

ACT
of 4 February 1994
on Copyrights and Related Rights

**(consolidated text, inc. Journal of Laws of the Republic of Poland
of 2018, item 2339)**

Chapter 1

The Subject Matter of Copyright

Article 1. 1. The subject matter of copyright shall be any manifestation of creative activity of individual nature, established in any form, irrespective of its value, intended purpose or form of expression (work).

2. In particular, the subject matter of copyright shall include:

- 1) works expressed in words, mathematical symbols, graphic signs (literary, journalistic, scientific and cartographic works and computer programs);
- 2) artistic works;
- 3) photographic works;
- 4) string musical instruments;
- 5) industrial design works;
- 6) architectural works, architectural and urban planning works as well as urban planning works;
- 7) musical works as well as musical and lyrical works;
- 8) theatrical works, theatrical and musical works as well as choreographic and pantomime works;
- 9) audiovisual (including cinematographic) works.

2¹. Only the manner of expression may be subject to protection. Protection shall not be afforded to inventions, ideas, procedures, methods, principles of operation, or mathematical concepts.

3. The work shall be covered by copyright as of its establishment, even should its form be incomplete.

4. The author shall be granted copyright protection irrespective of compliance

with any formalities.

Article 2. 1. The work derived from another author's work, in particular its translation, alteration or adaptation, shall be copyrighted without detriment to the original work.

2. The disposal and use of the derivative work shall be dependent on the permission of the author of the original work (derivative copyright), unless the author's economic rights to the original work have expired. The author's permission shall also be required to create a derivative work in the case of databases that meet the characteristics of a work.

3. The author of the original work may withdraw their permission, if the derivative work has not been disseminated within five years from granting such permission. The remuneration paid to the author shall be non-refundable.

4. A work created under the inspiration of another author's work shall not be considered a derivative work.

5. The copies of the derivative work shall indicate the author and title of the original work.

Article 3. Collections, anthologies, selections and databases which have the characteristics of a work shall be covered by copyright even if they contain unprotected materials, provided that their selection, arrangement or composition are creative, without detriment to the rights to the works used.

Article 4. The copyright shall not cover:

- 1) legislative acts and their official drafts;
- 2) official documents, materials, logos and symbols;
- 3) published patent specifications and industrial design specifications,
- 4) simple press information.

Article 5. The provisions of this Act shall apply to works:

- 1) authored or co-authored by a Polish national, or
- 1¹⁾ authored by a national of a Member State of the European Union or Member States of the European Free Trade Agreement (EFTA) – parties to the Agreement on the European Economic Area, or
- 2) which have been published for the first time in the territory of the Republic of Poland or simultaneously in that territory and abroad, or
- 3) which have been published for the first time in Polish, or
- 4) which are protected under international agreements, to the extent of protection

granted under these agreements.

Article 6. 1. Pursuant to this Act:

- 1) published work shall mean a piece of work which has been reproduced and its copies have been made available to the public by its author's permission;
- 2) simultaneous publication shall mean the publication of a work in the territory of the Republic of Poland and abroad within 30 days from the date of its first publication;
- 3) disseminated work shall mean a work which has been made available to the public in any way whatsoever by its author's permission;
- 4) the broadcasting of a work shall mean its dissemination by radio or television transmission through wireless means (terrestrial or satellite) or by wire;
- 5) the rebroadcasting of a work shall mean its dissemination by an entity other than the original broadcaster by way of acquiring the entire and unaltered programme of a radio or television broadcasting organisation as well as simultaneously and integrally transmitting that programme to the public;
- 6) putting a work into circulation shall mean making the original copy or duplicates of that work available to the public through the transfer of their ownership by a rightholder or with the rightholder's permission;
- 7) the rental of the copies of a work shall mean their transfer for temporary use with the objective of generating material benefits, either directly or indirectly;
- 8) the gratuitous lending of the copies of a work shall mean their transfer for temporary use that is not intended to generate material benefits, either directly or indirectly;
- 9) the public performance of a work means communicating it to the public by means of sound, image or sound and image carriers on which the work is fixed, or using devices for receiving a radio or television programme in which the work is broadcast, or using devices that allow to use a work communicated to the public in a manner that allows anyone to access it from a place and at a time of their choosing;
- 10) technical protection measures shall mean all technologies, devices or their components intended for preventing actions or limiting actions enabling the use of works or artistic performances contrary to applicable laws,
- 11) effective technical protection measures shall mean technical protection measures that enable eligible entities to supervise the use of a protected work or artistic performance by way of applying an access code or a security

mechanism, including in particular encoding, scrambling, or any other transformation of a work or artistic performance or a reproduction control mechanism that fulfils the purpose of protection;

- 12) rights management information is information that identifies the work, the author, the rightholder or information about the terms and conditions of use of the work provided that it is attached to a copy of the work or is imparted in relation to its dissemination, including identification codes;
- 13) an educational institution means the organisational units referred to in Article 2 of the Education Law Act of 14 December 2016 (*Dziennik Ustaw* 2017, items 59, 949 and 2203, and *Dziennik Ustaw* 2018, item 650) as well as schools, school complexes, [*and educational centres at diplomatic posts, consular offices and military representations of the Republic of Poland referred to in Article 8.5 (1)(a)*], and non-commissioned officer training schools and training centres referred to in *Article 8.5 (1) (a)*] **<Polish schools referred to in Article 4.29d>** of the said Act, and non-commissioned officer schools and training centres referred to in Article 127 (2) and (3) of the Act of 11 September 2003 on the Military Service of Professional Soldiers (*Dziennik Ustaw* 2018, items 173 and 138);
- 14) a collective management organisation shall mean a collective management organisation within the meaning of Article 3 (2) of the Act of 15 June 2018 on the Collective Management of Copyright and Related Rights (*Dziennik Ustaw* 2018, item 1293), hereinafter referred to as the "Act on the Collective Management of Copyright and Related Rights";
- 15) a collective management agreement shall mean an agreement referred to in Article 29 of the Act on the Collective Management of Copyright and Related Rights;
- 16) a representation agreement shall mean an agreement within the meaning of Article 3 (9) of the Act on the Collective Management of Copyright and Related Rights;
- 17) a competent collective copyright or related rights management organisation shall mean an organisation that collectively manages the rights of a rightholder on the basis of a collective management agreement or a representation agreement, and where the rightholder has not concluded any agreement with any organisation — an organisation representative for the given type of works or subject matters of related rights and categories of rightholders within a given

The amendment to Article 6.1 (13) shall enter into force as of 1 September 2019 (*Dziennik Ustaw* 2018, item 2245).

field of use within the meaning of the Act on the Collective Management of Copyright and Related Rights;

18) the beneficiary shall mean, regardless of any other dysfunction:

- a) a blind person, or
- b) a visually impaired person whose visual impairment cannot be corrected to such an extent that the eyesight of this person would become essentially equivalent to the eyesight of the person without such dysfunction and who, therefore, is not able to read the works expressed in writing essentially to the same degree as a person without such dysfunction, or
- c) a person with limited perception or reading ability who, therefore, is not able to read works expressed in writing to essentially the same degree as a person without such dysfunction, or
- d) a person who due to any other physical dysfunction is not able to hold or use a book or focus their vision or move their eyes to a degree that would allow normal reading;

19) an authorised entity is a public finance sector entity, an educational institution, university or non-profit public benefit organisation which pursues activities related to education, training, adaptive reading or access to information to the benefit of beneficiaries as part of its statutory activity;

20) a copy of the work in the available format shall mean a copy:

- a) created as a result of an action necessary in order to ensure an equally effective and convenient access to the work for the beneficiary as the access enjoyed by a person without dysfunctions referred to in subparagraph 18,
- b) made from a copy referred to in point a.”;

2. Whenever this Act mentions an equivalent of a specific amount denominated in EUR it shall mean its equivalent denominated in the Polish currency, calculated at the average EUR exchange rate or its equivalent denominated in other currency, calculated at the average EUR exchange rate and the average exchange rate of such other currency as published by the National Bank of Poland on the day preceding the conversion.

Article 6¹. 1. Communication of a work to the public in the Republic of Poland through satellite radio or television broadcasting is its communication to the public by the work being introduced by and at the responsibility of a radio or television broadcasting organisation in the Republic of Poland into a chain of communication

leading to the satellite and down towards the Earth.

2. If satellite radio or television broadcasting takes place in a non-EU member state which does not guarantee the level of protection set forth in chapter II of Council Directive No 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 (OJ EC L 248, 06.10.1993, p. 15; OJ EU Special Polish edition, chapter 17, volume 1, p. 134) and if:

- 1) the work-carrying signal is transmitted to the satellite through an uplink station situated in the Republic of Poland, the act of communication to the public is deemed to be performed in the Republic of Poland by the operator of the uplink station;
- 2) the work-carrying signal is transmitted to the satellite through an uplink station situated in a non-EU member state, and the act of communicating the work to the public has been commissioned by a radio or television broadcasting organisation having its registered office in an EU member state and its principal establishment in the Republic of Poland, the work will be deemed to be communicated to the public in the Republic of Poland by the broadcasting organisation.

3. If the work-carrying signal is encrypted to prevent general and unrestricted reception, it is deemed as communication to the public within the meaning of paragraph 1 on the condition that the means for decrypting the signal are provided by the radio or television broadcasting organisation or with its consent.

4. A satellite is any artificial Earth satellite operating on frequency bands which, under the Telecommunications Law of 16 July 2004 (*Dziennik Ustaw* 2017, items 1907 and 2201; *Dziennik Ustaw* 2018, items 106,138 and 650) are reserved for broadcasting signals for reception by the public or which are reserved for closed, point-to-point communication; however, the circumstances in which the signal is received in both cases must be comparable.

Article 7. Where international agreements to which the Republic of Poland is a party provide for protection greater than that accorded under the Act, the provisions of such agreements apply to unpublished works of Polish nationals or to works first published in the Republic of Poland or simultaneously in the Republic of Poland, or first published in Polish.

The Owner of Copyright

Article 8. 1. The owner of a copyright in a work is its author, unless the Act provides otherwise.

2. It is presumed that the author is the person whose surname has been identified as such on copies of the work or whose authorship is made public in another way in connection with the dissemination of the work.

3. Until the author discloses their authorship, they will be replaced in exercising their copyright by the producer or publisher or, in their absence, by a competent collective copyright management organisation.

Article 9. 1. Co-authors are co-owners of a copyright. Their shares in the copyright are presumed to be equal. Each of the co-authors may request that a court determine their share based on their creative work contribution.

2. Each co-author may exercise the copyright to their autonomous part of the work without prejudice to the rights of the other co-authors.

3. Exercising the copyright to the work in whole requires the consent of all the co-authors. In the absence of such consent, each co-author may request a decision from a court, which will take into account the interests of all the co-authors.

4. Each co-author may pursue claims for infringement of copyright to the work in whole. All co-authors will share the remuneration received proportionately to their shares.

5. Co-authors' economic rights are governed *mutatis mutandis* by the provisions of the Civil Code on fractional co-ownership.

Article 10. If authors combine their separate works for the purpose of joint dissemination, each of them may request permission from the other authors to disseminate the whole work so created unless there are reasonable grounds for permission being refused and a contract does not provide otherwise. The provisions of Articles 9.2 to 9.4 apply accordingly.

Article 11. Authors' economic rights to a collective work, especially an encyclopaedia or a periodical, are vested in the producer or publisher, and authors' economic rights to individual autonomous parts of the work are vested in their authors. It is presumed that the producer or publisher holds the right to the title

Article 12. 1. Unless the Act or an employment contract provide otherwise, an employer whose employee creates a work as part of their employment duties acquires, upon acceptance of the work, the author's economic rights within the

limits resulting from the purpose of the employment contract and the mutual intent of the parties.

2. If, within two years of accepting the work, the employer does not start disseminating the work designated in the employment contract for dissemination, the author may give the employer in writing a time limit to disseminate the work with the effect that, after the time limit passes to no effect, the rights acquired by the employer, together with the ownership of the object on which the work has been fixed, revert to the author unless the contract provides otherwise. The parties may specify a different time limit for the commencement of dissemination of the work.

3. Unless the employment contract provides otherwise, the employer acquires ownership of the object on which the work is fixed upon acceptance of the work.

