

**THE REPUBLIC OF MOLDOVA**  
**LAW ON COPYRIGHT AND RELATED RIGHTS**

<b>Current Draft</b>	<b>Comment</b>	<b>PROPOSED CHANGE</b>	<b>Comparative Law or other references.</b>
<p style="text-align: center;"><b>CHAPTER I</b> <b>GENERAL PROVISIONS</b></p> <p><b>Article 1. Legal Framework</b></p> <p>(1) Copyright and neighboring rights, their protection and the liability for their infringements shall be governed by the Constitution of the Republic of Moldova, by the international treaties to which the Republic of Moldova is part of, by this Law and by other normative acts.</p> <p>(2) This Law governs the relations that arise from the creation and use of literary, artistic and scientific works (copyright) and of performances, phonograms, videograms<sup>1</sup> and the broadcasts of radio and television</p>	<p>The law should give preeminence to national law instead of international treaties. Some IP treaties intentionally leave room for interpretation regarding the scope of the obligations they create, making it easy for copyright norms to come into apparent conflict. Preeminence of national law will provide certainty to Moldovan rightsholders and users alike. This also permits better implementation of international treaties in light of the needs of Moldovans. Countries like the United States and those following the U.K. and Scandinavian constitutional tradition follow that approach. For example, U.S. Copyright Law declares that no right whatsoever originates in the U.S. directly from the Berne Convention.</p>		<p><b>US Copyritht Law, Section 104. Subject matter of copyright: National origin</b> (c) Effect of Berne Convention, —No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other federal or state statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto.</p> <p>(d) Effect of Phonograms Treaties.— Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.</p>

<p>organizations (neighboring rights), as well as certain other rights that are recognized in connection with intellectual activity in the field of literature, arts and sciences.</p>			
<p><b>Article 2. International Treaties; National Treatment.</b></p> <p>(1) Where an international treaty to which the Republic of Moldova is part of contains rules different from those specified in this Law, the provisions of the international treaty shall apply.</p>	<p>This norm would give preeminence to international treaties without regard to whether they are self-executing. For the reasons outlined in the comment to Article 1, that would mean legal uncertainty to citizens of Moldova as well as public authorities dealing with enforcement.</p> <p>The provision should be modified to give preeminence to national law.</p>		<p><b>US Copyritht Law, Section 104. Subject matter of copyright: National origin</b> (c) Effect of Berne Convention, —No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other federal or state statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto.</p> <p>(d) Effect of Phonograms Treaties.— Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.</p>
<p>(2) Individuals and foreign legal persons, whose works or objects of related rights are protected by an international treaty to which Moldova is part of, enjoy protection equivalent to that given by this Law to individuals or legal persons of the</p>	<p>Article 3 of TRIPS and Article 4 (2) of the WPPT allow limited national treatment for copyright and related rights. Most EU countries grant national treatment in their copyright law only to a limited number of countries. Moldova should follow the same approach and provide national treatment</p>		<p><i>Article 3 TRIPS</i></p> <p><i>National Treatment</i></p> <p>1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords</p>

<p>Republic Moldova (national treatment).</p>	<p>only to the extent that it is strictly required by international treaty. A phrase should be added at the end of paragraph (2) to require national treatment only to the extent required by treaty.</p> <p>To grant national treatment without limitation is harmful for domestic artists and consumers because most of the royalties for public communications and other uses would be sent abroad. In short, the pot of money collected by the national collecting societies will have to be divided among national and more international right holders, thus the share for nationals artist will be smaller. Also the Moldovan consumer or user will have to pay royalties to foreign artists in cases where domestic artists don't get paid for similar uses abroad.</p>		<p>to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. <b>In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement.</b> Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.</p> <p><b>Article 4 WPPT National Treatment</b></p> <p>(1) Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in <a href="#">Article 3(2)</a>, the treatment it</p>
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<p><b>Article 3. Basic Concepts</b></p> <p>In this Act shall use the following terms: ...</p> <p><i>communication to the public</i> means the transmission by air, including by satellite (broadcasting), by cable or by any other means, of images and/or sounds of works or objects of neighboring rights where such images or sounds may be perceived by persons outside the usual circle of a family and its close acquaintances in places where, without the transmission they would not be able to perceive the images and/or the sounds.</p> <p><i>communication to the public (broadcasting)</i></p>	<p>The line between what is “public” and what is “private” for the purposes of the definition of “communication to the public” is not clearly drawn by international treaties, leaving individual countries considerable discretion to define this concept for themselves. Most countries do not define “communication to the public” by statute. Moldova should follow the majority and allow this concept to evolve over time by means of judicial decision-making.</p> <p>In any case, the definition proposed in the draft expands the scope of the right well beyond what exists under U.S. law or the German Copyright Act.</p> <p>It is so wide as to encompass non-</p>		<p><b>Directive 2001/29/EC</b></p> <p>(Recital 23) This Directive should harmonize further the author's right of communication to the public. This right should be understood in a broad sense covering <b>all communication to the public not present at the place where the communication originates. This right should cover any such transmission or retransmission of a work to the public by wire or wireless means, including broadcasting. This right should not cover any other acts.</b></p> <p><b>Agreed statements WCT concerning Article 8 :</b> It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the</p>

<p><i>by satellite</i> means the act of introducing, under the control of the broadcasting organization, the programme that carries signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and towards the earth. Communication of codified signals shall represent a transmission by air (broadcasting) or by cable when the decoding means are offered to the public by the air broadcasting organization or by the cable distributor organization, respectively, or with its consent. Retransmission by air (rebroadcast) or by cable of works or objects of neighboring rights transmitted by air (broadcast) or by cable that does not take place simultaneously with the original communication to the public, or which includes changes (abridgements, subtitling, subscriptions, insertions of advertisement), shall be qualified as a new act of communication to the public by air (broadcasting) or by cable;</p>	<p>commercial activities that are part of everyday life, activities that otherwise would be free.</p> <p>To protect access and allow legitimate social activities, the definition of “public” must not be overbroad. Hence Moldova should reject the proposed concept of “public,” which would include closed social activities like those among members of a private club, coworkers, and similar private groups not related by family.</p> <p>Another important element that is missing from the proposed definition is the clarification that in-person public performances are not included. This should be corrected to correspond to article 3(1) of the Information Society Directive in conjunction with recital 23, which states that public performance is limited to communication to persons not present where the performance originates.</p> <p>Finally, Recital (27) of the Information Society Directive, consistent with the WCT treaty, states, “The mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Directive.” A similar clarification should be</p>		<p>meaning of this Treaty or the Berne Convention.</p> <p><b>US Copyright Law</b> To perform or display a work “publicly” means —          (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered;</p> <p><b>German Copyright Law</b>          Art. 15 The communication of a work shall be deemed public if it is intended for a plurality of persons, unless such persons form a clearly defined group and are connected by personal relationship with each other or with the organizer.</p> <p><b>Swedish Copyright Act</b> <sup>2</sup>  <b>Article 2.4 last paragraph</b>  <b>“As acts of communication to the public and of public performance shall be deemed also acts of communication and performance that, in the framework of commercial activities, occur to or for a comparatively large closed group of persons. “</b></p>
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**1.SWEDISH ACT ON COPYRIGHT IN LITERARY AND ARTISTIC WORKS (Act 1960:729, of December 30, 1960, as amended up to April 1, 2009).**

<p><i>public display</i> means the showing of an original or a copy of a work either directly or – by means of displaying the image of a work by slide or by other means on a screen or in a similar manner – indirectly (except for transmission by air or by wire) where the work, its copy or its image is shown at an open place or where it may be otherwise <b>perceived by persons outside of a family and close acquaintances</b>; the public display of an audiovisual work consists in the showing of individual images of the audiovisual work in a consequential manner, on the understanding that the showing of an audiovisual work in such a way in the usual sequential manner means public performance;</p>	<p>included in Moldovan law.</p> <p>The definition of “public display,” like the definition of “communication to the public,” includes an overbroad conception of “the public” which correspondingly narrows the concept of private display to those made to a family and its close acquaintances. This should be modified to avoid bizarre situations like requiring someone to pay a license fee for public display because he has a picture hanging in his office where he meets with a team of coworkers.</p>		
<p><i>distribution</i> means the sale or other transfer of property of the original or copies of the work or objects of neighboring rights, either against payment or without it, as well as public offer for this;</p>	<p>This definition goes beyond the definition in the WIPO Copyright Treaty, which only refers to transfer of property or sale.</p>		<p style="text-align: center;"><b>Article 6 WCT Right of Distribution</b></p> <p>(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to</p>

			the public of the original and copies of their works through sale or other transfer of ownership.
<i>fixation</i> means the embodiment by any means and in any manner, of sounds and/or images, or the representations thereof, in any material – including electronic – form that permits them to be perceived, reproduced or communicated;			ART 2 WPPT (c) “fixation” means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;
<i>rights management</i> administration means any information, provided by the right holder, identifying the work or any other object protected by this Law, the author or another right holder, or information on the conditions of the use of the work or other object of protection, as well as any numbers and codes representing such information;  <i>performer</i> means an actor, singer, musician, dancer or any other person who acts, sings, delivers, declaims, plays in, interprets or otherwise performs a literary or artistic work or an expression of folklore;			
<i>public performance</i> means the presentation of works, performances or phonograms by reciting, playing, singing or any other means	This overly expansive definition of the public performance right will encompass performances that are free in most countries		Swedish Copyright Act <sup>4</sup>  Article 2.4 last paragraph

<p>reciting, playing, singing or any other means either in a live show or with the aid of a device or process of any kind (except for transmission over the air or by wire) at places open to the public or where otherwise the works, performances, phonograms or broadcasts may be perceived by persons outside the usual family circle and their close acquaintances;</p>	<p>performances that are free in most countries. Under U.S. copyright law, public performance occurs only when the performance can be perceived by a SUBSTANTIAL number of persons outside the usual circle of a family and their social acquaintances. The proposed definition includes within the right a performance that is perceived by any number of persons outside the usual family circle and CLOSE acquaintances.<sup>3</sup></p> <p>Again, the majority of countries do not define what is “public” by statute. Moldova should follow that approach to provide more flexibility to its judges to develop the concept over time. Alternatively, it could provide guidelines following the examples of US, Germany and Sweden.</p> <p>And again, it is important to revise this definition so as not to affect what normally would be considered purely private performance.</p>		<p><b>“As acts of communication to the public and of public performance shall be deemed also acts of communication and performance that, in the framework of commercial activities, occur to or for a comparatively large closed group of persons. “</b></p> <p><b>US Copyright Law</b>” To perform or display a work “publicly” means —                  (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered;</p> <p><b>German Copyright Law</b>                  Art. 15 The communication of a work shall be deemed public if it is intended for a plurality of persons, unless such persons form a clearly defined group and are connected by personal relationship with each other or with the organizer.</p>
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<sup>3</sup> US Copyright Law” To perform or display a work “publicly” means —  
 (1) to perform or display it at a place open to the public or at any place where **a substantial number** of persons outside of a normal circle of a family and its social acquaintances is gathered; or”

<sup>4</sup> **1.SWEDISH ACT ON COPYRIGHT IN LITERARY AND ARTISTIC WORKS (Act 1960:729, of December 30, 1960, as amended up to April 1, 2009).**



<p><i>lending</i> means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments accessible to the public;</p> <p><i>rental</i> means making available for use for a limited period of time and for direct or indirect economic or commercial advantage;</p>	<p>The proposed definitions of lending and renting do not clearly exclude the acts referenced by Recital (10) of the <b>DIRECTIVE 2006/115 on rental and lending rights expresses</b> that states, “it is desirable, with a view to clarity, to exclude from rental and lending within the meaning of this Directive certain forms of making available, as for instance making available phonograms or films for the purpose of public performance or broadcasting, making available for the purpose of exhibition, or making available for on-the-spot reference use. Lending within the meaning of that directive should not include making available between establishments which are accessible to the public”.</p> <p>All these clarifications to exclude activities from the lending right – especially the ones concerning on-the-spot reference use and making available between establishments which are accessible to the public, which are intended to benefit libraries – are not included in the Moldovan draft law. They should be added to ensure proper interpretation of the rights, following the UK Copyright law model.</p>		<p>SECTION 18 A. UK LAW (2) In this Part, subject to the following provisions of this section -</p> <p>(a) “rental” means making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, and</p> <p>(b) “lending” means making a copy of the work available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public.</p> <p>(3) The expressions “rental” and “lending” do not include -</p> <p>(a) making available for the purpose of public performance, playing or showing in public or communication to the public;</p> <p>(b) making available for the purpose of exhibition in public;</p> <p>or</p> <p>(c) making available for on-the-spot reference use.</p> <p>(4) The expression “lending” does not include making available between establishments which are accessible to the public.</p> <p>(5) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to</p>

<p><i>technical</i> measures of copyright and neighboring rights protection means any technical equipment or its components that, in the normal course of its operation, is designed to control access to works or to other objects of neighboring rights, thus preventing or restricting acts which are not authorized by the right holders whose rights are protected by this Law;</p>	<p>The definition of technical measures seems to be focusing on access control measures.</p>		<p>not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.</p> <p>(6) References in this Part to the rental or lending of copies of a work include the rental or lending of the original.</p> <p>(48) Such legal protection should be provided in respect of technological measures that effectively restrict acts not authorised by the rightholders of any copyright, rights related to copyright or the sui generis right in databases <b>without, however, preventing the normal operation of electronic equipment and its technological development.</b> Such legal protection implies no obligation to design devices, products, components or services to correspond to technological measures, so long as such device, product, component or service does not otherwise fall under the prohibition of Article 6. Such legal protection should respect proportionality and should not prohibit those devices or activities which have a commercially significant purpose or use other than to circumvent the</p>
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			<p>technical protection. In particular, this protection should not hinder research into cryptography.</p> <p>(50) In particular, it should not apply to the protection of technological measures used in connection with computer programs, which is exclusively addressed in that Directive. It should neither inhibit nor prevent the development or use of any means of circumventing a technological measure that is necessary to enable acts to be undertaken in accordance with the terms of Article 5(3) or Article 6 of Directive 91/250/EEC</p>
<p><i>technological measures</i> shall be deemed “effective” where the use of a protected work or other object protected by this Law is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other object of protection or a copy-control mechanism, which, if not circumvented, achieves the protection objectives.</p>	<p>The definition DOES NOT correspond to Article 6(3) of the Information Society Directive. Instead, it expands the protection to technological measures that might not deserve it by using a circular definition of effectiveness: a measure is effective when “if not circumvented, [it] achieves the protection objectives.” Of course, every mode of protection, however flimsy, achieves its objectives so long as it is not circumvented.</p> <p>Therefore the last sentence should be reformulated to follow article 6(3) of the Information Society Directive, which requires the technological measure to</p>		<p>Article 6(3) of the Information Society Directive          “Technological measures shall be deemed “effective” where the use of a protected work or other subject-matter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, <b>which achieves the protection objective.</b> “</p>

	<p>achieve its protection objective in order to qualify as “effective” under the law.</p> <p>This modification would provide rightsholders with an incentive to use efficient technological measures as well as preventing the law from sanctioning accidental circumventions.</p>		
<p><i>work</i> means the result of original intellectual creation in the field of literature, arts and science, irrespective of the means of its making, of the concrete manner and form of its expression and of its merit and importance;</p>	<p>Work . “The originality test provides a double standard, determines both the quality as a protected work and its scope of protection. The more ‘creativity’ is involved, the stronger the resulting copyright will be in terms of protection. In continental systems, the mere fact that a production is an intellectual creation does not in and of itself imply it is original. The work must also testify of a personal vision (personal mark, <i>Eigenart</i>) of the author.”<sup>5</sup></p> <p>The Copyright Duration Directive, for photographs, uses the description, “author’s own intellectual creation <i>reflecting his personality</i>,” which implies a higher standard than the one required in the Computer Programs Directive and the Database Directive.</p>		<p>Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version)</p> <p>Recital (16) The protection of photographs in the Member States is the subject of varying regimes. A photographic work within the meaning of the Berne Convention is to be considered original if it is the author's own intellectual creation reflecting his personality, no other criteria such as merit or purpose being taken into account. ... Protection of photographs Art. 6. Photographs which are original in the sense that they are the author's own intellectual creation shall be protected in accordance with Article 1. No other criteria shall be applied to</p>

<sup>5</sup> IVIR, THE RECASTING OF COPYRIGHT & RELATED RIGHTS FOR THE KNOWLEDGE ECONOMY, page 34

<sup>6</sup> **Case C-61/05, Commission of the European Communities v Portuguese Republic, 2006.**

