

Law No. 8 of 25 January 1991 (published on 4 February 1991)

## **Copyright protection**

**We the Captains Regent**

**of the Most Serene Republic of San Marino**

*promulgate and order the publication of the following Law approved by the Great and General Council during its sitting of 25 January 1991.*

### **TITLE I**

#### **Provisions on the acquisition and ownership of copyright**

##### **Chapter I: Copyright**

###### **Art. 1**

The author of a protected work shall acquire copyright in that work by the sole fact of its creation.

Copyright is an intellectual property right entailing moral protection and patrimonial rights as envisaged by this law, with the possibility of economic exploitation.

Copyright shall be granted to all protected works regardless of their nature, form of expression, target, merit and of their intrinsic, aesthetic and artistic value.

###### **Art. 2**

The protection of the work shall start at the moment of its creation.

The creation of a work, irrespective of its publication or disclosure, shall be determined by the mere execution, also incomplete, of the author's idea.

Incomplete works shall be protected within the limits of their execution.

###### **Art. 3**

The author shall acquire the rights granted by this law also when the work has been commissioned to him or by virtue of a contractual relation of a different nature.

###### **Art. 4**

Copyright shall be distinct from ownership of the material object.

The owner of the material object shall not be entitled to any of the rights granted by this law simply on account of such ownership.

Copyright shall not interfere with the ownership of the material object and connected rights; ownership, however, shall not prevent recourse to the means of redress to protect copyright as set forth in this law.

## **Chapter II: Works**

### **Art. 5**

The following original works shall be protected:

- a) literary, dramatic, musical or artistic works;
- b) sound recordings and audiovisual works;
- c) models and drawings.

### **Art. 6**

Literary works shall be protected both in written and oral form and shall include among others:

- a) words and texts intended to be sung or recited in the context of musical works or as accompaniment thereto;
- b) works expressed by conventional signs or numerical formula;
- c) computer programmes.

### **Art. 7**

Dramatic works also include choreographic works or pantomimes, even when intended to be represented or performed together with a musical work or as accompaniment thereto.

### **Art. 8**

Musical works include music of any kind and intended to be played by any means.

### **Art. 9**

Artistic works include graphic works, photographs, sculptures and any combination thereof, as well as architectural works and their drawings, projects, models or other representations thereof.

Graphic works include paintings, drawings, engravings and similar figurative works of art, as well as stage sets and theatrical sketches, even if made by using mechanical or electronic devices.

Sculptures also include casts, models and sketches.

Photographs include any recording of visible light or other radiation through which an image is or may be reproduced by any means or device, and which do not form part of an audiovisual work.

Architectural works include immovable goods, even if destined to be disassembled or removed after a short period, including their parts and decorations.

### **Art. 10**

Sound recordings include any reproduction and recording of sounds, among which the total or partial reproduction or recording of a literary, dramatic or musical work, which may be reproduced as sounds, regardless of the medium on which the recording is made or of the method of reproduction.

#### **Art. 11**

Audiovisual works include any recording and reproduction of motion pictures, whether or not accompanied by sounds, regardless of the methodology and medium used.

#### **Art. 12**

Models and drawings include configurations of industrial and handicraft products conferring, on account of their shape or a particular combination of lines or colours, a special ornament or functional purpose to these products.

Models and drawings include topographies of semi-conductor products.

#### **Art. 13**

Topographies of semi-conductor products include a series of related images, regardless of the nature of their representation and of the stand to which they are fixed, which represent the three-dimensional configuration of the layers composing a semi-conductor product; each image reproduces, partially or entirely, the drawing of a semi-conductor product at any stage of its development or manufacture.

Semi-conductor products include any product composed of an under-layer and a superficial layer of semi-conductive material and of one or more layers of insulating, semi-conductive or conductive material in a pre-determined three-dimensional configuration and mainly designed to perform an electronic function.

### **Chapter III: Derivative works**

#### **Art. 14**

A derivative work based upon a pre-existing work shall be protected by copyright, irrespective of and without prejudice to the copyright of the original works.

The provisions of the preceding paragraph shall not prejudice the rights granted to the author of the original work by this law, and in particular by Article 28 c) hereunder.

#### **Art. 15**

Derivative works also include the translation, adaptation, transformation and elaboration of pre-existing works, as well as works resulting from the union or adding of other works or part thereof or from modifications or additions to an original work.

#### **Art. 16**

The title and presentation of works, in so far as they are original, shall also be protected.

The use of titles and presentations of works to identify a work of the same kind under circumstances that may generate confusion shall be unlawful, even if the time-limits of protection have expired.