Article 13. Unless the employer notifies the author within six months of the work being delivered that it refuses to accept the work or makes acceptance conditional on specific changes being made within a time limit designated for that purpose, the work will be deemed accepted without any reservations. The parties may specify a different time limit.

Article 14. 1. Unless the employment contract provides otherwise, a scientific establishment has the right of priority in publishing a scientific work of an employee who created the work as part of their employment duties. The author is entitled to remuneration. The priority of publication expires if, within six months of the work being delivered, no contract for publication of the work is concluded with the author or if, within two years of the work being accepted, the work is not published.

2. A scientific establishment may, without separate remuneration, use the scientific material contained in the work referred to in paragraph 1 and make the work available to third parties if this follows from the agreed purpose of the work or is provided for in the contract.

Article 15. It is presumed that the producer or publisher is the person whose surname or name appears as such on the objects on which a work is fixed or is made public in any way in connection with the dissemination of the work.

Article 15a. 1. A higher education institution shall have a priority right to publish a student's diploma work. If a higher education institution does not publish a diploma work within 6 months from the diploma defence, the author may publish it, unless the diploma work is a part of a collective work.

2. The entity referred to in Article 7.1 (1), (2), and (4) to (6) of the Act of 20 July 2018—The Law on Higher Education and Science (*Dziennik Ustaw* 2018, item 1668) may use, without remuneration and without the need to obtain the author's consent, a work created by a student or a person seeking the degree of doctor as a result of the performance of obligations related to studying or preparing a doctoral dissertation, make such a work available to the minister responsible for higher education and science, and use works stored in databases maintained by the minister, for the purpose of checks with the use of the Single Anti-Plagiarism System.

3. The minister responsible for higher education and science may use diploma works and doctoral dissertations stored in databases maintained by the minister to the extent necessary to ensure the proper maintenance and development of those databases and the IT systems cooperating with them.

Chapter 3

Substance of Copyright

Subchapter 1

Author's Moral Rights

Article 16. Unless this Act provides otherwise, the author's moral rights shall protect the link between the author and their work which is unlimited in time and not subject to any waiver or transfer, and, in particular, the right:

- 1) to be an author of the work;
- 2) to sign the work with the author's name or pseudonym, or to make it available to the public anonymously;
- 3) to have the contents and form of the author's work inviolable and properly used;
- 4) to decide on making the work available to the public for the first time;
- 5) to control the manner in which the work is used.

Subchapter 2

Copyrights

Article 17. Unless this Act provides otherwise, the author shall have an exclusive right to use the work and to manage its use throughout all the fields of exploitation and to receive remuneration for the use of the work.

Article 17¹. The development or reproduction of the database constituting a work, made by a lawful user of the database, or a copy thereof, shall not require the permission of the author of the database, if it is required in order to access the contents of the database and for their normal exploitation. If the user is authorised to use only a portion of the database, this provision shall refer only to that portion.

Article 18. 1. The author's economic rights shall not be subject to execution as long as they serve the author. This shall not apply to matured debts.

2. After the author's death their heirs may object to the execution of an unpublished work under copyright, unless the objection contradicts the expressed wish of the author as to the dissemination of the work.

3. The right to the remuneration referred to in Articles 19.1, 19¹, 20.2 to 20.4, 20¹, and 70.2¹, may not be waived, transferred, or executed. This shall not apply to matured debts.

4. The right to the remuneration referred to in Article 28.4, to which entities referred to in Article 28.5 (1) to (3) are entitled, may not be transferred or executed. This shall not apply to matured debts.

Article 19. 1. For original copies of artistic or photographic works professionally resold, the author and their heirs shall have the right to remuneration equal to the sum of the following rates:

- 1) 5% for the portion of the sale price up to the equivalent of EUR 50,000, and
- 2) 3% for the portion of the sale price from the equivalent of EUR 50,000.01 up to the equivalent of EUR 200,000, and
- 3) 1% for the portion of the sale price from the equivalent of EUR 200,000.01 up to the equivalent of EUR 350,000, and
- 4) 0.5% for the portion of the sale price from the equivalent of EUR 350,000.01 up to the equivalent of EUR 500,000, and
- 5) 0.25% for the portion of the sale price exceeding the equivalent of EUR 500,000

- however not more than the equivalent of EUR 12,500.

2. The provision of paragraph 1 shall not apply, if the sale is lower than the equivalent of EUR 100.

3. Pursuant to paragraph 1, original copies of the work shall include:

- 1) copies made personally by the author;
- 2) copies deemed as original copies of the work, if they were made personally, in

a limited number, by the author or under their supervision, numbered, signed or otherwise designated by the author.

Article 19¹. The author and their heirs shall have the right to remuneration amounting to 5% of the price of professionally resold manuscripts of literary and musical works.

Article 19². 1. Pursuant to Article 19.1 and Article 19¹, resale shall mean any sale effected after the first disposal of the work by the author.

2. Pursuant to Article 19.1 and Article 19¹, professional resale shall mean any acts of resale performed by sellers, buyers, intermediaries, and other entities professionally dealing in works of art or manuscripts of literary and musical works.

Article 19³. 1. The payment of remuneration referred to in Articles 19.1 and 19¹ is the obligation of the seller referred to in Article 19², and when the seller acts for a third party professionally dealing in works of art or manuscripts of literary and musical works, it is jointly and severally liable with the third party.

2. The seller is obliged to disclose the identity of the third party referred to in paragraph 1. The seller may be released from this obligation by paying the remuneration due.

3. The author of a work referred to in Article 19.1 and Article 19¹ and their heirs may request that the persons mentioned in paragraph 1 provide information and give access to the documents needed to determine the remuneration due for the resale of the original copy of a work or the manuscript of a work for a period of 3 years after resale.

Article 19⁴. The sale prices specified in Article 19.1 and Article 19¹ shall mean the prices net of the output value added tax due for the resale of the original copy of a work or the manuscript of a work.

Article 19⁵. The provisions of Articles 19 to 19⁴ also apply to original copies and manuscripts of works other than those mentioned in Article 5 whose authors have their place of residence in the Republic of Poland on the resale date.

Article 20. 1. The manufacturers and importers of:

- 1) tape recorders, video recorders and other similar devices;
- 2) photocopiers, scanners and other similar reprographic devices which allow to make copies of all or part of a published work;
- 3) blank carriers for fixing works or objects of related rights using devices mentioned in paragraphs 1 and 2, insofar as they are intended for personal use

shall be obliged to pay fees to collective management organisations specified in paragraph 5 acting for authors, performers, producers of phonograms and videograms, and publishers, in the amount not exceeding 3% of the amount due from the sale of those devices and carriers.

2. The amount received in the form of fees from the sale of tape recorders and other similar devices as well as related blank carriers shall be distributed as follows:

- 1) 50% – to artists;
- 2) 25% – to performers;
- 3) 25% – to phonogram producers.

3. The amount received in the form of fees from the sale of video recorders and other similar devices as well as related blank carriers shall be distributed as follows:

- 1) 35% – to artists;
- 2) 25% – to performers;
- 3) 40% – to phonogram producers.

4. The amount received in the form of fees from the sale of reprographic devices as well as related blank carriers shall be distributed as follows:

- 1) 50% – to artists;
- 2) 50% – to publishers.

5. The Minister in charge of culture and national heritage, having consulted collective copyright and related rights management organisations, associations of authors and performers, organisations of phonogram producers, videogram producers and publishers, and organisations of manufacturers and importers of the devices and blank carriers specified in paragraph 1, shall lay down by way of a regulation: device and carrier categories and the amount of fees referred to in paragraph 1, based on the ability of the devices and carriers to reproduce works, their intended use to perform functions other than reproducing works and the manner of collecting and distributing fees, and designate the collective copyright and related rights management organisations authorised to collect them.

Article 20¹. 1. The holders of reprographic devices whose business activity involves reproducing works for personal use by third parties are obliged to pay, through a collective copyright and related rights management organisation, fees amounting up to 3% of the proceeds from such activity to authors and publishers, unless the reproduction is carried out on the basis of an agreement with the rightholder. The fees are payable to authors and publishers in equal parts.

2. The minister in charge of culture and national heritage, having consulted

collective copyright and related rights management organisation, associations of authors and publishers, and the competent chamber of commerce, shall lay down by way of a regulation the amount of fees referred to in paragraph 1 based on the share of works reproduced for personal use in all reproduced materials, the manner of collecting and distributing fees and designate the collective copyright and related rights management organisation or organisations authorised to collect them.

Article 21. 1. Radio and television broadcasting organisations may broadcast minor musical works, minor lyrical works as well as musical and lyrical works exclusively on the basis of a contract signed with the competent collective copyright management organisation, unless the radio or television broadcasting organisation is entitled under a separate contract to broadcast works commissioned by a radio or television broadcasting organisation under a separate contract.

2. In a contract concluded with a radio or television broadcasting organisation, the author may waive the representation of the collective copyright management organisation, referred to in paragraph 1. The waiver must be made in writing, otherwise being null and void.

2¹. The provisions of paragraphs 1 and 2 shall apply accordingly to making works available to the public in a manner that allows anyone to access them in a place and at a time of their choosing.

3. (repealed)

4. (repealed)

Article 21¹. 1. Cable network operators may retransmit in cable networks the works broadcast in programmes of radio and television organisations exclusively on the basis of a contract concluded with the competent collective copyright management organisation.

1¹. The obligation of intermediation of a competent collecting society referred to in paragraph 1 shall not apply to rights used by a radio or television broadcaster in relation to its own transmissions, regardless of whether the rights in question belong to that broadcaster or whether they were transferred to it by another rightholder.

2. In the case of disputes related to the conclusion and the terms and conditions of the contract referred to in paragraph 1, the provision of Article 85 of the Act on the Collective Management of Copyright and Related Rights shall apply.

Article 21². 1. A broadcasting organisation may, as part of its own archival

broadcasts, broadcast works and make them publicly available in a manner enabling everyone to access them from a place and at a time individually chosen by them, and may reproduce them for the purposes of such use, exclusively on the basis of an agreement concluded with a competent copyright collecting society, unless a given broadcasting organisation has the right to such use under the statute or a separate agreement. The provision of Article 21.2 shall apply accordingly.

2. An own archival broadcast, as referred to in paragraph 1, shall be a broadcast produced by a given broadcasting organisation, ordered or commissioned by it or co-produced by it before 1 January 2003.

Article 21³. The holders of devices used to receive radio or television programming can communicate broadcast works to the public only under a contract concluded with a competent collective copyright management organisation, unless their communication occurs on the basis of a separate agreement.

Article 22. (repealed)

Subchapter 3

Permitted Use of Protected Works

Article 23. 1. A work already disseminated may be used free of charge for personal use without the author's permission. This provision does not grant authorisation to build according to another author's architectural or architectural and urban planning works, or to use electronic databases having the features of a work unless for own non-profit use for academic purposes.

2. The scope of personal use shall include the use of single copies of works by a group of individuals who are related, especially by blood or marriage, or who are in a social relationship.

Article 23¹. The author's consent is not required for a temporary reproduction, transient or incidental in nature, that has no independent economic significance and is an integral and essential part of a technological process whose sole purpose is to enable:

- 1) the transmission of a work in an information and communications technology system between third parties by an intermediary, or
- 2) lawful use of the work.

Article 23². 1. Broadcasting organisations may, using their own resources, fix works for the purposes of their own broadcasts.

2. The fixations referred to in paragraph 1 shall be destroyed within one month from the date of expiration of the right to broadcast a work.

3. The provisions of paragraph 2 do not apply to fixations that are archival materials being part of the national archive resources.

Article 24. 1. Works broadcast by satellite or ground signal by another radio or television broadcasting organisation may be communicated by a collective antenna or a cable network provided it takes place as simultaneous, integral and free-of-charge dissemination of radio or television programmes and is intended for reception by a specified group of recipients in one building or in single-family houses of up to 50 households.

2. The holders of devices used for receiving radio and television programmes may by means of such devices receive broadcast works even if the devices are located in a public place, provided that no economic benefits are gained.

3. (repealed)

4. (ineffective).

