (2);

and shall have access to the customs and statistical documents to the extent necessary to find out whether the import or receiving of such commodities for utilization in the entire territory of the Czech Republic is in compliance with this Act, or to learn details necessary for the enforcement of rights ensuing from this Act, or to learn the data needed for claiming the rights ensuing hereof.

(2) Provisions of Paragraph (1) shall apply, *mutatis mutandis*, to the export or dispatch of the goods.

(3) The information referred to in Paragraphs (1) and (2) may also be requested by the relevant collective rights manager as well as by the legal person authorised to defend the interests of authors, or the persons entitled on a statutory basis to exercise the economic rights in respect of the work (Article 58) or enjoying exclusive authorisation on a contractual basis.

Article 42a

(1) In exercising supervision and control based on a special legal regulation^{4b)}, the customs authority may detain any item where it suspects that the holder of that object infringes copyright hereunder, if such an item represents the goods of the Community^{4c)}, and may do so for a period not longer than 1 month of the date of issue of the decision on the detention. The period referred to in the previous sentence may be exceeded if in relation to the detained item a motion for preliminary ruling has been filed, or a claim was lodged hereunder, and the respective decisions are still pending. There is no possibility to appeal against the decision on the detention of an item.

(2) The customs authority that detained an item under Paragraph (1) above shall forthwith deliver a written notification of the detention of the item to the author, the relevant collective rights manager; to the legal person authorised to defend authors' interests or to the persons having the statutory authorisation to exercise the economic rights in respect of the work. Such a notification shall simultaneously be delivered by public notice for a period of at least 15 days.

(3) Not later than within 15 days of the delivery of the notification of the detention of the item shall the author, the relevant collective rights manager, the legal person authorised to defend authors' interests or the person having the statutory authorisation to exercise the economic rights in respect of the work, notify the customs authority in writing whether he intends to bring his claim for copyright protection before a court. If within that period he states in writing that he shall not intend to bring his claim before the court or if the period specified in the first sentence lapses to no effect, the customs authority shall return the detained items to the person from whom those items were seized; such a person shall not be entitled to compensation from the government for loss of his property.

(4) If the court decides lawfully that copyright was infringed, the customs authority shall deliver the detained items to the person who sought copyright protection in the court, and shall make a record thereof in the files. All the costs connected with the detention, storage and delivery of the detained goods shall be paid by the person from whom the items were seized.

(5) The customs authority shall impose the costs referred to in Paragraph (4) above by decision. Appeal against the decision of the customs authority has no suspending effect. The costs shall fall due within 30 days of the date of delivery of the decision. If the costs are not paid by the due date, the customs authority that imposed those costs shall collect and recover them in accordance with a special legal regulation governing tax administration. Such collected costs are an income to the national budget.

Article 43

(1) Copyright is infringed by anybody who circumvents effective technical measures that are in place to protect rights under this Act.

(2) Copyright is also infringed by anybody who manufactures, imports, receives, distributes, sells, rents, advertises for sale or rental, or possess for commercial purposes any devices, products or components, or provides services, that:

- a) are promoted, advertised or marketed for the purpose of circumvention of effective technical measures;

^{4b)} Act No. 185/2004 on the Customs Administration of the Czech Republic, as amended

^{4c)} Article 4 Paragraph 3 of Council Regulation (EEC) 2913/92 of 12 October 1992, establishing the Community Customs Code.

- b) have only a limited commercially significant purpose or use other than the circumvention of the effective technical measures; or
- c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of the effective technical measures.

(3) For the purposes of this Act, the expression effective technical measures means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, which are not authorised by the author, if the author can control the use of a protected work through application of an access control or protection process, such as encryption, scrambling or other transformation of the work, or a copy control mechanism.

(4) Legal protection under Paragraph (1) above shall be without prejudice to the provisions of Article 30a, Article 31 (1) (b), Article 34 (a), Article 37 (1) (a) and (b), Article 38, Article 38a (2) and Article 38e, to the extent necessary to benefit from the exception. An author who used technical measures under Paragraph (3) in respect of his work shall make his work available to lawful users to the extent necessary to fulfil the purpose of the stated exploitation of the work. The author may make available his work, for which he used the technical measures referred to in Paragraph (3), even in the case that a reproduction of his work for private use has already been made under Article 30; this shall not prevent the author from adopting adequate measures regarding the number of such reproductions.

(5) Provisions of Article 4 shall not apply to works made available by the author or with his consent in the way specified in Article 18 (2).

(6) The technical measures designed to fulfil the obligations under Paragraph (4), taken by the author voluntarily or on a contractual basis, shall enjoy the protection provided for in Paragraphs (1) to (3).

Article 44

(1) Copyright is also infringed by anybody who without the author's consent induces, enables, facilitates or conceals the infringement of copyright by:

- a) Removing or altering any electronic rights-management information; or
- b) Distributing, importing or receiving for distribution purposes, broadcasting or communicating to the public in the way referred to in Article 18 (2) a work whose electronic rights-management information was without authority removed or altered.

(2) The rights-management information, as referred to in Paragraph (1), is any information provided by the author to identify the work, the author or any other rightholder, or information concerning the ways and conditions of using the work, and any numbers or codes that represent such information. The same applies to the information which is associated with a reproduction of the work or appears in connection with the communication of the work to the public.

Article 45

Copyright is also infringed by anybody who uses for his own work the title or external design that has previously been lawfully used by another author for a work of the same kind, if this could lead to the danger of confusion of the two works, unless otherwise follows from the nature or designation of the work.

VOLUME 6

Types of Agreement

SECTION 1

Licence Agreement

Article 46

General Provisions

(1) Through a licence agreement, the author grants authorisation to the licensee to exercise the right to use the work (licence) in specific ways or in all ways of use to a limited or unlimited extent, and the licensee agrees, unless agreed otherwise pursuant to Article 49 (2) (b), to remunerate the author.

(2) The author may not grant authorisation to exercise the right to use the work in a way that is not known at the time when the agreement is made.

(3) The licensee shall utilise the licence, unless otherwise stipulated in the agreement. This is without prejudice to the provisions of Article 53.

(4) If the licence is granted as an exclusive licence, the agreement must be in writing.

(5) An offer to enter into an agreement is involved even in the cases where the declaration of will is addressed to an indeterminate circle of persons.

(6) With respect to the content of the proposal or to the practice introduced between the parties, or with respect to the generally established practice, the person to whom the offer to enter into an agreement is addressed may express his consent with the offer by carrying out an act without notifying it to the offering party, such an act being based on the offered agreement including, but not limited to the provision or acceptance of a discharge. If such is the case, the acceptance of the offer shall become effective at the moment of carrying out such an act.

Article 47

Exclusive or Non-exclusive Licence

(1) A licence may be granted as an exclusive licence or a non-exclusive licence, unless otherwise provided in a special legal regulation^{4a)}. Unless otherwise follows from the agreement, it shall be deemed that the licence is non-exclusive.

(2) In the case of an exclusive licence, the author may not grant the licence to any third party and shall, unless agreed otherwise, refrain from exercising the right to use the work in the same way to which he granted the licence.

(3) In the case of a non-exclusive licence, the author shall remain authorised to exercise the right to use the work in the way to which he had granted the licence as well as to grant the licence to third parties.

(4) A non-exclusive licence acquired by the licensee before the subsequent granting of an exclusive licence to a third party shall be retained, unless otherwise agreed between the author and the licensee of such a non-exclusive licence.

(5) The agreement by which the author has granted a licence to a third party while an exclusive licence of the licensee to the same way of use of the work is still in effect shall be invalid, unless the licensee of the exclusive licence has given his written consent to such an agreement.

Article 48

Granting Authorisation to Third Party

(1) Where the agreement so stipulates, the licensee may grant an authorisation under the licence in full or in part to a third party (sub-licence). The provisions of Article 46 (3) shall apply *mutatis mutandis*.

(2) The licensee may only assign his licence to a third party with the author's written consent; the licensee must inform the author without undue delay about assigning the licence and the name of the assignee.

(3) The author's consent to the transfer of the licence is not required, unless otherwise agreed, when an undertaking or any part thereof, representing a separate organisation unit, is being sold.

Article 49

Royalty

(1) Unless otherwise provided hereinafter, the agreement shall stipulate the amount of the royalty or at least the way of its determination.

(2) Where the amount of the royalty or at least the way of its determination is not provided for in the agreement, the agreement shall be invalid, with the exception of cases where:

- a) The will of the parties to conclude an agreement for a consideration without determining the amount of the royalty ensues from the negotiations between the parties on entering into the agreement; in such a case the

^{4a)} Section 14a Subsections (3) and (4) of Act No. 106/1999 on Free Access to Information, as amended by Act No. 61/2006.

licensee shall pay royalty to the author in an amount usual at the time of the conclusion of an agreement under contractual terms similar in their content to such an agreement for such type of work, or

b) The parties to the agreement agree that the licence is granted gratuitously.

(3) The author who grants a licence for the rental of an original or a copy of a work fixed as an audio or audiovisual fixation to the producer of such a fixation shall be entitled to a reasonable remuneration from the person who rents the original or a copy of the fixed work; the author may not waive this right.

(4) Where the amount of the royalty has been agreed in dependence on the proceeds from the utilisation of the licence, the licensee shall be obliged to make it possible for the author to audit the relevant accounting documents or other documentation in order to establish the real amount of the royalty. Where the licensee thus provides the author with information designated by the licensee as confidential, the author may not divulge such information to any third party, nor use it according to his needs in contravention of the purpose for which it has been made available to him.

(5) The licensee shall submit to the author, at agreed time intervals, regular financial statements of the royalty referred to in Paragraph (4) above; unless otherwise agreed, he shall do so at least once a year.

(6) Where the amount of the royalty has not been derived from the proceeds from the utilization of the licence and where such an amount is so low that it is in obvious disproportion to the profit from the utilisation of the licence and to the importance of the work for the achievement of such profit, the author shall be entitled to an equitable supplementary royalty.

(7) During negotiations on the royalty, heed shall be taken of the purpose of the licence and the manner and circumstances of the use of the work and the scope of the licence in terms of territory, time and quantity.

Article 50

Limitations of Licence

(1) A licence may be limited to individual ways of use of the work; the ways of use of the work may be limited in scope, particularly in terms of quantity, location or time.

(2) Where the agreement does not stipulate the individual ways of use of the work or the scope of use for which the licence is being granted, the licence shall be deemed to have been granted for such ways of use and within such scope as would be necessary for achieving the purpose of the agreement.

(3) Unless otherwise provided in the agreement, or unless otherwise implied by its purpose, it shall be deemed that:

a) The territorial scope of the licence is limited to the territory of the Czech Republic;

b) The time scope of the licence is limited to the normal time for the given type of work and way of use, however not longer than one year from the date on which the licence was granted; where the work ought to be delivered only after the granting of the licence, the term shall be one year from the date of delivery;

c) The quantity scope of the licence is limited to the normal quantity for the given type of work and way of use.

(4) Unless otherwise provided in the agreement, the licence to reproduce a work shall imply the authorisation to make direct and indirect, permanent and temporary reproductions, in whole or in part, by any means and in any form; in the case of reproductions in electronic form this shall include both on-line and off-line reproductions.

(5) Unless otherwise provided in the agreement, the licence to reproduce a work shall include the licence to distribute the reproductions thus made.