## **Chapter IV: Authors**

### **Art. 17**

The author, unless otherwise demonstrated, shall be the person customarily indicated as such when the work is disseminated.

The author shall be considered as indicated as such even if the work is disseminated with pseudonyms, initials or conventional signs, which are known to identify said person.

### **Art. 18**

All rights conferred upon by this law shall be recognised to the authors of anonymous or pseudonymous works.

Except for the case envisaged in the second paragraph of the preceding Article, such authors shall be represented, until they have revealed their name, by the person who originally disseminated the work in the exercise of the right of economic exploitation deriving from copyright.

The rights of third parties acquired prior to the disclosure of the author's name shall be protected in all cases.

### **Art. 19**

The author of an anonymous or pseudonymous work shall have the right to reveal his name at any time, also in the form of a testamentary clause.

Such disclosure may also be made by the author's heirs or successors in title.

### **Art. 20**

Copyright in a collective work, created with the contribution of more than one person, shall be jointly owned by all co-authors.

If a collective work is the result of an activity organised and directed by virtue of a contract, the person organising and directing the creative activity shall be considered to be the author of the work.

### **Art. 21**

For the purpose of exercising the rights of economic exploitation attributed to copyright, the collective work shall be considered to belong in its entirety to all co-authors.

Without prejudice to other agreements to be proven in writing, any part of the work shall be considered to have the same value.

Each co-author may exercise individually moral copyright; however, he may not object, without good cause, the publication, modification or transformation of the work that has been accepted by the other co-authors representing the majority of the ownership shares of the work.

If the single contributions can be separated, each author shall also enjoys the exclusive right in the work deriving from his own contribution.

In exercising such exclusive right, the author shall not prejudice the collective work.

#### **Art. 22**

The author of the original work shall not be considered the author of the derivative work if he has not participated in its creation.

### **Chapter V: Authors of audiovisual works and sound recordings**

#### **Art. 23**

Without prejudice to the provisions of Article 20 of this law, co-authors of the audiovisual work include, unless otherwise demonstrated, the authors of the subject, script, dialogues, original music, as well as the director.

By way of derogation from the provisions of Article 22 above, whenever the audiovisual work derives from a pre-existing work that, when the audiovisual work is created, is still protected by copyright, the authors of the pre-existing work shall be assimilated to the authors of the derivative work.

#### **Art. 24**

By way of derogation from the provisions of the second paragraph of Article 20, the producer of the audiovisual work shall not be considered the author of the work.

The producer shall be any natural or legal person taking the initiative or the responsibility to realize the work.

#### **Art. 25**

The provisions of Article 24 shall apply by analogy also to sound recordings and to the representations of literary, dramatic and musical works.

#### **Art. 26**

By way of derogation from the fourth paragraph of Article 21, the authors of the subject, script and soundtrack of an audiovisual work shall not use their contribution in another work of the same nature without the producer's consent.

## **TITLE II**

### **Subject matter of copyright**

#### **Chapter I: Moral right**

#### **Art. 27**

Moral copyright shall be the author's right to the respect of his quality and of the integrity of his work.

Such right shall be personal, perpetual, inalienable and imprescriptible and shall be transmitted in case of death to the author's heirs or legatees and to their successors in title.

If the heirs, legatees and their successors in title are unknown or if they have not accepted the inheritance or the legacy, moral copyright shall be vested collectively in San Marino people and shall be exercised by the Minister of Internal Affairs.

### **Art. 28**

Moral right shall include, among others, the author's right:

- a) not to disseminate the work;
- b) to claim authorship of the work and to take action against any usurpation thereof by third parties;
- c) to object any distortions, transformations and elaborations of the work, which have not been authorised by him;
- d) to object any use and act concerning the work that could damage his reputation and honour;
- e) without prejudice to the right to disseminate anonymous or pseudonymous works, to claim not to be mentioned as the author of the work in the cases provided for in the third paragraph of Article 21 above, in the second paragraph of Article 62 and in Article 79;
- f) to withdraw the work from circulation according to the terms and conditions envisaged by this law.

### **Art. 29**

The author or co-author of an audiovisual work who refuses to complete his contribution to the work, or who cannot complete it, shall not object the use by the producer, for the purpose of completing the work, of that part of his contribution that has already been realized.

Without prejudice to his moral or patrimonial rights, he may, however, claim not to be mentioned among the co-authors of the work.

### **Art. 30**

The fact that the author requests not to be mentioned as such shall not imply any loss of, or limitation on copyright.