Article 25. 1. It is permitted for information purposes to disseminate through press, radio and television:

1) already disseminated:

a) reports on current events,

b) articles on current political, economic or religious topics where such further dissemination thereof is not expressly prohibited;

c) current comments made and photographs taken by reporters;

2) short excerpts from reports and articles referred to in subparagraph 1 (a) and (b);

3) reviews of publications and works already disseminated;

4) (repealed)

5) short summaries of works already disseminated.

2. The author shall have the right to remuneration for the use of the works referred to in paragraph 1 (1) (b) and (c).

3. The dissemination of works pursuant to paragraph 1 is allowed both in the original and in translation.

4. The provisions of paragraphs 1 to 3 shall apply accordingly to making works available to the public in a manner allowing anyone to access them in a place and at a time of their choosing; however, if the remuneration referred to in paragraph 2 is

not paid under a contract with the rightholder, it will be paid through a competent collective copyright and related rights management organisation.

Article 26. It is permitted to quote, in the reports on current events, works made available in the course of those events, however only to the extent justified by the purpose of the information.

Article 26¹. Political speeches and speeches given in public trials, as well as fragments of public speeches, lectures, and sermons, can be used to the extent justified by the informatory purpose. The provision does not give the right to the publication of collections of works of this type.

Article 27. 1. Educational institutions and the entities referred to in Article 7.1 (1), (2), and (4) to (8) of the Act of 20 July 2018—The Law on Higher Education and Science may, for the purpose of illustrating the content conveyed for educational purposes or for the purpose of conducting scientific activity, use the originals and translations of disseminated works and reproduce for these purposes disseminated minor works or parts of larger works.

2. In the case of making works publicly available in a manner enabling members of the public to access it from a place and at a time individually chosen by them, the use referred to in paragraph 1 is allowed only for a limited number of persons who are learners or who teach or conduct scientific research, identified by the entities listed in paragraph 1.

Article 27¹. 1. For educational and scientific purposes, distributed minor works or fragments of larger works may be quoted in textbooks, extracts from literature, and anthologies.

2. In the cases referred to in paragraph 1, the author shall be entitled to remuneration.

Article 28. 1. Educational institutions, universities, research institutes pursuing the activity referred to in Article 2.3 of the Act of 30 April 2010 on Research Institutes (*Dziennik Ustaw* 2018, item 736), research institutes of the Polish Academy of Sciences pursuing the activity referred to in Article 50.4 of the Act of 30 April 2010 on the Polish Academy of Sciences (*Dziennik Ustaw* 2017, items 1869 and 2201), libraries, museums, and archives may:

- 1) lend, as part of their statutory tasks, copies of disseminated works,
- 2) reproduce works being part of their own collections for the purposes of supplementing, preserving, or protecting their own collections,

3) make their collections available for research or cognitive purposes via the end points (terminals) of information technology systems located on their premises —if these activities are not performed for direct or indirect financial gain.

2. The reproduction referred to in paragraph 1 (2) may not result in an increase in the number of copies of works and an expansion of their collections, lent and made available, respectively, pursuant to paragraph 1 (1) and (3).

3. The provision of paragraph 1 (3) shall not be applied if works are made available using the method described therein pursuant to a prior agreement with a rightholder.

4. For lending copies of works expressed in words, created or published in the Polish language in print, by public libraries within the meaning of the Act of 27 June 1997 on Libraries (*Dziennik Ustaw* 2018, items 574), hereinafter referred to as “public libraries”, remuneration specified and paid in accordance with Subchapter 4 is due.

5. After the condition defined in Article 35².1 is met, the remuneration referred to in paragraph 4 shall be payable to:

- 1) the author of a work expressed in words, created and published in the Polish language;
- 2) the translator into Polish of a work expressed in words, created in a foreign language and published in Polish;
- 3) the co-author of a work referred to in subparagraph (1) whose contribution is an artistic or photographic work;
- 4) the publisher of a work expressed in words and published in Polish.

6. The remuneration referred to in paragraph 4 shall not be payable for lending a copy of a work if it is to be used exclusively on the premises of a public library.

7. The provision of paragraph 4 shall not be applied to lending copies by the National Library.

Article 29. Works constituting an independent whole may quote fragments of distributed works and entire distributed graphic works, photographic works, and minor works, to the extent that it is justified by the purpose of the quotation, such as explanation, polemics, critical or scientific analysis or teaching, or by the rights of an artistic genre.

Article 29¹. Works may be used for the purposes of parody, pastiche, or caricature, to the extent that it is justified by the rights of these artistic genres.

Article 29². A work may be unintentionally incorporated into another work, as long as the work incorporated has no significance for the work into which it has been incorporated.

Article 30. (repealed)

Article 30¹. Article 27¹ and Article 28 do not apply to databases which have the characteristics of a work.

Article 31. 1. Works may be used during religious ceremonies and official ceremonies organised by public authorities if this is not associated with obtaining a direct or indirect financial benefit.

2. Distributed works may be publicly performed or displayed free of charge using devices or mediums located at the same site as the audience during school and academic events, if this is not associated with obtaining a direct or indirect financial benefit and if the performers and the persons displaying the works do not receive remuneration.

3. The provisions of paragraphs 1 and 2 do not apply to using works during advertising, promotional, and electoral campaign events.

Article 32. 1. The owner of a copy of an artistic work may exhibit it in public, provided that it is not for economic benefit.

2. If a decision is taken to destroy the original of an artistic work located in a public place, the owner is obliged to submit an offer to sell the work to the author or their relatives, provided that it is possible to contact them to make the sale offer. The maximum price is set at the value of the materials. If the sale is not possible, the owner is obliged to allow the author to make a copy or – depending on the type of the work – appropriate documentation.

Article 33. It is permitted to disseminate:

- 1) works permanently exhibited on commonly accessible public roads, streets, squares or gardens, although not for the same use;
- 2) (repealed)
- 3) in encyclopaedias and atlases – published artistic and photographic works, provided that contacting the author to obtain their permission entails obstacles that are difficult to overcome. In such case, the author is entitled to remuneration.

Article 33¹. 1. It is permitted to use works already distributed for the benefit of the disabled, provided that such use is directly related to their disability, is

non-profit and is undertaken in proportion to the nature of the disability.

2. The use referred to in paragraph 1, consisting in the reproduction of works expressed in writing, mathematical symbols, graphic marks or notations as well as related artistic or photographic works, made publicly available in any way, and dissemination of these works for the benefit of beneficiaries shall be carried out on the terms set out in Subchapter 3a.

Article 33². It is permitted to use works for the purposes of public security or for conducting or reporting administrative, judicial or parliamentary proceedings.

Article 33³. 1. Works may be used for the purpose of advertising a publicly accessible exhibition or a public sale of works, to the extent justified by the promotion of that exhibition or sale and excluding other commercial use.

2. The use referred to in paragraph 1 concerns in particular publicly accessible exhibitions in museums, galleries, and exhibition halls, and includes using works in advertisements, catalogues, and other materials distributed to promote an exhibition or sale and exhibiting copies of works or making them available in any other manner for these purposes.

Article 33⁴. It is permitted to use works in connection with the demonstration or repair of equipment.

Article 33⁵. It is permitted to use a work in the form of a building structure, its drawings, plans or another arrangement for the purpose of reconstructing or renovating a building structure.

Article 34. It is permitted to use works within the limits of permitted use on condition that the author's full name and source are indicated. The author and the source should be indicated taking into account existing possibilities. The author is not entitled to remuneration, unless the Act provides otherwise.

Article 35. Permitted use cannot conflict with the normal use of the work or prejudice the legitimate interests of the author.

Subchapter 3a

Permitted Use for the Benefit of Beneficiaries

Article 35a. 1. The beneficiary or a person acting on their behalf can reproduce works in order to make copies of works in available formats.

2. The authorised entity may:

- 1) reproduce works for the purpose of making copies works in available formats;

2) disseminate copies of works in available formats, made independently or received from another authorised entity, among beneficiaries and authorised entities.

3. The activities referred to in paragraphs 1 and 2 can be performed solely for the purpose of ensuring that the beneficiary has equally effective and convenient access to the work as the person without dysfunctions referred to in Article 6.1 (18).

4. In the case of dissemination among beneficiaries referred to in paragraph 2 (2), the beneficiary shall prove the existence of circumstances referred to in Article 6.1 (18), in particular by means of a statement made in writing or as a document, submission of a medical certificate, a disability certificate or a certificate on the degree of disability.

5. The provisions of agreements concluded between the authorised entity who holds proprietary copyrights and the beneficiary, a person acting on their behalf or an authorised entity that are contrary to paragraph 1 or 2 shall be invalid.

Article 35b. The authorised entity undertakes:

- 1) activities referred to in Article 35a.2 with due diligence and records their progress;
- 2) appropriate measures aimed to discourage unauthorised reproduction and dissemination of copies of works in available formats.

Article 35c. 1. The authorised entity shall make available on its website and update on an on-going basis:

- 1) the list of works whose copies in available formats are held by the authorised entity and information on the types of these formats;
- 2) names and contact details of authorised entities with whom the authorised entity exchanges copies of works in available format;
- 3) information on the manner in which duties referred to in Article 35b are performed.

2. The list, information, names and details referred to in paragraph 1 can be additionally provided in a manner customarily adopted for the relevant authorised entity.

Article 35d. 1. At the request of the beneficiary, authorised entity or holder of proprietary copyrights, an authorised entity shall provide requesting entity with the list, information, names and details referred to in Article 35c.1 (1) and (2).

2. The list, information, names and details referred to in Article 35c.1 (1) and

(2) shall be provided to the beneficiary in a form that enables the beneficiary to acquaint themselves with its content.

Article 35e. 1. When requested by the authorised entity, the minister in charge of culture and the conservation of national heritage provide the European Commission with the name and contact details of that entity.

2. The minister in charge of culture and the conservation of national heritage shall adjudicate, by way of a decision, that the entity reporting the name and contact details is not an authorised entity.

Subchapter 4

The Rules for the Determination and Payment of Remuneration for the Lending of Copies of Works by Public Libraries

Article 35¹. 1. The remuneration for the lending of copies of works referred to in Article 28.4 by public libraries, hereinafter referred to as “remuneration for lending”, shall be paid by a collective copyright management organisation appointed by the minister in charge of culture and national heritage from funding provided to it by the minister in charge of culture and national heritage from the resources of the Culture Promotion Fund referred to in Article 87 of the Gambling Act of 19 November 2009 (*Dziennik Ustaw* 2018, items 165, 650, and 723).

2. The organisation for collective management, referred to in paragraph 1, is appointed by the minister responsible for culture and national heritage protection for a period of not more than five years, following a competition taking into account the following criteria:

- 1) representativeness;
- 2) organisational capacity to carry out tasks in a manner that ensures the effective payment of remuneration for lending;
- 3) efficiency and regularity of operation;
- 4) validity and amount of planned costs for the determination of the amount and payment of remuneration for lending.

3. The minister responsible for culture and national heritage protection announces the competition referred to in paragraph 2 and its result in *Biuletyn Informacji Publicznej* [the Public Information Bulletin] on the minister’s website.

4. An organisation for collective management of copyright participating in the competition referred to in paragraph 2 may lodge to the minister responsible for culture and national heritage protection, within 7 days from the date of

announcement of the result of that competition, an appeal against that result due to an infringement of a provision of law.

5. The appeal referred to in paragraph 4 shall be examined by the minister responsible for culture and national heritage protection within 14 days from the date of its receipt. In the event of the appeal being upheld, the minister responsible for culture and national heritage protection shall cancel the competition referred to in paragraph 2.

6. The co-financing for the payment of remuneration for lending, payable to the entities referred to in Article 28.5, shall be allocated for the payment of remuneration for lending and for covering reasonable and documented costs of determining the amount of and paying remuneration for lending.

7. Co-financing for the payment of remuneration for lending in a given calendar year equals to 5% of the value of the purchases of library materials made by public libraries in the preceding calendar year, with 75% of that amount, after the deduction of costs of determining the value of and paying remuneration for lending, being paid to the entities referred to in Article 28.5 (1) to (3), and 25% being paid to the entities referred to in Article 28.5 (4).

8. Co-financing for the payment of remuneration for lending shall be provided pursuant to an agreement concluded every year between the minister responsible for culture and national heritage protection and the organisation for collective management referred to in paragraph 1.