Article 51

Limitations on Licensee's rights

The licensee may not adapt or otherwise alter a work, its title or indication of the author, unless otherwise agreed or unless the adaptation or other alteration of the work or of its title is of such a kind where it is possible to reasonably expect that the author would, in view of the circumstances of use of the work, give his consent; even in the latter case, however, the licensee may not alter the work or its title if the author has reserved his consent also for such alterations and the licensee has been notified of such a reservation. This shall apply, *mutatis mutandis*, where the work is combined with another work or is included in a collection of works.

Article 52

Reproductions for Author

Where it can be fairly required of the licensee, and if this is a normal custom, the licensee shall, at his own cost, provide the author with at least one reproduction of the author's work from among the reproductions made by the licensee on the basis of the relevant licence.

Article 53

Withdrawal from Agreement Due to Inactivity of Licensee

(1) Where the licensee of an exclusive licence does not utilise the licence at all or utilises it insufficiently, and where this has a considerable adverse effect on the legitimate interests of the author, the author may withdraw from the agreement. This shall not apply in the case where the non-utilisation or insufficient utilisation of the licence has been caused by circumstances mainly on the part of the author.

(2) The author may withdraw from the agreement for reasons referred to in Paragraph (1) only after urging the licensee to utilise the licence adequately within a reasonable period after being so urged, and after the licensee's failure to utilise the licence sufficiently in spite of being so urged. In his notice the author shall draw the licensee's attention to the possibility of withdrawal from the agreement after the reasonable period being expired in vain. The notice is not required where the utilisation of the licence by the licensee is not possible or the licensee has declared that he will not utilise the licence.

(3) Unless otherwise provided in the agreement, the author may not apply the right to withdraw from the agreement pursuant to Paragraph (1) earlier than two years after the granting of the licence and where the work is to be delivered only after the granting of the licence the period shall commence on the date of such a delivery; in the case of contributions to daily periodicals this period shall be three months, in the case of other periodicals one year. Where an urging notice pursuant to Paragraph (2) is required to be submitted before withdrawal from the agreement, not even such an urging notice may be made before the passage of the stipulated period.

(4) The agreement shall expire on the day of delivery of the withdrawal notice to the licensee.

(5) Where reasons worthy of special consideration exist, the author shall be obliged to compensate the licensee for the damage caused by his withdrawal from the agreement. The reasons for which the licensee has not utilised the licence adequately shall, in particular, be taken into account.

(6) Where the licence has not been utilised at all, the author shall return to the licensee the royalty he had received from him on the basis of the agreement from which he is withdrawing; where the licence has only been utilised insufficiently, the author shall return the royalty minus the amount falling to the share of actually implemented utilisation, taking into account the proportion of the licence utilisation actually implemented and the proportion of licence utilisation provided for in the agreement or in law.

(7) Where the licensee has been obliged to use the licence but failed in this obligation, the author's entitlement to the royalty shall remain unaffected by his withdrawal from the agreement pursuant to Paragraph (1); where the amount of the royalty has been agreed in dependence on the proceeds from the use of the work, it shall be deemed that the author is entitled to royalty in an amount equal to that to which he would be entitled if the licensee sufficiently utilised the licence during the period prior to the author's withdrawal from the agreement.

Article 54

Withdrawal from Agreement Due to Change of Author's Conviction

(1) The author may withdraw in writing from the agreement if his work, which has not yet been made public, no longer corresponds with his conviction, and where the making public of the work would have a significant adverse effect on his legitimate personal interests. The agreement shall expire at the date of the delivery to the licensee of the written notice of withdrawal from the agreement.

(2) The author shall compensate the licensee for the damage the licensee may have suffered due to the author's withdrawal from the agreement pursuant to Paragraph (1) above.

(3) Where after withdrawal from the agreement pursuant to Paragraph (1) the author expresses renewed interest in the exploitation of the work, he shall first offer the licence to the licensee and shall do so under conditions comparable to those agreed originally.

(4) Provision of Article 53 (7) shall apply *mutatis mutandis*.

Article 55

Termination of Licence

Upon the death of the natural person or dissolution of the legal person to whom the licence was granted, the rights and obligations under the licence agreement shall pass on to his/its successor in title. The licence agreement may eliminate such transfer of rights and obligations to the successor in title.

SECTION 2

Special Provisions on Publisher's Licence Agreement

Article 56

1) Any licence agreement by which the author grants the licensee a licence to reproduce and distribute a literary work musical-dramatical or musical work, a work of fine arts, a photographic work or a work expressed by a process similar to photography, unless the work is used in a performance by performers, shall be a publisher's licence agreement.

(2) Unless otherwise follows from the agreement, the licence shall be deemed to have been granted exclusively; this shall not apply where the work is reproduced and distributed in a periodical publication.

(3) Unless otherwise provided in the agreement, the author shall be entitled to make, before the publication of the work and within a reasonable period granted by the licensee, small creative changes to the work, provided that such changes do not give rise to unreasonable costs for the licensee, or if they do not change the nature of the work (author's corrections).

(4) Where the licensee does not make it possible for the author to make author's corrections, the author may withdraw from the agreement if the consequence would be the use of the work in a way detracting from its value.

(5) If the quantity scope of the licence has been limited to a certain number of reproductions, and such reproductions have gone out of print before the expiry of the period for which the licence was granted, then, unless the parties agree on extending the quantity scope within six months from the date on which the author invited the licensee to make such a change to the agreement, the licence shall terminate, if it is still in effect, upon the period being expired in vain.

SECTION 3

Sublicence Agreement

Article 57

Provisions of Articles 46 to 56 shall apply, *mutatis mutandis*, to the sub-licence agreement.

VOLUME 7

Special Provisions on Certain Works

Article 58

Employee Work

(1) Unless otherwise agreed, the author's economic rights to a work created by the author in fulfilling his duties arising from the employment or civil service contract with the employer or from an employment relationship between a cooperative and its member (hereinafter referred to as employee work) shall be exercised by the employer in his own name and on his own account. The employer may only assign the exercise of the right pursuant to this paragraph to a third party with the author's consent, unless this occurs when an undertaking or any part thereof is being sold.

(2) In the event of the death or dissolution of the employer who has been authorised to exercise the economic rights to an employee work and who has no successor in title, the authorisation to exercise these rights shall be acquired by the author.

(3) Where the employer does not at all exercise the economic rights to an employee work, or exercises them inadequately, the author may request the employer to grant him the licence under normal conditions, unless there is a serious reason on the part of the employer to decline from doing so.

(4) The author's moral rights to an employee work shall remain unaffected. Where the employer exercises the economic rights to an employee work it shall be deemed that the author has given his consent to the work's being made public, altered, adapted (including translation), combined with another work, included into a collection of works and, unless agreed otherwise, also presented to the public under the employer's name.

(5) Unless otherwise agreed, it shall be deemed that the author has given the employer his consent to complete his unfinished employee work in the case that his employment contract expires sooner than the work is completed, as well as in the case of justified concerns that the employee will be unable to complete the work duly and timely in accordance with the employer's needs.

(6) Unless otherwise agreed, the author of an employee work is entitled to an equitable supplementary remuneration from the employer if the wage or any other compensation paid to the author by the employer is in evident disproportion to the profit from the utilisation of the rights to the employee work and to the importance of such work for the achievement of this profit; this provision shall not apply to works referred to in Paragraph (7), irrespective of whether they are actual employee works or are just considered as such, unless agreed otherwise.

(7) Computer programs and databases, as well as cartographic works that are not collective works, shall also be deemed employee works where they have been created by the author to order; the person who ordered them shall in such case be considered an employer. The provisions of Article 61 shall not apply to such works.

(8) The rights and obligations under Paragraphs (1) to (6) shall remain unaffected upon the termination of the contractual relation referred to in Paragraph (1) or Paragraph (7).

(9) In the case of agency employment^{4d)}, the employer for whom the recruitment agency employee temporarily works under employment contract or contract for work shall be deemed to be the employer for the purposes of this provision, unless otherwise agreed between the recruitment agency and such an employer.

(10) Provisions of Paragraphs (1) to (6) and Paragraph (8) shall apply, *mutatis mutandis*, to the works created to fulfil the obligations based on the relationships between a company and an author who himself is the company's statutory body or is a member of a statutory or any other body of a company, or member in a public limited company, or unlimited partner in a limited partnership^{4e)}; in such a case, the company is considered to be the employer. The previous sentence shall apply, *mutatis mutandis*, to other legal persons and other authors who are their statutory bodies or members of statutory bodies. Provisions of Article 61 do not apply to the works created in accordance with this Paragraph.

Article 59

Collective Work

(1) A collective work is a work that is created by more than one author on the initiative and under the management of a natural person or legal person, and is made public under that person's name, provided that the contributions involved in such work are not capable of independent use.

(2) Collective works shall be deemed employee works pursuant to Article 58 in the case that they have been created to order; the person who has made the order shall in such cases be considered the employer. The provision of Article 61 shall not apply to these works.

(3) An audiovisual work and works used audiovisually are not collective works.

Article 60

School Work

(1) A school or a school-related or educational establishment shall have the right to conclude, under usual terms, a licence agreement on the utilisation of a school work [Article 35 Paragraph (3)]. Where the author of

^{4d)} Labour Code.

^{4e)} Section 66 (2) of the Commercial Code.

such a work withholds his permission without stating a serious reason, such entities may claim compensation for the absence of manifestation of the author's will in court. This is without prejudice to the provisions of Article 35 Paragraph (3).

(2) Unless otherwise agreed, the author of a school work may use his work or may grant the licence to any other party, unless this contravenes the legitimate interests of the school or school-related or educational establishment.

(3) The school or the school-related or educational establishment shall be entitled to claim an adequate contribution to be provided by the author of the school work from the income earned by him in connection with the exploitation of the work or with the granting of the licence pursuant to Paragraph (2) to cover the cost incurred by them in creating the work. Depending on the circumstances, the contribution may be up to the full amount of such costs. The amount of the contribution shall be determined with respect to the proceeds earned by the school or the school-related or educational establishment from the utilisation of the school work pursuant to Paragraph (1) above.

Article 61

Work Created on Order and Work Created for Competition

(1) If a work is created by the author on the basis of a contract for work (a work created to order), then, unless otherwise agreed, it shall be deemed that the author has granted a licence for the purpose following from the contract. Unless otherwise provided in this Act, the customer may only use the work beyond such a purpose on the basis of a licence agreement.

(2) Unless otherwise agreed, the author may himself use the work made to order and may grant a licence also to another party, provided that this shall not contravene the legitimate interests of the customer.

(3) The provisions of Paragraphs (1) and (2) shall apply *mutatis mutandis*, to the work created by the author as a competitor in a public competition (a work created for a competition).

Audiovisual Work

Article 62

General Provisions

(1) An audiovisual work shall mean a work created by the arrangement of works used audio-visually, adapted or unadapted, consisting of a number of recorded interlinked images evoking the impression of motion, either accompanied by sound or mute, perceivable by sight and, if accompanied by sound, also perceivable by hearing.

(2) A work may only be adapted and included into an audiovisual work with the author's consent.

Article 63

Author of Audiovisual Work

(1) The author of an audiovisual work is the director of that work. This is without prejudice to the rights of the authors of the works used audio-visually.

(2) The statement concerning the audiovisual work and the rights to such work, including the rights relating to its utilisation, which statement is registered in the register of audiovisual works maintained in compliance with the international convention, shall be deemed true, unless the contrary is proved; this shall not apply in cases where a statement cannot be valid according to this Act or where it is contradicted by another statement in such a register.