<p><i>audiovisual work</i> means a work consisting of a series of fixed related images, with or without accompanying sounds giving an impression of movement when it is made visible – if accompanied by sounds, along with the sounds – by an appropriate device;</p> <p><i>collective work</i> means a work created by several persons – whose contributions merge in the totality of the work in a way that it is impossible or impracticable to identify them – at the initiative and under the direction of a individual or legal person who will publish the work under his own name;</p> <p><i>producer of phonograms</i> means the natural person or legal entity who or which takes the initiative and responsibility for the first fixation of the sounds of performance of other sounds or the representations of sounds;</p> <p><i>producer of an audiovisual work</i> means a natural person or legal entity, on whose initiative and responsibility the audiovisual work is created;</p>	<p>The proposed definition might be improved by requiring that the work reflect the personality of the author. This would rule out protection on the basis of mere independent effort on the part of the author.</p>		<p>determine their eligibility for protection. Member States may provide for the protection of other photographs.</p> <p><b>DIRECTIVE 2006/115/, Rental Rights Directive.</b></p> <p>Article 2 (c) ‘film’ means a cinematographic or</p>
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<p><i>producer of videogram</i> means a natural person or legal entity on whose initiative and responsibility the videogram is recorded;</p>	<p>The producer of a videogram who is not the producer of the underlying film is not entitled to a related right under international norms, nor do the EU Directives require such a right.</p> <p>So there is no need to define “producer of videogram.” Instead, following the Rental Directive, it would be more useful to define “producer of films,” who owns copyright in the film. Because of this, the definition of producer of videogram should be deleted, and a definition of film should be added.</p> <p>According to the EU Commission, “the list in Article 2(1) of the Rental Rights Directive, is exhaustive and therefore it is only for the producer of the first fixation and not the producer of videograms to authorize or prohibit the rental of the original and copies of a film. That list is in no way minimal or supplementary. Only the first fixation of a film justifies specific protection by Community law. Protecting copies of a film by means of a right related to copyright is unjustified due to the absence of any ‘ancillary’ link with the literary or artistic work”<sup>6</sup></p>		<p>audiovisual work or moving images, whether or not accompanied by sound.</p> <p style="text-align: center;"><b>Article 3</b> <b>Rightholders and subject matter of rental and lending right</b></p> <p>1. The exclusive right to authorise or prohibit rental and lending shall belong to the following:</p> <p style="text-align: center;">...</p> <p>(d) the producer of the first fixation of a film in respect of the original and copies of his film.</p>
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*computer program* means a set of instructions and commands expressed in words, codes or diagrams intended for the operation of a computer with a view to a specific aim or result whatever may be the mode or form its expression; this term covers both application programs and operation systems, in the form of both source code and machine-readable object code, as well as programs incorporated in hardware; and it also covers the preparatory design work produced during the development of a program provided that the nature of the preparatory work is such that a computer program may result from it at a later stage;

*publication* means offering of copies of a work, a fixed performance, a phonogram or a videogram to the public with the consent of the author or other holder of the copyright or neighboring rights, in sufficient quantity to satisfy the reasonable needs of the public;

*reproduction* means making of one or more copies of a work or object of neighboring rights either directly or indirectly, and either temporarily or permanently, in any form whatsoever, including an audio or video recording, and the temporary or permanent storage of a work or object of neighboring rights in an electronic medium;

*reprographic reproduction* means facsimile reproduction of the original of a literary or graphic work, whether in the same format, enlarged or reduced, by means of photocopying or with the aid of other similar technical means, except those of publishing; reprographic reproduction does not include recording in an electronic (including digital) or optical form or in any other machine-readable form;

*retransmission* means the simultaneous broadcasting (or cable transmission) by a broadcasting or cable distribution organization of programs of another broadcasting or cable distribution organization;

*satellite* means any satellite operating on frequency bands which, under telecommunication law, are reserved for the communication to the public (broadcast) of signals for reception by the public or which are reserved for closed, point-to-point communication; in the latter case, however, circumstances in which the reception of the signals by the members of the public takes place should be comparable to those which apply in the first case;

*valorification* means any action that is connected to the use in any forms of authors rights, and related rights and other rights protected by this law videogram - fixation any sequence of images with or without



<p>sounds, irrespective of whether or not it qualifies as an audiovisual work.</p>			
<p><b>Article 4. Powers and duties of the State Agency on Intellectual Property Law in The area of Copyright and Related rights</b></p> <p>(1) State Agency for Intellectual Property (hereinafter AGEPI)</p> <p>a) contribute to the development and implementation, within the limits of its competence, the appropriate policy for the protection, pursuit and implementation of copyright, related rights and other rights protected under this law, international commitments and national interests of the Republic of Moldova;</p> <p>b) acquire the necessary information, training activities and consultations with government authorities and institutions, and representatives of rightholders and users of the area concerned;</p> <p>c) submit proposals to the Government, ministries and other central administrative authorities, when undertaking certain measures to implement the policy referred to in points. a) is not within its competence;</p> <p>d) participate in drafting legislation on the protection, pursuit and implementation of copyright, related rights and other rights protected by this law;</p> <p>e) represent the Republic of Moldova in international and regional organizations in the field of copyright, related rights and other</p>			

<p>rights protected by this law;</p> <p>f) establish and maintain, in accordance with legislative acts and norms, cooperative relations with each other for the same offices, agencies and research institutions and other organizations from other countries working in the field of copyright, related rights and other rights protected by this law;</p> <p>g) perform specialized expertise copies of works, phonograms and videograms presumed to be counterfeit;</p> <p>h) accredits organizations of collective management of copyright and related rights, and supervise their work;</p> <p>i) self-promotion information for ministries, other central administrative authorities, judicial, administrative and other institutions, rights holders and users about the importance and the legal and practical aspects of protection, performance and implementation of copyright, related rights and other rights protected by this law, drafted and distributed informational materials that end, organized information campaigns and work actively with the media;</p> <p>j) issue of control marks.</p> <p>(2) AGEPI Commission establishes mediation and arbitration, in cases provided by law, examine and resolve disputes in collective management of copyright and related rights. Commission for mediation and arbitration operates under Regulation approved by the General Director of AGEPI.</p>			
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<p>(3) The mediation and arbitration board consists of eleven members. Ten members of the Commission is designated by the Director General of AGEPI from among persons whose knowledge in the field of copyright and related rights, independence and impartiality are not put in doubt by any of the parties in dispute. Eleventh members of the Commission shall be ex officio by the General Director of AGEPI.</p>			
<p style="text-align: center;"><b>CHAPTER II COPYRIGHT</b></p> <p style="text-align: center;"><b>Article 5. Conditions Of Protection</b></p> <p>(1) This Law shall protect all works in the literary, artistic and scientific fields irrespective of whether they have been disclosed or not.</p> <p>(2) An author shall enjoy the protection of copyright in his work by the sole fact of having created the work. For the existence and application of copyright no registration of the work or any other act of notice or formality shall be required.</p> <p>(3) The Copyright shall comprise economic rights and moral (personal) rights.</p> <p>(4) The convright does not denend on the</p>	<p>Article 5 is missing a fixation requirement.</p> <p>According to the Berne Convention and the WTO TRIPS, countries may require fixation as a condition of protection. That possibility has not been recognized by the ACT. As Kenneth Crews has pointed out, granting copyright protection without fixation of the work is highly problematic for works in the visual arts, where the image often needs to be embodied and perceived to have any meaning whatsoever. Consequently, Japanese law and the law of many other countries specify that paintings, drawings, and cinematographic works must be fixed to have protection.<sup>7</sup></p>		<p>UK law mandate: (2) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.</p>

<p>ownership of the material object in which he found that expression work. Purchasing such an item does not confer ownership of any rights provided to authors of this law.</p> <p>(5) Property rights may belong to the author or another natural or legal person that owns, lawfully rights (rightholder).</p> <p>(6) Copyright protection extends to the form of expression and does not extend to ideas, theories, scientific discoveries, and procedures, methods of operation or mathematical concepts as such and the inventions contained in a work, whatever the mode takeover, explanation or expression.</p>	<p>Therefore it seems advisable to include the requirement of fixation to grant protection to all type of works or at least in the case of visual works like pantomimics.</p>		
<p><b>Article 6. Scope of Copyright</b></p> <p>(1) Copyright shall extend to:</p> <p>a) Works, regardless of their place of first publication of which the holder of copyright is a natural person or legal entity in the Republic of Moldova;</p> <p>b) Works published for the first time in Moldova, regardless of domicile or headquarters of the copyright holder of such works;</p> <p>c) Other works, in accordance with international treaties to which Moldova is party.</p> <p>(2) Work shall also first published in Moldova. where it was published in the</p>			

<p>Republic of Moldova within 30 days after its first publication abroad.</p>			
<p><b>Article 7. Works Protected by Copyright</b></p> <p>(1) Copyright shall extend to literary, artistic and scientific creating independent, mode of expression or a value, expressed in the following forms:</p> <ul style="list-style-type: none"> <li>a) written (manuscript, text typing, scores);</li> <li>b) oral (public interpretation);</li> <li>c) audio - or video print (mechanical, magnetic, digital, optical);</li> <li>d) picture (drawing, sketching, painting, plan, photo);</li> <li>e) three-dimensional (sculpture, design, layout, construction);</li> <li>f) in other forms.</li> </ul> <p>(2) Objects of copyright are:</p> <ul style="list-style-type: none"> <li>a) literary works (stories, essays, novels, poems, computer programs);</li> <li>b) scientific works;</li> <li>c) works and dramatic-musical dramatics, draft scenarios and scenarios, liberties, film synopsis;</li> <li>d) musical works with or without text;</li> <li>e) choreographic works and pantomime;</li> <li>f) audiovisual works;</li> <li>g) works of painting and sculpture, graphics and other works of art;</li> <li>h) works of architecture, art and urban gardening;</li> <li>i) works of applied art;</li> <li>j) photographic works and works obtained by a process analogous to photography;</li> </ul>	<p>Article 7 (1) lowers the standard of creativity required to be eligible for protection by excluding the concept of an “original work.”</p>		

<p>k) maps, drawings and three dimensional works of geography, topography, architecture and other fields of science;  l) databases;  m) other works.</p> <p>(3) Without prejudice to the protection of copyright in the original works, those derivative works and collections that are based on one or more pre-existing works and/or any other materials, shall also be protected by copyright; in particular:</p> <p>a) translations, adaptations, annotations, musical arrangements and other transformations of literary, artistic or scientific purposes, provided that the results of creative intellectual;</p> <p>b) collections of literary, artistic or scientific, are as encyclopedias and anthologies, compilations or other material information, whether or are not protected, including databases, provided that, for the selection and arrangement of their contents, the results intellectual creations.</p> <p>(4) The copyright shall also be protected as such part or another part of the work (including title work or his work), which is in itself an intellectual creation.</p> <p>(5) works as well as parts and other items of works mentioned in paragraph (1) - (4) of this Article shall enjoy protection if you are</p>	<p>The general standard of protection should follow the Term Directive. which states that</p>		
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<p>genuine in the sense that by itself is very intellectual creations of the authors. No apply other criteria such as characteristics of quantitative, qualitative or aesthetic to determine whether they are subject to protection.</p>	<p>to be protected a photograph must be the ‘author’s own intellectual creation <i>reflecting his personality</i>’ (emphasis added). This standard requires a higher level of originality to warrant protection, especially important in the case of providing protection to parts of works. A lower threshold risks upsetting the balance between rightholders and users, which in turn prevents the creation of new works.</p>		
<p><b>Article 8. Creations And Other Objects Unprotected By Copyright</b></p> <p>(1) Copyright protection shall not extend to:</p> <p>a) official documents of a regulatory, administrative or political nature (laws, court decisions) and official translations thereof;</p> <p>b) State symbols and official signs of state (flag, coat of arms, decorations, monetary signs);</p> <p>c) folklore expressions;</p> <p>d) daily news day and various facts of simple information.</p>	<p>There should be an additional exception for <b>political speeches and speeches delivered in the course of legal proceedings</b>. The Berne Convention and The Information Society Directive allow such limitations, which are critical for exercising public information rights and the protection of democratic processes.</p>		<p><b>Berne Convention</b> Art. 2.1 e) political speeches and speeches delivered in the course of legal proceedings ( art.2 bis 1 Berne)</p> <p><b>Information Society Directive</b> Art. 5 f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author’s name, is indicated, except where this turns out to be impossible;</p>
<p><b>Article 9. The Subject Of Copyright. Presumption Of Authorship And The Symbol Of Protection Of Copyright</b></p> <p>(1) In absence of proof to the contrary, the person whose name appears on a work in the usual manner shall be deemed to be the</p>			

<p>author thereof.</p> <p>(2) When the work was published in anonymous form or under a pseudonym that does not allow identification of the author, publisher, whose name or designation is indicated on the work shall be deemed, in the absence of contrary evidence, the representative of the author, taking as such right to protect and exercise the author's rights.</p> <p>(3) Natural or legal person, whose name or designation appears on an audiovisual work, videogram or phonogram in the absence of proof to the contrary, shall be considered the producers of the work.</p> <p>(4) To inform the public about the rights holder has the right to use the symbol of protection of copyright which apply to each copy of the work and consists of three elements:</p> <p>a) the Latin letter C included in the circle: ©;</p> <p>b) the name (name) of the holder of exclusive rights of authors;</p> <p>c) year of first publication of the work.</p> <p>(5) Using the symbol of protection of copyright is not a condition for granting protection works required by law.</p>	<p>Proposed Article 9(3) does not correspond to Article 15(2) of the Berne Convention. The proposed Article 9(3) expands the presumption to include all audiovisual works, whereas Berne includes only cinematographic works. Berne also requires that the name or designation appear in "the usual manner," which proposed Article 9(3) does not require.</p> <p>Also, the law should include reference to other symbols that might be used to signify the rights reserved or granted by the copyright holder, for example the Creative Commons symbol, (CC).</p>		<p><b>Art. 15 Berne Convention-</b>                  (2) The person or body corporate whose name appears on a <u>cinematographic work in the usual manner</u> shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.</p>
<p><b>Article 10. Moral Rights (Personal) of The</b></p>			<p><b>Berne Convention</b></p>



<p style="text-align: center;"><b>Author</b></p> <p>(1) The author of a work shall enjoy the following moral rights (personal):</p> <p>a) the right of paternity - the right to be recognized as the author of his work and the right to seek such recognition, including an indication of its name on all copies of published work or reference to his name, as is usual in return for any other public work, except when this is impossible and if the lack of obligation to indicate the author's name derives from other provisions of this Law;</p> <p>b) the right to name - the right author to decide how his name will appear during the recovery work (real name, pseudonym or anonymously);</p> <p>c) the right to respect the integrity of the work - the right to protect his work against any distortion, mutilation or any other prejudice to the work, which is prejudicial to the honor or reputation of the author;</p> <p>d) the right to disclose the work - the right to decide whether, how and when work will be brought to public attention;</p>	<p>There are no international obligations with respect to moral rights beyond the Berne Convention.</p> <p>Information Society Directive Recital (19) states, “The moral rights of right holders should be exercised according to the legislation of the Member States and the provisions of the Berne Convention... Such moral rights remain outside the scope of this Directive.”</p> <p>Therefore Moldova has broad discretion to grant or withhold moral rights. It is not a good idea to exercise that discretion to grant moral rights that far exceed standard international practice, as moral rights would interfere with the economic exploitation of works and therefore limit domestic business opportunities, as well as limiting the creation of derivative works.</p> <p>Especially objectionable is the proposed moral right to withdraw the work, which would allow the author to take out of the market works that have already been distributed, without contemplating compensation of damages to all affected parties.</p>		<p><b>Berne Convention.</b></p> <p>Art. 6bis (1): <i>“Independently of the author’s economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation”</i>.</p> <p>Art. 6bis (2) states that <i>“The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights.</i></p>
<p>e) the right to withdraw the work - the right to withdraw from the marketing work, on the rightholder damages recovery if it is prejudiced by the withdrawal.</p>	<p>This is not a right mandated by the Berne Convention, and it has severe implications against not only right holders but also other industries and third parties affected by the</p>		

	<p>withdrawal. Therefore this provision should either be deleted or else it should obligate the author to pay damages to all legitimate third parties affected by the withdrawal.</p>		
<p>(2) Moral rights shall be inalienable and unwaivable. The author shall maintain his moral rights also when he transfers his economic rights.</p>	<p>The term of protection for moral rights is missing.</p>		<p><b>Berne Convention.</b></p> <p>Art. 6bis (2) states that “<i>The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights.</i>”</p>
<p><b>Article 11. Exclusive Rights</b></p> <p>(1) The author or other holder of copyright has the exclusive right to conduct, permit or prohibit the recovery work, including:</p> <p>a) reproduction of the work;  b) distribute copies or original work;  c) copies of the work, hiring, except for architectural work and the work of applied art;</p>	<p>According to TRIPS, computer software shall also be exempted from the renting right when the software itself is not the essential object of the rental. Art. 11 TRIPS.</p> <p>Omitting this clarification would affect businesses dealing with the rental of cars, phones, and other electronic appliances that work with software.</p> <p>Although this exception is not included in the Computer Programs Directive, in some cases it would be consistent with the</p>		<p>TRIPS  Article 11  Rental Rights</p> <p>In respect of at least computer programs ..a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of ... <b>of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.</b></p>