9. The agreement referred to in paragraph 8 shall specify in particular:

- 1) the amount of funding allocated for the payment of remuneration for lending, with the costs of determining and paying its amount in a given year indicated;
- 2) time limits and method for the transfer of funding;
- 3) the obligation of the collective management organisation to undergo an inspection conducted by the minister in charge of culture and national heritage;
- 4) the manner of accounting for the funding;
- 5) conditions and manner pursuant to which any unused part of the funding or funding used contrary to its intended purpose is to be returned.

10. Co-financing for the payment of the remuneration for lending in the part allocated for covering reasonable and documented costs of determining the amount of and paying the remuneration for lending, incurred by the organisation for collective management referred to in paragraph 1, may not, in a given calendar year, exceed 10% of the amount of the co-financing determined in accordance with

paragraph 7.

11. The minister responsible for culture and national heritage protection performs controls of fulfilment of the tasks related to the payment of remuneration for lending, comprising in particular the determination of the amount of the remuneration and the payment of that remuneration, the use of the co-financing provided for that purpose, and the maintenance of required documentation.

Article 35². 1. The remuneration for lending is due after the entity referred to in Article 28.5 submits a written statement of intent to receive remuneration for lending, hereinafter “statement”.

2. The statement is filed with the organisation for collective management referred to in Article 35¹.1. The statement produces effects in a given year if it is filed by 31 August of that year. A filed statement produces effects in the next years until it is withdrawn.

3. Within 14 days of the date of signature of the agreement referred to in Article 35¹.8, the organisation for collective management referred to in 35¹.1 publishes on its website, and the minister responsible for culture and national heritage protection publishes on the minister’s website in *Biuletyn Informacji Publicznej* [the Public Information Bulletin], information about the possibility of filing statements.

4. The amount of remuneration for lending payable in a given calendar year to particular entities referred to in Article 28.5 is determined by the organisation for collective management referred to in Article 35¹.1, proportionally to the number of copies of works by those entities lent by public libraries in the preceding year and based on statements filed by those entities before 31 August of a given calendar year and in the previous years.

5. The amount of remuneration for lending, payable to an entity referred to in Article 28.5 (2) in a given calendar year, equals 30% of the amount of remuneration payable to the author of a work expressed in words created and published in the Polish language.

6. The maximum amount of remuneration for lending payable to an entity referred to in Article 28.5, for lending, in a given calendar year, copies of all works of that entity indicated in the statement, shall equal five times the average monthly remuneration in the business enterprise sector, including profit-sharing payments, for the last quarter of the preceding calendar year, announced by the President of *Główny Urząd Statystyczny* [the Central Statistical Office of Poland].

7. Remuneration for lending shall not be payable to an entity referred to in

Article 28.5 in a given calendar year if, following the division of the amount referred to in Article 35³.2, the amount of the remuneration for lending copies of all works of that entity by public libraries payable to that entity is lower than one two hundredth of the average monthly remuneration referred to in paragraph 6.

Article 35³. 1. Remuneration for lending due to each of the entities referred to in Article 28.5 is calculated based on information on the lending of copies of works in a given calendar year provided by public libraries on the list referred to in Article 35⁴.2 to the collective management organisation referred to in Article 35¹.1 and to the minister in charge of culture and national heritage, within 3 months of the end of the calendar year for which the remuneration for lending is payable.

2. Based on the information referred to in paragraph 1, the organisation for collective management referred to in Article 35¹.1 shall divide proportionally the amount provided for remuneration for lending payable to particular entities referred to in Article 28.5, and subsequently, not later than by the end of a given calendar year, pays that remuneration.

Article 35⁴. The minister responsible for culture and national heritage protection, after consultation with the organisation for collective management of copyright or related rights, associations of authors, public library organisations, and appropriate chambers of commerce, shall define, by way of a regulation:

- 1) the procedure for the distribution and payment of remuneration for lending based on the number of lendings of copies of works in collections in public libraries and the types of costs referred to in Article 35¹.9 as well as the need to ensure that the costs are reasonable and documented and the expenses made in an effective and transparent manner;
- 2) the scope of the information referred to in Article 35³.1 and the list of public libraries obliged to provide it, having regard to the need to estimate the number of lendings of copies of works in collections in public libraries, taking into account the effect of the geographic criterion, including the size of the district in which the indicated public libraries operate, on the variation of this number;
- 3) the required scope of information included in the statement referred to in Article 35².1, having regard to the need to provide the collective management organisation referred to in Article 35¹.1 with data enabling the payment of remuneration for lending, including the full name or pseudonym of the author or the name of another entity referred to in Article 28.5, and the number of the

- bank account to which the remuneration is to be paid;
- 4) the required scope of information to be included in the announcement of the competition referred to in Article 35¹.2, having regard to the fact that the minimum scope of such information is to comprise at least the conditions for participation in the competition, the time limit for bid submission, and bid assessment criteria;
 - 5) the scope of competition documentation, having regard to the fact that the scope of such documentation must specify at least the requirements for participation in the competition referred to in Article 35¹.2, the requirements to be met by bids, and bid assessment criteria;
 - 6) the competition procedure, having regard to its transparency, reliability, and objectivity.

Subchapter 5

Permitted Use of Orphan Works

Article 35⁵. 1. Orphan works are:

- 1) works published in books, daily newspapers, periodicals, or other forms of publication in print,
- 2) audiovisual works and works ordered or incorporated into audiovisual works or fixed in videograms, within the scope of using an audiovisual work or a videogram as a whole,
- 3) works fixed in phonograms

—being part of the collections of entities referred to in paragraph 2, if the rightholders, having the author's economic rights to those works within the fields of use listed in paragraph 2, have not been identified or located despite the search referred to in Article 35⁶ being carried out.

2. Archives, educational institutions, universities, research institutes pursuing the activity referred to in Article 2.3 of the Act of 30 April 2010 on Research Institutes, research institutes of *Polska Akademia Nauk* [the Polish Academy of Sciences] pursuing the activity referred to in Article 50.4 of the Act of 30 April 2010 on the Polish Academy of Sciences, libraries and museums, as well as cultural institutions whose statutory task is to assemble, protect, and popularise collections of film or phonographic heritage, and public-service broadcasting organisations, may reproduce published orphan works, and in the absence of publication—works broadcast for the first time in the territory of the European Union or the European

Economic Area, and may make them publicly available in a manner enabling members of the public to access it from a place and at a time individually chosen by them.

3. The use of orphan works pursuant to paragraph 2 is allowed for the purposes of fulfilment of the statutory tasks, being in the public interest, of the entities listed in paragraph 2, in particular for the purpose of preserving, renewing, or making available works being part of their collections for cultural and educational purposes. The entities may earn revenues from such use as long as such revenues are earmarked for covering the direct costs of digitisation of orphan works and making them publicly available.

4. It is also allowed, in accordance with paragraph 2, to use orphan works which have not been published or broadcast, if with the consent of the rightholders that had the author's economic rights to such works within the fields of use listed in paragraph 2 the works have been made publicly available by one of the entities listed in paragraph 2, as long as it can be assumed that the rightholders would not object to such use.

5. If there is more than one rightholder holding the author's economic rights to an orphan work in the fields of exploitation listed in paragraph 2, the work is considered an orphan work in relation to the rights of rightholders who have not been identified or located despite searches being conducted as referred to in Article 35⁶. The use of such a work pursuant to paragraph 2 is allowed on condition that the consent of the other identified and located rightholders, having the author's economic rights to that work within the fields of use referred to in paragraph 2, is obtained.

6. In the case of public-service broadcasting organisations, the provisions of this Subchapter apply to works referred to in paragraph 1 (2) and (3) which were produced, ordered, or commissioned by those organisations or co-produced with those organisations before 1 January 2003, in order for the organisations to acquire exclusive rights.

7. The provisions of Article 34 sentence one and two and of Article 35 shall apply to the use of orphan works pursuant to paragraph 2.

Article 35⁶. 1. Before using a work that can be considered an orphan work, the entities listed in Article 35⁵.2 shall carry out carefully and in good faith a search for each of the rightholders that have the author's economic rights to that work within the fields of exploitation listed in Article 35⁵.2, consisting in consulting sources

appropriate for the category of works in question for information about those rightholders, hereinafter referred to as “diligent search”.

2. A diligent search shall be carried out in that Member State of the European Union or member state of the European Free Trade Agreement (EFTA)—party to the European Economic Area (EEA) Agreement, in which the work was published for the first time, and in the absence of publication—broadcast for the first time.

3. In the case of an audiovisual work, diligent search shall be carried out in that Member State of the European Union or member state of the European Free Trade Agreement (EFTA)—party to the European Economic Area (EEA), in which the headquarters or habitual residence of the producer is located.

4. In the case of the works referred to in Article 35⁵.4, diligent search shall be carried out in that Member State of the European Union or member state of the European Free Trade Agreement (EFTA)—party to the European Economic Area (EEA), in which the headquarters of the entity that made the work in question publicly available is located.

5. If it becomes probable during a diligent search that information about the rightholders referred to in paragraph 1 may be found in countries other than those specified in paragraphs 2 to 4, appropriate sources in those countries need to be consulted for such information.

6. The entities listed in Article 35⁵.2 may commission a diligent search from a third party, including an organisation for collective management of copyright or related rights.

7. Diligent search shall be considered as carried out in respect of works that have been listed as orphan works in the database referred to in Article 35⁷.1.

8. The entities listed in Article 35⁵.2 keep records confirming that a diligent search has been carried out.

9. The minister responsible for culture and national heritage protection, after consultation with the organisation for collective management of copyright or related rights, associations of authors, performers and producers, and nationwide organisations of entities referred to in Article 35⁵.2, shall define, by way of a regulation:

- 1) the list of sources that need to be checked as part of a diligent search, comprising at least the sources listed in the Annex to Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5), taking into

- account the need for a diligent search to be carried out carefully and the availability of information on rightholders in particular sources;
- 2) the method of documentation of information on the results of diligent searches by the entities listed in Article 35⁵.2, taking into account the need to ensure a uniform standard of diligent search documentation.

Article 35⁷. 1. Upon application of an entity listed in Article 35⁵.2, made before using an orphan work, the minister responsible for culture and national heritage protection shall register that entity in an orphan work database maintained by the Office for Harmonization in the Internal Market as part of the European Observatory on Infringements of Intellectual Property Rights.

2. The minister responsible for culture and national heritage protection shall declare, by way of a decision, that the applicant is not one of the entities listed in Article 35⁵.2, which are authorised to use an orphan work.

3. Entities listed in Article 35⁵.2 that are registered in the database referred to in paragraph 1 communicate to the minister responsible for culture and national heritage protection and enter into that database information on:

- 1) the results of the diligent searches that the entities have carried out;
- 2) the use that the entities make of orphan works;
- 3) any changes in the orphan work status, in accordance with Article 35⁸;
- 4) their contact details.

4. The applications and information referred to in paragraphs 1 and 3 shall be provided by means of an ICT system used to operate the database referred to in paragraph 1.

Article 35⁸. 1. A rightholder that has, within the fields of use listed in Article 35⁵.2, the author's economic rights to a work considered to be orphan may request the entity that entered that work into the database referred to in 35⁷.1 or its legal successor to acknowledge the expiry of the orphan work status of the work to the extent to which the rightholder demonstrates his or her rights to that work.

2. The admissibility of use of an orphan work pursuant to Article 35⁵.2 shall cease, if the orphan work status of the work has been acknowledged as expired to the extent of the rights of a given rightholder and if information on this fact has been entered into the database referred to in Article 35⁷.1.

3. If the request of a rightholder referred to in paragraph 1 who has demonstrated his or her rights to an orphan work is not accepted within the period

of a month from the date of its service, the admissibility of use of the orphan work by the entity to which the request is addressed shall cease on the date of expiry of that period.

4. If the entity which entered an orphan work into the database referred to in Article 35⁷.1 no longer exists and has no legal successor, the rightholder referred to in paragraph 1 may submit to the minister responsible for culture and national heritage protection a request for acknowledgement of the expiry of the orphan work status of the work to the extent to which the rightholder demonstrates his or her rights to that work. The refusal to acknowledge the expiry of the orphan work status of a work shall take place by way of a decision. The provision of paragraph 3 shall not apply.