(3) If the author of an audiovisual work has granted the producer of the first fixation of the audiovisual work a written permission to make a first fixation of the work, then, unless otherwise agreed, it shall be understood that:

- a) He also granted that producer an exclusive and unlimited licence to use the audiovisual work in the original, dubbed and captioned versions as well as to use the photos created in connection with the making of the first fixation, including also the option of granting an authorisation, which is part of such a licence, in entirety or in part to a third party; and that
- b) He agreed with that producer on remuneration in a normal amount within the meaning of Article 49 Paragraph 2 Clause a).

(4) The provisions of Article 54 shall not apply to the relation between the author of the audiovisual work and the producer of the first fixation of the audiovisual work, unless otherwise agreed; the provision of Article 58 Paragraph (4) shall apply *mutatis mutandis*, and the provision of Article 58 Paragraph (5) shall apply similarly.

Article 64

Works Used Audiovisually

(1) If the author of a work utilised audiovisually, with the exception of a musical work, has granted the producer of the first fixation of the audiovisual work a written permission to include the work in an audiovisual work, then, unless otherwise agreed, it shall be understood that he has:

- a) granted that producer an authorisation to include the work without alteration or after adaptation or other change into an audiovisual work, and also to make a first fixation of such an audiovisual work, and to dub it and add captions to it;
- b) also granted the producer the exclusive and unrestricted licence to use the work within the utilisation of an audiovisual work, and also to use the photographs created in connection with the making of a first fixation, including also the option of granting an authorisation, which is part of such a licence, in entirety or in part to a third party; and
- c) agreed with the producer on a remuneration in a normal amount within the meaning of the provision of Article 49 Paragraph (2) Clause a).

(2) Unless otherwise agreed, the author of a work utilised audiovisually pursuant to Paragraph (1) may grant permission for the inclusion of his work in another audiovisual work, or may include it in such a work himself, after expiry of a ten-year period from the granting of the permission pursuant to Paragraph (1).

(3) Provisions of Article 63 Paragraph (4) shall apply *mutatis mutandis*.

Computer Programs

Article 65

General Provisions

(1) A computer program, irrespective of the form in which it is expressed, including preparatory design material, shall be protected as a literary work.

(2) The ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected under this Act.

Article 66

Limitation of Scope of Author's Rights to Computer Program

(1) Copyright is not infringed by a lawful user of a computer program reproduction, if he:

- a) reproduces, translates, adapts, arranges or otherwise alters the computer program if necessary for the utilisation of a lawfully acquired computer program, provided that he shall do so during the loading and operation of the computer program or while correcting computer program errors;
- b) otherwise reproduces, translates, adapts, arranges or alters in any other way a computer program if necessary for the utilisation of a lawfully acquired computer program in accordance with its purpose, unless otherwise agreed;
- c) makes a back-up copy of the computer program, if necessary for its exploitation;
- d) examines, studies or tests, by himself or through another person on his behalf, the functionality of the program in order to identify the ideas and principles underlying any element of the program, provided that he shall do so while performing any of the acts of the program's loading, storing, displaying, running or transmitting, for which he is authorised;
- e) reproduces the code or translates its form during the reproduction of the computer program or during its translation or any other adaptation, adjustment or other alteration, for which he is authorized, doing so either by himself or through another person on his behalf, if such reproduction or translation is necessary to obtain the information needed to achieve the interoperability of an independently created computer program with other programs, where the information needed for the achievement of interoperability is not otherwise

easily and promptly available to such persons and such activity is restricted to those parts of the computer program that are necessary for the achievement of interoperability.

(2) The making of a reproduction needed for the loading and storage of the computer program into the memory of the computer, as well as for its display, running and transmission, shall also be deemed computer program reproduction in accordance with this act.

(3) Rental or lending of a computer program reproduction where the program itself is not a substantial object of the rental or lending shall not be considered as rental or lending hereunder.

(4) The information acquired during activities referred to in Paragraph (1) Clause e) may not be disclosed to any third parties, unless such disclosure is necessary to achieve interoperability of an independently created computer program, nor be used for other purposes as to achieve the interoperability of an independently created computer program. Further, such information may not be used for the development, production or marketing of any computer program substantially similar in its expression, or for any other act which endangers or infringes the copyright.

(5) Provisions of Article 29 Paragraph (1) shall apply to the copyright limitations in respect of computer programs, as referred to in Paragraph (1) above.

(6) The lawful user of a computer program reproduction is any lawful acquirer of the computer program reproduction who enjoys ownership rights or any other rights in respect of the computer program reproduction for the purpose of the utilisation thereof and not for the purpose of its further transfer; a lawful licensee or any other person authorised to use the computer program reproduction is also a lawful user of a computer program reproduction. Such a user may utilise the lawfully acquired computer program reproduction within the scope specified in Paragraph (1) above (the minimum scope), unless a wider scope is agreed on a contractual basis; the minimum scope may not be narrowed down on a contractual basis, except in the case of the authorisation referred to in Paragraph (1) Clause b).

(7) Provisions of Articles 30a to 33, Article 34 Clauses b) to d), Articles 35 to 38, Article 38a Paragraph (1) Clause b), Article 38a Paragraph (2), Articles 38b to 39, Article 43 Paragraphs (1) and (4) to (6), and Article 54 shall not apply to computer programs.

(8) Legal protection of the technical measures referred to in Article 43 shall be without prejudice to the provisions of Paragraph (1) Clauses d) and e) within the range essential for making use of such limitations. An author who used in respect of his work the technical measures referred to in Article 43 Paragraph (3) shall make the computer program available to the lawful user within the scope specified in Paragraph (1) and shall label the computer program protected by technical measures by indication of the name and address of the person whom the lawful user shall address for that purpose.

TITLE II

RIGHTS RELATED TO COPYRIGHT

VOLUME I

Rights of Performer to his Artistic Performance

Article 67

Artistic Performance and Performer

(1) An artistic performance is the performance of an actor, singer, musician, dancer, conductor, choirmaster, director or any other person who acts, sings, recites, presents or otherwise performs an artistic work, including works of traditional folk culture. The performance of an artiste, although he shall not perform an artistic work, shall also be deemed an artistic performance.

(2) A performer is the natural person who created the artistic performance.

Article 68

Joint Representative of Performers

(1) Performers shall be represented, on their behalf and on their account, in the exercise of rights to performances created jointly during the performance of the same work by more than one performer, e.g. by members of an orchestra, choir, dance troupe or other artistic corps, by the artistic leader of the ensemble as their

joint representative. The artistic leader of the ensemble shall not be the joint representative where the majority of the members of the artistic ensemble designate another person as their joint representative; to become effective, the authorisation must be in writing and bear the signatures of the majority of the members of the artistic ensemble.

(2) Provision of Paragraph (1) on the joint representative shall not apply to the following performers - soloist, conductor and director of theatrical performance; this shall be without prejudice to the right of such persons themselves to be joint representatives of performers.

Article 69

Content of Performer's Rights

The right of the performer shall include exclusive moral rights (Article 70) and exclusive economic rights (Article 71).

Article 70

Moral Rights of Performer

(1) The performer shall have the right to decide about the making public of his artistic performance.

(2) The soloist, where he creates the performance alone, the conductor, choirmaster, theatre director and soloist, where they create the performance together with the members of an artistic ensemble, shall have the right to decide whether and how their names are to be indicated when their performance is made public and further exploited. Performers as members of an artistic ensemble shall only enjoy the right pursuant to the preceding sentence in respect of the joint name (joint pseudonym) under which they jointly create the performance; this shall be without prejudice to any agreement on the indication of their names pursuant to the preceding sentence.

(3) The performer shall, however, not be entitled to the right pursuant to Paragraph (2) in cases justified by the way of the exploitation of the performance.

(4) The performer shall have the right to protection against any disfigurement, deformation or any other alteration of his performance, which may affect his reputation; performers as defined in Article 68 Paragraph (1) shall be obliged to exercise appropriate mutual consideration.

Article 71

Economic Rights of Performer

(1) The performer shall have the right to use his artistic performance in its original version or in a version adapted or otherwise altered by any other person, and to grant by contract to another person the authorisation to exercise this right; another person may only use the artistic performance without such authorisation in the cases stipulated by this Act.

(2) The right to use an artistic performance shall be understood to mean:

- a) The right to broadcast and otherwise communicate the live performance to the public;
- b) The right to make a fixation of the live performance;
- c) The right to reproduce of the fixed performance;
- d) The right to distribute the reproductions of the fixed performance;
- e) The right of rental of copies of the fixed performance;
- f) The right of lending of copies of the fixed performance;
- g) The right of communication of the fixed performance to the public.

(3) The performer shall be entitled to remuneration in connection with the reproduction of his fixed performance for personal use, *mutatis mutandis*, pursuant to Article 25.

Article 72

Compulsory Licence Granted for Consideration

(1) The right of the performer shall not be infringed by anybody who uses the artistic performance fixed as a phonogram published for commercial purposes by radio or television broadcasting or by retransmitting the

broadcast; the performer shall, however, be entitled to a remuneration for such use. This right may only be exercised by the performer through the relevant collective rights manager.

(2) As a phonogram published for commercial purposes shall be understood, for the purposes hereof, a phonogram whose reproductions are distributed by sale, or which is lawfully communicated to the public in accordance with Article 18 Paragraph 2.

(3) The right of the performer shall, however, be infringed by anybody who does not, before the use in the manner referred to in Paragraph (1), conclude an agreement with the relevant collective rights manager, setting the amount of the remuneration for such use and the terms of the payment thereof.

(4) The right of the performer shall be also infringed by anybody who has been forbidden by the relevant collective rights manager to further use of the performance in the manner referred to in Paragraph (1) for being in delay with the payment of the remuneration for such a way of use and for failing to pay the remuneration even in the thirty-day grace period provided by the collective rights manager for this purpose. Unless the collective rights manager limits such a ban to a shorter period, the ban shall be in effect until such time as the liability to pay the remuneration is met or expires in any other way; however, should the ban be violated, the duration of the ban shall not be ended without the consent of the collective rights manager before the claims arising from such violation will be settled as well.

Article 73

Duration Performer's Economic Rights

The economic rights of the performer shall run for 50 years from the creation of the performance. However, where a fixation of such a performance is made public during this period; the rights of the performer shall not expire until 50 years from the time when such a fixation was made public.

Article 74

Application of the Provisions of Title I

Provisions of Article 2 Paragraph (3), Articles 4, 6, 7 and 9, Article 11 Paragraphs (4) and (5), Article 12 Paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Articles 25 and 26, Article 27 Paragraph (7), Article 28 Paragraph (1), Article 29, Article 30 Paragraphs (1), (2), (5) and (6), Article 30b, Article 31, Article 34 Clauses a) to c), Article 35, Articles 37 to 38a, Article 38c, Article 38e, Articles 40 to 44, Articles 46 to 48, Articles 49 to 51, Articles 53 to 55, Articles 57 and 58, Article 62 Paragraph (2) and Article 64 Paragraphs (1) and (3) shall apply, *mutatis mutandis*, to the performer and his performances.

VOLUME 2

Right of Phonogram Producer to his Phonogram

Article 75

Phonogram and Its Producer

(1) A phonogram is exclusively by hearing perceivable fixation of the sounds of the performer's performance or of other sounds, or the expression thereof.

(2) A phonogram producer is a natural or legal person who, on his own responsibility, fixes for the first time the sounds of the performer's performance or other sounds, or their expression, or on who impulse such a fixation is made by a third party.