<p>d) to import copies for dissemination work, including copies made with the consent of the author or other holder of copyright;</p> <p>e) public demonstration of the work;</p>	<p>Community acquis.</p> <p>Article 6 of TRIPS and Article 6 of the WIPO WCT and WPPT treaties allow for exhaustion of the distribution right after the first legal sale in any country. Article 4(2) of the Information Society Directive provides for community-level exhaustion of the right of distribution.</p> <p>Hence an importation right, which amounts to national exhaustion, is far more restrictive than international norms and would prevent Moldovans from importing works obtained legally from foreign markets. Under an importation right regime, Moldovans will not benefit from lower prices of legitimate works on the market in Europe and elsewhere. The entrance to market of new products would be delayed until there is someone authorized to import works distributed abroad.</p> <p>The Republic of Moldova is not yet a member of the European Union, which requires regional exhaustion. Hence it is free to choose the best option to encourage access to copyrighted works: international-level exhaustion.</p>		<p><b>TRIPS</b> <b>Article 6</b> <b>Exhaustion</b></p> <p>For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.</p> <p><b>WCT</b> <b>Article 6</b> <b>Right of Distribution</b></p> <p>(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.</p> <p>(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the <b>exhaustion of the right in <a href="#">paragraph (1)</a> applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author.</b><a href="#">6</a></p>
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<p>f) interpretation of the published work;  g) communication of the work published by ether (television, radio, including satellite) or cable;  h) and simultaneous relaying changes without air or cable transmission of the work by cable or by air;  i) making the work accessible to the public as interactive;  j) translation work;  k) transformation, adaptation, arrangement or other similar changes in the work.</p> <p>(2) The author or other holder of exclusive rights of the author is entitled to an equitable remuneration. Amount and manner of payment of the remuneration of authors for each case and method of recovery work is set in the author or the contracts that organizations collecting the rights of the author have done with the users.</p>			
<p>(3) Moral rights shall be inalienable and unwaivable. The author shall maintain his moral rights also when he transfers his economic rights.</p>	<p>This has already been said in Article 10 (2) above.</p>		
<p>(4) Where an author has sent or sold to a producer of phonograms or audiovisual his right to hire a phonogram or audiovisual work, mentioned in paragraph (1). c) of this article, the author retains the right to an equitable remuneration for each rental. This right can not be waived and shall be</p>	<p>Art. 5 .3 of the DIRECTIVE 2006/115/ on rental right and lending right establishes that member States <i>may</i> entrust collecting societies with the administration of this right to obtain an equitable remuneration, therefore it is possible for member states to provide more freedom to the authors and</p>	<p><b>4)</b></p>	<p><b>DIRECTIVE 2006/115/on rental right and lending right</b>  Art. 5  Unwaivable right to equitable remuneration  1. Where an author or performer has transferred or assigned his rental right concerning a phonogram or an original or</p>

<p>exercised only through a collective management organization of property rights.</p>	<p>allow them to choose to exercise this right themselves or assign it to a collecting society.</p> <p>Article 5.4 of the same Directive gives the option to member states to regulate from whom the remuneration may be claimed or collected, so it could be claimed from the producer of the audiovisual or phonogram.</p>		<p>copy of a film to a phonogram or film producer, that author or performer shall retain the right to obtain an equitable remuneration for the rental.</p> <p>3. The administration of this right to obtain an equitable remuneration may be entrusted to collecting societies representing authors or performers.</p> <p>4. Member States may regulate whether and to what extent administration by collecting societies of the right to obtain an equitable remuneration may be imposed, as well as the question from whom this remuneration may be claimed or collected</p>
<p>(5) The right of cable retransmission, provided in paragraph (1). h) of this Article shall be exercised only through a collective management organization of property rights. The amount of remuneration to the author the right of cable retransmission shall be determined based on taking any kind of payments network that cable operators charge from the members of the public services, including access to technical and maintenance and maintenance of equipment used properly for retransmission. Remuneration is set out for payment of remuneration due to authors or other holders of copyright to their exclusive rights referred in paragraph (1). h) of this article, as well as equitable remuneration due interpreters and producers of phonograms provided for in art. 37 paragraph (1). c) of this Act.</p>			

<p>(6) In determining the amount of pay, which payment is required by paragraph (5) of this article, and determining other provisions, and for resolving any disputes between the parties will apply art. 50 of this law on the following conditions:</p> <p>a) the parties, which determines the amount of remuneration, are collective management organization of property rights referred in paragraph (7). a) of this article, on the one hand, and the representative of cable network operators, on the other;</p> <p>b) regardless of the manner of determining the amount of remuneration, it shall not be less than the minimum rates set by the Government.</p> <p>(7) If the agreement between the holders of rights contains other provisions, pay all amounts referred in paragraph (5) of this Article:</p> <p>a) accumulates in the collective management organization representing authors and other holders of copyright;</p> <p>b) after deducting the actual expenditure for rights management, the amounts of remuneration shall be distributed as follows:          - in the case of television broadcasts retransmitted by cable, authors or other holders of copyright on audiovisual works</p>	<p>This provision adversely affects the freedom to negotiate and to establish real market value of licenses and should be deleted.</p> <p>It is important to set a limit on the expenditure for rights management to avoid abuses or inefficiency that would affect not only Moldovan authors but also users. Otherwise, authors will not receive their fair</p>		
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<p>shall be paid 60%, for audiovisual interpreters - 30%, interpreters, whose interpretation is fixed 5%, for phonogram producers - 5%;</p> <p>- for radio broadcasts retransmitted by cable, authors or other holders of rights to the works shall be paid 50%, for interpreters - 25%, for producers of phonograms - 25%.</p>	<p>compensation because the money will go to those who rule the collective organization and the users will be forced to pay higher licenses to compensate the inefficiency.</p>		
<p>(8) the management of collective property rights referred in paragraph (7). a) of this Article, the transfer rates of remuneration set out in paragraph (7). b) of this article:</p> <p>- due to categories of holders of rights that is not represented</p> <p>- due to collective management organizations of property rights or other organizations that represent them and hold those responsible for distribution of the amounts accordingly..</p>			
<p><b>Article 12. Right To Remuneration For The Loan</b></p> <p>(1) If the owner gives the original loan or copies of a work, except works of architecture and works of applied art, it is not necessary consent of the author or another holder of copyright, however, the author or other holder of copyright is entitled to an equitable remuneration.</p>	<p>The international norms of copyright as embodied in the Berne Convention, Trips and the WCT do not recognize a lending right for authors, and this right has only regional recognition in the EU Directives. In this context Moldova is not bound by international law to create such a restriction on lending works to the public.</p> <p>Other options would be to grant such lending rights only for certain classes of works, e.g. computer programs and</p>		

	<p>sound recordings, or to provide a lending right only to works that have been first published in the Moldovan language.</p> <p>If Moldova does provide such a lending right, all non-commercial libraries could be exempted.</p> <p>To comply with the EU Directive on rental and lending and recent cases before the ECJ, the category of exempted libraries should be expanded to include those serving educational institutions, as well as libraries serving people with special needs, such as the elderly, the disabled, minors, and low income communities.</p> <p>On this point it is important to bear in mind that the Directive does not define what is meant by “certain categories of establishments” nor does Article 5 (3) provide a criterion by which Member States must decide which categories of establishments qualify for an exemption from payment. It is therefore left to the state to choose the criteria.</p> <p>To minimize the cost to libraries, the right to remuneration should be granted only for works first published in Moldova, following the example of Sweden’s implementation of the lending remuneration right.</p> <p>Finally, it is important that the Moldovan</p>		
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	<p>State set the rate of remuneration and pay that rate itself.</p>		
<p>(2) Libraries of schools that are not for direct or indirect economic or commercial advantage shall be exempted from the obligation of the payment of the remuneration mentioned in paragraph (1).</p>			
<p>(3) Right to credit provided in paragraph (1) of this Article shall be exercised only through collective management organizations, empowered by the author or other holder of rights.</p>	<p>The Directive (article 4) addresses collective management as a model for the management of the equitable remuneration right, but does not make collective management a requirement.</p>		
<p>(4) To determine the amount of remuneration and determining the other terms and to resolve any disputes between the parties will apply art. 50 of this law on the following conditions:  a) the parties who negotiated the amount of remuneration, are collective management organization of property rights on the one hand, and representatives of other libraries or similar institutions, on the other;  b) the agreed remuneration shall not be less</p>			

<p>than the minimum rates set by the Government.</p> <p>(5) The Government will determine the share of remuneration for public lending, which can be assigned individual authors and other holders of copyright and the share that will be used for collective purposes, such as promoting creativity and appreciation of creative achievements remarkable.</p>			
<p><b>Article 13. Works of Joint Authorship</b></p> <p>(1) Copyright on a work created by joint work of two or more persons, the coauthors in common, regardless of whether such work constitutes an indivisible whole or is composed of parts.</p> <p>(2) Each of the joint authors shall maintain copyright in the part of the work he has created if that part is independent, and he may use it as he sees fit. A part of a work shall be deemed independent if it may be used separately from the other parts of the work.</p> <p>(3) Relations between co-authors are established, usually under contract. In the absence of such a contract, copyright in the work is carried out jointly by all authors, and remuneration shall be divided between them proportionately to each contribution, if it can be determined. If the contribution of each co-author can not be determined, the remuneration shall be divided in equal</p>			

<p>shares.</p> <p>(4) If the collective work can be divided into parts in their own right, co-authors may exercise copyright only by mutual agreement.</p>			
<p><b>Article 14. The Copyright on Works Created as A Result Performance of Service Duties</b></p> <p>(1) The moral rights of a work created as a result of performing a mission entrusted by the employer or as a result of performing duties of service (service work) are those of the author of this work.</p> <p>(2) The work referred in paragraph (1) has no right to prohibit his employer to publish or make otherwise publicly available.</p> <p>(3) In the absence of legal provisions or provisions contrary to the extent that recovery work is subject to the mission entrusted to the author to create this work, the right of recovery belongs to the employer.</p> <p>(4) The remuneration of authors for each case of exploitation of the work of service is established in the contract between the author and employer.</p> <p><b>(5) The recovery work service name indicating if this is practically possible. Employer is also entitled to require the</b></p>			

<p><b>indication of the name (name) or in each case the value of service work</b></p>			
<p><b>Article 15. Copyright in the Collective Works</b></p> <p>(1) The natural person or legal entity at whose initiative and under whose direction a collective work (such as an encyclopedia, a dictionary, other similar collections, newspapers, reviews and other periodicals) has been created and under whose name it has been published shall enjoy the economic rights in such works.</p> <p>(2) If the contract between authors and the natural or legal person referred in paragraph (1) provides otherwise, the authors of works included in a collective work will keep the rights provided by law, on their works and have them operate independently of the collective in which they are included.</p>			
<p><b>Article 16. The Copyright on Works Derived</b></p> <p>(1) Translators and other authors of derived works shall enjoy the copyright in the translations, adaptations, arrangements and other transformations of the work also made by them.</p> <p>(2) translation or other derivative work can only be achieved with the consent of the original author of the work. The copyright of the translator or other author of a derivative</p>			

<p>work will not prejudice the rights of the author, whose original work has been translated, adapted, arranged or otherwise transformed.</p> <p>(3) The copyright of the translator or other author of a derivative work is not an impediment to the other person to carry out, with consent of the original author of the work, translation or conversion of the same work.</p>			
<p><b>Article 17. Copyright in the Work Integral</b></p> <p>(1) The compiler of a collection or any other composite work shall enjoy copyright in the compilation or arrangement he has made of the materials if such selection or arrangement constitutes the result of his own intellectual creation.</p> <p>(2) A work protected by copyright may only be included into a collection if the author thereof or other holder of copyright therein authorizes it. The copyright of the compiler shall not prejudice the rights of the authors of each work included in the composite work.</p> <p>(3) The authors of works included in the work were integral to the right and exploit their works independently of the work integral, if the author does not provide otherwise.</p> <p>(4) Notwithstanding the copyright of the compiler, any other person may make an</p>			

<p>independent compilation or an independent arrangement of the same materials for the purpose of creating his own composite work subject to the right of authorization of the authors of or other owners of rights in the works protected to be included into the collection.</p> <p>(5) Compiled collections that include various materials (articles and information, and the essays, diagrams, tables) are subject to protection as such, if the selection and systematization of the results of intellectual activities. Protection shall not extend to numerical data and the content of information contained in the collection.</p>			
<p><b>Article 18. The Copyright of Audiovisual Works</b></p> <p>(1) Authors (co-authors) of the audiovisual work are:</p> <ul style="list-style-type: none"> <li>a) the director ;</li> <li>b) the author of the screenplay (scenarist);</li> <li>c) the dialogue;</li> <li>d) the composer - the author of any musical works (with or without text) specially created for audiovisual work;</li> <li>e) the operator;</li> <li>f) painter, and</li> <li>g) other potential authors who have contributed creatively to the audiovisual work.</li> </ul>	<p>According to Article 2(2) of the Directive on rental right and lending right and on certain rights related to copyright, the principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors for the purposes of the Directive. Member States may provide for others to be considered as co-authors. Article 2.2 of the Term Directive names among the possible persons to be considered authors the first four named in the draft.</p> <p>The draft bill in paragraph (1) adds</p>		<p><b>Terms Directive</b>  <b>Article 2</b>  <b>Cinematographic or audiovisual works</b></p> <p>1. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States shall be free to designate other co-authors.</p> <p>2. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for</p>

<sup>8</sup> REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE ECONOMIC AND SOCIAL COMMITTEE on the question of authorship of cinematographic or audiovisual

<p>(2) The author created a work that was previously included, after processing or without modifications, in an audiovisual work, is also considered co-author of the audiovisual.</p>	<p>additional persons to be considered authors of the audiovisual work. This creates an excessive number of right holders, without regard to the merits of their contribution or the originality of their work.</p> <p>This in turn will harm the right of the main authors, like the director, as well as placing unnecessary burdens on the clearance of rights.</p> <p>This approach differs from countries like “Denmark, Finland and Sweden that do not provide for any specific rule relating to the determination of authorship in cinematographic or audiovisual works. They vest authorship according to the general rules on authorship in persons whose creative contribution is decisive for the making of a work as a whole, ... Normally these are at least the principal director and the writer of the screenplay. Others, like the composer of the film music, may also be considered as authors of a work, provided that their contributions meet the requirements of originality in each individual case and play a decisive role in the work as a whole”<sup>8</sup></p>		<p>use in the cinematographic or audiovisual work.</p>
<p>(3) Unless otherwise laid down by contract.</p>	<p>If the lending right in its current form is</p>		

<p>the conclusion by an author of a contract for creating an audiovisual work shall imply assignment, in exchange of an equitable remuneration, by the joint authors to the producer of such work of the following exclusive rights of exploitation: the rights of reproduction, rental, distribution, public display, public performance, communication to the public, interactive making available to the public and the rights of subtitling.</p> <p>(4) Audio-visual work producer is entitled to their name (name) or to request an indication in such return of any public work. The authors of the audiovisual work may not oppose the publication of the audiovisual work, and use the final version of the audiovisual work in whole or in part.</p> <p>(5) As an exception to paragraph. (3) of this Article, if the authors transfer their rights of rental to audiovisual producers, they maintain, according to art. 11 paragraph (4) of this Act, be entitled to an equitable remuneration, on which will be mutually agreed between the parties to each lease. The authors of musical works with or without text, which transmit their public interpretation and public communication to producers of audiovisual works, also will transfer the right to an equitable remuneration for each case of public interpretation, communication or public broadcasting.</p>	<p>retained, it will be important to include that right among those that are transferred to the producer of audiovisual works.</p> <p>Please review the text translation, as there may be a translation error in connection with the transfer of the remuneration right for the author of musical works with regard to public performance, communication to the public and broadcast.</p> <p>The EU Directives and other international norms do not require countries to provide authors of musical works a “residual right” of remuneration for public performance, communication or broadcasting after they have transferred these rights to the producer. Only the residual right of remuneration for the renting of audiovisual works should be kept.</p>		
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<p>(6) Without the permission of the authors or other holders of rights of the author and related to the audiovisual work is prohibited destruction variant definitive audiovisual work (blocks, original fixations).</p>			
<p><b>Article 19. The Copyright on Works of Art. Right of Access</b></p> <p>(1) The author of a work of art is entitled to ask the owner of the work to enable it to reproduce his work (right of access). However, the owner of the work may not be required to deliver the work to the author to that end.</p> <p>(2) Creation and distribution of a work of fine art containing a portrait shall only be permitted with the consent of the represented person or testamentary heirs of the represented person.</p>			
<p><b>Article 20. The Copyright on Works of Art. Right of Resale</b></p> <p>(1) For each resale of the original work of art, subsequent transfers by the first author of the ownership, seller is required to pay the author or his successors, a remuneration amounting to 5% of the resale price if the price constitute at least 20 minimum wages (the resale right). The resale right is inalienable author's lifetime and passes only the legal or testamentary successors of the</p>			