5. The rightholder referred to in paragraph 1 may request from an entity listed in Article 35⁵.2 a fair compensation for the use of the rightholder's work as an orphan work. The amount of the compensation shall take into account the nature and scope of the use of that work, the amount of revenues earned pursuant to Article 35⁵.3 sentence two, and the harm caused to the rightholder in relation to that use.

Article 35⁹. The provisions of Subchapter 5 shall not apply in the case referred to in Article 8.3.

Subchapter 6

Certain Uses of Out-of-Commerce Works

Article 35¹⁰. 1. Commercially unavailable works are works published in books, daily newspapers, periodicals, or other forms of publication in print that are not commercially available for recipients with the consent of the rightholders having the author's economic rights to those works within the fields of use listed in paragraph 2, are not available in the form of copies placed on the market in a number meeting reasonable needs of recipients, and are not made available to the public in a manner enabling members of the public to access them from a place and at a time individually chosen by them. Trading in copies of works for which the exhaustion of the right referred to in Article 51.3 has occurred shall not be taken into account in the determination of work availability.

2. Archives, educational institutions, the entities referred to in Article 7.1 (1), (2), and (4) to (8) of the Act of 20 July 2018—The Law on Higher Education and Science, and cultural institutions may, on the basis of an agreement concluded with an organisation for collective management of copyright designated by the minister

responsible for culture and national heritage protection, reproduce commercially unavailable works being part of their collections that were published in the territory of the Republic of Poland for the first time before 24 May 1994 and may make them publicly available in a manner enabling anyone to access them from a place and at a time individually chosen by them. The provision of Article 35⁵.3 shall apply accordingly.

3. The organisation for collective management referred to in paragraph 2 shall be considered authorised to manage the rights of the rightholders referred to in paragraph 1 who have not granted such authorisation to that organisation if a work is put on the list of commercially unavailable works and the rightholders do not file with that organisation a written objection to the management of their rights by that organisation within 90 days from the date of revealing the entry.

4. The rightholders referred to in paragraph 1 who have not filed an objection in accordance with paragraph 3 may, after the lapse of the period specified in that provision, waive the agency of the organisation for collective management referred to in paragraph 2 in respect of certain works by filing with that organisation a written statement on the cessation of the authorisation referred to in paragraph 3 with three months' notice, with effect at the end of a given calendar year. Written notification of such a statement is given by the organisation without delay to the minister responsible for culture and national heritage protection and the entities referred to in paragraph 2 with which the organisation has concluded agreements concerning such works.

5. The provisions of paragraphs 1 to 4 shall not apply to translations into the Polish language of works expressed in words that were created in a foreign language.

Article 35¹¹. 1. A list of out-of-commerce works, hereinafter referred to as "list of works", shall be drawn up and maintained in the ICT system. The list of works shall be maintained by the minister responsible for culture and national heritage protection.

2. The list of works includes the following information:

- 1) title of the work;
- 2) full name or the pseudonym of the author or a note on anonymity;
- 3) the publisher of the work;
- 4) the date of first publication of the work;
- 5) an indication of collective copyright management organisation that filed the

application for the work to be entered on the list;

- 6) information on any opposition referred to in Article 35¹⁰.3 or submission of the statement referred to in Article 35¹⁰.4, with an indication of the date from which it is effective and information on the withdrawal of such opposition or statement.

3. The list of works shall be public and freely available in *Biuletyn Informacji Publicznej* [the Public Information Bulletin] on the website of the minister responsible for culture and national heritage protection.

4. Inclusion in the list of works shall be effected upon application of the organisation for collective management referred to in Article 35¹⁰.2. Immediately after the receipt of the objection referred to in Article 35¹⁰.3 or the statement referred to in 35¹⁰.4, the organisation for collective management referred to in Article 35¹⁰.2 files an application for the inclusion of information on this fact in the list of works.

5. If an application for inclusion in the list of works does not contain all information listed in paragraph 2 (1) to (5), the minister responsible for culture and national heritage protection calls upon the applicant to complete the application within a period of not less than 7 days, on pain of the return of the application.

6. The minister responsible for culture and national heritage protection shall define, by way of a regulation, a specimen application for inclusion in the list of works, having regard to the information specified in paragraph 2 and the need for the uniformity of filed applications.

Article 35¹². 1. The collective management organisation referred to in Article 35¹⁰.2 shall be appointed by the minister in charge of culture and national heritage for a maximum of five years, following a competition conducted based on the following criteria:

- 1) representativeness;
- 2) organisational capacity to determine the availability of works, referred to in Article 35¹⁰.1;
- 3) organisational capacity necessary for effective payment and settlement of remunerations;
- 4) efficiency and regularity of operation;
- 5) grounds for the planned costs of management of rights to out-of-commerce works and their amount.

2. The minister responsible for culture and national heritage protection may, by

way of the competition referred to in paragraph 1, appoint more than one organisation for collective management of copyright on condition that they operate jointly.

3. The minister responsible for culture and national heritage protection announces the competition referred to in paragraph 1 in *Biuletyn Informacji Publicznej* [the Public Information Bulletin] on the minister's website.

4. An organisation for collective management of copyright participating in the competition referred to in paragraph 1 may lodge to the minister responsible for culture and national heritage protection, within 7 days from the date of announcement of the result of that competition, an appeal against that result due to an infringement of a provision of law.

5. The appeal referred to in paragraph 4 shall be examined by the minister responsible for culture and national heritage protection within 14 days from the date of its receipt. In the event of the appeal being upheld, the minister responsible for culture and national heritage protection shall cancel the competition referred to in paragraph 1.

6. The minister responsible for culture and national heritage protection, after consultation with the organisation for collective management of copyright, shall define, by way of a regulation:

- 1) the required scope of information to be included in the announcement of the competition referred to in paragraph 1, having regard to the fact that the minimum scope of such information is to comprise at least the conditions for participation in the competition, the time limit for bid submission, and bid assessment criteria;
- 2) the scope of competition documentation, having regard to the fact that the scope of such documentation must specify at least the requirements for participation in the competition referred to in paragraph 1, the requirements to be met by bids, and bid assessment criteria;
- 3) the competition procedure, having regard to its transparency, reliability, and objectivity.

Chapter 4

Term of Author's Economic Rights

Article 36. Subject to exceptions provided for in this Act, the author's economic rights expire seventy years:

- 1) after the death of the author, and in the case of joint authorship – after the death of the last surviving co-author;
- 2) in the case of anonymous works – after the work is first disseminated, unless the pseudonym adopted by the author leaves no doubt as to their identity or if the author has disclosed their identity;
- 3) in the case of a work in which the author's economic rights are vested by virtue of this Act in a person other than the author – after the work is first disseminated, and if the work has not been disseminated – from the date of its establishment;
- 4) in the case of an audiovisual work – after the death of the last of the following persons: the principal director, the author of the screenplay, the author of the dialogue, and the composer of the music composed for the audiovisual work;
- 5) in the case of a lyrical and musical work, if the lyrical work and the musical work were created especially for a given lyrical and musical work – from the death of the person who died later: the author of the lyrical work or the composer of the musical work.

Article 37. Where the term of protection of author's economic rights runs from the time the work is lawfully disseminated and the work is published in volumes, episodes, parts or inserts, the term of protection runs for each such section separately.

Article 38. (repealed)

Article 39. The term of the author's economic rights shall be calculated in full years following the year of the event as of which terms referred to in Article 36 and Article 37 start running.

Article 40. (repealed)

Chapter 5

Transfer of Author's Economic Rights

Article 41. 1. Unless the Act provides otherwise:

- 1) the author's economic rights may devolve to other persons through inheritance or by contract,
- 2) the person who acquires the author's economic rights may transfer them to other persons, unless the contract provides otherwise.

2. A contract on the transfer of the author's economic rights or on the use of the work, hereinafter referred to as the "licence", shall cover the fields of exploitation expressly specified therein.

3. A contract is invalid in the part concerning all the works or all the works of a specific type by the same author to be created in the future.

4. A contract may concern only those fields of exploitation which are known at the time the contract is concluded.

5. When new ways of exploitation are created, the author of a work used or incorporated in an audiovisual work or a work being part of a collective work may not without good reason refuse to permit the work to be used as part of the audiovisual work or collective work in fields of exploitation which are unknown at the time the contract is concluded.

Article 42. If the author's economic rights of one of the co-authors were to fall to the State Treasury as the statutory heir, that part passes to the surviving co-authors or their legal successors in proportion to their shares.

Article 43. 1. If a contract does not provide that the author's economic rights are transferred or a licence is granted free of charge, the author is entitled to remuneration.

2. If the contract does not specify the amount of the author's remuneration, the remuneration is determined taking into account the scope of the right granted and the benefits arising from the use of the work.

Article 44. If the author's remuneration is grossly disproportionate to the benefits of the acquirer of the author's economic rights or the licensee, the author may request that the remuneration be increased accordingly by a court.

Article 45. Unless a contract provides otherwise, the author is entitled to separate remuneration for the work being used in each field of exploitation.

Article 46. Unless a contract provides otherwise, the author retains the exclusive right to permit the exercise of a derivative copyright even though the contract provides for the transfer of all of the author's economic rights.

Article 47. If the author's remuneration depends on the proceeds from the use of the work, the author has the right to receive information and to have access, to the extent necessary, to documentation essential to determine the remuneration.

Article 48. 1. If the remuneration of the author was determined as a percentage of the sale price of a copy of the work and such price has increased since then, the agreed percentage from copies sold at the higher price shall be due to the author.

2. The unilateral reduction of the sale price before the lapse of one year from starting the dissemination of such work shall not affect the amount of remuneration. The parties may extend this time limit.

Article 49. 1. If a contract does not specify the manner in which a work is to be used, the manner should be consistent with the character and purpose of the work and established practice.

2. Regardless of having acquired all the author's economic rights, a legal successor may not, without the author's consent, alter the work unless it is obviously necessary, and the author has no reasonable ground to object. This applies accordingly to works in which the author's economic rights have expired.

Article 50. The separate fields of exploitation include, but are not limited to:

- 1) as regards fixing and reproducing a work – producing copies of a work using a specific technique, including printing, reprographic, magnetic recording and digital techniques;
- 2) as regards the circulation of the original copy of the work or its duplicates on which the work has been fixed – putting into circulation, lending or renting the original copy of the work or its duplicates;
- 3) as regards the dissemination of works in a manner other than that referred to under subparagraph 2 above – public performance, exhibition, screening, presentation, broadcast and rebroadcast, as well as communicating it to the public in a manner that allows anyone to access it from a place and at a time of their choosing.

Article 51. 1. (ineffective)

2. (ineffective).

3. The putting of an original or a copy of a work into circulation in the

European Economic Area exhausts the right to control resale of such copy in the Republic of Poland, except for rental and lending.

Article 52. 1. Unless the contract provides otherwise, the transfer of ownership of a copy of work shall not result in the devolution of the author's economic rights to such work.

2. Unless the contract provides otherwise, the transfer of the author's economic rights shall not result in the transfer of ownership of a copy of the work to the acquirer.

3. The acquirer of an original of a work is obliged to make it available to the author to the extent necessary to exercise copyright. The acquirer of the original may, however, demand from the author relevant security and remuneration for the use.

Article 53. A contract transferring author's economic rights must be made in writing, otherwise being null and void.

Article 54. 1. The author shall deliver the work within the time limit specified in the contract, and if such time limit has not been set – immediately after completing the work.

2. If the author has not delivered the work within the set time limit, the ordering party may set a suitable additional time limit for the author under pain of rescission of the contract, and upon the expiry of such time limit, the ordering party may rescind the contract.

Article 55. 1. If the ordered work has defects, the ordering party may set a suitable additional time limit for the author to remove them, and after the time limit passes to no effect the ordering party may rescind the contract or request that the agreed remuneration be reduced unless the defects result from circumstances beyond the author's control. The author shall in any event retain the right to part of the remuneration received, not higher than 25% of the remuneration agreed in the contract.

2. If the work has legal defects, the ordering party may rescind the contract or request that they be removed.

3. The claims referred to in paragraph 1 shall expire upon acceptance of the work.

4. If within six months after the delivery of the work the ordering party does not notify the author that the work has been accepted, rejected or that acceptance is

conditional on specific changes being made within a specific time limit set for this purpose, the work will be deemed accepted without reservations. The parties may set another time limit.