Article 76

Content of Phonogram Producer's Right

(1) The phonogram producer shall have the exclusive economic right to use his phonogram and to grant by contract the authorisation to the exercise of this right to any other person; this other person may only use the phonogram without such an authorisation in the cases provided for in this Act;

(2) The right to use a phonogram shall be:

- a) The right to reproduce the phonogram;
- b) The right to distribute the original or copies of the phonogram;
- c) The right to rent the original or copies of the phonogram;
- d) The right to lend the original or copies of the phonogram;
- e) The right to broadcast and otherwise communicate of the phonogram to the public.

(3) The provisions of Article 72 shall apply, *mutatis mutandis*, to the phonogram producer.

(4) The phonogram producer shall be entitled to remuneration in connection with the reproduction of his phonogram for personal use, *mutatis mutandis*, pursuant to Article 25.

(5) The right of the phonogram producer is transferable.

Article 77

Duration of Phonogram Producer's Right

The right of the phonogram producer shall run for 50 years from the making of the phonogram. However, where a phonogram is lawfully made public during this period; the right of the producer shall not expire until 50 years from the date when such a phonogram was made public. If during the period referred to in the first sentence the work is not lawfully made public and the work is, during that period, lawfully communicated to the public, the right of the producer shall not expire until 50 years from the date of such communication to the public.

Article 78

Application of the Provisions of Title I

Provisions of Article 2 Paragraph (3), Article 4, Article 6, Article 9 Paragraphs (2) to (4), Article 12 Paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Article 25, Article 27 Paragraph (7), Article 28 Paragraph (1), Article 29, Article 30 Paragraphs (1), (2), (5) and (6), Article 30b, Article 31, Article 34 Clauses a) to c), Article 35, Articles 37 to 38a, Article 38c, Article 38e, Articles 40 to 44, Articles 46 to 48, Article 49 Paragraphs (1) to (5), Articles 50, 51, 55, 57 and Article 62 Paragraph (2) shall apply, *mutatis mutandis*, to the phonogram producer and his phonogram.

VOLUME 3

Right of Audiovisual Fixation Producer to his First Fixation

Article 79

Audiovisual Fixation and Its Producer

(1) Audiovisual fixation is the fixation of an audiovisual work or a fixation of any other series of fixed and interconnected images evoking the impression of motion, either accompanied by sound or mute, perceivable by sight and, if accompanied by sound, perceivable also by hearing.

(2) The producer of an audiovisual fixation is a natural or legal person who, on his own responsibility, has made for the first time the audiovisual fixation, or on who impulse is such a fixation made by a third party.

Article 80

Content of Audiovisual Fixation Producer's Right

(1) The producer of an audiovisual fixation shall have the exclusive economic right to use his audiovisual fixation and to transfer by contract the authorisation to exercise this right to another person; this other person may use the audiovisual fixation without such an authorisation only in the cases provided for in this Act.

(2) The right to use an audiovisual fixation shall be:

- a) The right to reproduce the audiovisual fixation;
- b) The right to distribute the original or copies of the audiovisual fixation;
- c) The right to rent the original or copies of the audiovisual fixation;
- d) The right to lend the original or copies of the audiovisual fixation;

e) The right to broadcast and otherwise communicate the audiovisual fixation to the public.

(3) The producer of the audiovisual fixation shall be entitled to remuneration in connection with the reproduction of his fixation for personal use, *mutatis mutandis*, pursuant to Article 25.

(4) The right of the producer of the audiovisual fixation is transferable.

Article 81

Duration of Audiovisual Fixation Producer's Right

The right of the producer of an audiovisual fixation shall run for 50 years from its first fixation. However, where the audiovisual fixation has been lawfully made public during this period, the right of the producer of the audiovisual fixation shall not expire until after 50 years after the date when the audiovisual fixation was so made public.

Article 82

Application of the Provisions of Title I

Provisions of Article 2 Paragraph (3), Article 4, Article 6, Article 9 Paragraphs (2) to (4), Article 12 Paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Article 25, Article 27 Paragraph 7, Article 28 Paragraph (1), Article 29, Article 30 Paragraphs (1), (2), (5) and (6), Article 30b, Article 31, Article 34 Clauses a) to c), Article 35, Articles 37 to 38a, Article 38c, Article 38e, Articles 40 to 44, Articles 46 to 48, Article 49 Paragraphs (1) to (5), Articles 50, 51, 55, 57, and Article 62 Paragraph (2) shall apply, *mutatis mutandis*, to the producer of audiovisual fixation and to his fixation.

VOLUME 4

Right of Radio and Television Broadcaster to his Broadcasting

Article 83

Broadcast and Broadcaster

(1) Broadcast shall mean the result of the dissemination of sounds, or images and sounds, or the dissemination of their expression by means of radio or television for reception by the public.

(2) The broadcaster shall be a natural or legal person who, on his own responsibility, performs the broadcasting of sounds, or of images and sounds, or of their expression by radio or television, or a natural or legal person on whose impulse is the broadcasting executed by a third party.

Article 84

The Content of the Right of Broadcaster

(1) The broadcaster shall have the exclusive economic right to use his broadcast and to grant by contract the authorisation to exercise this right to another person; the other person may use the broadcasting without such authorisation only in the cases stipulated in this Act.

(2) The right to use the broadcast shall be understood to mean:

- a) The right to make a fixation of the broadcast;
- b) The right to reproduce the broadcast fixation;
- c) The right to distribute the copies of the fixed broadcast;
- d) The right to communicate the broadcast to the public.

(3) The right of the broadcaster pursuant to Paragraph (1) is transferable.

Article 85

Duration of Right of Broadcaster

The right of the broadcaster shall run for 50 years from the first broadcast.

Article 86

Application of the Provisions of Title I

Provisions of Article 2 Paragraph (3), Article 4, Article 6, Article 9 Paragraphs (2) to (4), Article 12 Paragraphs (2) and (3), Articles 13 to 16, Articles 18 to 23, Article 25, Article 27 Paragraph (7), Article 28 Paragraph 1, Article 29, Article 30 Paragraphs (1), (2), (5) and (6), Article 30b, Article 31, Article 34 Clauses a) to c), Article 35 Paragraphs (1), (2) and (4), Article 37 Paragraphs (1) and (4), Article 38 Paragraph (1) Clause a), Article 38a, Article 38c, Article 38e, Articles 40 to 44, Articles 46 to 48, Article 49 Paragraphs (1) to (5), Articles 50, 51, 55, 57 and Article 62 Paragraph (2) shall apply, *mutatis mutandis*, to the broadcaster and his broadcasts.

Volume 5

Right of Publisher

Article 87

The publisher has the right to remuneration in connection with the making of a reproduction for personal use of a work published by him. The duration of this right is 50 years from the publication of the work. The provision of Article 27 Paragraph (7) shall apply *mutatis mutandis*.

TITLE III

RIGHTS *SUI GENERIS* OF MAKER OF DATABASE

Article 88

Definition

For the purposes of this Act a database shall mean a collection of independent works, data, or other items arranged in a systematic or methodical manner and individually accessible by electronic or other means, irrespective of the form of the expression thereof.

Article 88a

(1) Rights *sui generis* in respect of a database (Article 90) pertain to the maker of the database, provided that the formation, verification or presentation of the content of the database represents a contribution, which is substantial in terms of quality or quantity, irrespective of whether the database or the contents thereof are subject to copyright protection or any other type of protection.

(2) Any new contribution to a database, substantial in terms of quality or quantity, consisting in the supplementing, abbreviating or otherwise adjusting the database, shall result in a new run of the duration of rights pursuant to Article 93.

Article 89

Maker of Database

The maker of the database is the natural or legal person who, on his own responsibility, has compiled the database, or on who impulse is the database compiled by another person.

Article 90

Content of *Sui Generis* Right of Database Maker

(1) The maker of the database shall have the right to extraction or re-utilisation of the entire content of the database or of its part substantial in terms of quality or quantity, and the right to grant to another person the authorisation to execute such a right.

(2) Extraction pursuant to Paragraph (1) means the permanent or temporary transfer of all the content of a database or a substantial part thereof to another medium by whatever means or in whatever form.

(3) Re-utilization pursuant to Paragraph (1) shall mean any form of making available to the public all the content of a database or a substantial part thereof by the distribution of copies, by rental or by the on-line or any other forms of transmission.

(4) Lending of the original or a copy (Article 16) of a database shall not mean extraction pursuant to Paragraph (2) or re-utilization pursuant to Paragraph (3).

(5) Repeated and systematic extraction or re-utilization of insubstantial parts of the content of the database and any other acts that are not usual and adequate and that adversely affect the legitimate interests of the maker of the database is not permitted.

(6) The right of the maker of a database is transferable.

Article 91

Limitation of *Sui Generis* Right of Database Maker

The right of the maker of a database that has been made available in any way to the public is not infringed by the lawful user who extracts or re-utilises qualitatively or quantitatively insubstantial segments of the content of the database or any part thereof, doing so for whatever purpose, on condition that such a user uses the database in a normal and appropriate manner, not systematically or repeatedly, and without damaging the legitimate interests of the maker of the database, and that he shall not cause damage to the author or the rightholder of rights related to the copyright to the works or other protected items contained in the database.

Article 92

Gratuitous Compulsory Licences

The right of the maker of the database made available by him is not infringed by the lawful user who extracts or re-utilises a substantial part of the content of the database:

- a) for his personal use; this is without prejudice to the provision of Article 30 Paragraph (1);
- b) for scientific or educational purposes, if he indicates the source, within the scope justified by the pursued non-gainful purpose; and
- c) for the purposes of public security or an administrative or judicial procedure.

Article 93

Duration of Database Maker's *Sui Generis* Right

The right *sui generis* of the maker of the database shall run for 15 years from the making of the database. If however the database is made available during that period, the right *sui generis* of the maker of the database shall expire 15 years from the date when the database is thus made available.

Article 94

Application of the Provisions of Title I

(1) Provisions Article 4, Article 6, Article 9 Paragraphs (2) to (4), Article 12 Paragraph (2), Articles 13 to 15, Article 18 Paragraphs (2) and (4), Article 27 Paragraph (7), Article 28 Paragraph (1), Article 29, Article 30 Paragraph (1) and (3), Articles 40 to 44, Articles 46 to 48, Article 49 Paragraphs (1) to (5), Articles 50, 51, 55 and 57 shall apply, *mutatis mutandis*, to the maker of the database.

(2) Provision of Article 3 Clause a) shall also apply, *mutatis mutandis*, to the maker of a database that is a part of a legal regulation.

TITLE IV

COLLECTIVE MANAGEMENT OF RIGHTS

Article 95

(1) The purpose of collective management of rights pursuant to this Act (hereinafter referred to as "collective management" is to ensure collective exercise and collective protection of authors' economic rights and of the economic rights related to copyright and also to make available the items of these rights to the public.

(2) Collective rights management is the representation of a larger number of persons who are entitled to hold:

- a) the economic copyright or an economic right related to copyright;
- b) a statutory authorisation to exercise economic rights to a work (Article 58); or
- c) a contractual exclusive authorisation to exercise a collectively managed right for the entire duration of the economic rights and combined with the right, at least for the territory of the Czech Republic, to grant sub-licences;

(hereinafter referred to as "rightholders") for their joint benefit in the exercise of their economic rights to works made public or offered to be made public, to artistic performances, audio and audiovisual recordings (hereinafter referred to as "items of protection"), provided that any execution of these rights other than collective execution is prohibited (Article 96) or pointless; the item of protection offered to be made public shall mean a protected item that has been notified in writing by the rightholder to the relevant collective rights manager for the purpose of including such an item in the register of items of protection.