In particular, the rights envisaged in Article 19 of this law shall be safeguarded.

### **Art. 31**

The exercise of moral copyright shall be independent from, and without prejudice to the exercise of the right of economic exploitation and of patrimonial rights enjoyed by the author of the work.

## **Chapter II: Economic exploitation of the work**

### **Art. 32**

The author shall enjoy the exclusive right to economically exploit the work in any form and manner.

This right shall include, among others, the powers to use the work, such as the power to reproduce or disseminate it.

### **Art. 33**

The right to economically exploit the work shall be transmissible, through an act *inter vivos* or *mortis causa*, either in its entirety or separately for each of the powers constituting it.

### **Art. 34**

The right to economically exploit the work shall lapse upon expiry of the time-limit of protection of the work envisaged by this law.

Until expiry of such time-limit, the right shall be unconditional and imprescriptible and shall not be subject to usucaption, expropriation or executive acts.

The provisions envisaged by the preceding paragraph shall not prejudice the right of action of third parties with regard to the remuneration received or to be received by the author or by his successors in title in exchange for the disposition of the right to economically exploit the work.

### **Art. 35**

The various rights to use the work shall independent from each other.

The assignment or licence to third parties of some of these rights shall not entail the assignment or licence of all other rights or of the right to economically exploit the work.

## **Chapter III: Duration of protection**

### **Art. 36**

Unless otherwise envisaged in this law, the works shall be protected throughout the author's life and for a period of fifty years starting from the end of the civil year in which the author died.

### **Art. 37**

If the work was created with the inseparable contribution of more than one author, the duration of protection shall terminate with the conclusion of the fiftieth year since the end of the civil year in which the last co-author died.

On the contrary, if the contributions of the single authors are separable, the protection of each contribution shall be determined by Article 36 with reference to its author's life; unless otherwise envisaged in this law, the work in its entirety shall be protected for sixty years following the end of the civil year in which the work was first disseminated.

### **Art. 38**

Except for the case envisaged in the second paragraph of Article 17, the duration of protection of anonymous and pseudonymous works shall terminate with the conclusion of the sixtieth year since the end of the civil year in which the work was first disseminated.

However, if the author's name is revealed before the expiry of such time-limit, the duration of protection of the work shall be determined according to Articles 36 and 37.

#### **Art. 39**

The period of protection of the works disseminated after the author's death shall continue for sixty years following the end of the year in which the work was first disseminated, provided that this occurs within thirty years following the author's death.

#### **Art. 40**

The period of protection of audiovisual works shall continue, irrespective of the authors' duration of life, until the conclusion of the fiftieth year following the end of the civil year in which the work was first disseminated.

However, if the work is not disseminated within fifty years since the date of its production, the period of protection shall terminate with the conclusion of the fiftieth year since the end of the civil year in which it was produced.

#### **Art. 41**

Models and drawings shall be protected for a period of fifteen years since the end of the year in which they were first disseminated.

#### **Art. 42**

Computer programmes shall be protected for a period of ten years since the end of the year in which they were first disseminated.

#### **Art. 43**

If the work is disseminated in separate parts, the period of protection shall be calculated separately for each part with reference to the year of its dissemination.

### **Chapter IV: Dissemination**

#### **Art. 44**

Any act by which the work is made known to the public, in particular following a representation or reproduction of the work itself, shall constitute dissemination thereof.

Any work made known by the author, his heirs or legatees, not for profit, to the ordinary members of their family or to persons having with them a social relationship, shall not be considered as disseminated.

#### **Art. 45**

Representation shall be intended as any communication of the work to the public through any means and, in particular, through public recitation, performance, dramatic representation, presentation to the public, public projection and transmission in a public place of the radio and television broadcasting of the work.

Broadcasting shall be intended as the transmission through any telecommunication means of sounds, images, documents, data and messages of any kind.

Broadcasting to satellite shall be assimilated to representation.



#### **Art. 46**

Reproduction shall consist in fixing the work on a material medium of any kind so that communication to the public may be made in an indirect way.

In particular, reproduction may be made through the press, drawing, engraving, cast, melting and any other procedure of figurative and plastic arts, photography, cinematography and mechanical or magnetic recording.

#### **Art. 47**

The list of representation and reproduction methods of a work mentioned in Articles 45 and 46 of this law is only an indication and is not compulsory.

### **TITLE III**

#### **Ways to exercise the rights of economic exploitation of the work**

##### **Chapter I: General Provisions**

#### **Art. 48**

Under penalty of nullity, any disposition of the right to economic exploitation of the work and of the rights of use deriving therefrom shall be made in writing.