<p>author for the protection of copyright.</p> <p>(2) The right to receive royalties provided in paragraph (1) of this Article shall apply in all cases the resale of an original work of art that involves as sales, buyers or intermediaries, merchants of works of art, as are the organizers of auctions, exhibitions, art galleries , stores.</p> <p>3) For the purposes of this article, “original work of art” means works of graphic or plastic art, such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, provided they are made by the artist himself or are copies considered to be original works of art. Copies of such works of art, which have been made in limited numbers by the artist himself or under his authority (normally numbered, signed or otherwise authorized by the author) shall be considered to be original works of art.</p> <p>(4) The right to receive royalties provided in paragraph (1) of this article may be exercised only through a collective management organization of property rights.</p> <p>(5) Within three years from the date of resale, holder of the right of resale or collective management organization of rights of property, which represents the interests it has the right to ask anv dealer in works of art</p>			
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<p>referred in paragraph (2) of this Article, to submit any information necessary to secure payment of amounts due for resale.</p> <p>(6) Holders of the resale right referred in paragraph (1) of this Article, which are not citizens of the Republic of Moldova does and not have permanent residence in Moldova, can benefit from the right only if the law of the country, of which they are nationals grants a right of resale to the holders of rights who are nationals of the Republic of Moldova.</p>			
<p><b>Article 21. Copyright in Photographic Work</b></p> <p>(1) The transfer of the property of the negative or other similar embodiment of a photographic work on the basis of which copies may be made thereof, unless otherwise provided in a contract, shall result in the transfer of economic rights in the work other than the right of resale.</p> <p>(2) A photographic work portraying the person who has commissioned it, may be published, reproduced, distributed and used in the form of interactive making available to the public by the person concerned, unless otherwise provided in a contract.</p> <p>(3) Create, reproduce, modify and distribute a work which contains a photographic portrait is allowed only with consent of the person represented in the portrait or</p>			

<p>successors.</p> <p>(4) In the absence of a contractual clause, consent of the person represented in the portrait (photographic work) is not necessary:</p> <p>a) if the person represented in the portrait is a model professional and / or has received remuneration for the picture;</p> <p>b) if the person represented is generally known portrait was executed at his public activities;</p> <p>c) if the person represented is only a detail of a work that presents a photographic assembly, a landscape or a public event</p>			
<p><b>Article 22. Copyright in the Works of Applied Art (Design) and Architectural Works</b></p> <p>(1) The protection provided by this law applied to works of art (design) extend to the outside appearance of the objects, determined by features such as lines, contours, shape, texture, regardless of whether the object is two-dimensional or three-dimensional.</p> <p>(2) The protection provided by this law on architectural works applies to:</p> <p>a) objects of architecture;</p> <p>b) architectural projects and technical documentation developed under them;</p> <p>c) complex architectural projects.</p>			

<p>(3) The right of transformation, adaptation and other similar changes of the work of applied art or architecture, in art. 11 paragraph (1). k) of this Act, shall not extend to those changes which do not result in changing the appearance of the work.</p> <p>(4) In respect of works of applied art and architecture:</p> <p>a) the right to respect the integrity of the work provided for in art. Article 10. (1). c) of this Act, shall not extend to changes not resulting in changing the appearance of the work;</p> <p>b) when the transmission works projects of architecture and complex architectural projects, to start the construction, is exhausted right after publication, provided for in art. Article 10. (1). d) of this Act;</p> <p>c) the right to withdraw, as provided for in art. Article 10. (1). e) of this Act shall not apply.</p>	<p>The right of integrity should not apply to work or architecture, as it would interfere with the rights of the owner of a property to modify her property.</p>		
<p><b>Article 23. The Terms of Protection of Copyright</b></p> <p>Art. 23. (1) The exclusive economic rights and the rights to remuneration provided for in this Law for works (hereinafter: the economic rights) shall have effect throughout the lifetime of the author and for 70 years after his death computed from January 1 of the year following that of his death, unless otherwise provided in this article.</p>			<p>Article 4</p> <p>Protection of previously unpublished works</p> <p>Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic</p>

<p>(2) The economic rights in an audiovisual work shall be protected for 70 years computed from January 1 of the year following that of the death of the last of the following joint authors to survive:</p> <ul style="list-style-type: none"> <li>(a) the principle director,</li> <li>(b) the author of the scenario,</li> <li>(c) the author of the dialogue, and</li> <li>(d) the composer of the music specifically created for use in the audiovisual work.</li> </ul> <p>(di)</p> <p>(3) The rights of property of an anonymous or pseudonymous work, with the exception of applied art, shall be protected 70 years, since January 1 of the year following the publication of legal work. If the author of an anonymous or pseudonymous emerged revealing their identity or if his identity during this period became known, the provisions of paragraphs (1) and (2) of this article shall apply.</p> <p>(4) The economic rights in a work of joint authorship shall be protected until the death of the last surviving joint author and, after his death, for 70 years computed from January 1 of the year following that of his death.</p> <p>(5) The periods of protection of rights of the collective work shall be determined in</p>			<p>rights of the author. The term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.</p> <p>Article 5</p> <p>Critical and scientific publications</p> <p>Member States may protect critical and scientific publications of works which have come into the public domain. The maximum term of protection of such rights shall be 30 years from the time when the publication was first lawfully published.</p> <p>Article 6</p>
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<p>accordance with paragraph (4) of this article. However, if the coauthors contributions to collective work is distinct, the duration of assets for each of them shall be determined in accordance with paragraph (1) and (3) of this article.</p> <p>(6) If the work has been published in volumes, parts, series, editions or episodes, and the term of protection of copyright begins from the time when work was lawfully made available to the public, the term of protection will be calculated for each of these components.</p> <p>(7) Property rights over the work of applied art is protected for 25 years after its creation.</p> <p>(8) The moral rights (personal) of the author are protected for an indefinite period. After the death of the author's moral rights protection is exercised by the heirs and organizations authorized as appropriate to protect the rights of authors. Such organizations provide protection to moral rights of authors when there are not heirs or if copyright are off.</p>	<p>The term of protection for moral rights is only regulated by the relevant provisions of Article 6bis of the Berne Convention, as EU Directives have left this issue to member states.</p> <p>Paragraph (2) of Article 6bis sets as a general norm that, "The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights." Protection that endures for an indefinite period thus exceeds by far the international requirement, creating a barrier to the reuse of works and derivative creativity.</p> <p>Also, assigning the administration of moral rights to collecting societies gives these</p>		<p>Article 6bis Moral Rights: 1. To claim authorship; to object to certain modifications and other derogatory actions; 2. After the author's death; 3. Means of redress</p> <p>(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.</p> <p>(2) <b>The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights,</b> and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author</p>
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<p>(9) At the expiry of the protection of property rights, work in the public domain. Works entered in the public domain can be used freely, by respecting the moral rights of authors and other holders and payment of remuneration in accordance with art. 47 of this Law.</p> <p>(10) If the term of protection of rights of the work in the country of origin is higher than the time provided by law, the rules of this law, if this term is smaller, the law rules the country of origin.</p>	<p>entities an unreasonable amount of market power.</p> <p>Paragraph (9) seems to imply that article 47 of this law requires payment for the use of works in the public domain, which is an additional burden on creativity. No such payment is required by any international norm, and such a right would be a curiosity within the modern copyright system. Derivative creativity as well as access to culture in Moldova will suffer if the public domain is encumbered in this way.</p>		<p>of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.</p> <p>(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.</p> <p><b>Article 9 TERMS DIRECTIVE</b></p> <p>Moral rights</p> <p>This Directive shall be without prejudice to the provisions of the Member States regulating moral rights.</p>
<p><b>CHAPTER III</b> <b>EXCEPTIONS AND LIMITATIONS OF ECONOMIC RIGHTS</b></p> <p><b>Article 24. General Criteria for the Application of Exceptions and Limitations</b></p> <p>Exceptions and limitations provided in this chapter shall apply only in cases where not contrary to normal recovery works and does not prejudice the legitimate interests of authors and other holders of copyright.</p>			



<p><b>Article 25. Reproduction of Temporary Works</b></p> <p>Without consent of author or other holder of copyright and without payment of remuneration to the author allows the reproduction of temporary works, provided that the acts of reproduction:</p> <ol style="list-style-type: none"> <li>1) are transient or incidental;</li> <li>2) constitutes an integral and essential part of a technological process;</li> <li>3) pursuing the sole purpose of facilitating:             <ol style="list-style-type: none"> <li>a) transmission in a network between third parties by an intermediary or</li> <li>b) the lawful use of a work;</li> </ol> </li> <li>4) have no economic significance in their own right.</li> </ol>			
<p><b>Article 26. Reproduction for Personal Work. Private Copy</b></p> <p>(1) reproduction of a work published legally shall be permitted without the consent of the author or other holder of copyright, but with payment of equitable remuneration (compensation paid) in accordance with paragraph (3) - (11) of this Article, when the reproduction is made by an individual exclusively for personal and private and have not sought any advantage directly or indirectly commercial. Entitled to compensatory remuneration may be exercised only through a collective</p>	<p>This provision restricts far more behavior than is required by Article 5(2)(b) of the Information Society Directive, which protects reproductions on any medium made by a natural person for <b>private</b> use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned.</p>		<p>Recital (35) INFOSOC In certain cases of exceptions or limitations, rightholders should receive fair compensation to compensate. ... In cases where rightholders have already received payment in some other form, for instance as part of a licence fee, no specific or separate payment may be due. ... In certain situations where the prejudice to the rightholder would be minimal, no obligation for payment may arise.</p>

<p>management organization of property rights.</p> <p>(2) The provisions of paragraph. (1) of this Article shall not apply where:</p> <p>a) reproduction of a work of architecture in a building or similar construction;</p> <p>b) reproduction of an electronic database;</p> <p>c) reproduction of a computer program, except as provided in art. 29 of this Law;</p> <p>d) a full reproduction of a book, or scores of original works of art;</p> <p>e) an audiovisual reproduction during its public interpretation;</p>			
<p>f) the reproduction of any work on a copy or from a source that the person reproducing the work, known and, under certain circumstances, to have reasonable grounds to know, that are illegal.</p>	<p>International norms do not require that the source of a private copy be legal, as it is very difficult to know when a copy is legal or illegal, especially in a private setting.</p>		
<p>(3) Equitable remuneration referred in paragraph (1) of this Article shall be paid by those individuals and businesses that produce or import any equipment (audio, videocassettes, drive-era disk) materials and media (print media for sound and / or video, tapes, laser discs, CDs) that can be used to make such reproductions.</p> <p>(4) No compensation shall be paid</p>			

<p>remuneration in respect of equipment and support materials for making impressions referred in paragraph (3) of this Article, if:</p> <ul style="list-style-type: none"><li>a) are exported items;</li><li>b) are items for trainings and can not be used in household or;</li><li>c) are imported by a natural person exclusively for personal use.</li></ul> <p>(5) Compensatory remuneration referred in paragraph (1) of this Article:</p> <ul style="list-style-type: none"><li>a) is paid by producers and importers of equipment and support materials for making impressions, referred in paragraph (3) of this Article, collective management organization referred to paragraph (10) a) of this Article until such equipment is put into circulation or media (ie, until it includes the distribution immediately after the production or import);</li><li>b) sets out to compensate authors and other holders of copyright, whose works can be reproduced in the manner referred in paragraph (1) of this article, and compensation for interpreters and producers of audiovisual works, phonograms and videograms, whose interpretations, audiovisual works and phonograms, in turn, can be reproduced in a similar manner, and</li><li>c) is determined, taking into account of the fact that right holders have not applied or technological means of audiovisual works, phonograms or videograms.</li></ul>			
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<p>(6) To determine the amount of remuneration and determining the other terms and to resolve any disputes between the parties will apply art. 50 of this law on the following conditions:</p> <p>a) the parties are negotiating the amount of remuneration for collective management organization referred in paragraph (10) points. a) of this article, on the one hand, and those individuals and legal entities are obliged to pay compensatory remuneration, on the other;</p> <p>b) the amount of remuneration will be agreed at least 3% of the amount collected through re(selling) equipment and media referred in paragraph. (3) of this article.</p> <p>(7) Manufacturers and importers when put into circulation and the media referred in paragraph (3) of this article:</p> <p>a) shall inform the collective management organization of property referred in paragraph (10) points. a) of this Article, the payment of remuneration and compensation available to the necessary documents showing the number of copies, equipment and / or media produced or imported and the data on the identity of the distributors who have made or through which they were put in circulation or the media;</p> <p>b) will be sent to distributors that place, or through which it is put into circulation and the media, documents confirming the payment of compensatory remuneration to</p>			
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<p>the collective management organization of property rights.</p> <p>(8) Distributors of any parts of distribution network, including marketing units (stores, shopping centers) who have equipment for commercial and media referred in paragraph (3) of this article, must prove, under the documents with legal significance, that the compensatory remuneration referred in paragraph (1) of this article was paid for such equipment and media. Distributors at the request of the collective management organization of rights of property are required to submit any relevant documents and to disclose the identity and contact details of manufacturer, importer or other person or body in the distribution network which supplied the equipment and media .</p> <p>(9) Distributors who can not present collective management organization of rights of property referred in paragraph (10) points. a) of this Article, the documents and / or contact information listed in paragraph (8) of this article, to check if the remuneration was compensatory, or paid as appropriate, are themselves obliged to pay it.</p> <p>(10) If the agreement between different categories of rights holders, referred in paragraph (5). b) of this article, not otherwise provided, pay compensation:</p> <p>1) is up to all holders of copyright and</p>			
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<p>related rights, the collective management organization representing other holders of copyright on musical works;</p> <p>2) after deducting the actual expenditure for rights management, is divided as follows:</p> <p>a) on the reproduction of audiovisual or videograms: 40% of authors, interpreters and 30% of their producers - 30%;</p> <p>b) on the reproduction of phonograms: 50% of authors, interpreters and 25% of producers of phonograms 25%.</p> <p>(11) The collective management organization representing other holders of copyright on musical works, after deducting the actual expenditure for rights management, will forward appropriate rates of remuneration provided in paragraph (10) pct.2) point. b) of this article, due to the categories of rights holders that do not represent them, the collective management organizations or other organizations that represent right holders concerned.</p> <p>(12) Compensatory remuneration shall be distributed among authors and other holders of copyright, the performers and producers of audiovisual works and phonograms, in respect of those works, the interpretation and phonograms that it can be assumed to have been reproduced as referred in paragraph (1) of this article.</p>			
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<p><b>Article 27. Reproduction by Libraries, Archives and Other Institutions</b></p> <p>(1) It shall be permitted without consent of author or other holder of copyright and without payment of remuneration to the author (with indication of the name of the author whose work is used and the source of the loan), reprography reproduction without intent to profit and to the extent justified by the aim pursued in the following cases:</p> <p>a) a published legal works, when reproducing in a single copy is made by libraries and archives and does not seek to obtain economic or commercial advantage, directly or indirectly, but to replace one copy that is lost, destroyed or become unusable or to make a copy available to other libraries or archives in order to replace similar in their own collections, the works that are lost, destroyed or made unusable, if obtained through a normal copies of such work is not possible;</p> <p>b) special articles and other works with small volume and short extracts from lawfully published literary works (except software), when the reproduction is for a single copy by libraries or archives for the needs of individuals who use Such reproduced copy for personal study or research, not to achieve economic or commercial advantage, directly or indirectly;</p> <p>c) special articles and other works with small volume and short extracts from lawfully published literary works</p>	<p>Article 27 (1) a) does not permit making copies for preservation. Rather, it only permits copying to replace a work that has already been lost or made unusable. This is clearly a failure, as it is obviously too late to make a copy once the original work is destroyed, lost, or unusable. This should be corrected, at a minimum by following the example of the UK law. Moldova should expressly provide an exception for preservation purposes.</p>		<p><b>Article 42 UK Copyright Law, Copying by librarians or archivists: replacement copies of works</b></p> <p>(1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive -</p> <p>(a) in order to preserve or replace that item by placing the copy in its permanent collection in addition to or in place of it, or</p> <p>(b) in order to replace in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged, without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement.</p> <p>(2) The prescribed conditions shall include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question to fulfil that purpose.</p>
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<p>(except software), when the reproduction is made by educational institutions for scientific study or not to achieve a economic or commercial advantage, directly or indirectly.</p>			
<p>(2) In cases other than those mentioned in paragraph (1) of this Article, shall be permitted without consent of author or other holder of copyright, but with payment of equitable remuneration (pay compensatory) a reprography reproduction of a work, except in the books and scores. Entitled to compensatory remuneration may be exercised only through a collective management organization of property rights.</p>	<p>The EU Commission Recommendation of 24 August 2006 on the digitization and online accessibility of cultural material and digital preservation recommends that Member States adopt legislation allowing multiple copying and migration of digital cultural material by public institutions for preservation purposes.<sup>9</sup></p>		
<p>(3) Compensatory remuneration referred in paragraph (2) of this Article shall be paid by:  a) natural or legal persons producing or importing equipment (copiers, scanners, etc..) used to reproduce reprography (fees for the production / import of equipment);  b) natural or legal persons who have access to the reproductive reprographv in public</p>	<p>It seems that there is a double charge for natural persons that access reprography in public places, because a fee has already been charged to the producer or the importer of the equipment.</p>		

<sup>9</sup>

Commission Recommendation 2006/585/EC of 24 August 2006 on the digitization and online accessibility of cultural material and digital preservation, paragraph 9.