(3) Mediation of a licence or any other agreement is not deemed to be exercise of collective rights management. Also not deemed to be the exercise of collective rights management is any occasional or short-term representation of any rights other than those subject to compulsory collective rights management.

Article 96

Rights Subject to Compulsory Collective Rights Management

(1) Rights subject to compulsory collective rights management are the following:

- a) The right to remuneration for:
 1. the use of an artistic performance fixed on a phonogram published for commercial purposes by (radio or television) broadcasting or by rebroadcasting and retransmission of the (radio or television) broadcast [Article 72 Paragraph (1)];
 2. the use of a phonogram published for commercial purposes by (radio or television) broadcasting or by rebroadcasting and by retransmission of the (radio or television) broadcast [Article 76 Paragraph (3)];
 3. the making of a reproduction for personal use on the basis of an audio or audiovisual fixation or any other fixation by the transfer of its content by means of a technical device to a blank carrier of such fixation [Article 25 Paragraph (1) Clause b), Article 28 Paragraph (2), Article 71 Paragraph (3), Article 76 Paragraph (4), and Article 80 Paragraph (3)];
 4. the making of a reproduction for a natural person's personal use or for a legal person's or sole trader's own internal use by means of a technical device for making printed reproductions on paper or any other carrier material, also through a third party [Article 25 Paragraph (1) Clause a), Article 28 Paragraph (2), Article 87];
 5. resale of the original of a work of art (Article 24);
 6. the lending of the original or reproduction of a published work in accordance with Article 37 Paragraph 2;
- b) The right to an equitable remuneration for the rental of the original or a copy of the work, or of a performer's performance fixed in an audio or audiovisual fixation;
- c) The right to the use – by cable retransmission – of works, live performances and performances fixed on phonogram or in an audiovisual fixation, with the exception of such performances whose phonogram has been published for commercial purposes [Clause a) Item 1], and also the right to the use – by cable retransmission – of audiovisual fixations and phonograms other than those published for commercial purposes [Clause a) Item 2] with the exception of the cases where the rights to cable retransmission are exercised by the broadcaster for its own broadcasting, irrespective of whether such rights are his own rights or rights exercised on the basis of a licence agreement with a rightholder.

(2) The rightholders shall thus be represented *ex lege* by the relevant collective rights manager in the exercise of their rights pursuant to Paragraph (1) above, and also in their claims for entitlement to the surrender of any unjust enrichment from the unauthorized exercise of such collectively managed rights.

(3) When distributing and paying out the remuneration or the proceeds from the surrendered unjust enrichment which the relevant collective rights manager had collected during the execution of compulsory

collective management, the relevant collective rights manager shall take into consideration only such rightholders whose rights in respect of the same protected items or, as the case may be, of the same types of works are managed by him collectively on a contractual basis, or who are registered for that purpose in his register. He shall not take into account the protected items that have not yet been made public. During the distribution and payment of the remuneration collected in accordance with Article 25 Paragraph (3) Clauses a) and c), the relevant collective rights manager shall take into account the use and effectiveness of the technical protection measures under Article 43.

(4) If an authorisation to a cable retransmission based on special legal provisions⁵⁾ arises for a certain person, that person shall be obliged to notify the relevant collective rights manager of such a fact not later than 15 days from the day of the issue of such an authorisation

Article 97

Collective Rights Manager

(1) Collective rights manager shall mean an entity that has acquired the authorisation to execute collective rights management.

(2) A collective rights manager may only be a legal person with its seat in the Czech Republic and associating, directly or through a third party, rightholders whom he represents in collective rights management.

(3) Collective rights management shall be executed by the collective rights manager consistently, under its own name and on his own responsibility. Collective rights management is not a business enterprise.

(4) Collective rights management shall be executed by the collective rights manager as the main area of his activity.

(5) A collective rights manager may only authorise another person to exercise the rights collectively managed by him where such a person is:

- a) a foreign person, who, pursuant to the law of another state, lawfully executes in the territory of that state collective rights management of the same rights and, in the case of a work, also of the same type of work, if the matter at issue is the execution of collective rights management in such a state;
- b) a local collective rights manager who is also authorised to execute collective rights management, if the objective is efficient execution of collective rights management.

(6) To be effective, the authorisation agreement pursuant to Paragraph (5) must be in writing.

(7) When carrying out his representation obligations, the person authorised pursuant to Paragraph (5) shall act under his own name and on the account of the collective rights manager who gave him the authorisation; this shall be without prejudice to the duty of such a collective rights manager to transfer the acquired proceeds to the represented rightholders.

(8) Neither the agreements, by which the rightholders are associated in the person of the collective rights manager, nor agreements pursuant to Paragraph (5) above, shall be deemed agreements infringing economic competition according to special regulations.

Article 98

Authorisation to Execute Collective Rights Management

(1) The decision on the granting of authorisation to execute collective rights management (hereinafter referred to as "authorisation") shall be made by the Ministry of Culture (hereinafter the "Ministry") upon a written application.

(2) The application must contain:

- a) the name, registered office, identification number, if any, and the designation of the statutory body of the applicant, the name, surname and residence of the person who is the statutory body or of the persons who are members of the statutory body, and the way of acting for and on behalf of the applicant;
- b) definition of the rights that are to be managed collectively;
- c) definition of the subjects of rights referred to under b) above, and in the case of works, also the definition of their type.

⁵⁾ Act No. 468/1991 on Radio and Television Broadcasting, as amended.

(3) The applicant shall attach to the application pursuant to Paragraph (2) the following:

- a) document to prove the information provided pursuant to Paragraph (2) Clause a) and Article 97 Paragraph (2);
- b) specimen draft contract with rightholders for representation in the execution of collective rights management;
- c) draft allocation schedule, including the way of distribution and rules for the payment of the collected remuneration, and excluding any arbitrary action during the distribution, and respecting the principle of support of culturally significant works and performances;
- d) list of names of the rightholders who expressed their interest in the collective management of their rights by the applicant, including their domicile or (if foreign nationals) their residence, and also their nationality, their published items of protection to the extent corresponding to the purpose of the proceedings, and the signatures of those rightholders;
- e) list of names of the applicant's members who are the holders of the rights to be collectively managed, including their domicile or (if foreign nationals) their residence, and also their nationality, their published items of protection to the extent corresponding to the purpose of the proceedings, and the signatures of those rightholders;
- f) estimate of the anticipated proceeds from the collectively managed rights and of the costs of execution of collective rights management;
- g) proposed levels of remuneration for the individual ways of use of the items of protection.

(4) The parties to the proceedings for the granting of the authorisation shall be the person lawfully applying for the authorisation.

(5) Decision concerning the application for the granting of authorisation shall be made by the Ministry within 90 days of the submission of the application. If it is impossible, owing to the nature of the matter, to make the decision within that period, the Ministry may extend it to a reasonable length. The Ministry shall notify such an extension without undue delay to the party to the proceedings. During the proceedings on the extension of authorisation the Ministry shall take into account, in particular, indications of the applicant's competency in orderly and effective execution of collective rights management.

(6) The Ministry shall grant the authorisation to an applicant:

- a) whose application for the granting of the authorisation meets the requirements set out in Paragraphs (2) and (3);
- b) who has applied for authorisation for representation in exercising such rights as can be collectively exercised in an effective manner;
- c) where no other person has acquired authorisation for the same item of protection and, in the case of works, no other person has acquired authorisation for the exercise of rights in respect of the same type of work; and
- d) who has the prerequisites for ensuring the orderly execution of collective rights management.

(7) The Ministry may only grant authorisation for the collection of remuneration for all authors or for all holders of the rights related to copyright in accordance with Article 25 and Article 37 Paragraph (2) to one applicant; in such cases the authorisation of any other collective rights managers only covers the distribution of the remuneration collected in this way to the authors or holders or rights related to copyright whom such another collective rights manager represents.

(8) The ruling of the decision by which the authorisation was granted, together with the indication of the date of finality of that decision, shall be made public by the Ministry in a manner enabling remote access. The Ministry shall do so without delay, not later than 30 days after the finality of the decision.

(9) Unless otherwise provided in this Act, the decision on the granting of the authorisation shall be governed by general regulations on administrative procedure⁶⁾.

Article 99

Withdrawal of Authorisation

(1) The Ministry shall revoke the authorisation:

- a) if it is later learned that at the time of the granting of the authorisation the applicant did not meet the requirements for the granting of the authorisation or that the applicant failed to meet those requirements after having obtained the authorisation, and if this was not remedied within a reasonable period of time prescribed by the Ministry, or if no such remedy is possible;

⁶⁾ Act No. 71/1967 on Administrative Procedure (Rules of Administrative Procedure), as amended by Act No. 29/2000.

b) if the collective rights manager so requests.

(2) The Ministry shall revoke the authorisation if the collective rights manager fails to meet his obligations set out in this Act and fails also to remedy this within a reasonable period of time prescribed by the Ministry.

(3) The collective rights manager whose authorisation is to be revoked in the administrative proceedings shall be the party to the proceedings.

(4) An authorisation revoked pursuant to Paragraph (1) Clause a) above shall terminate on the day of the finality of the decision to that effect, unless a later date is stipulated in the decision; the period between the finality of the decision and the date of the termination set out in the decision may not be longer than six months. An authorisation revoked pursuant to Paragraph (1) Clause b) shall terminate on the last day of the calendar year in which period of six months will have elapsed from the date of delivery of the application to the Ministry.

(5) Provisions of Article 98 Paragraph 5, first to third sentences, shall apply *mutatis mutandis*, and the provision of Article 98 Paragraphs (8) and (9) shall apply similarly.

Article 100

Relations of Collective Rights Manager to the Represented Rightholders and to the Users of Protected Items

(1) The collective rights manager shall exercise due diligence and due professional care, in order to, within the scope of the authorisation awarded to him:

- a) represent each rightholder in the exercise of his rights which the collective rights manager shall manage collectively on the basis of the law;
- b) undertake under normal conditions the representation of any rightholder in the exercise of his rights if the latter requests him to do so and proves that the item of protection has been exploited in the relevant manner, and if that rightholder is not represented in the exercise of the same right relating to the same item of protection – and in the case of works in the exercise of the same right to the same type of work – by a foreign person pursuant to the provision of Article 97 Paragraph (5) a);
- c) represent each rightholder in the exercise of his rights within the scope agreed with him;
- d) represent rightholders on equal terms;
- e) keep a register of contractually represented rightholders and register of rightholders entered to the evidence; the register may only contain such data which are necessary for the execution of collective rights management;
- f) keep a register of the items of protection for which the rights are being collectively managed, if such items are known to the collective rights manager; the register may only contain such data which are necessary for the execution of collective rights management;
- g) inform anybody who requests such information whether he represents the holder of rights in respect of a certain item of protection in the exercise of a certain right, and to issue a written certificate thereon at the request and cost of the applicant;
- h) conclude contracts on reasonable and equal terms with the users of the items of protection or with the bodies authorised to protect the interests of users under a special legal regulation^{6a)} who exploit the items of protection in the same or similar way, or with persons obliged to pay remuneration in compliance with this Act. For the users, such contracts shall ensure that:
 1. authorisation is granted to exercise the right to use the item of protection for which the collective rights manager manages such right collectively;
 2. the amount and way of payment of remuneration is set pursuant to Article 96 Paragraph (1) Clause a) Items 1 and 2, and Clause b) and its disbursement is monitored;
 3. the amount and way of payment of remuneration is set pursuant to Article 19 Paragraphs 1 and 2 on the basis of the number of persons to whom the work is communicated;
 4. the way of payment of remuneration, provided for in this Act, is determined;
- i) assert under his own name and on the account of the represented rightholders claims for damages, claims for the surrender of unjust enrichment from unauthorised exercise of a collectively managed right, and claims for abstention from the unauthorised exercise of a collectively managed right, unless the rightholder, if authorised to do so, asserts such claims himself, or unless such a procedure is wasteful;

^{6a)} Act No. 257/2001, as amended.