The provisions of the preceding paragraph shall not apply to the assignment of the material object, in so far as this does not include the transfer, on whatever basis, to the assignee of any of the rights of economic exploitation of the work.

#### **Art. 49**

The right to economic exploitation of the work may be assigned to third parties against payment or free of charge.

The assignment of the right to economic exploitation of the work shall entail the transfer to the assignee of all related rights, unless otherwise envisaged by this law.

#### **Art. 50**

Without prejudice to what explicitly envisaged by this law, the assignment of the right to economic exploitation of future works shall be void.

The contract with which the author undertakes, for a period not exceeding five years, to authorise a third party, according to predetermined conditions, to use some rights of exploitation of future works shall be valid provided that the contract specifies each single right and the maximum number of works.

If the author does not create the works envisaged in the contract within the established time-limit, the contract will not be terminated but the remuneration due to the author may be proportionally reduced.

#### **Art. 51**

Under penalty of nullity, the contract authorising a third party to use some rights of economic exploitation of the work shall specify at least:

- a) the rights covered by the contract;
- b) the territorial area in which such rights may be exercised;
- c) the period for which such authorisation is granted;
- d) the remuneration due to the author.

Unless otherwise agreed upon, the assignee shall not transfer to third parties or sublicense the rights covered by the authorisation.

## **Chapter II: Publishing contract**

### **Art. 52**

The publishing contract is the contract with which the author or his successors in title assign to a third party the right to realize a number of copies of the work, either determined or to be determined by contract, or to have them realized, under commitment to guarantee their dissemination and commercial distribution.

Without prejudice to the provisions envisaged in Article 51 above, the publishing contract shall indicate, under penalty of nullity, the minimum and maximum number of copies of the work that shall be realized and the time-limit within which the publisher undertakes to start distribution.

### **Art. 53**

Unless otherwise agreed upon, the rights envisaged in the publishing contract shall be considered as exclusively assigned to the publisher for the territorial area specified in the contract and throughout the validity of the contract.

### **Art. 54**

The author shall guarantee the publisher the possibility to freely use the rights envisaged in the publishing contract.

In particular, the author shall enable the publisher to realize and disseminate the work; he shall deliver the publisher, within the agreed time-limit, the work to be published in a form allowing ordinary realization.

Unless otherwise agreed upon, or in case of technical impediments, the work to be published, which has been delivered by the author, shall remain a property of the latter; the publisher shall be responsible for the adequate maintenance of the work from the moment of its delivery till the conclusion of one year following realization.

### **Art. 55**

The publisher shall realize the work in the form agreed upon and shall not modify it in any way without the written consent of the author.

Unless otherwise agreed upon, the publisher shall affix on any copy of the work the name, pseudonym or initials of the author.

Without prejudice to any specific agreement signed between the parties, the publisher shall realize the work and start to disseminate it within an ordinary time-limit; moreover, the publisher shall guarantee with all due

diligence the continued dissemination of the work.

The publisher's obligations shall be assessed with reference to the ordinary professional and arts practises.

#### **Art. 56**

The author's remuneration may be fixed either on a lump-sum basis or in a way proportional to the publisher's revenue deriving from the dissemination of the work.

If the remuneration is fixed on a lump-sum basis, the author shall not be entitled to claim an additional fee from the publisher, except when the profits earned by the latter and deriving from the dissemination of the work are clearly disproportionate to the remuneration received by the author: in this case, the ordinary Judicial Authority may, through a judgement, order the publisher to pay the author a sum of money sufficient to bring the contract back to fairness.

The action envisaged in the preceding paragraph shall be proposed within two years at the latest since the date when the work was first disseminated and the author shall be responsible for proving clear inequality of the remuneration originally received.

The author's acceptance of an offer of supplementary remuneration by the publisher shall preclude the above-mentioned action; similarly, when the action has already been proposed, the publisher may conclude the process by offering a supplementary remuneration deemed appropriate and approved by the ordinary Judicial Authority.

The approval decree shall not be subject to appeal and shall be enforceable in favour of the author.

If the author's remuneration is fixed in a way proportional to the publisher's revenue deriving from the dissemination of the work, the provisions of Articles 57 and 58 shall apply.

#### **Art. 57**

Unless the contract specifies a shorter time-limit, the publisher shall submit the accounts at least once a year.

The accounts shall include at least the number of copies realized during that period, by specifying the date and the print-runs of each edition or reprint, the number of copies on deposit, both with the publisher and third parties, the number of destroyed or unusable copies due to unforeseeable circumstances or force majeure, the number of copies assigned free of charge for promotional purposes, the number of sold copies and their price, as well as the royalties due or paid to the author.