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<p>places (fees for use of equipment).</p>			
<p>(4) Compensatory remuneration referred in paragraph (2) of this article:</p> <p>a) is paid by producers and importers of equipment referred in paragraph (3). a) of this Article, collective management organization of property rights referred in paragraph (2) of this Article until such equipment is put into circulation or media (ie, until it includes the distribution immediately after the production or import);</p> <p>b) sets out to compensate authors and publishers as well, about whose works, and publications can be presumed to have been reproduced in the manner provided in paragraph (2) of this article.</p> <p>(5) To determine the amount of remuneration and determining the other terms and to resolve any disputes between the parties will apply art. 50 of this law on the following conditions:</p> <p>a) parties that the amount of remuneration are determined by collective management organization of property rights referred in paragraph (2) of this article, on the one hand and the natural and legal persons obliged to pay compensatory remuneration, on the other;</p>			

<p>b) the agreed amount of remuneration referred in paragraph (3). a) of this article will be at least 3% of the amount collected in the (re) selling equipment and, if the remuneration referred in paragraph (3). b) of this Article shall not be less than the minimum rates set by the Government.</p> <p>(6) Manufacturers and importers when put into circulation and the media referred in paragraph (3). a) of this Article:</p> <p>a) shall inform the collective management organization of rights of property referred in paragraph (2) of this Article, the payment of remuneration and compensation available to the necessary documents showing the number of copies of equipment and / or media produced or imported and the data on the identity of the distributors who have made or through which they were made circulation or in the media;</p> <p>b) will be sent to distributors that place, or through which it is put into circulation the documents confirming payment of the compensatory remuneration for collective management organization of property rights.</p> <p>(7) If the producers, importers or distributors rents or otherwise transferring their ownership or possession of the equipment referred in paragraph (3). a) of this article, any user of such equipment, and will transmit the documents referred in paragraph (6). b)</p>			
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<p>of this article.</p> <p>(8) Distributors of any parts of distribution network, including marketing units (stores, shopping centers, etc..) Holding for commercial equipment referred in paragraph (3). a) of this article, must prove, on the basis of documents with legal significance, that the compensatory remuneration referred in paragraph (2) of this article was paid for this equipment. Distributors at the request of the collective management organization of rights of property are required to submit any relevant documents and to disclose the identity and contact details of manufacturer, importer or other person or body in the distribution network which supplied the equipment and media.</p> <p>(9) Distributors who can not submit to the organization of collecting property rights referred in paragraph (2) of this article, documents and / or contact information listed in paragraph (8) of this article, to check if the remuneration was compensatory, or paid as appropriate, are themselves obliged to pay it.</p> <p>(10) The provisions of paragraph. (8) and (9) of this Article shall apply mutatis mutandis also responsibility and obligations of users of the equipment referred in paragraph (3). b) of this article.</p> <p>(11) If the agreement between the authors and publishers do not provide otherwise.</p>			
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<p>compensatory remuneration collected by collective management organization, after deducting the actual expenditure for rights management, is divided in equal shares to the authors and publishers of whose publications can be assumed to have been reproduced in the manner provided in paragraph (2) of this article.</p>			
<p><b>Article 28. Other Exceptions and Limitations</b></p> <p>Are allowed without consent of author or other holder of copyright and without payment of any remuneration, the following actions:</p>			<p>(35) In certain cases of exceptions or limitations, rightholders should receive fair compensation to compensate them adequately for the use made of their protected works or other subject-matter. When determining the form, detailed arrangements and possible level of such fair compensation, account should be taken of the particular circumstances of each case. When evaluating these circumstances, a valuable criterion would be the possible harm to the rightholders resulting from the act in question. In cases where rightholders have already received payment in some other form, for instance as part of a licence fee, no specific or separate payment may be due. The level of fair compensation should take full account of the degree of use of technological protection measures referred to in this Directive. In certain situations where the</p>

			prejudice to the rightholder would be minimal, no obligation for payment may arise.
<p>a) use of short quotations in other works in order to achieve critical opinions or reviews, provided they relate to work or other subject-matter, which has already been made, lawfully available to the public, indicating the source and author name, except when this is impossible, and their use in accordance with proper practice and to the extent required by a specific purpose;</p>	<p>Article 5(3)(d) allows quotations "for purposes <i>such as</i> criticism or review."<sup>24</sup> (emphasis added) Criticism and review are therefore only examples of possible justifications for quotation. The purpose of quotation is not limited to criticism or review.</p>		
<p>b) use of works by illustrations in publications, print or broadcast audio or video in the educational process, provided that the source and the author's name, unless this is impossible and to the extent justified by a non-attainment;</p> <p>c) reproduction and distribution of media, public communication or making available to the public in the online articles published on topics of current economic, political or religious works or of broadcasting or other objects protected by the same character or to the public attention in online, where such uses are not expressly reserved, and if the source is indicated, including the author's name;</p>			

<p>d) use of works or other subject-matter for the account current events, as far as justified by the purposes of information and provided the source is indicated, including the author's name, unless this is impossible;</p> <p>e) setting works intractable in public in electronic form for archiving by libraries, without obtaining a commercial or economic benefit directly or indirectly;</p> <p>f) use of public speeches and extracts of public lectures, works or objects protected similar to the extent justified by the purpose of information and provided the source is indicated, including the author's name, unless this is impossible;</p> <p>g) use for the purposes of public security or to ensure adequate progress and the account of parliamentary proceedings, administrative or judicial proceedings;</p> <p>h) use their own facilities and for programs to impressions temporary works carried out by broadcasting organizations. Prints will also be removed and destroyed after six months, except those who have exceptional documentary value to be kept in state archives;</p> <p>i) use for the benefit of disabled persons, having direct bearing on that disabled and non-commercial nature, to the extent required by the specific disability;</p>			
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<p>j) printing broadcasts of nonprofit social institutions such as hospitals are, provided that the rightholders receive fair remuneration;</p> <p>k) use of works during religious ceremonies or official ceremonies organized by a public authority;</p> <p>l) use of works such as works of architecture or sculpture, for the permanent location in public places;</p> <p>m) use of works for purposes of advertising or public exhibitions stimulation works of art, to the extent necessary to promote the event, excluding any other commercial purposes;</p>			
<p>n) the use of works in order to parody or caricature;</p>	<p>Article 5(3)(k) of the Directive exempts uses "for the purposes of caricature, parody or Pastiche"</p>		
<p>o) use of works in connection with demonstration or repair of equipment;</p> <p>p) the use of artistic works as a building or a drawing or plan of a building, in order that the building reconstruction;</p> <p>a) use of works. through communication or</p>			

<p>making them available as interactive, for the purposes of research or private study by individual members of the public through special terminals of the premises referred to in art institutions. Article 27. (1) of this Act, the works and other protected objects in their collections and not subject to purchase or licensing terms.</p>			
<p><b>Article 29. Using Computer Programs and Databases, Decompilation of Computer Programs</b></p> <p>(1) In the absence of contractual clauses separate legal purchaser of a computer program or a database should not obtain consent of the author or other holder of copyright to use them according to their destination, including error corrections.</p>	<p>(1) With respect to computer program this exception specially includes:</p> <p>(a) the permanent or temporary reproduction of a computer program by any means and in any form, in part or in whole. Insofar as loading, displaying, running, transmission or storage of the computer program necessitate such reproduction,</p> <p>(b) the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program</p>		
<p>(2) The making of a back-up copy by a person having a right to use a computer program may not be prevented by contract insofar as it is necessary for that use.</p> <p>(3) A person who is entitled to use a copy of a computer program may, without consent of author or other holder of copyright, to examine, study or test the functioning of the program in order to determine the ideas and principles which underline any elements of</p>	<p>(6) Any contractual provisions contrary to the exceptions provided for in (3) and (4) shall be null and void</p> <p>COMMENT: These exceptions are mandatory according to article 9 of the <b>COUNCIL DIRECTIVE of 14 May 1991 on the legal protection of computer programs</b> (91/250/EEC), s</p> <p>o it is important to add a paragraph stating that any contractual provision that is contrary to such exemptions shall be null and void.</p>		



<p>the program when performing any of the acts of loading, displaying, running, transmitting or storing the program which is entitled to execute.</p> <p>(4) Consent of the author or other owner of copyright is not necessary when the reproduction of the code and translation form the code is essential to obtain information necessary to ensure interoperability with another computer program created independently by other authors on the following conditions:</p> <p>a) these acts are performed by the licensee or by another person who is entitled to use a copy of the program or on their behalf by a person authorized for that purpose;</p> <p>b) the information necessary to achieve interoperability has not previously been made available to persons specified in point. a) of this article;</p> <p>c) these acts are limited to parts of the original, which are necessary to achieve interoperability.</p> <p>(5) The provisions of paragraph. (4) of this Article shall not permit the information obtained through its application:</p> <p>a) be used for purposes other than achieving interoperability of computer program created independently;</p> <p>b) be forwarded to third persons. except</p>			
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<p>when necessary for interoperability of computer program created independently;  c) to be used for the development, production or marketing of a computer program similar to the expression, or any other act which infringes copyright.</p>			
<p style="text-align: center;"><b>Chapter IV</b>  <b>Copyright Contracts</b></p> <p><b>Article 30. Transfer of Economic Rights by Copyrights Contract</b></p> <p>(1) Authors or other holders of copyright may send the contract by the author, if this Act provides otherwise, the exclusive rights and the right to remuneration for authors. Following such assignment, the rights holder becomes the assignee.</p> <p>(2) In respect of the exclusive economic rights, unless otherwise provided in this Law, also licenses may granted either in the form of an exclusive license or in the form of a nonexclusive license. If in a license contract, it is not stipulated that it is exclusive, the license shall be deemed non-exclusive.</p> <p>(3) Under an exclusive license, only the licensee may use the work by specified means and within the limits laid down by the contract. Within the limits laid down in the contract, has right to authorize or prohibit the use of the work by other persons.</p>			

<p>(4) Under a non-exclusive license, the licensee, within the limits laid down in the contract, may use the work in the same way as other persons who have obtained authorization to use it. He shall not have the right to authorize or prohibit the use of the work by other persons.</p>			
<p style="text-align: center;"><b>Article 31. Conditions and Form of Copyright Contracts</b></p> <p>(1) A copyright contract shall be concluded in written form and shall set out the uses of the work (the rights) covered by it, the period of its validity, the territory for which it applies, the amount of remuneration or the basis for determining such amount for each of uses of the work, the conditions and time limits for payment of the remuneration and any other conditions 30 considered essential by the parties. A copyright contract for the use of works in newspapers and other periodical publications may also be concluded verbally.</p> <p>(2) If, in copyright contract, the territory for which it applies is not stipulated, it shall only be applicable for the territory of the Republic of Moldova.</p> <p>(3) If, in a copyright contract, the term of its validity is not stipulated. it shall be deemed</p>			

<p>to have been concluded for three years as from the date of its conclusion if it concerns use of a work in its original form, and for five years if it concerns use of a work in an adapted or otherwise modified form or in translation.</p> <p>(4) Any clauses in a copyright contract that are contrary to the provisions of this Law shall be deemed null and void, and the conditions set out in this Law shall apply in place thereof.</p> <p>(5) Any clause in a copyright contract that restricts the author's future faculty to create works on a given subject or in a given field shall be null and void.</p> <p>(6) A copyright contract shall define the remuneration in the form of a percentage of the revenue obtained from the use of the work, in the form of a lump sum, in accordance with a tariffs applied by collective management organizations or in any other way.</p> <p>(7) Government approves minimum rates of remuneration of the author, in% or in the form of "flat fees".</p>			
<p style="text-align: center;"><b>Chapter V</b> <b>Neighboring Rights</b></p>			

<p><b>Article 32. Beneficiaries of Neighboring Rights;</b> <b>Scope of Neighboring Rights</b></p> <p>(1) Performers, producers of phonograms, producers of videograms and broadcasting and cable distribution organizations shall be the beneficiaries of neighboring rights. Neighboring rights shall be exercised without prejudice to copyright.</p>	<p>Cable distributors are not rightholders under multilateral copyright law. The EU Directive expressly denies fixation rights to cable distributors that only retransmit broadcast signals.</p>		<p><i>Article 7</i> <b>Fixation right</b> Rental Right Directive<sup>10</sup> Art. 7</p> <p>1. ..</p> <p>2. Member States shall provide for broadcasting organisations the exclusive right to authorise or prohibit the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.</p> <p>3. A cable distributor shall not have the right provided for in paragraph 2 where it merely retransmits by cable the broadcasts of broadcasting organisations.</p>
<p>(2) The acquisition, enjoyment and exercise of neighboring rights shall not be subject to compliance with any formality. In the absence of proof to the contrary, the natural person or the legal entity whose name appears on a fixation of a performance, on a phonogram, on a videogram or on the fixation of a broadcast or original program distributed by cable, respectively, in the usual manner shall be deemed to be the performer, producer, broadcaster or distributor by cable, thereof, respectively.</p>			

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**DIRECTIVE 2006/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006, on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version)**

<p>(3) In order to indicate their rights, phonogram producers and performers may place a notice on each copy of a phonogram or on each phonogram sleeve, to be comprised of the following three elements:</p> <ul style="list-style-type: none"><li>(a) a circled capital letter P: (P);</li><li>(b) the name (designation) of the holder of the exclusive neighboring rights;</li><li>(c) the year of first publication of the phonogram.</li></ul> <p>(4) The rights of performers shall be protected in accordance with this Law if:</p> <ul style="list-style-type: none"><li>(a) the performer has a citizenship of the Republic of Moldova;</li><li>(b) the performance took place on the territory of the Republic of Moldova;</li><li>(c) the performance was fixed on a phonogram meeting the conditions set out in paragraph (5) of this article;</li><li>(d) the performance has not been fixed on a phonogram, but is included in a program broadcast by a broadcasting or cable distribution organization meeting the conditions set out in paragraph (6) of this article.</li></ul> <p>(5) The rights of phonogram producers shall be protected in accordance with this Law if:</p> <ul style="list-style-type: none"><li>(a) the phonogram producer is a citizen of the Republic of Moldova or a legal person with headquarters in the Republic of Moldova;</li></ul>			
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<p>(b) the phonogram was published for the first time in the Republic of Moldova or was published here within 30 days of the date of its first publication in another country.</p> <p>(6) The rights of broadcasting and cable distribution organizations shall be protected in accordance with this Law if the organization has its headquarters in the Republic of Moldova and broadcasts from transmitters located on the territory of the Republic of Moldova.</p> <p>(7) The neighbouring rights of foreign natural persons or legal entities mentioned in paragraph (1) of this article shall be protected in accordance with the international agreements to which the Republic of Moldova is part of.</p>			
<p><b>Article 33. Rights of Performers</b></p> <p>Art. 33. (1) A performer shall enjoy the following moral rights in respect to his performance:</p> <p>(a) the right to be named;</p> <p>(b) the right to respect for his reputation – the right to interpret and is considered to require such recognition, including by communication or indication of its name to each value of its interpretation, if this law are not established or other exceptions;</p> <p>c) the right to respect the integrity - the right</p>			