- j) collect for the rightholders, in compliance with law and with the agreements referred to under h) above, the remuneration and the proceeds, if any, from the surrender of unjust enrichment, and to distribute and pay out them in compliance with the allocation schedule;
- k) keep a register of collected remuneration and proceeds from surrendered unjust enrichment and enable the rightholder to inspect the register for checking the correctness of the amount paid out to him as remuneration or as the proceeds, if any, from the surrender of unjust enrichment;
- l) build a reserve fund from the collected remuneration and the contingent proceeds, from the surrender of unjust enrichment;
- m) prepare regular financial statements, have them audited, and submit them together with the auditor's report to the Ministry, without undue delay after the audit and after approval by the collective rights manager's managing body;
- n) draft, by 30 June of each year, an annual report on the activities and economic management (hereinafter the "annual report") for the preceding calendar year, including also the annual financial statements and the auditor's report; the annual report shall contain a full and fair description of all decisive facts and shall be made available to the represented rightholders;
- o) make public, without undue delay, the annual financial statements, including the auditor's report, in the Commercial Bulletin;
- p) inform the Ministry about all changes in the data indicated in the application for the authorisation pursuant to Article 98 Paragraph (2) Clause a), including changes of the person who is the statutory body of the collective rights manager or member of such a body, and provide evidence of such changes, all without delay, not later than 15 days from such a change;
- r) provide the Ministry with a copy of:
 - 1. changes to the documents attached to the application for the authorisation pursuant to Article 98 Paragraph 3 Clauses a) to c) within 15 days from any such change;
 - 2. collective agreement concluded by the collective rights manager within 15 days from the date on which the Ministry requested it;
 - 3. agreement pursuant to Article 97 Paragraph (5), concluded by the collective rights manager, within 15 days from the date on which the Ministry requested it;
 - 4. the ruling of the court or any other relevant authority, if the collective rights manager is a participant in the proceedings, within 15 days from the date on which the Ministry requested it;
- s) make public in a suitable manner, enabling also remote access, the proposed amount of remuneration tariffs or the way of calculating such amounts for the respective ways of exploitation of the item of protection;
- t) inform the Ministry about the decisions of courts or other relevant bodies in the proceedings to which the collective rights manager is a party and which are of substantial importance for the collective rights manager's activities.

(2) The collective rights manager shall represent the rightholder on the latter's account and under the collective rights manager's name. The collective rights manager shall execute collective rights management on a non-profit basis. The collective rights manager shall however be entitled to claim compensation for effectively expended costs.

(3) Users of items of protection as well as persons liable to pay special remuneration shall be obliged to allow the collective rights manager to perform the orderly execution of collective rights management and may not, without serious reason, refuse the provision to the collective rights manager of the information needed for that purpose. The collective manager may not use the information acquired during inspecting activities for any purpose other than the execution of collective rights management. The collective rights manager shall be authorised to monitor the duly and timely fulfilment of agreements concluded by him in the execution of collective rights management; the users of items of protection as well as persons liable to pay special remuneration, or other parties to such agreements, shall be obliged to allow the collective rights manager to carry out such activities.

(4) The operator of a premise or other space, who provides the premise or other space for a non-theatrical performance of a musical work with or without text, or of an artistic performance (hereinafter "public musical performance"), shall provide the relevant collective rights manager with the needed data and assistance so that the producer of such a musical performance can be duly identified.

(5) The provider of a live public musical performance shall submit to the operator of the live public performance the performance's programme, listing the names of the authors and titles of the works that are to be performed, and shall do so not later than 20 days before the event. The operator of the live public musical

performance must forward the data, including the programme of the performance and the names of the authors and titles of works that are to be produced, to the relevant collective rights manager not later than 10 days before the event, unless stipulated otherwise in the contract concluded by the producer and the collective rights manager.

(6) Upon concluding contracts in accordance with Paragraph (1) Clause h), the following shall be considered:

- a) whether the item of protection will be used within a business or other economic activity;
- b) the direct or indirect economic or commercial benefit, which the user will enjoy by exploiting the item of protection or in the context of exploitation of such an item;
- c) the specific features and characteristics of the place or region, in which the item of protection is used;
- d) the purpose, manner, scope and circumstances of the exploitation of the item of protection.

(7) Upon drafting the proposals of the remuneration amount or the method of calculation thereof, the collective rights manager must consult the legal persons associating the relevant users of the items of protection, if such legal persons have contacted the collective rights manager to this end, and provided that they represent more than a negligible number of users.

Article 100a

(1) The collective rights manager or the holder of the rights represented by the manager can not raise a cease-and-desist claim [Article 40 Paragraph (1) Clause b)], nor to claim damages or the surrender of unjust enrichment pursuant to a special provision of this Act [Article 40 Paragraph (4)] based on an infringement of the collectively managed rights or its endangering, if, in the light of such infringement or exposure of the right, the user or an entity authorised to defend the interest of the users associated in that entity opens duly and without undue delay negotiations with the relevant collective rights manager to conclude a contract required by this Act, or if in this context the user or the said entity agrees with using a mediator pursuant to this Act (Article 102).

(2) The provision of Paragraph (1) is without prejudice to the claim to the surrender of unjust enrichment in the standard amount pursuant to special legal regulations.^{6b)}

(3) The impediment to raise a cease-and-desist claim pursuant to Paragraph (1) above shall not arise or vanishes if a waiver to raise such a claim is at variance with the legal joint interests of the rightholders, i.e., in particular, if the conduct of the user or the authorised representative of the associated users clearly indicates that they do not intend to conclude the contract specified in Paragraph (1), or if the claimed surrender of the unjust enrichment pursuant to special legislation is thus jeopardised.^{6b)}

Article 101

Collective and Cumulative Agreements

(1) The collective rights manager shall provide by means of agreements based on Article 100 Paragraph (1) Clause h) Item 1 authorisation to exercise the right to use the items of protection defined either individually or cumulatively – i.e. including all items of protection for which he collectively manages such right. Where the collective rights manager grants the authorisation to exercise rights to items of protection defined cumulatively (the term used for the purposes of this Act is “cumulative agreement”), and where user data on the use of the specific items of protection are needed for the distribution of collected remuneration, the collective rights manager shall be entitled to request such data from the user. The cumulative agreement must be made in writing. The provision of the preceding sentence shall also apply, *mutatis mutandis*, to agreements pursuant to Article 100 Paragraph (1) Clause h) Items 2 to 4.

(2) The collective rights manager may not impose on the users of the items of protection any restrictions that exceed the framework of protection provided for in this Act.

(3) The collective rights manager shall be free of the obligation pursuant to Article 100 Paragraph (1) Clause h) if the conclusion of the agreement would be in contravention of the legitimate common interests of the rightholders, or if the proposed agreement is intended to grant authorisation relating to an individually defined item of protection, where the conclusion of the agreement would be in contravention of the legitimate interests of the rightholders in respect of such an item of protection.

(4) The collective rights manager shall also be free of the obligation to conclude, pursuant to Article 100 paragraph (1) Clause h), an agreement with a legal entity associating users (the term used for the purposes of this

^{6b)} Section 451 *et seq.* of Act No. 40/1964, the Civil Code, as amended.

Act is "collective agreement") in the event that it is not possible to fairly require of him to enter into such an agreement because of the negligible number of users associated by such entity.

(5) The collective agreement shall be made in writing and the rights and obligations of the associated users towards the collective rights manager shall be derived directly from the agreement; this shall be without prejudice to the rule that the collective rights manager shall act on the account of the rightholders.

(6) The collective rights manager shall be entitled to prohibit temporarily, for the period of the arrears, a user who is in arrears with the payment of remuneration to him, and who fails to pay such remuneration even within an additional thirty-day grace period awarded for that purpose by the collective rights manager, from using the items of protection to which the user would otherwise be entitled on the basis of the agreement concluded with collective rights manager.

(7) The collective rights manager shall also be authorised to issue the ban pursuant to Article 72 Paragraph (4) and Article 76 Paragraph (3); he may apply this authorisation both in relation to individual or all artistic performances and phonograms, the rights to which he manages collectively.

(8) The collective rights manager shall be authorised to provide authorisation to the user to exercise the right to use the items of protection manager as a non-exclusive authorisation.

(9) Where, on the basis of a cumulative agreement pursuant to paragraph (1), the relevant collective rights manager grants a licence:

- a) for performing artistic performances from a phonogram published for commercial purposes, or for performing those phonograms as such;
- b) for the non-theatrical performance of musical works with or without text from a phonogram published for commercial purposes;
- c) for the radio or television broadcasting of a certain type of works;
- d) for performing radio or television broadcasting of a certain type of works, artistic performances, phonograms and audiovisual fixations;
- e) for the lending of the original or reproduction of a work, except computer program, or for the lending of a work or a performer's performance fixed as an audio or audiovisual fixation, and for the lending of such fixations;
- f) for making available the works by a library^(6a), also including the making of a reproduction of a published work, to individual members of the public upon request in accordance with Article 18 Paragraph (2) for the purposes of research and private study; this shall not apply to computer programs, phonograms, audiovisual fixations, published musical notation of a musical work or musical - dramatical work, and also to the works not subject to licence agreements, and to cases where the rightholder forbade it;
- g) for live non-theatrical performance of a work, if the performance of the work do not look towards the achieving direct or indirect economic or commercial benefit;

it shall be deemed that such a licence has been granted not only to apply to the relevant items of protection, and in the case of works, to the relevant types of works of the rightholders represented on the basis of the agreement, but also to all others, who thus consider themselves represented on the basis of the law. This shall not apply to audiovisual works or to works used audiovisually in the case of a licence pursuant to Clauses c) and e), or to any such rightholder not represented on a contractual basis, who, in relation to the user and to the relevant collective rights manager, has excluded the validity of the cumulative agreement for a specific case or for all cases; he may not however exclude the validity of the cumulative agreement in the case of a licence pursuant to Clause d).

(10) In distributing and paying out the remuneration collected by him on the basis of cumulative agreement pursuant to Paragraph (9) for rightholders not represented on a contractual basis, the relevant collective rights manager of rights shall take into account those rightholders who have applied for registration with the collective rights manager for such purposes. The collective rights manager is obliged to invite for registration those for whom he collected the remuneration and who are known to him.

(11) If the user of the items of protection enters into contracts for the provision of authorisation to exercise the right to use the items of protection in respect of which more than two collective rights managers manage the respective rights, such a user is entitled to request that those collective rights managers shall authorise a joint representative under Article 97 Paragraph (5) to conclude a single contract. This provision shall also apply, *mutatis mutandis*, to cases where collective agreements are concluded in accordance with Paragraph (4) above. The purpose of authorising a joint representative of the collective rights managers is to ensure that the collective rights management is executed in an expedient manner.

(12) The collective rights manager who was awarded authorisation to collect remuneration for all authors in accordance with article 98 paragraph 7 is obliged to provide the remuneration to another collective rights manager to distribute it among the authors whose rights are managed by such another collective rights manager.