Article 56. 1. The author may rescind or terminate a contract due to their vital creative interests.

2. If, within two years of the rescission or termination referred to in paragraph 1, the author intends to start using the work, they shall be obliged to offer such use to the acquirer or licensee, setting them a suitable time limit for this purpose.

3. If the contract is rescinded or terminated after the work is accepted, the other party may make the rescission or termination conditional on the costs incurred by it in connection with the contract concluded being secured. However, reimbursement of costs may not be claimed if distribution is ceased due to circumstances beyond the author's control.

4. The provision of paragraph 1 above shall not apply to architectural works and architectural and urban planning works, audiovisual works and works ordered within the scope of their exploitation in audiovisual work.

Article 57. 1. If the acquirer of the author's economic rights or the licensee who has undertaken to disseminate the work does not start the dissemination within the agreed time limit or if there is no agreed time limit, the author may rescind or terminate the contract within two years from the acceptance of the work and may claim the damage to be repaired after the expiry of an additional time limit, not shorter than six months.

2. If the work has not been made available to the public due to circumstances attributable to the acquirer or the licensee, the author may claim double remuneration with respect to the remuneration specified in the contract on dissemination of the work instead of redress for the damage incurred, unless the licence is non-exclusive.

3. The provisions of paragraphs 1 and 2 above shall not apply to architectural and architectural and urban planning works.

Article 58. If the work is made available to the public in an unsuitable form or with changes to which the author may rightfully object, the author may rescind or terminate the contract after the ineffective summon to cease the infringement. The author shall have the right to remuneration specified in the contract.

Article 59. If this Act does not provide otherwise, each of the parties

rescinding or terminating the contract may request that the other party return everything it received under the contract.

Article 60. 1. The user of the work shall allow the author to exercise the author's supervision prior to starting the dissemination of the work. If the changes made as a result of supervision are indispensable and result from circumstances beyond the author's control, the costs of their introduction shall be covered by the acquirer of the author's economic rights or the licensee.

2. If the author has not exercised the author's supervision within the specified time limit, it shall be presumed that they have consented to the dissemination of the work.

3. Unless this Act or the contract provides otherwise, the author shall not have the right to additional remuneration for exercising author's supervision.

4. The authors of artistic works shall have the right to exercise the author's supervision for remuneration.

5. The exercise of the author's supervision with regard to architectural works and architectural and urban planning works shall be regulated by separate provisions of law.

Article 61. Unless the contract provides otherwise, acquisition of a copy of an architectural design or architectural and urban planning design from the author shall entitle the acquirer to use it for a single construction only.

Article 62. 1. The author may include works in a collective publication of their works for the publication of which a separate contract has been concluded.

2. Unless provided otherwise, the contract for the collective publication of works shall not include the right to publish particular works.

Article 63. If the contract covers the preparation of copies which are to be made available to the public, the author shall receive author's copies number of which has been set in the contract.

Article 64. Unless provided otherwise, a contract transferring the author's economic rights shall transfer to the acquirer, upon acceptance of the work, the right to the exclusive use of the work within the field of exploitation specified in the contract.

Article 65. If there is no clear provision regarding the transfer of copyright, it is deemed that the author has granted a licence.

Article 66. 1. Unless provided otherwise, a licence contract shall authorise the

use of the work for five years in the territory of the state in which the licensee has its seat.

2. After the time limit specified in paragraph 1 the right obtained under the licence contract shall expire.

Article 67. 1. The author may grant authorisation to use their work within the fields of exploitation specified in the contract and state the scope, territory and time of such use.

2. Unless the contract reserves the exclusive use of the work in a specific form (exclusive licence), a licence shall not preclude the author from granting authorisation to other persons to use the work in the same field of exploitation (non-exclusive licence).

3. Unless the contract provides otherwise, the licensee may not authorise any other person to use the work, even if it is within the scope of the licence obtained.

4. Unless the contract provides otherwise, rightholder under an exclusive licence may, within the scope covered by the licence contract, lay claims for the infringement of the author's economic rights.

5. The exclusive licence contract shall be null and void unless made in writing.

Article 68. 1. Unless the contract provides otherwise and the licence has been granted for an indefinite time, the author may terminate it keeping the contractual time limits, and if such have not been agreed, one year in advance at the end of the calendar year.

2. The licence granted for longer than five years shall be deemed, after a lapse of that period, as granted for an indefinite time.

Chapter 6

Special Provisions on Audiovisual Works

Article 69. Co-authors of an audiovisual work shall be persons who made a creative contribution to its completion, and in particular: the director, picture operator, the author of the adaptation of a literary work, the author of musical works or musical and lyrical works created for the audiovisual work and the author of the screenplay.

Article 70. 1. It is presumed that the producer of an audiovisual work acquires, pursuant to the contract for creation of such work or a contract for use of an existing work, exclusive economic rights to the exploitation of those works within the

framework of the audiovisual work as a whole.

2. (ineffective)¹.

2¹. Co-authors of an audiovisual work and performers shall have the right to:

- 1) remuneration proportionate to proceeds received from screening the audiovisual work in cinemas;
- 2) appropriate remuneration for the rental of copies of audiovisual works and their public presentation;
- 3) appropriate remuneration for the broadcasting of the work on television or through other mass media;
- 4) appropriate remuneration for the reproduction of the audiovisual work on a copy intended for personal use.

3. The person using an audiovisual work shall pay remuneration referred to in paragraph 2¹ through the competent collective copyright and related rights management organisation.

4. Appropriate remuneration for the use of a Polish audiovisual work abroad or a foreign work in the Republic of Poland may be agreed as a fixed amount.

Article 71. A producer is permitted to make translations of the audiovisual work into various language versions without the consent of the authors.

Article 72. The author of a work ordered for an audiovisual work may, five years after the acceptance of the ordered work, authorise the dissemination of that work in another audiovisual work, if within such time the original audiovisual work with their work in it has not been disseminated. The parties may shorten this time limit.

Article 73. The right to author's supervision may be exercised only with respect to the final version of the audiovisual work.

Chapter 7

Special Provisions on Computer Programs

Article 74. 1. Computer programs shall be subject to protection as literary works, unless the provisions of this Chapter provide otherwise.

2. Protection accorded to a computer program shall cover all forms of its expression. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, shall not be protected.

¹ As of 6 June 2007 pursuant to the decision of the Constitutional Tribunal dated 24 May 2006, case file No. K 5/05 (*Dziennik Ustaw*, item 658).

3. Unless the contract provides otherwise, the author's economic rights in a computer program created by an employee in the course of performing their duties under the employment relationship shall be vested in the employer.

4. Subject to the provisions of Articles 75.2 and 75.3, the economic rights to a computer program shall include the right to:

- 1) reproduce a computer program permanently or temporarily by any means and in any form, in part or in whole; insofar as loading, displaying, running, transmitting or storing the computer program necessitate such reproduction, such acts require the rightholder's permission;
- 2) translate, adapt, arrange and alter the computer program in any other way, without prejudice to the rights of the person who changes the program;
- 3) disseminate the original computer program or copies thereof to the public, including lending or rental.

Article 75. 1. Unless the contract stipulates otherwise, the acts specified in Article 74.4 (1) and (2) shall not require the rightholder's permission, if they are necessary for the use of the computer program in accordance with its purpose, including the correction of errors by the lawful acquirer.

2. The rightholder's permission is not required to:

- 1) make a back-up copy insofar as it is needed to use the computer program. Unless the contract provides otherwise, such copy may not be used concurrently with the computer program;
- 2) observe, study and test the functioning of the computer program by a person who, in order to learn about its idea and principles, has a right to use a copy of the computer program, if such person is entitled to perform those acts and does it while loading, displaying, running, transmitting or storing the computer program;
- 3) reproduce the code or translate its form pursuant to of Articles 74.4 (1) and (2), if that is indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other computer programs provided that the following conditions are met:
 - a) the acts are performed by the licensee or another person having a right to use a copy of the computer program or by another person acting on their behalf;
 - b) information necessary to achieve interoperability has not been previously readily available to persons mentioned in point a,

c) such acts apply only to the parts of the original computer program which are necessary to achieve interoperability.

3. The information referred to in paragraph 2.3 cannot be:

- a) used for purposes other than to achieve the interoperability of an independently developed computer program;
- 2) provided to other persons, unless it is necessary to achieve the interoperability of an independently developed computer program;
- 3) used to develop, produce or market a computer program in a similar form or for other activities that infringe on the copyrights.

Article 76. The provisions of contracts that are contrary to Articles 75.2 and 75.3 shall be invalid.

Article 77. 1. The provisions of Articles 16 (3) to (5), Article 20, Article 23, Article 23¹, Article 27, Article 28, Articles 33² to 33⁵, Article 49.2, Article 56, Article 60 and Article 62 do not apply to computer programs.

2. The provision of Article 33¹ shall apply to computer programs only insofar as referred to in Article 33¹.2.

Article 77¹. A rightholder may request that a computer program user destroy the technical measures held thereby (including computer programs) the sole use of which is to facilitate prohibited removal or circumvent technological protection measures of the program.

Article 77². The protection granted to databases having the characteristics of a work shall not cover computer programs used to develop or operate databases accessible via electronic means.

Chapter 8

Protection of Author's Moral Rights

Article 78. 1. The author whose moral rights have been threatened by actions of others may request that such actions be ceased. Where an infringement is committed, the author may also request that the person who committed the infringement perform all the actions necessary for the removal of its effects, and in particular to make a public statement having appropriate content and form. If the infringement was intentional, the court may award the author a certain amount of money as recompense for damage suffered and/or – at the request of the author – to oblige the offender to pay a relevant amount of money for a social cause as

indicated by the author.

2. Unless the author expressed a different intention, after their death a statement of claim for protection of their moral rights may be filed by their spouse, and in the absence of a spouse, by their descendants, parents, siblings, and descendants of siblings, in that order.

3. Unless the author expressed a different intention, persons mentioned in paragraph 2 above shall be authorised in the same order to exercise the moral rights of the deceased author.

4. Unless the author expressed a different intention, the statement of claim referred to in paragraph 2 may also be filed by a relevant association of authors according to the type of creative activity or the collective copyright and related rights management organisation which managed the copyrights of the deceased author.

Chapter 9

Protection of Author's Economic Rights

Article 79. 1. A rightholder whose author's economic rights have been infringed may request that the person who infringed these rights:

- 1) cease the infringement;
- 2) remedy the effects of the infringement;
- 3) redress any damage caused:
 - a) pursuant to generally applicable provisions of law, or
 - b)²⁾ paying an amount corresponding to

double or, where the infringement is intentional, triple the amount of the relevant remuneration that would at the time it is claimed have been due to the rightholder for authorising the use of the work;

- 4) hand over any benefits obtained.

2. Notwithstanding the claims referred to in paragraph 1, the rightholder may request the publication of one or more than one press statements having the appropriate content and form or the public announcement of the whole or part of a

² This provision lost force as of 1 July 2015 to the extent that the rightholder whose author's economic rights have been infringed may request that the person who infringed these rights redress any damage caused by paying an amount corresponding to – where the infringement is intentional – triple the amount of the relevant remuneration that would at the time it is claimed have been due to the rightholder for authorising the use of the work, pursuant to the decision of the Constitutional Tribunal dated 23 June 2015, case file No. SK 32/14 (*Dziennik Ustaw*, item 932).

ruling issued by the court in the case concerned, in the manner and to the extent prescribed by the court.

3. A person who infringed the author's economic rights may be instructed by the court, at such person's request and with the rightholder's permission, if the breach is not intentional, to pay a relevant sum to the rightholder if ceasing the infringement or removing its effects would be disproportionately onerous for the infringer.

4. When a court decides that a right has been infringed, it may adjudicate, at the rightholder's request, that items and the means and materials used to produce them have been produced unlawfully, especially that they be withdrawn from the market, that they be awarded to the rightholder on account of any damages payable, or that they be destroyed. When adjudicating, the court takes into account the gravity of the breach and the interests of third parties.

5. It is presumed that the means and materials referred to in paragraph 4 are owned by the person who infringed on the author's economic rights.

6. The provision of paragraph 1 shall apply accordingly to the removal or circumvention of technological protection measures against access, reproduction or dissemination of a work, provided that the objective of such actions is the unlawful use of such work.