<p>to interpret its protection against any distortion, mutilation or any other harm which harm the honor or dignity interpreter.</p> <p>(2) A performer shall enjoy the exclusive right to authorize or to prohibit the following acts:</p> <p>(a) fixation of his unfixed performance;</p> <p>(b) reproduction of the fixation of his performance;</p> <p>(c) distribution of the fixation of his performance;</p> <p>(d) rental of the fixation of his performance;</p> <p>(e) communication to the public of his performance by air (broadcasting) or by cable, except where the performance is itself a broadcast performance or is made from a fixation;</p> <p>(f) interactive making available to the public of his fixed performance.</p> <p>(3) The authorizations referred to paragraph (2) of this Article shall be given by the performer or, in the case of a collective performance, by the leader of the group or other person appointed by the group. by</p>			
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<p>means of a written contract concluded with the user.</p> <p>(4) The conclusion of the creation of an audiovisual performer and producer of audiovisual work, unless otherwise entail the transmission of the performer rights provided in paragraph (2) of this article.</p> <p>(5) The exclusive rights on an interpretation created by fulfilling the mission entrusted by the employer or as a result of performing duties of the employer's service, unless otherwise specified.</p> <p>(6) Exclusive rights referred in paragraph interpreter. (2) of this article may be transmitted to others through contract or transfer the license, as specified in art. 30-31 of this law.</p> <p>(7) The right of distribution provided in paragraph (2)(c) of this article shall be exhausted with the first sale or other first transfer of property of the fixation of the performance on the territory of the Republic of Moldova.</p> <p>(8) Where a performer has transferred or sent to a producer of phonograms, videogramme or audiovisual his right to hire, as set out in paragraph (2). d) of this Article, the performer retains the right to an equitable</p>			
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<p>remuneration, on which will be mutually agreed between the parties for rental phonogram, videograms or audiovisual work that contains its interpretation. This right can not be waived and shall be exercised only through a collective management organization of property rights.</p>			
<p><b>Article 34. Rights of Producers of Phonograms</b></p> <p>Art. 34. (1) A producer of phonogram shall have the exclusive right to authorize or prohibit the following acts in respect of his or its phonogram:</p> <p>(a) reproduction of the phonogram;</p> <p>(b) distribution of copies of the phonogram;</p> <p>(c) rental of copies of the phonogram;</p> <p>(d) import for the purposes of distribution of copies of the phonogram, including copies made with the authorization of the phonogram producer;</p> <p>(e) adaptation or any other transformation of the phonogram;</p> <p>f) making the phonogram available to the public online.</p> <p>(2) The right of distribution referred in paragraph (1). b) of this article is exhausted with the first sale or other first transfer of ownership of the phonogram in the territory</p>	<p>Literal d) limits the exhaustion of the distribution right, therefore must be modified to allow international or regional exhaustion</p> <p>Literal e) includes a adaptation right not recognized by international law or EU directives</p>		

<p>of Moldova.</p> <p><b>(3) The producer of phonogram may transfer the exclusive rights provided in paragraph (1) of this article to other persons by contract.</b></p>			
<p><b>Article 35. Rights of Producers of Videograms</b></p> <p>Art. 35. (1) A producer of videograms shall have the exclusive right to authorize or prohibit the following acts in respect of his or its videogram:</p> <p>(a) reproduction of the videogram;  b) distribution of copies of the videogram;  (c) rental of copies of the videogram;  (d) interactive making available to the public of the videogram.  e) making publicly available videograms as online.</p> <p>(2) The right of distribution referred in paragraph (1). b) of this article is exhausted with the first sale or other first transfer of ownership on videograms in Moldova.</p> <p>(3) The exclusive rights of the producer referred in paragraph videogram. (1) of this article may be transmitted to others through contract or transfer the license, as specified in art. 30-31 of this law.</p>			<p>EU Directives</p> <p>Article 2</p> <p>Reproduction right</p> <p>Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:</p> <p>...</p> <p>(b) for performers, of fixations of their performances;</p> <p>(c) for phonogram producers, of their phonograms;</p> <p>(d) for the producers of the first fixations of films, in respect of the original and copies of their films;</p> <p>(e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.</p> <p>Article 3</p> <p>Right of communication to the public of works and right of making available to the</p>

			<p>public other subject-matter</p> <p>...</p> <p>2. Member States shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:</p> <p>(a) for performers, of fixations of their performances;</p> <p>(b) for phonogram producers, of their phonograms;</p> <p>(c) for the producers of the first fixations of films, of the original and copies of their films;</p> <p>(d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.</p> <p>3. The rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.</p>
<p><b>Article 36. Rights of Broadcasting Organizations by Air and Cable</b>                  (1) Organizations air broadcasting and cable</p>			<p>Rental Right Directive                  Art. 8</p>

<p>have the exclusive right to permit or prohibit the following actions in its broadcast run on air or cable:</p> <p>(a) fixation of the broadcast;</p> <p>(b) reproduction of a fixation of the broadcast;</p> <p>(c) distribution of the fixation of the broadcast;</p> <p>(d) rebroadcasting or communication to the public by cable of the broadcast;</p> <p>(e) communication of the broadcast to the public in places to which a charge is made for admission.</p> <p>(f) interactive making available to the public of the fixation of the broadcast.</p> <p>(2) The right of distribution provided in paragraph (1)(c) of this article shall be exhausted with the first sale or other first transfer of property of the fixation of the broadcast in the territory of the Republic of Moldova.</p> <p><b>3) The exclusive rights of broadcasting organizations by air and by cable in paragraph (1) of this article may be transmitted to others through contract or transfer the license, as specified in art. 30-31 of this law.</b></p>			<p>3. Member States shall provide for broadcasting organisations the exclusive right to authorise or prohibit the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.</p>
<p><b>Article 37. Use of Phonograms Published for Commercial Purposes</b></p>			

<p>(1) Without consent of the producer of phonograms published for commercial purposes and interpreter whose interpretation is printed on such phonogram, but with payment of equitable remuneration, on which will be mutually agreed between the parties, the following are allowed:</p> <p>(a) public performance of the phonogram;</p> <p>(b) communication of the phonogram over the air (broadcasting) or by cable;</p> <p>(c) simultaneous and unchanged retransmission of the phonogram.</p> <p>d) communication for general information as interactive works and phonograms</p> <p>(2) The right to equitable remuneration provided in paragraph (1) of this article can be exercised only through a collective management organization of property rights. Equitable remuneration in respect of:</p> <p>a) for actions referred in paragraph (1). a) and b) of this Article shall apply paragraph. (4), lit. b) of this article;</p> <p>b) the said paragraph. (1). c) of this Article shall apply the provisions of art. 11 paragraph (5) - (8) of this Act.</p> <p>(3) To determine the amount of remuneration and other conditions for establishing a payment of equitable remuneration for the actions referred in paragraph (1). a) and b) of</p>			
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<p>this article, and for resolving any disputes between the parties will apply art. 50 of this law on the following conditions:</p> <p>a) the amount of remuneration which is determined by collective management organization of property rights referred in paragraph (4). a) of this article, on the one hand, and representatives and those individuals who perform legal actions at paragraph. (1). a) and b) of this article, second;</p> <p>b) the amount of the agreed remuneration shall not be less than the minimum rates approved by the Government.</p> <p>(4) If the agreement between the interpreters and producers of phonograms is not provided otherwise, the remuneration referred in paragraph (1) of this Article:</p> <p>a) accumulates by the organization of collective management, entitled to such office by the mutual agreement of representatives of right-holders concerned;</p> <p>b) after deducting the actual expenditure for rights management, is divided into equal shares, 50% - 50%, interpreters and producers of phonograms on whose interpretation and phonograms can be presumed to have been used in accordance with paragraph (1). a) or b) of this article.</p>			
<p><b>Article 38. Exceptions to, and Limitations on, Neighbouring Rights</b></p>			

<p>Exceptions and limitations of copyright referred to in art. 24-26 and art. 28 of this Law shall apply mutatis mutandis, also related rights.</p>			
<p><b>Article 39. Periods of Protection of Related Rights</b></p> <p>(1) The rights of performers provided for in Articles 33 and 37 shall be protected for 50 years as from the date of the performance. However, if the recording of the performance is lawfully published or lawfully communicated to the public within this period, their rights shall be protected for 50 years from the date of the first such publication or first such communication to the public, whichever is the earlier. The performer's right to be named and his right for respect for his reputation shall be protected without limitation in time.</p> <p>(2) The rights of phonogram producers provided for Article 34 and 37 shall be protected for 50 years as from the date of the first recording of the phonogram. However, if the phonogram is lawfully published within this period, their rights shall be protected for 50 years from the date of the first lawful publication. If no lawful publication takes place within the period mentioned in the first sentence of this paragraph, and its is communicated to the public within this period, the rights of phonogram producers shall be protected for</p>			



<p>50 years from the date of the first lawful communication to the public.</p> <p>(3) The rights of producers of videograms provided in Articles 35 shall be protected for 50 years as from the date of the first recording of the videogram. However, if the videogram is lawfully published or lawfully communicated to the public within this period, their rights shall be protected for 50 years from the date of the first such publication or first such communication to the public, whichever is the earlier.</p>	<p>The term of protection of producers of first fixation is 50 years from publication</p>		
<p>(4) The rights of broadcasting and cable distribution organizations provided for referred to in Article 33 shall be protected for 50 years as from the first broadcasting or cable transmission of the program by such organization.</p>	<p>Cable distributors are not rightholders under multilateral copyright law. The EU Directive prohibits granting fixation rights to cable distributors that only retransmit broadcast signals.</p>		
<p>(5) The periods of time referred to paragraphs (1) to (4) of this article shall be computed as from January 1 of the year following that in which the legal event that initiates the period has occurred.</p> <p>(6) If the term of protection of the economic</p>			

<p>rights in an object of neighbouring rights the country of origin of which is a foreign country is longer than the term of protection provided for in this Law, the provisions of this Law shall apply; if it is shorter, the term of protection provided for in the country of origin shall apply.</p> <p>7) The related rights pass, within the limits of the remaining periods of protection referred in paragraph (1) - (4) of this Article, to the heirs or other successors in title of interpreters, producers of phonograms, producers videogramme the broadcasting organization by ether or by cable.</p>			
<p style="text-align: center;"><b>Chapter VI</b> <b>Other Rights and Public Domain Public</b> <b>Article 40. The Rights of Producers of Databases. Object of Protection</b></p> <p>(1) The manufacturer of a database, which proves that it made a substantial investment in qualitative or quantitative for obtaining, verification or presentation of content, has the right to prohibit extraction and / or reuse of the content in full or a substantial part, evaluated qualitatively and / or quantitatively of that database.</p> <p>(2) For the purpose of this chapter:</p> <p>(a) “extraction” shall mean the permanent or temporary transfer of all or a substantial part</p>			

of the contents of a database to another medium by any means or in any form;

(b) “re-utilization” shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database within the territory of the Republic of Moldova by the rightholder or with his consent shall exhaust the right to control resale of that copy.

(3) The right provided in paragraph (1) of this article may be transferred, assigned or granted under contractual license.

(4) The right provided in paragraph (1) of this article shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of eligibility of the contents of that database for protection by copyright or by other rights. Protection of databases under the right provided in paragraph (1) of this article shall be without prejudice to existing rights in respect of their contents.

(5) The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the

<p>producer of the database shall not be permitted.</p>			
<p style="text-align: center;"><b>Article 41. Rights and Obligations of Lawful Users of Databases</b></p> <p>The producer of a database which is made available to the public in whatever manner may not prevent a lawful user of the database from extracting and/or re-utilizing insubstantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever. Where the lawful user is authorized to extract and/or re-utilize only part of the database, this paragraph shall apply only to that part. Any clause contrary to the provisions of this paragraph is void.</p> <p>(2) A lawful user of a database which is made available to the public in whatever manner may not perform acts which conflict with normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.</p> <p>(3) A lawful user of a database which is made available to the public in any manner may not cause prejudice to the holder of a copyright or neighbouring rights in respect of the works or other objects of protection contained in the database.</p>			
<p style="text-align: center;"><b>Article 42. Exceptions to the Rights of Producers of Databases</b></p>			

<p>Lawful users of a database which is made available to the public in whatever manner may, without the authorization of its producer, extract or re-utilize a substantial part of its contents:</p> <p>(a) in the case of extraction for private purposes of the contents of a non-electronic database;</p> <p>(b) in the case of extraction for the purposes of illustration for teaching or scientific research, provided that the source is indicated and to the extent justified by the non-commercial purpose to be achieved;</p> <p>(c) in the case of extraction and/or re-use for the purposes of public security or an administrative or judicial procedure.</p>			
<p><b>Article 43. Term of Protection of the Rights of Producers of Databases</b></p> <p>(1) The right provided for in Article 37 shall be protected from the date of completion of the of the making of the database until the expiry of fifteen years calculated from January 1 of the year following the date of completion.</p> <p>(2) In the case of a database which is made available to the public in whatever manner before the expiry of the period provided in paragraph (1) of this article. the term of</p>			

<p>protection of the right of the producer of the database shall expire fifteen years calculated from January 1 of the year following the date when the database was first made available to the public.</p> <p>(3) Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantially new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.</p>			
<p><b>Article 44. Beneficiaries of Protection of the Rights of Producers of Databases</b></p> <p>(1) The right provided for in Article 40 shall apply to databases whose makers or holders of rights are nationals of the Republic of Moldova or who have their habitual residence on the territory of the Republic of Moldova.</p> <p>(2) The right provided for in Article 40 shall also apply to companies and firms formed in accordance with the law of the Republic of Moldova and having their registered office, central administration or principal place of business within the territory of the Republic</p>			

<p>of Moldova. However, where such a company or firm has only its registered office in the territory of the Republic of Moldova Community, its operations also must be genuinely linked on an ongoing basis with the economy of the Republic of Moldova.</p> <p>(3) Databases made in other countries which do not fall under the provisions of paragraph (1) and (2) of this Article shall be protected under international treaties to which Moldova is part of. The term of protection extended to databases produced in these countries will not exceed the period provided by art. 43 of this Law.</p>			
<p><b>Article 45. Protection of Previously Unpublished Works Fallen into the Public Domain</b></p> <p>(1) Any person who, after expiry of the protection of copyright, for the first time lawfully publishes or lawfully communicated to the public a previously unpublished work, benefit from a protection equivalent to the economic rights of the authors.</p> <p>(2) The term of protection of the rights mentioned in paragraph (1) of this article shall be 25 years from the time when the work was first published or lawfully communicated to the public.</p>			

<p><b>Article 46. Protection of Critical and Scientific Publication of Works Fallen into the Public Domain</b></p> <p>(1) Any person who, after the expiry of copyright protection, publishes a critical and scientific publication of a work shall be benefit from a protection equivalent to the economic rights of authors.</p> <p>(2) The term of protection of the rights mentioned in paragraph (1) of this article shall be 30 years from the time when the publication was first lawfully published.</p>			
<p><b>Article 47. Remuneration for the Recovery of Works Entered in the Public Domain and Folk Expressions</b></p> <p>(1) The following methods of recovery of the works entered the public domain and folk expressions are paid remuneration:</p> <p>a) the interpretation of public communication to the public by cable or ether such musical works and expressions of folklore music;</p> <p>b) the resale of such original works of art entered in the public domain and similar expressions folk artists.</p> <p>(2) The remuneration referred in paragraph (1) of this Article shall be paid:</p> <p>a) collective management organization</p>	<p>NOT CLEAR IF REFERS TO PAYMENT OF ALL PUBLIC DOMAIN OR ONLY THOSE WORKS UNDER THE SPECIAL REGIME OF PROTECTION SET IN ARTICLE 46.</p>		



<p>representing authors and other holders of copyright on musical works - for the actions referred in paragraph (1). a) of this article;</p> <p>b) collective management organization referred to in art. Article 20. (4) of this Act - for the action referred in paragraph (1). b) of this article.</p> <p>(3) To determine the amount of remuneration referred in paragraph (1) of this article and for resolving any disputes related to payment, shall apply mutatis mutandis:</p> <p>a) the provisions of art. 50 of this law - if the measures referred in paragraph (1) letters a) of this article;</p> <p>b) the provisions of art. Article 20. (1) of this law - if the measures referred in paragraph (1). b) of this article.</p> <p>(4) After deducting expenses related rights management, the remuneration arrangements for recovery referred in paragraph (1) of this Article shall be allocated as follows:</p> <p>a) the amount collected for the recovery of works entering the public domain will be used to promote creativity and appreciation of outstanding creative achievements, and for support of authors who, for reasons of illness, age or other reasons made similar need of financial support;</p> <p>b) the amount collected for marketing folk expressions will be used both for purposes</p>			
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<p>specified in point. a) of this paragraph, and to support research activities and preservation of folklore, including the assessment of achievements from these activities, as well as the interpretations of folk works.</p>			
<p style="text-align: center;"><b>Chapter VII.</b> <b>Collective Administration of Copyright and Neighbouring Rights</b></p> <p style="text-align: center;"><b>Article 48. Establishment of Collective Management Organizations</b></p> <p>(1) Authors, interpreters, producers of phonograms, producers of videogramme and other holders of copyright and neighboring rights may, on its own initiative, set up organizations for collective management of their property rights (hereinafter - the collective management organizations ).</p> <p>(2) Collective management organizations have the status of legal persons and shall be established through free association and direct holders of copyright and related rights, which either become members of these organizations or empower them through a contract in writing.</p> <p>(3) Collective management organizations operating in accordance with this Law and other relevant acts of the Republic of Moldova, under their own statutes and, except as provided in paragraph (12) of this</p>	<p>Recital</p> <p>(17) It is necessary, especially in light of the requirements arising out of the digital environment, to ensure that collecting societies achieve a higher level of rationalisation and transparency with regard to compliance with competition rules.</p>		