Article 102

Mediators of Collective and Cumulative Agreements

(1) To provide assistance in the negotiation of collective agreements, or of cumulative agreements [Article 100 Paragraph (1) Clause h)], as the case may be, the parties to the agreement may use one or more mediators appointed for this purpose by the Ministry from the ranks of independent experts. For the purposes of this Act, the appointee must be legally competent and willing to perform this activity. The list of mediators shall be available to the public and shall be maintained by the Ministry, taking into account the nominations made by collective rights managers and users, or by their associations.

(2) Where the parties to the agreement do not agree on a mediator within 30 days from the submission of the proposal by any of the parties to negotiate a mediated collective agreement pursuant to paragraph (1), the mediator shall be designated by the Ministry within 14 days from the submission of the application.

(3) The application for the negotiation shall be submitted to the mediator in writing by any of the parties to the agreement. In the application the party shall indicate the current state of the negotiations and attach its own proposal and the statement of the other party to the agreement. The parties to the agreement shall be obliged to coordinate their steps during the negotiation.

(4) The mediators shall assist the parties to the agreement during the negotiation and shall submit, if necessary, to the parties their own proposals within 30 days from the delivery of the application.

(5) Unless any of the parties submits, within 30 days from the submission of the proposal of the mediator pursuant to paragraph (1), an objection to the proposal, it shall be deemed that the proposal has been accepted by the parties.

(6) The mediator shall be entitled to a contractual fee agreed by the parties to the agreement, and to compensation of unavoidably incurred costs. Unless the parties to the agreement agree on the fee for his work in the negotiation of the collective or cumulative agreement, the mediator's fee shall be double the amount of the minimum wage paid for employees who receive their pay on a monthly basis⁷⁾. The mediator's fee and the cost incurred by him in connection with his work shall be borne in equal proportion by the parties to the agreement.

Article 103

Supervision by the Ministry

(1) In accordance with this Act, the Ministry supervises the collective rights managers that are authorised to execute collective rights management hereunder.

(2) In executing its supervision under Paragraph (1) above, the Ministry may:

- a) request the collective rights manager to provide information and submit the documentation necessary to execute the supervision;
- b) investigate whether any breach of duties imposed by this Act has occurred;
- c) impose, if any faults are identified in respect of compliance with this Part of the Act, the duty to remedy such a fault, set a reasonable term for the implementation of such remedy and impose fines.

(3) The collective rights manager is obliged to provide within the reasonable period, set by the Ministry, complete and true information and assistance within the scope of what the Ministry may require under Paragraph 2 above.

(4) The costs incurred by the collective rights manager in connection with the Ministry's supervision under Paragraph 2 above shall be borne by the collective rights manager.

(5) Should a collective rights manager fail to fulfil the imposed duty to ensure that a fault is remedied within the prescribed period of time, the Ministry may impose on the collective rights manager an enforcement fine of up to CZK 100,000 to enforce the fulfilment such a duty, and may do so repeatedly. The total amount of enforcement fines so imposed may not exceed CZK 500 000.

⁷⁾ Section 2 (1)(b) of Government Order No. 303/1995 on Minimum Wage, as amended

(6) Should a collective rights manager fail to fulfil the duty under Paragraph 3, the Ministry may impose upon such a collective rights manager a disciplinary fine of up to CZK 50,000, and may do so repeatedly if the rights manager so fails even in the period newly set by the Ministry. The total amount of disciplinary fines so imposed may not exceed CZK 200,000. The proceedings on the imposition of the disciplinary fine may be commenced not later than within 1 month of the date of failure to fulfil the duty.

(7) Where the Ministry finds out on the part of the collective rights manager a breach of a duty ensuing from this Act, it may impose a fine on the collective rights manager up to CZK 500,000. The fine may be imposed repeatedly. The fine may be imposed not later than within one year from the date on which the Ministry finds out that a breach of duty has occurred. When stipulating the amount of the fine, the Ministry shall take into account the severity of the breach of the duty and its consequences.

(8) Fines shall be collected and recovered by the Ministry. Fines represent income to the State Fund of Culture of the Czech Republic.

(9) Imposition of the duty to remedy faults and of a fine hereunder shall be without prejudice to responsibility under any other legal regulations.

(10) Ministry supervision shall be without prejudice to supervision by the Office for the Protection of Economic Competition under a special legal regulation.⁸⁾

Article 104

Rules for Distribution of Remuneration Collected by Collective Rights Manager

- (1) Of the remuneration collected pursuant to Article 25 Paragraph (3) Clauses a) and c):
- a) in the case of technical devices for the fixation of sound recordings and in the case of blank carriers of sound recordings, 50% shall go to the authors and the other 50% shall go to the performers and producers of sound recordings, who shall receive equal proportions of that amount.
 - b) in the case of technical devices for the fixation of audio-visual recordings, and in the case of blank carriers of such recordings, 60% shall go to the authors, including, but not limited to, directors of audiovisual works, authors of literary, dramatic and musical -dramatical works, authors of musical works with and without text, camera operators, architects, set designers (scenographers), costume designers, art directors and authors of choreographic and pantomime works, and 40% shall go to performers and producers of audiovisual fixations (split into 25% for the producers of audiovisual fixations and 15% for performers).
- (2) Of the remuneration collected pursuant to Article 25 Paragraph (3) Clauses a) and c), unless the remuneration falls under Paragraph (1) above, and of the remuneration collected pursuant to Article 25 Paragraph (3) Clause b) and Paragraph 4, authors shall receive 60% (of this, authors of literary works, also including scientific and cartographic works, shall receive 45% and authors of fine art works shall receive 15%), and the remaining 40% shall go to publishers of the published works.
- (3) Of the remuneration collected pursuant to Article 37 Paragraph (2), 75% shall go to authors of literary works, also including scientific and cartographic works, and 25% shall go to authors of fine art works.

TITLE V

CONCURRENT PROTECTION

Article 105

Copyright shall not be prejudiced by rights relating to copyright or by the database maker's right to the database made by him. Protection of works under copyright shall not exclude the protection stipulated by special legislation.

⁸⁾ Act No. 143/2001 on Protection of Economic Competition and on Amendment to Certain Acts (Act on the Protection of Economic Competition), as amended.

TITLE VI

ADMINISTRATIVE INFRACTIONS, OFFENCES, MISDEED))

Article 105a

Administrative Infractions

(1) A natural person may commit contravention if he:

- a) makes unauthorised use of an author's work, artistic performance, phonogram or audiovisual fixation, radio or television broadcast, or database;
- b) infringes copyright in the manner specified in Article 43 Paragraph 1 or 2, or in Article 44 Paragraph 1; or
- c) as a trader involved in the sale of an original of a work of art, fails to fulfil the notification duty under Article 24 Paragraph 6.

(2) A fine of up to CZK 150,000 shall be imposed for a contravention under Paragraph 1 Clause a); a fine of up to CZK 100,000 shall be imposed for a contravention under Paragraph 1 Clause b); and a fine of up to CZK 50,000 shall be imposed for a contravention under Paragraph 1 Clause c).

Article 105b

Administrative Infractions of Legal Persons and Sole Traders

(1) A legal person or a sole trader may commit administrative infraction if he:

- a) makes unauthorised use of an author's work, artistic performance, phonogram or audiovisual fixation, radio or television broadcast, or database;
- b) infringes copyright in the manner specified in Article 43 Paragraph 1 or 2, or in Article 44 Paragraph 1; or
- c) as a trader involved in the sale of an original of a work of art, fails to fulfil the notification duty under Article 24 Paragraph 6.

(2) A fine of up to CZK 150,000 shall be imposed for an administrative infraction under Paragraph 1 Clause a); a fine of up to CZK 100,000 shall be imposed for an administrative infraction under Paragraph 1 Clause b); and a fine of up to CZK 50,000 shall be imposed for an administrative infraction under Paragraph 1 Clause c).

Article 105c

Common Provisions

(1) A legal person shall not be held responsible for an administrative infraction if it is able to prove having made all reasonable effort as may be required to prevent the breach of a legal duty.

(2) The gravity of the administrative infraction, including, but not limited to, the manner of its commitment, its consequences, and the circumstances in which it was committed shall be taken into account in assessing the fine.

(3) Responsibility of the legal person for administrative infraction shall cease unless the administrative body initiates proceedings thereon within 1 year of the date on which it learned about the infraction but not later than 3 years after the date of commitment thereof.

(4) In the first instance, administrative infractions hereunder shall be heard, under transferred authority, by the municipality with extended authority in the territory of which the administrative infraction was committed.

(5) Provisions of the Act on Legal Person's Responsibility and Sanctions shall apply to responsibility for the conduct during the business activities of a sole trader^{8a)} or in direct connection therewith.

(6) Fines shall be collected and recovered by the body that imposed them. The proceeds from fines shall go to the budget from which the work of the body that imposed the fine is financed.

^{8a)} Section 2 (2) of the Commercial Code.

TITLE VII
TRANSITIONAL AND FINAL PROVISIONS

Article 106

Transitional Provisions

(1) This Act shall govern the legal relations established as of the date on which this Act comes into effect. Legal relations in effect hitherto, and the rights and obligations arising from such legal relations, as well as the rights arising from liability for breach of contracts concluded before the date on which this Act comes into effect, shall be governed by provisions in effect before that date.

(2) All the terms that have started running before the date on which this Act comes into effect shall be treated on the basis of the provisions effective before the date on which this Act comes into effect, and so shall the terms that are set for claiming the rights, which are governed, pursuant to paragraph (1), by the provisions hitherto in force even where such terms start running after the date of the entry into effect hereof.

(3) The period of duration of economic rights shall be governed by this Act also where the term has started before the entry into effect of this Act. Where the term of duration of those rights has expired before the date of entry into effect hereof, and would have continued hereunder, the term shall be renewed as from the date on which this Act comes into effect for the remaining period. Reproductions of items of protection for which the term of duration of economic rights is being renewed, which were lawfully acquired before the date of entry into effect hereof, may however continue to be freely disseminated for another two years after the entry into effect hereof.

(4) In accordance with this Act, protection shall also be provided to copyright-protected items that have not been hitherto protected according to existing provisions [Article 1 Clause b) Items 3, 5 and 6 and Article 2 Paragraph (2)], or whose protection content is different from that defined in this Act. The National Film Archive⁹⁾ shall be deemed to be the producer of any Czech audio-visual recording of a work made public in the period between 1 January 1950 and 31 December 1964. The State Fund of the Czech Republic for the Promotion and Development of Czech Cinematography which, in compliance with special legal provisions¹⁰⁾, exercises the copyright to audio-visual recordings of audio-visual works made public in the period between 1 January 1965 and 31 December 1991, shall be deemed to be the producer of such works.

(5) The provision of Paragraph (4) shall be without prejudice to the right of the National Film Archive to manage the original record carriers for audio-visual works.

(6) The provision of Paragraph (4), first sentence, shall be applied *mutatis mutandis* where the works are databases pursuant to the provisions of Article 88, but only if they were made not earlier than 15 years before the entry into effect of this Act.

(7) Authorisations to execute collective rights management, granted in compliance with legal provisions in effect hitherto, shall be considered authorisations to execute collective rights management of rights in accordance with this Act. The content and scope of such authorisations shall be brought into compliance with this Act by the Ministry, which will issue, within 90 days from the date of entry into effect hereof, new authorisations to the relevant persons.

(8) Administrative proceedings commenced before the entry into effect of this Act shall be brought to conclusion in compliance with this Act.

Article 107

Final Provisions

(1) The provisions of this Act shall apply to the works of authors and artistic performances of performers who are citizens of the Czech Republic, irrespective of the place where such works or performances are created or made public.