7. Paragraphs 1 and 2 shall apply accordingly to the unauthorised removal or alteration of any electronic information on copyrights or related rights management and to the conscious distribution of the works from which such information has been removed or altered without authorisation.

Article 80. 1. The court competent to hear cases concerning infringement of author's economic rights in the place where the offender conducts business or where its assets are located, also before an action is brought, hears, within 3 days of a motion being filed with the court by a party having a legal interest therein:

- 1) to secure evidence and any claims related thereto;
- 2) to oblige a person who infringed the author's economic rights to provide information and any documentation specified by the court and being material to the claims referred to in Article 79.1;
- 3) to oblige a person other than the infringer to provide information material to the claims defined in Article 79.1 on the origin, distribution networks, volume and price of goods or services which infringe the author's economic rights, provided that:

- a) it is confirmed that this person has goods that infringe the author's economic rights; or
- b) it is confirmed that this person has benefited from services that infringe the author's economic rights; or
- c) it is confirmed that this person renders services used in activities that infringe the author's economic rights; or
- d) this person has been indicated by the person specified in point a, b or c as participating in the production, manufacture or distribution of goods or in the rendering of services that infringe the author's economic rights, and the above actions are aimed at generating, directly or indirectly, profit or other economic benefit; however, this does not cover actions taken by consumers acting in good faith.

2. When admitting evidence or considering the motions referred to in paragraph 1, the court will ensure that business secrets and other secrets protected by law are kept confidential.

3. The obligation referred to in paragraph 1 (2) and (3) may be avoided by anyone who according to Code of Civil Procedure could refuse to give testimony or to respond to any questions asked of them as a witness.

4. In justified cases the court may condition the issuance of a ruling to secure any of the evidence referred to in paragraph 1 (1) on the payment of a security deposit.

5. Complaints against a court ruling in any of the matters referred to in paragraph 1 shall be considered by the court within 7 days.

6. Articles 733, 742 and 744 to 746 of the Code of Civil Procedure shall apply accordingly to the securing of evidence.

Chapter 10

Protection of Image, Addressee of Correspondence and Confidentiality of Information Sources

Article 81. 1. The dissemination of an image shall require the permission of the person shown in the image. In the absence of an explicit reservation, such permission shall not be required if the person has received the agreed payment for posing.

2. The permission shall not be required to disseminate the image of:

- 1) a public person, if such image has been made in connection with their

performance of public functions, especially political, social and professional functions;

- 2) a person constituting only a detail of a whole, such as a meeting, a landscape, or a public event.

Article 82. Unless a person to whom correspondence is addressed has expressed a different intention, dissemination of the correspondence within twenty years after their death shall require the permission of the spouse or, in absence thereof, the permission of descendants, parents or siblings, in that order.

Article 83. The provisions of Article 78(1) shall apply accordingly to claims brought due to the dissemination of the image of a person appearing in the image and the dissemination of correspondence without the required permission of its addressee; such claims cannot be brought after the lapse of twenty years from the death of those persons.

Article 84. 1. The author, or the publisher or producer at the request of the author, shall keep confidential the sources of information used in the work and shall not disclose any documents connected therewith.

2. The disclosure of a secret shall be permissible upon consent of the person who entrusted such a secret or by virtue of an order of a competent court.

Chapter 11

Related Rights

Subchapter 1

Rights to Performances

Article 85. 1. Each performance of a work or expression of folklore shall enjoy protection regardless of its value, intended purpose and form of expression.

2. Pursuant to paragraph 1, performances shall include, but are not limited to: performances of actors, reciters, conductors, instrumentalists, vocalists, dancers and mimes as well as other individuals who make a creative contribution to a performance.

Article 86. 1. Within the limits set forth by this Act, performers have the exclusive right to:

- 1) protection of personal interests, especially with regard to:
 - a) being identified as the performer, except where the omission is customary practice;

- b) deciding how the performer should be named, including maintaining anonymity or using a pseudonym;
 - c) raising objections to any distortions, misrepresentations and other changes in the performance which could harm the performer's good name;
- 2) use the performance and dispose of the rights thereto in the following fields of exploitation:
- a) as regards fixing and reproduction – production of copies of the performance with the use of specific technology, including magnetic fixing and digital technology,
 - b) as regards the circulation of copies on which the performance was fixed – putting into circulation, letting for use or rental of the copies,
 - c) as regards the dissemination of a performance in a form other than defined in point b – broadcast, rebroadcast and presentation, unless made with the use of a copy introduced to the market, or making available to the public any fixing of a performance in such a way as to allow anyone to access it at a place and time of their choosing.

2. Performers shall have the right to remuneration for the use of their performance or for disposition of rights thereto as provided for in a contract or granted by the provisions of this Act.

3. In case of broadcast, rebroadcast or presentation of a performance with the use of a copy put into circulation, the performer shall have the right to appropriate remuneration.

Article 87. The contract concluded by a performer with the producer of an audiovisual work for joint production of an audiovisual work, unless it provides otherwise, shall transfer to the producer the rights to manage and to use the performance as part of the audiovisual work, in all fields of exploitation known on the time of entry into the contract.

Article 88. The right of the performer shall not infringe the copyright in the performed work.

Article 89. 1. The right referred to in Articles 86.1 (2) and 86.2 shall expire after the lapse of fifty years following the year in which the performance was fixed.

2. If the publication or other form of distribution of a performance fixed otherwise than in a phonogram occurs during the period referred to in paragraph 1, the term of protection is calculated from that event, and if both occur—from the

earlier of those events.

Article 89¹. If the publication or other form of distribution of a performance fixed in a phonogram occurs during the period referred to in Article 89.1, the right referred to in Articles 86.1 (2) and 86.2 shall expire after the lapse of seventy years following that event, and if both occur—from the earlier of those events.

Article 90. The provisions of this Act shall apply to performances which:

- 1) have been made by a Polish national or a person residing in the territory of the Republic of Poland; or
- 1¹⁾ made by a national of a Member State of the European Union or Member States of the European Free Trade Agreement (EFTA) – parties to the Agreement on the European Economic Area, or
- 2) have been established for the first time in the territory of the Republic of Poland; or
- 3) have been published for the first time in the territory of the Republic of Poland; or
- 4) are protected under international agreements, to the extent of protection granted under these agreements.

Article 91. It is presumed that the manager of a team is authorised to represent the rights to a group performance. This presumption applies accordingly to autonomous parts of a performance.

Article 92. The provisions of Articles 8 to 10, Article 12, Article 18, Articles 21 to 21³, Articles 41 to 45, Articles 47 to 49, Articles 52 to 55, Articles 57 to 59, Articles 62 to 68, Article 71, and Article 78 shall apply accordingly to performances.

Article 93. The provision of Article 15a and Article 33 (10) of the Family and Guardianship Code shall apply accordingly to the right in a performance.

Subchapter 2

Rights to Phonograms and Videograms

Article 94. 1. A phonogram shall be the first fixing of the sound of a performance of a work or other acoustic phenomena.

2. A videogram shall be the first fixing of a sequence of moving pictures, with or without sound, whether or not it constitutes an audiovisual work.

3. It is presumed that the producer of a phonogram or videogram shall be the

person under whose name or business name such phonogram or videogram has first been made.

4. Without detriment to the rights of authors or performers, the producer of a phonogram or videogram shall have the exclusive right to dispose of and use the phonogram or videogram within the scope of:

- 1) reproduction by a specific technique;
- 2) putting them into circulation;
- 3) rental or lending of copies for use;
- 4) making a phonogram or a videogram available to the public in a form that allows anyone to have access to it at the place and time of their choosing.

5. In the case of broadcasting, rebroadcasting or communication to the public of a phonogram or videogram already put into circulation, the producer is entitled to appropriate remuneration.

Article 95. 1. The right referred to in Article 94.4 and 94.5 expires fifty years from the end of the year in which the phonogram or videogram is made.

2. If a phonogram is published during the period referred to in paragraph 1, the right referred to in Articles 94.4 and 94.5 shall expire after the lapse of seventy years following the year in which the phonogram was published.

3. If a phonogram is not published during the period referred to in paragraph 1 and if it is distributed otherwise during that period, the right referred to in Articles 94.4 and 94.5 shall expire after the lapse of seventy years following the year in which the phonogram was distributed.

4. If a phonogram is published during the period referred to in paragraph 1, the right referred to in Articles 94.4 and 94.5 shall expire fifty years after the end of the year in which first of those events occurred.

Article 95¹. 1. Article 21.1 shall apply accordingly to phonograms, unless the broadcast takes place on the basis of a contract with the rightholder.

2. Articles 21¹ to 21³ shall apply accordingly to phonograms and videograms.

Article 95². 1. If, after the lapse of fifty years after the publication of a phonogram or its distribution otherwise, the producer of the phonogram does not market a sufficient number of copies of the phonogram, which number, taking into account the character of the phonogram, would meet reasonable needs of recipients, or does not make the phonogram available to the public in a manner enabling members of the public to access it from a place and at a time individually chosen by

them, the performer or his or her heir may terminate the agreement by which the rights to performances were transferred within that scope to the producer of the phonogram, or the agreement by which an exclusive licence for the use of a performance was granted within that scope to the producer.

2. The termination of an agreement referred to in paragraph 1 becomes effective if the producer of the phonogram does not begin to use the phonogram in any manner referred to in paragraph 1 within one year from the date of service of the performer's or his or her heir's statement regarding the termination of the agreement.

3. Where a phonogram contains the fixation of performances of a plurality of performers, each of those performers has the right to the termination of an agreement referred to in paragraph 1.

4. In the case of the effective termination of agreements concluded in respect of all performances fixed in a phonogram, the right of the producer to that phonogram, referred to in Articles 94.4 and 94.5, shall expire.

5. The right to the termination of an agreement, referred to in paragraph 1, may not be waived or transferred.

Article 95³. 1. If the rights to a performance are transferred to a phonogram producer or if an exclusive licence for the use of a performance is granted to a phonogram producer against a one-off remuneration, the performer has the right to receive an annual supplementary remuneration from the phonogram producer for every year after the lapse of fifty years from the year of publication of the phonogram or its distribution otherwise.

2. The amount of the supplementary remuneration referred to in paragraph 1 shall be 20% of the revenues of the producer of the phonogram, derived during the preceding year from the reproduction and distribution of that phonogram and making it publicly available in a manner enabling members of the public to access it from a place and at a time individually chosen by them.

3. The right to the supplementary remuneration referred to in paragraph 1 may not be waived or transferred.

4. The payment of the supplementary remuneration referred to in paragraph 1 is made through an organisation for collective management of related rights to performances, appointed for a period of not more than five years by the minister responsible for culture and national heritage protection, following a competition taking into account the criteria specified below:

- 1) representativeness;
- 2) organisational capacity to carry out tasks in a manner that ensures the effective collection and payment of remuneration referred to in paragraph 1;
- 3) efficiency and regularity of operation;
- 4) grounds for and amount of the planned costs related to the payment of remunerations referred to in paragraph 1.

5. The minister responsible for culture and national heritage protection announces the competition referred to in paragraph 4 and its result in *Biuletyn Informacji Publicznej* [the Public Information Bulletin] on the minister's website.

6. An organisation for collective management of related rights to performances participating in the competition referred to in paragraph 4 may lodge to the minister responsible for culture and national heritage protection, within 7 days from the date of announcement of the result of that competition, an appeal against that result due to an infringement of a provision of law.

7. The appeal referred to in paragraph 6 shall be examined by the minister responsible for culture and national heritage protection within 14 days from the date of its receipt. In the event of the appeal being upheld, the minister responsible for culture and national heritage protection shall cancel the competition referred to in paragraph 4.

8. A performer or an organisation for collective management, as referred to in paragraph 4, may request a phonogram producer to provide all information and documents necessary for the determination of the amount of the supplementary remuneration referred to in paragraph 1 that is payable to them and for the payment of that remuneration.

9. An organisation for collective management, as referred to in paragraph 4, has the right to allocate not more than 10% of the supplementary remuneration referred to in paragraph 1 for covering reasonable and documented costs of obtaining and paying that remuneration incurred by that organisation.