<p>Article, the powers which were delegated by the copyright holders and / or related rights and operates under rules governing non-profit associations (real).</p> <p>(4) A collective management organizations operate if:</p> <p>a) is registered as an organization under the laws in force;</p> <p>b) is accredited as a collective management organization by AGEPI.</p> <p>(5) Accredits AGEPI a collective management organization, if it meets the following conditions:</p> <p>a) a considerable part of its members, or holders of rights, which, otherwise, they have entrusted to collective management rights are rights holders who have the nationality or domicile of Moldova, and in case of legal persons - headquarters , in Moldova, and if it can join other rights holders who wish, in accordance with the statutes that organization;</p> <p>b) has concluded mutual representation agreements with organizations of similar interests that represent right holders from abroad, or at least, take all measures necessary for the conclusion of such agreements;</p> <p>c) has the ability to manage the principles of collective rights. including with staff and</p>			
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<p>appropriate equipment;</p> <p>d) has adequate mechanisms for the collection, distribution and payment of remuneration to the author;</p> <p>(e) ensure equal treatment of rights holders and users, when it comes to the same objectives, and</p> <p>f) if the statutes and regulations of the organization meet the provisions of this law and other relevant acts of the Republic of Moldova and the international treaties to which Moldova is party.</p> <p>(6) Organization of collecting, submitting an application to AGEPI accreditation must submit all information and documents necessary for the Agency, in accordance with paragraph (5) of this article, to adopt a decision on the request.</p> <p>(7) Where several organizations have submitted applications for accreditation on the same types of management rights of the same categories of rights holders, AGEPI will empower the organization to a more fulfilling the conditions mentioned in paragraph (5) of this article.</p> <p>(8) Decision of accreditation of a collective management organization, with the rights holders and the categories of rights in respect of which extends for collective management, are published in the Official Gazette of the Republic of Moldova.</p>			
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<p>(9) Before the settlement of any dispute regarding the decision to refuse accreditation adopted by the AGEPI organization that filed the opposition or the rights of holders thereof, in order to claim payment of remuneration to the author to him, will, in a reasonable time for filing opposition to all acts required - evidence that holders of the rights and means that you are in management - the collective management organization has been accredited to manage those rights and those categories of rights that was and application for accreditation.</p> <p>(10) Extended collective management (extended license). Effects of a license issued by the user organization collecting on behalf of right holders, or members of which, otherwise, they entrusted the management rights, extend, also, for the right-holders who did not to be members of this organization and did not given in any other way, the management rights, provided that they have not withdrawn from the collective management organization, with reference to the following rights:</p> <p>a) the right interpretation of public communication to the public by air or by cable (except public communications satellite when it is not simultaneous with television, terrestrial broadcasting performed by the same broadcasting organization) and the</p>			
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<p>right to re-air and right to make available as interactive works of music and snippets of dramatic-musical works;</p> <p>b) the right to reproduce the works in the form of phonograms, where rightholders concerned have previously sent a producer of phonograms the right to such reproduction;</p> <p>c) the right of interpreters to make their interpretations printed on phonogram available as interactive;</p> <p>d) producers of phonograms and authors in communicating information to the interactive works and their phonograms.</p> <p>(11) If extended collective management in paragraph (9) of this Article, holders of rights, which are not members of collective management organization nor does it have convinced otherwise in their management, may notify, in writing, collective management organization, not later than three months before the end of the calendar year, that he withdraw the rights of collective management. Such withdrawal rights with effect from January 1 of the year following that in which it was notified.</p> <p>(12) Compulsory collective management (compulsory license). In accordance with the provisions of this Act may be exercised only through collective management organizations, accredited AGEPI, the following rights:</p>			
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<p>a) the right to equitable remuneration (compensation paid), on which will be mutually agreed between the parties, to reproduce reprography according to Art. Article 27. (2) - paragraph (11) of this Act;</p> <p>b) the right of authors and other holders of copyright and related rights to equitable remuneration (compensation paid), on which will be mutually agreed between the parties for private copying of their works and / or objects of related rights, as provisions of art. 26. (2) - (11) of this Act;</p> <p>c) the right to equitable remuneration, on which will be mutually agreed between the parties, reserved for authors and interpreters after cession of their leases exclusive producers of phonograms or audiovisual works, according to Art. 11 paragraph (4) and art. Article 33. (8) of this Act;</p> <p>d) interpreters and producers of phonograms the single equitable remuneration, on which will be mutually agreed between the parties, in each case the interpretation and communication of public phonograms published for commercial purposes, according to Art. 37 of this Law;</p> <p>e) the right of authors and other holders of copyright and relevant rights holders related retransmits, simultaneously and without modifications, cable works, phonograms and their interpretations, according to Art. 11 paragraph (1). h) and paragraph (5) - (8), art. 37 paragraph (1). c) and paragraph (2). b) of this Act;</p>			
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<p>f) the right to receive royalties, according to Art. 20 of this Law.</p> <p>(13) The collective management organization is not entitled to conduct business or to exploit the works and objects of related rights which have been entrusted to collective management.</p> <p>(14) Any property claims of holders of copyright or related rights user submitted, which refers to how recovery works or objects of related rights provided for license shall be examined and resolved by the collective management organization that issued the license .</p>			
<p><b>Article 49. Powers, Rights and Obligations of Organizations Collecting</b></p> <p>(1) Collective management organizations, on behalf of holders of rights that represent them, and the powers granted to them, and in cases provided for compulsory collective management, and those that do not represent them, the following tasks:</p> <p>a) issue licenses to users exploiting works or objects of related rights who have entrusted the management of rights holders or under the law;</p> <p>b) negotiate with users to maximize the amount of remuneration of works or objects of related rights and other licensing</p>			



<p>conditions;</p> <p>c) accumulated remuneration stipulated in the licenses issued under lit. b) of this paragraph, and / or that which is due to a right to equitable remuneration (as in its management);</p> <p>(d) allocate and pay the remuneration collected in time and, as possible, fair and proportionate to the actual value and valuation of works and objects of related rights appropriate;</p> <p>e) represent rightholders, including those foreign ((in the collective management organizations in the appropriate country) in the courts and other legal proceedings, and the state organizations, with respect to the rights delegated by them by law or in management, and perform any other acts necessary to protect and ensure the rights, including in his own name;</p> <p>f) ensure the rights of its members abroad through the conclusion of representation of mutual interests with similar organizations of collective management of rights of foreign;</p> <p>g) take any other action within the powers which were delegated by the holders of copyright and related rights.</p> <p>(2) Collective management organization has the right to require users of works and / or objects of related rights presentation works recovered (identified by rights holders) and other documents and information relating to anv recoverv - which corresponnds to a right</p>			
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<p>what falls under the collective administration organization, and any information necessary to calculate, accumulation and distribution of remuneration</p> <p>(3) Collective management organization is in the interests of holders of copyright and related rights, the following obligations:</p> <p>(a) pay to use the acquired exclusive distribution for its payment and the holders of copyright and rights related to understanding, however, that the organization has the right to withhold from the remuneration gained actual expenditure for rights management, and amounts earmarked for special funds created by the organization, provided that their creation has been authorized by the rightholders, either directly or - if foreign holders of rights - the collective management organization that represents them;</p> <p>b) share, after deduction of amounts referred in paragraph (3). a) of this Article, remuneration gained and to make regular payments, in proportion to the actual valuation of works and / or objects of related rights;</p> <p>c) to provide holders of copyright and related rights, with the payment of remuneration, reports on the recovery of their rights.</p> <p>(4) In the case of an extended collective management. the holders of copyright and</p>			
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<p>related rights, which are not members of collective management organization and did not given in any other manner, in managing their rights and have not withdrawn, according to art. 48 paragraph (10) of this Act, the repertoire of that organization, are entitled to the same remuneration that they ought to represent the holders of certain methods of recovery with respect to certain categories of works or objects of related rights and the exclusion of works or objects of related rights beneficiaries of licenses issued by this organization.</p> <p><b>(5) Collective management organization has the right to have pay the amounts collected from users within 3 years from the date of their collection on account, were not claimed by their addition to the amounts to be distributed or otherwise determined after consultation with the Ministry of Culture and AGEPI. Collective management organization that is required at least six months before the expiry of three years to take all necessary steps to distributions to holders of copyright and related rights has gained what remuneration is appropriate.</b></p>			
<p><b>Article 50. Settlement of Tariffs. Dispute Litigation</b></p> <p>(1) Collective management shall determines the amount of remuneration, and other licensing arrangements for the recovery of</p>			

<p>what had been entrusted to management, based on negotiations with the persons who are required to pay remuneration or associations representing them.</p> <p>(2) If the parties can not agree on the amount of remuneration and other conditions of license specified in paragraph (1) of this Article, each of the parties involved in the litigation may appeal to the mediation and arbitration established by AGEPI.</p> <p>(3) The remuneration to be determined by negotiation or mediation may not be less than the minimum rates of remuneration of authors approved by the Government or provided by law.</p> <p><b>(4) The amount of remuneration (remuneration rates by the author) and licensing conditions agreed by the parties or determined under paragraph. (2) of this article is published in the Official Gazette of the Republic of Moldova. This also refers to rates established in accordance with art. 11 paragraph (7), article 12 paragraph (4), Article 20. (1), Article 26 paragraph (6), Article 27 paragraph (5), art.37 paragraph (3 ) and Art.47 paragraph (3) of this Act.</b></p>			
<p><b>Article 51. Monitoring Management Organizations Collective</b></p>			

<p>(1) Monitoring the activity of collective management organizations is exercised by AGEPI.</p> <p>(2) To this end, the collective management organizations will submit to AGEPI:</p> <ul style="list-style-type: none"><li>a) regulations and their status, with all amendments and supplements;</li><li>b) bilateral and multilateral agreements with organizations collecting foreign;</li><li>c) decisions of the General Assembly;</li><li>d) annual balance sheet, annual reports on all remuneration paid to the specification for each holder of copyright and related part and the internal and external audit in the conduct of;</li><li>e) information on persons authorized to represent them;</li><li>f) other documents necessary for verification of work organization in accordance to this law and other regulations of the Republic of Moldova.</li></ul> <p>(3) AGEPI performs once in a year controls on the overall activity of the collective management organization. However, during the period between two annual general controls, AGEPI entitled to carry out the specific allegations made by right holders, including members of the organization, users or submitted by other relevant sources, which contain information on which reasonable</p>			
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<p>doubt occur regarding of the business of the organization on the provisions of this law and other relevant acts of the Republic of Moldova and / or their own statutes. While checking AGEPI required to submit any documents and information from the collective management organization control and upon request copies of the document.</p> <p>(4) the results of each inspection referred in paragraph (3) of this article, AGEPI establish control measures that indicate, where applicable, the provisions of paragraph (5) of this article. The supreme leadership of the collective management organization (such as the General Assembly) is required to consider this act to control and inform AGEPI within the time limits set on action taken concerning the removal of violations, if found.</p> <p>(5) If the inspection finds that the collective management organization no longer meets the conditions or not working in accordance with this Law and other relevant acts of the Republic of Moldova, AGEPI may call up the organisation to bring its activities in accordance with this Law and the other relevant laws determining a reasonable deadline for this. If the collective management organization does not comply with this provision, AGEPI will suspend or revoke the decision of the accreditation.</p>			
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<p><b>(6) Appropriate decision on the suspension or revocation is published in the Official Gazette of the Republic of Moldova.</b></p>			
<p style="text-align: center;"><b>CHAPTER VIII PROTECTION OF TECHNOLOGICAL MEASURES AND RIGHTS MANAGEMENT INFORMATION</b></p> <p style="text-align: center;"><b>Article 52. Technological Protection Measures</b></p> <p>(1) The following acts shall be forbidden, irrespective of whether or not infringing, in any way, copyright, neighbouring rights or other rights protected by this Law as a result of their performance::</p> <p>a) the circumvention any effective technological measures by a person who carries out the act of circumvention in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective;</p> <p>b) manufacturing, importation, distribution, sale, rental, advertising for sale or lease, or possessions for commercial equipment, products or parts thereof, or services that:</p> <p>i) are promoted, subject to advertising and are marketed for the purpose of circumvention;</p> <p>ii) the purpose of the use and / or outcome of</p>	<p>“Technological measures’ are any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work other than a computer program.</p>		<p>Sweden</p> <p>EU Directive Information Society: <b>On the Protection of Technological Measures Article 52 d. It is prohibited to circumvent, without the consent of the author or his successor in title, any digital or analogue lock which prevents or limits the making of copies of a work protected by copyright, to circumvent a technological process, such as encryption, that prevents or limits the making available to the public of a work protected by copyright, or to circumvent any other technological measure that prevents or limits such acts of making available.</b></p> <p><b>The provisions of the first Paragraph do not apply when someone, who in a lawful way has access to a copy of a work protected by copyright, circumvents a technological measure in order to be able to watch or listen to the work.</b></p>

<sup>11</sup> 296ZF Interpretation of sections 296ZA to 296ZE UK COPYRIGHT LAW. In <http://www.ipso.gov.uk/cdpact1988.pdf>, pag 211

<p>any use to circumvent technological means of protection;</p> <p><b>iii) are designed, produced, adapted or performed, mainly to enable or facilitate circumvention.</b></p>	<p>(2) Such measures are "effective" if the use of the work is controlled by the copyright owner through –</p> <p>(a) an access control or protection process such as encryption, scrambling or other transformation of the work, or</p> <p>(b) a copy control mechanism, which achieves the intended protection.”<sup>11</sup></p> <p>Article 6(3) of the Directive defines “effective technological protection measures” as “any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorized by the rightholder of any copyright or any right related to copyright as provided for by law or the sui generis right provided for in Chapter III of Directive 96/9/EC. Technological measures shall be deemed ‘effective’ where the use of a protected work or other subject-matter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.”</p>		



<p>(2) Notwithstanding the legal protection provided for in paragraph (1), in the absence of voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, the beneficiaries of the exceptions and limitations provided for in Articles 27 and 28 (a), (b), (f), (g), (h) and (i) may turn to the mediation body established at the State Agency for Intellectual Property requesting that it intervene and ensure that rightholders make available to them the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where they have legal access to the protected work and/or objects of neighbouring rights and other rights provided for by this Law.</p> <p>(3) If the examination of an application referred in paragraph (2) of this Article, the Commission for mediation and arbitration acts as court of arbitration under the procedural rules in force relating to arbitration, I understand is, however, that:</p> <ul style="list-style-type: none"> <li>a) the committee work with 3 members appointed by the parties in dispute, and if they do not reach a common decision the Director General of AGEPI has final vote;</li> <li>b) parties to the dispute are the beneficiaries of exceptions and limitations referred in paragraph (2) of this Article or organization whose members are on the one hand. and</li> </ul>			
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<p>corresponding rights-holders or organization whose members are those, on the other;</p> <p>c) committee adopted arbitration decision within 30 days from the date appointed committee;</p> <p>d) the arbitration decision shall be considered as accepted by the parties to the dispute, if any of them do not dispute within 30 days from the date when it was submitted;</p> <p>e) if the party is an issue referred to in point. b) of this paragraph, the arbitration decision shall apply to all members.</p> <p>(4) The legal protection provided by this article discusses both the technological measures applied voluntarily by rightholders, including those applied in the implementation of voluntary agreements, and to those applied in accordance with an arbitration decision or court decision.</p>			
<p>(5) The provisions of paragraph. (2) - (4) of this Article shall not apply to works or objects of related rights specified in this law, which were made on the basis of contractual clauses, in a publicly available in an interactive form</p>	<p>According to the Information Society Directive, the protection of TPMs complements the protection of copyright. The Directive only requires Member States to protect TPMs in respect of works or any subject matter covered by "copyright or any right related to copyright as provided by the</p>		

	<p>law or the sui generis right in databases" (Article 6(3)). TPMs applied to protect other subject matter or works in the public domain are thus not protected under the Directive. The protection of TPM under the Directive is therefore distinct from Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access. This directive deals with the unauthorized reception of conditional access services, which may or may not contain intellectual property protected content. This implies that Article 6(3) only protects technological measures that restrict acts which come within the scope of the exclusive rights.</p>		
<p><b>Article 53. Information Rights Management</b></p> <p>Following actions are prohibited done intentionally and without permission required:</p> <ul style="list-style-type: none"> <li>a) removal of work or other subject-matter or amendment thereto has any information about electronic rights management;</li> <li>b) distribute, import for distribution, public communication or making available to the public in the online works, objects of related rights or other objects protected by this law, which was removed or altered without permission from the rights holder information in electronic form on management rights, if such person knows or has reasonable grounds to know, so that it causes. allows or facilitates tainuieste a</li> </ul>			