(2) The provisions of this Act shall apply to the works and performances of foreign nationals and people without nationality in accordance with the international treaties binding on the Czech Republic and promulgated in the Collection of Laws of the Czech Republic, or, in the absence of such a treaty, where reciprocity is assured.

⁹⁾ Section 6 of Act No. 273/1993 on Certain Conditions of the Production, Distribution and Archiving of Audiovisual Works, on Amendment to Certain Acts and Certain Other Regulations.

¹⁰⁾ Act No. 241/1992, as amended by Act No. 273/1993; Section 14 of Act No. 273/1993.

(3) Where none of the conditions stipulated by Paragraph (2) are satisfied, this Act shall apply to the works of authors and performances of performers who are not Czech nationals if their works and performances were first made public in the Czech Republic or if the author or performer resides in the Czech Republic.

(4) Copyright in the works of foreign nationals shall not subsist for longer than copyright in the state of origin of the work¹¹⁾.

(5) The provisions of this Act shall apply to the phonograms of the producers of phonograms domiciled or resident in the territory of the Czech Republic; they shall also apply to the phonograms of foreign producers of phonograms, provided that the provisions of Paragraphs (2) and (3) are applied *mutatis mutandis*.

(6) The provision of Paragraph (5) shall apply, *mutatis mutandis*, to audiovisual fixations, radio and television broadcasts, works in the public domain published pursuant to Article 28 Paragraph (2), works published by a publisher pursuant to the provisions of Article 87, and databases pursuant to the provisions of Article 88.

PART ELEVEN REVOKING PROVISIONS

Article 117

This is to revoke:

1. Act No. 35/1965 on Works of Literature, Science and Art (Copyright Act).
2. Act No. 89/1990, amending Act No. 35/1965, on Works of Literature, Science and Art (Copyright Act).
3. Act No.86/1996, amending Act No. 35/1965 on Works of Literature, Science and Art (Copyright Act), as amended by Act No. 89/1990, Act No. 468/1991, Act No. 318/1993 and Act No. 237/1995.

PART TWELVE EFFECT

Article 118

This Act shall come into effect on 1 December 2000.

¹¹⁾ Article 5 Paragraph (4) of the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, complemented at Paris on 4 May 1896, revised in Berlin on 13 November 1908, complemented at Berne on 20 March 1914, and revised at Rome on 2 June 1928, at Brussels on 26 June 1948, at Stockholm on 14 July 1967, and at Paris on 24 July 1971 (Ministry of Foreign Affairs Regulation No. 133/1980)

Tariffs of Remuneration for the Re-sale of an Original of a Work of Art and Tariffs Relating to the Reproduction of Works for Personal Use and to the Lending of Works

1. On the resale of an original of an artistic work in the territory of the Czech Republic, the persons referred to in Article 24 paragraph (6) shall pay remuneration to the relevant collective rights manager, who was granted authorisation to execute collective rights management within a scope that includes the collection of remuneration from such persons. The remuneration shall be:

- a) 4% of the part of purchase price up to 50 000 EUR,
- b) 3% of the part of purchase price from 50 000 EUR to 200 000 EUR,
- c) 1% of the part of purchase price from 200 000 EUR to 350 000 EUR,
- d) 0.5% of the part of purchase price from 350 000 EUR to 500 000 EUR,
- e) 0.25% of the part of purchase price above 500 000 EUR.

Total amount of remuneration may not exceed 12 500 EUR.

2. Persons referred to in Article 25 paragraph (2) Clause a) or Clause d), who are domiciled or permanently resident or, as the case may be, resident for not less than 183 days in the relevant calendar year, either continuously or in several periodical stays, in the territory of the Czech Republic, are obliged to pay remuneration twice annually to the relevant collective rights manager who is authorised pursuant to this Act to execute collective rights management within a scope that includes the collection of remuneration from such persons.

3. Lump sum remuneration due on the import or acceptance or first sale of technical devices designated for the making of reproductions of sound or audiovisual fixations shall be 3% of the selling price of the devices being sold, irrespective of whether such devices serve for the recording of merely sound, or merely image, or simultaneously sound and image, or any other recording. In the case of radio and television sets enabling to make a record of a broadcast, the remuneration shall be 1.5% of the selling price of the sets being sold.

4. Persons referred to in Article 25 Paragraph (2) Clause b), or Clause d), who are domiciled or permanently resident or, as the case may be, resident for at least 183 days in the calendar year, either continuously or in several periodical stays, in the territory of the Czech Republic, shall be obliged to pay remuneration twice annually to the relevant collective rights manager who is authorised pursuant to this Act to execute collective management within a scope that includes the collection of remuneration from such persons.

5. Persons referred to in Article 25 Paragraph (2) Clause e) shall be obliged to pay remuneration pursuant to Article 25 Paragraph (5) once a year to the relevant collective rights manager who is authorised in accordance with this Act to execute collective rights management within a scope including the collection of remuneration from such persons.

6. The remuneration for one print reproduction shall be:

- a) for a black-and-white reproduction CZK 0.20 per page
- b) for a coloured reproduction CZK 0.40 per page

7. The probable number of the print reproductions of works made by reproduction service providers shall be as follows:

- a) when made in the premises of libraries, museums, galleries, schools and other educational facilities: 70% of the total number of print reproductions made by the provider of paid reproduction services;
- b) when made in the premises of archives, government offices and offices of territorial self-governing units and in the premises of other reproduction service providers: 20% of the total number of print reproductions made by the provider of paid reproduction services

8. Persons referred to in Article 25 paragraph 2 Clause c) or Clause d), who have their registered office or place of business, or are domiciled, or permanently resident or, as the case may be, are resident for not

less than 183 days in the relevant calendar year, either continuously or in several periodical stays, in the territory of the Czech Republic, shall be obliged to pay remuneration twice annually to the relevant collective rights manager who is authorised pursuant to this Act to execute collective rights management within a scope that includes the collection of remuneration from such persons.

9. For the persons referred to in Article 37 Paragraph 1, the remuneration under Article 37 Paragraph 2 shall be paid by the government once annually to the relevant collective rights manager.

10. Remuneration for lending shall be CZK 0.50 for one loan.

Act No. 81/2005 amending Act No. 121/2000 on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act) came into effect on the date of its promulgation (23 February 2005).

Act No. 61/2006 amending Act No. 106/1999 on Free Access to Information, as amended, Act No. 121/2000 on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act), as amended by Act No. 81/2005, and Act No. 128/2000 on Municipalities (the Municipalities Act), as amended, came into effect on 1 January 2006.

Act No. 216/2006 amending Act No. 121/2000 on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act), as amended, and certain other Acts, came into effect on the date of promulgation (22 May 2006).

Prime Minister



Urząd Ochrony Konkurencji i Konsumentów

Departament
Ochrony Konkurencji

Warszawa, 18 listopada 2019 r.

DOK-2.071.16.2019/ASA

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Szanowny Panie,

w odpowiedzi na Pana pismo z dnia 31 października 2019 r. (data wpływu do Urzędu Ochrony Konkurencji i Konsumentów: 6 listopada 2019 r.) (znak pisma: RMSP-437/2019/WPL) z prośbą o przekazanie informacji dotyczących postępowania prowadzonego przez Urząd Ochrony Konkurencji i Konsumentów pod sygnaturą DOK-2.400.5.2019/ASA/MP, uprzejmie wskazuję, że przedmiotowe postępowanie jest postępowaniem wyjaśniającym mającym na celu wstępne ustalenie, czy w związku z działalnością przedsiębiorców dotyczącą obrotu treściami audiowizualnymi rozpowszechnianymi za pośrednictwem telewizji, w szczególności dotyczącą tworzenia, zestawiania, nadawania, rozpowszechniania i rozprowadzania programów telewizyjnych, mogło dojść do naruszenia przepisów ustawy z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów (t. j. Dz. U. z 2019 poz. 369, dalej: „u.o.k.k.”), uzasadniającego wszczęcie postępowania antymonopolowego, w tym ustalenie, czy sprawa ma charakter antymonopolowy. Przy czym, postępowanie wyjaśniające jest postępowaniem prowadzonym w sprawie, a nie w stosunku do konkretnych przedsiębiorców. W przedmiotowej sprawie wobec żadnego przedsiębiorcy nie zostało do tej pory wszczęte postępowanie antymonopolowe i żadnemu przedsiębiorcy nie zostały postawione zarzuty naruszenia przepisów u.o.k.k. Postępowanie jest prowadzone pod kątem wyjaśnienia, czy sprawa ma charakter antymonopolowy, i czy nie doszło do stosowania praktyk ograniczających konkurencję, co uzasadniałoby wszczęcie postępowania antymonopolowego.

Przedmiotowe postępowanie dotyczy w szczególności działań nadawców telewizyjnych i badane są w nim między innymi zasady i warunki współpracy nadawców z operatorami telewizyjnymi w zakresie udzielania praw do reemisji programów, w tym

w szczególności sposób kalkulacji ceny za reemisję programów, kwestie powiązania praw do reemisji programów telewizyjnych z innymi programami lub innymi usługami, czy też kwestie ewentualnych ograniczeń nakładanych na operatorów przez nadawców, takich jak przykładowo ograniczanie swobody operatora do decydowania o umieszczeniu danego programu w pakiecie podstawowym lub premium. W postępowaniu badane są również kwestie związane z ewentualnym różnicowaniem przez nadawców ceny za programy oraz pakiety programów, czy też innych zasad i warunków współpracy w zależności od wielkości danego operatora, tj. w szczególności w zależności od liczby abonentów takiego operatora.

W ramach przedmiotowego postępowania wyjaśniającego zostały skierowane wezwania do udzielenia informacji do uczestników rynku telewizyjnego. Następnie we wrześniu br. przedstawiciele Urzędu Ochrony Konkurencji i Konsumentów odbyli spotkania z przedstawicielami Krajowej Rady Radiofonii i Telewizji, a także z przedstawicielami izb gospodarczych zrzeszających przedsiębiorców z sektora telewizyjnego, w szczególności operatorów telewizyjnych - Związkiem Pracodawców Mediów Elektronicznych i Telekomunikacji Mediakom, Polską Izbą Komunikacji Elektronicznej oraz Krajową Izbą Komunikacji Ethernetowej. W ramach przedmiotowych spotkań omówiono aktualne problemy rynkowe i wątpliwości operatorów telewizyjnych związane z działaniami nadawców telewizyjnych.

W ramach planowanych w najbliższym czasie działań przewidujemy skierowanie do uczestników rynku telewizyjnego kolejnych wezwań do udzielenia informacji i przedstawienia dokumentów. Przedmiotowe wezwania będą miały na celu doprecyzowanie i uzupełnienie informacji przedstawionych w odpowiedziach na pierwsze wezwania, pozyskanie dodatkowych informacji i dokumentów, jak również wyjaśnienie nowych okoliczności podniesionych przez operatorów telewizyjnych na spotkaniach.

W przypadku jakichkolwiek wątpliwości lub pytań dotyczących ww. postępowania, prosimy o kontakt z osobami prowadzącymi sprawę - p. Anetą Sakowicz (e-mail: aneta.sakowicz@uokik.gov.pl; tel. 22 55 60 451) lub p. Michałem Patoletą (e-mail: michal.patoleta@uokik.gov.pl; tel. 22 55 60 311) lub z sekretariatem Departamentu Ochrony Konkurencji (e-mail: dok@uokik.gov.pl; tel. 22 8 26 91 06).

Z poważaniem,
Z up. Prezesa
Urzędu Ochrony Konkurencji i
Konsumentów
DYREKTOR
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