10. The minister responsible for culture and national heritage protection, after consultation with an organisation for collective management of related rights to performances and an organisation of phonogram producers, shall define, by way of a regulation:

- 1) the procedure for collecting the supplementary remuneration referred to in paragraph 1, making deductions from such remuneration and paying the supplementary remuneration, having regard to the need to ensure that the

- collection and payment of that remuneration is performed in an effective and transparent manner and that deductions are reasonable and documented;
- 2) the required scope of information to be included in the announcement of the competition referred to in paragraph 4, having regard to the fact that the minimum scope of such information is to comprise at least the conditions for participation in the competition, the time limit for bid submission, and bid assessment criteria;
 - 3) the scope of competition documentation, having regard to the fact that the scope of such documentation must specify at least the requirements for participation in the competition referred to in paragraph 4, the requirements to be met by bids, and bid assessment criteria;
 - 4) the competition procedure, having regard to its transparency, reliability, and objectivity.

Article 95⁴. If the rights to a performance are transferred to a phonogram producer or if an exclusive licence for the use of a performance is granted to a phonogram producer against a remuneration paid to the performer by the phonogram producer periodically, no advance payments or other deductions specified in the agreement are deducted from such remuneration after the lapse of fifty years from the year of publication of the phonogram or its distribution otherwise.

Article 96. The provisions of this Act shall apply to phonograms and videograms:

- 1⁾ whose producer has their place of residence or seat in the territory of the Republic of Poland; or
- 1¹⁾ whose producer has their place of residence or seat in the territory of the European Economic Area; or
- 2) protected under international agreements, to the extent of protection granted under these agreements.

Subchapter 3

Rights to Programme Broadcasts

Article 97. Without detriment to the rights of the authors, performers, producers of phonograms and videograms, radio or television broadcasting organisations shall have the exclusive right to dispose of and use their own broadcasts of programmes to the extent of:

- 1) fixation;
- 2) reproduction by specific technique;
- 3) broadcast by another radio or television broadcasting organisation;
- 4) rebroadcast;
- 5) putting fixations into circulation;
- 6) communication to the public at locations accessible for an entrance fee;
- 7) making their fixations available in such a way that anyone can access the work at the place and time of their choosing;

Article 98. The right referred to in Article 97 shall expire fifty years from the end of the year in which the programme is first broadcast.

Article 99. The provisions of this Act shall apply to broadcasts of programmes:

- 1) of radio and television broadcasting organisations having their seat in the territory of the Republic of Poland or
- 2) of radio and television broadcasting organisations having their seat in the territory of the European Economic Area;
- 3) protected under international agreements, to the extent of protection granted under these agreements.

Subchapter 3¹

Rights to First Publications and Scientific and Critical Publications

Article 99¹. The publisher who was the first to publish or otherwise disseminate a work for which the term of protection has expired and its copies have not been yet made public has the exclusive right to dispose of this work and use it across all the fields of exploitation for a period of twenty five years from the date of the first publication or dissemination.

Article 99². A person who, after the term of protection of copyrights to a work, prepares a critical or scientific publication thereof which is not considered a work has the exclusive right to dispose of and to use such publication within the scope referred to in Article 50 (1) and (2) for a term of thirty years from the date of publication.

Article 99³. Articles 99¹ and 99² shall apply accordingly to works and texts which, because of the time of their creation or their nature, have never been protected by copyright.

Article 99⁴. Articles 37 and 39 shall apply accordingly when setting the

protection term referred to in Articles 99¹ and 99².

Article 99⁵. 1. The provisions of this Act shall apply to the first publications:

- 1) whose publisher has their place of residence or seat in the territory of the Republic of Poland; or
- 2) whose publisher has their place of residence or seat in the territory of the European Economic Area; or
- 3) protected under international agreements, to the extent of protection granted under these agreements.

2. The provisions of the Act shall apply to scientific and critical publications which:

- 1) have been made by a Polish national or a person residing in the territory of the Republic of Poland; or
- 2) have been established for the first time in the territory of the Republic of Poland; or
- 3) have been published for the first time in the territory of the Republic of Poland; or
- 4) are protected under international agreements, to the extent of protection granted under these agreements.

Article 99⁶. The provisions of Chapter 3 Subchapter 6 shall not apply to first publications and scientific and critical publications.

Subchapter 4

Common Provisions on Related Rights

Article 100. The exercise of the rights to performances, phonograms, videograms and programme broadcasts, first publications or scientific and critical publications shall be subject to the restrictions referred to in Articles 23 to 35 accordingly.

Article 101. Articles 1.4, 6, 6¹, 8.2, 35⁵ to 35⁹, 35a to 35e, 39, 51, 79, and 80 shall apply accordingly to performances, phonograms, videograms, programme broadcasts, first publications, and scientific and critical publications.

Article 102. 1. Each copy of a phonogram or videogram shall carry, apart from the indication of the authors and performers, titles of works and the date of establishment, surname or business name of the producer, and in the case of fixation of a broadcast, the name of the radio or television broadcasting

organisation.

2. Copies that do not meet the requirements specified in paragraph 1 are presumed to have been made illegally.

Article 103. Disputes over related rights fall within the jurisdiction of regional courts

Chapter 12

(repealed)

Chapter 12¹

(repealed)

Chapter 12²

(repealed)

Chapter 13

(repealed)

Chapter 14

Criminal Liability

Article 115. 1. Anyone who usurps the authorship or misleads others as to the authorship of a whole or a part of another person's work or another person's performance shall be subject to a fine, restriction of personal liberty or imprisonment for up to 3 years.

2. The same penalty shall be imposed on anyone who disseminates, without identifying the author by surname or pseudonym, the original or a derivative version of another person's work or a performance, or who publically distorts such work, performance, phonogram, videogram or broadcast.

3. Anyone who, in order to achieve financial benefits in a manner other than that defined in paragraph 1 or 2, infringes a third person's copyright or related rights established in Articles 16, 17, 18, 19.1, 19¹, 86, 94.4, or 97, or does not perform the obligations defined in Article 19³.2 or Articles 20.1 to 20.4,

shall be liable to a fine, restriction of personal liberty, or imprisonment for up to a year.

Article 116. 1. Anyone who, without authorisation or against its terms and conditions, disseminates another persons' work, performance, phonogram, videogram or broadcast in the original or derivative version,

shall be subject to a fine, restriction of personal liberty or imprisonment for up to 2 years.

2. If the offender commits the act specified in paragraph 1 above in order to

gain economic benefits,

they shall be subject to imprisonment for up to 3 years.

3. If the offender made the offence specified in paragraph 1 above a regular source of income or organises or manages a criminal activity as specified in paragraph 1,

they shall be subject to imprisonment for a period from 6 months to 5 years.

4. If an offender of the act specified in paragraph 1 acts unintentionally, shall be liable to a fine, restriction of personal liberty, or imprisonment for up to a year.

Article 117. 1. Anyone who, without authorisation or against its terms and conditions, fixes or reproduces the original or a derivative version of another person's work, a performance, a phonogram, a videogram or a broadcast for the purpose of their dissemination shall be subject to a fine, restriction of personal liberty or imprisonment for up to 2 years.

2. If the offender made the offence specified in paragraph 1 above a regular source of income or organises or manages a criminal activity as specified in paragraph 1,

they shall be subject to imprisonment for up to 3 years.

Article 118. 1. Anyone who, in order to obtain economic benefits, acquires or assists in the disposal of or accepts or assists in concealing an object which carries a work, performance, phonogram, videogram disseminated or reproduced without authorisation or against its terms and conditions,

shall be subject to imprisonment for a period from 3 months to 5 years.

2. If the offender made the offence specified in paragraph 1 above a regular source of income or organises or manages a criminal activity as specified in paragraph 1,

they shall be subject to imprisonment for a period from 1 to 5 years.

3. If, based on the circumstances, the offender who committed the offence specified in paragraph 1 or 2 should and could assume that the object was acquired by means of a prohibited act,

they shall be subject to a fine, restriction of personal liberty or imprisonment for up to 2 years.

Article 118¹. 1. Anyone who manufactures devices or their components used for unlawful removal or circumvention of effective technological measures

preventing communication to the public, recording or reproduction of works or objects of related rights or trades in such devices or their components, or advertises them for sale or rental purposes,

shall be subject to a fine, restriction of personal liberty or imprisonment for up to 3 years.

2. Anyone who possesses, keeps or uses the devices or their components referred to in paragraph 1,

shall be liable to a fine, restriction of personal liberty, or imprisonment for up to a year.

Article 119. Anyone who prevents or hinders the exercise of the right to monitor the use of a work, performance, phonogram or videogram or refuses to provide the information referred to in Article 47,

shall be liable to a fine, restriction of personal liberty, or imprisonment for up to a year.

Article 120. (repealed)

Article 121. 1. In the case of conviction for an act specified in Articles 115, 116, 117, 118 or 118¹, the court will order that the objects derived from the offence be forfeited, even if they are not owned by the perpetrator.

2. In the case of conviction for an act specified in Articles 115, 116, 117 or 118, the court may order that the objects used to commit the offence be forfeited, even if they are not owned by the perpetrator.

Article 122. The offences referred to in Articles 116.1, 116.2 and 116.4, Article 117.1, Article 118.1, Article 118¹ and Article 119 are prosecuted at the request of the aggrieved party.

Article 122¹. In cases relating to offences specified in Articles 115 to 119, the aggrieved party is also the competent collective copyright and related rights management organisation.

Article 123. The Minister of Justice may, by regulation, appoint district courts competent to hear cases concerning offences specified in Articles 115 to 119 – within the jurisdiction of a given regional court.

Chapter 15

Transitional and Final Provisions

Article 124. 1. The provisions of this Act shall apply to works:

- 1) established for the first time after its entry into force;
- 2) the copyright protection of which under previous regulations has not yet expired;
- 3) the copyright protection of which under previous regulations has expired, but which under this Act continue to be protected except for the period between the expiry of protection under the previous act and entry into effect of this Act. This Act does not infringe ownership rights to copies of works disseminated before its date of entry into force.

2. Paragraph 1 (3) above shall apply to works of foreign nationals permanently residing abroad on the condition of reciprocity.

3. (repealed)

4. Provisions of any contracts concluded before the entry into force of this Act that are contrary to the provisions of Articles 75.2 to 75.3 shall be null and void.

Article 125. 1. The provisions of this Act shall apply to performances:

- 1) established for the first time after its entry into force;
- 2) with regard to their use after this Act enters into force, if, pursuant to this Act they are still protected.

2. This Act shall not infringe the ownership of copies on which a performance had been fixed prior to its entry into force.

Article 126. 1. The provisions of this Act shall apply to:

- 1) phonograms and videograms which have been established after its entry into force;
- 2) radio and television programmes which have been broadcast after its entry into force;
- 3) phonograms and videograms and radio and television programmes that are still protected pursuant to this Act.

2. The principle referred to in paragraph 1 (3) do not apply to the use by schools, for teaching purposes, of broadcasts, phonograms and videograms that are not feature films or stage plays, established before the Act enters into force or to the use of performances fixed on phonograms and videograms.

Article 127. 1. If the use of the work, performance, phonogram, videogram or a radio or television programme that started before this Act enters into force was permitted under the previous regulations, and after that date it requires permission, it may be completed provided that the rightholder receives adequate remuneration.

2. Subject to paragraph 3, acts in law performed before this Act enters into force and relating to copyright shall be effective and subject to evaluation under previous regulations; this shall also apply to events other than acts in law.

3. This Act shall apply to long-term contracts before this Act enters into force with respect to the period after this Act enters into force, and to obligations which were assumed before the Act enters into force with respect to the legal effects of events following such date and unrelated to the essence of the obligation.

4. Contracts concluded before this Act enters into force shall not cover related rights, unless the parties agreed otherwise.

Article 127¹. At the request of the minister of culture and national heritage, the Prime Minister shall, by way of an order, create a task force for the prevention of infringement of copyright and related rights, and define its composition, tasks and operating procedures.

Article 128. The Act of 10 July 1952 on Copyright (*Dziennik Ustaw* 1952, item 234; *Dziennik Ustaw* 1975, item 184; *Dziennik Ustaw* 1989, item 192) loses effect.

Article 129. This Act shall enter into force 3 months after the date of its promulgation³), except for Article 124.3 which shall enter into force on the date of promulgation.

³ This act was promulgated on 23 February 1994.