<p>breach of copyright, related rights or other rights protected by law .</p>			
<p style="text-align: center;"><b>CHAPTER IX ENFORCEMENT OF COPYRIGHT, THE RIGHTS RELATED AND OTHER RIGHTS</b></p> <p style="text-align: center;"><b>Article 54. Violation of Copyright Related Rights and other Rights</b></p> <p>(1) Any recovery of the objects of copyright, related rights objects or objects of other rights protected by this law shall be deemed illegal if it takes place in breach of these rights.</p> <p>(2) Any copy of copyright objects, the objects of related rights or other rights of the objects protected by this law whose reproduction, import, distribution, lease and loan entails the violation of these rights is considered counterfeit.</p> <p>(3) Storage for commercial purposes of copies of copyright articles, copies of objects of related rights or copies of objects of other rights protected by this law shall be deemed illegal if it takes place in breach of these rights.</p> <p>(4) Violation of rights recognized and guaranteed by this Law entails civil, administrative or criminal liability as appropriate under the law. The procedural provisions are those prescribed by this law, which is supplemented by the common law.</p>			

<p><b>Article 55. Initiate Action on Violation of Rights</b></p> <p>(1) Any person or entity, and other rights holders who have claims on recovery of an object of copyright, related rights or other rights protected by this law, shall be entitled to initiate actions in court as or other authority to refer to the measures, procedures and remedies provided in this chapter.</p> <p>(2) proceedings in respect of infringement of copyright, related rights or other rights protected by this law may be initiated by the following persons:</p> <ul style="list-style-type: none"><li>a) right-holders;</li><li>(b) all other persons who enjoy such rights, in particular licensees;</li><li>c) organizations for collective management of copyright and / or related rights, including the rights covered by the collective management of extensive and / or mandatory;</li><li>(d) defense organizations and other representatives of right-holders and licensees.</li></ul> <p><b>(3) The courts and other authorities will apply coercive measures, procedures and remedies provided in this chapter, in a fair and equitable manner, in a way that should not be unnecessarily difficult and expensive and does not involve time limits</b></p>			
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<p><b>unnecessary or unforeseen delays. The implementation of these measures, procedures and remedies would be an effective and proportionate, so as to avoid creating obstacles to trade legally and to provide protection against their abusive use.</b></p>			
<p><b>Article 56. Evidence</b></p> <p>(1) The party who presents evidence available, reasonable and sufficient to claim and support a reason behind those claims, evidence, which are under the control of the party opposite, as the court may, subject to protection information, such evidence to be presented by the other side. For the purposes of this paragraph, the court will consider as sufficient evidence a reasonable sample of copies of a work or other subject-matter of law.</p> <p>(2) The conditions specified in paragraph (1) of this Article, if the infringement was committed on a commercial scale, the court may order at the request of either party, bank documents, financial or business that are under the control of the party opposite, subject to protecting confidential information.</p>			
<p><b>Article 57. Measures to Ensure Evidence</b></p> <p>(1) Before examining the merits of an action</p>			

at the request of either party who has submitted evidence reasonably available and sufficient to support its allegations that the rights they are infringed or that such infringement is imminent, to provide evidence, the court may, subject to protecting confidential information, the application of prompt and effective provisional.

(2) The measures referred in paragraph (1) of this article may include a detailed description, with or without taking samples, or seizure of goods which constitute the object of dispute and, if applicable, materials and devices used in the production and / or distribution of these goods and documents relating them.

(3) The measures referred in paragraph (1) of this article may be taken, if necessary, without notice to plaintiff, in particular when any delay might cause irreparable prejudice to rights holder or when there is an obvious risk that the sample be destroyed.

(4) If the evidence of insurance referred in paragraph (1) of this article are taken without the other party to be heard, it must be informed immediately about the measures. At the request of the interested party, will be a review and hearings to decide, within a reasonable time after notification of the measures, whether the measures should be modified, revoked or confirmed.

<p>(5) The measures referred in paragraph (1) of this article can be ordered subject to the filing by plaintiff of a security or a suitable equivalent insurance, having intention to ensure the compensation provided in paragraph (7) of this Article, of any damage incurred by plaintiff.</p> <p>(6) The measures referred in paragraph (1) of this article may be revoked at the request of plaintiff without affecting the right to seek damages if the plaintiff didn't receive a notice within 20 working days, the procedures leading to consideration of the case by the court.</p> <p>(7) If the measures referred in paragraph (1) of this Article shall be revoked or decays because of any act or omission by the plaintiff, or if subsequently not found any violation or threat of infringement of copyright, related rights or other rights protected by law, the court may order the complainant to request from plaintiff to pay the appropriate compensation for damages caused by the application of those measures.</p>			
<p><b>Article 58. Right to Information</b></p> <p>(1) In the context of proceedings concerning an infringement of an intellectual property</p>			



<p>right and in response to the request of the plaintiff, the courts may order that information about the origin and distribution networks of goods and services which infringes copyright, related rights or other rights protected by law, be given rights of the violator and / or any other person for which it was found that:</p> <ul style="list-style-type: none"><li>a) has in his possession counterfeit goods on a commercial scale;</li><li>b) use the infringing services on a commercial scale;</li><li>c) provide on a commercial scale services used in counterfeiting activities;</li><li>d) was indicated by the person referred to in point. a), b) or c) as being involved in activities of production, manufacture or distribution of goods or provision of services.</li></ul> <p>(2) The information referred in paragraph (1) of this article include, as appropriate:</p> <ul style="list-style-type: none"><li>a) the names and addresses of manufacturers, distributors, suppliers, other previous owners of the goods or services, and the sellers and retailers;</li><li>b) information on quantities produced, manufactured, delivered, received or ordered, and the price obtained for goods or services.</li></ul> <p>(3) Paragraph (1) and (2) of this Article shall apply without affecting other provisions, which:</p>			
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<p>a) give the holder the right to receive more detailed information;</p> <p>b) use in civil cases or criminal information communicated in accordance with this article;</p> <p>c) governing liability for misuse of the right to information;</p> <p>d) give the possibility to refuse to provide information which would constraint person referred in paragraph (1) of this article to recognize the participation of the immediate or close relatives in an infringement of copyright, related rights or other rights protected by this law;</p> <p>e) governing the protection of confidentiality of information sources or the processing of personal data.</p>			
<p><b>Article 59. Measures and Insurance</b></p> <p>(1) Upon plaintiff request, the court may:</p> <p>a) issue on the alleged violator with a closing order to prevent any imminent infringement of copyright, related rights or other rights protected by this law, or prohibit, as a provisional and subject to monetary penalties for repeat further alleged violations of the law in question, or to require the submission of guarantees intended to ensure compensation to rights holder;</p> <p>b) under the same conditions, to issue a conclusion on an intermediary whose services are used by a third person who</p>			

<p>infringes copyright, related rights or other rights protected by this law, including the intermediaries whose computers and telecommunications services are used by a third person who commits such violation;</p> <p>c) provide sequestration or clearance of goods suspected to infringe copyright, related rights or other rights protected by law, to prevent the introduction or spreading their trade networks.</p> <p>(2) Where an infringement committed on a commercial scale, when the plaintiff proves the existence of circumstances that could jeopardize the recovery of damages, the court may order interim measures as the seizure of movable and immovable property of the alleged violator, including blocking of bank accounts and other assets thereof. For the same purpose the court may order production of bank documents, financial or business or access to relevant information.</p> <p>(3) The court may, with reference to the measures referred in paragraph (1) and (2) of this article, requires the plaintiff to present evidence practically accessible to ensure the full extent that he is the holder of rights and that his rights were infringed or that such infringement is imminent.</p> <p>(4) Provisional measures mentioned in paragraph (1) and (2) of this article, where appropriate. be undertaken without notice of</p>			
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<p>plaintiff, especially when any delay would cause irreparable injury to the rights holder. In this case the parties will be informed immediately about the measures. At the request from plaintiff will be a review and hearings to decide, within a reasonable period after the notification, whether the measures should be amended, revoked or confirmed.</p> <p>(5) The measures referred in paragraph (1) and (2) of this article may be revoked at the request of pyrite, if the plaintiff is not initiated within 20 working days, the procedures leading to consideration of the case by the court.</p> <p>(6) The court may order the provisional measures referred in paragraph (1) and (2) of this Article, provided that the plaintiff to submit adequate security or equivalent assurance, having intended to provide compensation, referred in paragraph (7) of this Article, any damage incurred by pyrite.</p> <p>7) If the measures referred in paragraph (1) and (2) of this Article shall be revoked or decades because of any act or omission by the plaintiff, or if subsequently not found any violation or threat of infringement of copyright, related rights or other rights protected by this law, the court may require the applicant to request from plaintiff to pay the appropriate compensation for damages</p>			
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<p>caused by the application of those measures.</p>			
<p><b>Article 60. Corrective Measures</b></p> <p>(1) Not exempt from the payment of any compensation due the holder of the rights infringement and without compensation of any kind, the court may, at the request of the complainant, to be taken in respect of goods deemed that infringes copyright, related rights or other rights protected by law and, where relevant, with regard to equipment and materials have been used to create or manufacture those goods. Such measures provide for:</p> <p>a) the provisional withdrawal of the marketing;</p> <p>b) the final withdrawal of the marketing;</p> <p>c) confiscation and destruction.</p> <p>(2) The court may order coercive measures as mentioned in paragraph (1) of this article are taken from the rapist are invoked only if some reason for not doing so.</p> <p>(3) In assessing demand for the application of coercive measures should be taken to the principle of proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third persons.</p>			
<p><b>Article 61. Ensure Enforcement of Judicial</b></p>			

<p style="text-align: center;"><b>Decision</b></p> <p>(1) If it was issued by a court decision that if a violation of copyright, related rights or other rights protected by this law is found, the court may take measures to ensure that enforcement decisions, the issue regarding plaintiff of a conclusion that the somatic cease any action which constitutes an infringement of the rights mentioned. A similar conclusion can be issued, also on an intermediary whose services are used by a third person who infringes copyright, related rights or other rights protected by this law, including intermediaries whose computers and telecommunications services are used by a third person who commits such a violation.</p> <p>(2) Failure conclusion at paragraph. (1) of this Article will involve, as appropriate, the application of a repeated monetary sanctions to ensure enforcement.</p>			
<p style="text-align: center;"><b>Article 62. Alternative Measures</b></p> <p>In appropriate cases and at the request of the person liable to be subject to the measures provided for in this section, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in this section if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.</p>			

<p style="text-align: center;"><b>Article 63. Damages</b></p> <p>(1) In legal proceedings initiated in respect of infringement of copyright, related or other rights protected by this law, persons mentioned in art. 55 paragraph 2 of this Article may request the court or other competent bodies, as appropriate, recognizing their rights, finding infringement and damage by establishing damages.</p> <p>(2) The court may fix the compensation of aggrieved party, at its discretion, in one of the following ways:</p> <ul style="list-style-type: none"> <li>a) restore the situation existing before the violation of law and termination actions involving violation of law or creates a danger of breach;</li> <li>b) recovery of losses, including missed benefit incurred by the aggrieved party;</li> <li>c) the levying of illegal profits made by the person who violated rights;</li> <li>d) pay a compensation of at least 500 lei for a violated law.</li> </ul> <p>(3) When the infringer has committed a violation or unintentionally with no reasonable grounds to know this, the court may determine the compensation in the form of “flat fees”, such as at least the amount of remuneration or a rate which would be due rapist if it were authorized by a license to exploit the right in question.</p>			
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<p>(4) The holder of rights is harmed by protected rights of this Law may claim and recover material injury moral.</p> <p>(5) A person guilty of violation of copyright or related rights is liable under civil law, administrative and criminal matters.</p> <p>(6) For the violation of personal (moral) or the rights holder has the right to demand trial by the person who had raped:</p> <ul style="list-style-type: none"><li>a) introduce appropriate corrections in the work and publication in the press announcement or in any other way of restoring law violated;</li><li>b) the publication of the work or performance required to stop broadcasting them, and confiscation of copies published;</li><li>c) material injury recovery moral.</li></ul> <p>(7) The judge is entitled to give the decision on seizure and confiscation of all copies of works or phonograms, that are alleged counterfeit, and pronounced the decision on seizure and confiscation of equipment and materials intended for manufacturing and reproduction.</p> <p>(8) The prosecution, if they have sufficient evidence of violation of copyright and neighboring rights, is obliged to take appropriate steps to detect and seize:</p> <ul style="list-style-type: none"><li>a) copies of works and phonograms that</li></ul>			
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<p>supposed that are counterfeit;</p> <p>b) materials and equipment designed for manufacturing and reproduction;</p> <p>c) accounts and other documents that may serve as evidence of actions done in violation of this law.</p> <p>(9) customs services have the right to retain copies of works and phonograms entered the country or out of the country without a license. If these copies of works and phonograms were recognized counterfeit, the court may apply to any offender of the measures set out in paragraph (2). b) - d) of this article.</p>			
<p style="text-align: center;"><b>Article 64. Costs</b></p> <p>(1) The prosecution arising because of copyright, related rights or other rights protected by this law, persons mentioned in art. 55 paragraph (2) of this Act shall be exempt from payment of the application state. This is to be paid, in the manner and extent of the law, recognized by the person guilty of violation of copyright, related rights or other rights protected by law.</p> <p>(2) costs reasonable and proportionate and</p>			

<p>other expenses incurred by the win that took the case, as a general rule, will be collected from the person who lost the process, unless the spirit of fairness does not allow this.</p>			
<p><b>Article 65. Provisions Relating to Copyright Infringement and Through Related Computer Networks</b></p> <p>(1) natural or legal person, which provides hosting services and / or data transmission (Internet / Intranet), considered guilty if directly contributes to copyright infringement and / or related and responsible for infringement of these rights in the following cases:</p> <p>a) possibility if having technical block, to restrict access and / or delete objects in time that are published and / or used in breach of copyright and / or related and being notified by rights holders or their representatives (to indication of concrete) about the breach in question - have not executed the holders of copyrights and / or related on blocking, restricting access and / or deleting items listed;</p> <p>b) when being promotes, informed about the illegal field of copyright and related rights finances and contribute to illegal actions of another person;</p> <p>c) publish incorrect information, amend or delete information on holders of copyrights and related rights. including broadcasts and</p>			

<p>copies of works or objects of related rights from which this information was deleted or modified;</p> <p>d) intentionally make available to third parties any information (links, web addresses), which provides the possibility of illegal access to objects protected by copyright and related rights.</p> <p>(2) natural or legal person, which provides hosting services and / or data transmission (internet / intranet), including Internet providers not responsible for the illegal actions of other people who use his services to violate copyright and / or related rights, where no information about the actions of that person or if you can restrict access to or delete articles published or used in breach of copyright and / or related.</p>			
<p><b>66. Publication of Judicial Decisions</b></p> <p>In the framework of an infringement of copyright, related rights or other rights protected by this law, the court may, at the request of the complainant and the rapist's expense, appropriate measures Spreading information about the decision of the court, including exposure and its publication in full or partial.</p>			
<p><b>Article 67. Concerning the Violation of Technological Measures and Information Rights Management</b></p> <p>(1) For provisions relating to breach of</p>			

<p>technological measures (referred to in art. 52 of this Act) and information rights management whether or not result in infringement of (referred to in art. 53 of this Law) apply the same copyright, related rights or other rights protected by this law measures, procedures, remedies and sanctions that are provided by this chapter and other regulations referred to in art. 54 of this Law for infringement of copyright, related rights or other rights protected by law.</p> <p>(2) If copies of counterfeit and equipment used for counterfeiting measures, procedures, remedies and penalties provided in paragraph (1) of this Article shall apply mutatis mutandis and equipment, products, components referred to in art. 52 paragraph (1). b) of this Act.</p>			
<p><b>Article 68. Social-Legal Protection of Authors and Holders Related Rights</b></p> <p>(1) Equipment, drawings, models, manuscripts and other similar goods that serve to create a work that gives rise to a copyright may not be compelled follow.</p> <p>(2) The remuneration due to authors and holders of related rights, as a result of the use of their works and objects receive the same protection as wages. including the meaning</p>			

<p>that can not be pursued under the performance than in the same salary and that is exempt from value added tax.</p> <p>(3) Judicial decisions that will have the collection of remuneration will be executed immediately after delivery, if the court considers it necessary.</p> <p>(4) For the purposes of effective protection of economic rights of authors and holders of related rights against inflation and other socio-economic factors are negative indexing tariffs shall pay the minimum amount established simultaneously and proportionally to increase the minimum wage in the country, governed labor legislation (pay). This does not mean that the minimum charge amount must correspond to the amount of the minimum wage in the country.</p>			
<p style="text-align: center;"><b>CHAPTER X</b> <b>FINAL AND TRANSITIONAL PROVISIONS</b></p> <p style="text-align: center;"><b>Article 69. Entry into Force</b></p> <p>(1) This Law shall enter into force on expiry of 3 months from the date of publication.</p> <p>(2) The entry into force of this Law. the Law</p>			

nr.293-XIII of 23 November 1994 on copyright and related rights.			
<p><b>Article 71. Implementation of this Law</b></p> <p>Within six months from the date of entry into force of this Law, the Government: will submit proposals on bringing the legislation in accordance with this Law; bring its normative acts in accordance with this law.</p> <p><b>President of Parliament</b></p>			