The author shall have the right to control the accuracy of the accounts submitted by the publisher, or to have them controlled by a third party of his choice.

#### **Art. 58**

If, during the period of validity of the contract, the number of copies realized by the publisher proves to be insufficient to meet the customers' demand, the publisher shall realize, with all due diligence, additional copies, up to the maximum amount specified in the contract.

If the number of copies proves to be insufficient to meet the customers' demand even after the maximum number of copies is realized, the publisher shall realize, upon request of the author, an adequate number of additional copies; unless otherwise agreed upon between the parties, the number of such additional copies to be realized following each request by the author shall be considered equal to one tenth of the maximum number of copies specified by the contract and their realization shall be subject to the same conditions as in the original

contract.

If the publisher does not fulfil the author's request within the usual time-limits, the publishing contract shall be considered terminated due to the act and fault of the publisher.

#### **Art. 59**

Remunerations and royalties due to the author shall constitute a preferential credit in favour of the publisher.

#### **Art. 60**

The rights assigned to the publisher fully cease to have effect upon expiry of the time-limit specified in the contract, without the need for any formal notice by the author.

Upon expiry of the contract, the publisher shall, unless otherwise agreed upon, withdraw and destroy, at his own expenses, unsold copies of the work, without prejudice to the author's right to repurchase them at a cost jointly agreed or, alternatively, established by an expert appointed by San Marino Court upon request of the most diligent party.

However, if the author's remuneration has been fixed in a way proportional to the publisher's revenue deriving from the dissemination of the work, the latter shall continue to enjoy the right to carry on the dissemination, at a normal price, of the copies of the work that are still unsold upon expiry of the contract.

#### **Art. 61**

The contract according to which the authors assign the publisher, against payment, the right to economic exploitation of the collective work, to be realized provided that such work is sufficiently specified in the contract, is valid.

If the single contributions by co-authors are separable, the assignment of the right to economic exploitation of the collective work shall not entail the assignment of the right to economic exploitation of the single contribution.

### **Chapter III: Audiovisual production contract**

#### **Art. 62**

Production contracts of audiovisual works shall entail, unless otherwise agreed upon, the assignment to the producer of the right to economic exploitation of the work in its entirety.

#### **Art. 63**

The producer shall be entitled to modify the work in any way he deems necessary in order to guarantee the best commercial exploitation, in so far as such modifications do not alter the fundamental features of the work and do not prejudice the authors' reputation and honour.

Without prejudice to the actions safeguarding their own rights, every co-author of the audiovisual work may, if they have not previously approved the modifications made by the producer to the work, exercise the right envisaged in e) of Article 28 of this law; those assimilated to the authors by virtue of the second paragraph of Article 23 shall also have the right to be assured that there will be no public mention of the fact that the audiovisual work derives from their pre-existing work.

The exercise of the right envisaged in the preceding paragraph of this Article by any co-author shall not entail

the revision of the remuneration due to them.

#### **Chapter IV: Representation contract**

##### **Art. 64**

Representation contracts shall include contracts with which the author or his successors in title assign some rights to a third party to represent the work according to the conditions specified in the contract.

Without prejudice to the provisions of Article 51 above, representation contracts shall indicate, under penalty of nullity, the minimum and maximum number of representations that the assignee is authorised to make and the relevant modalities; however, if the author's remuneration is fixed in a way proportional to the number of representations made, the contract not specifying the maximum number of representations shall be valid provided that the duration of such contract does not exceed five years.

##### **Art. 65**

Unless otherwise explicitly agreed upon, the rights envisaged in representation contracts shall not be considered as exclusively assigned to the assignee.

If the exclusive assignment to the assignee is envisaged, the duration of the contract shall not exceed five years.

##### **Art. 66**

Representation contracts covering the right of terrestrial radio and television broadcasting shall not imply the assignment of the right of cable radio and television broadcasting, unless this latter is exercised by the same assignee, at the same time as terrestrial radio and television broadcasting, and without any extension of the territorial area specified in the contract.

##### **Art. 67**

Terrestrial radio and television broadcasting shall include broadcasting through electromagnetic waves, without resorting to any material medium, sounds, images or other information, which:

- a) may be legitimately received by the public or
- b) is destined to be received by the public.

The fact that broadcasting is made through repeaters or capture devices shall not prejudice the nature of terrestrial radio and television broadcasting.

Cable radio and television broadcasting shall include broadcasting through a material distribution network, when the connection to this distribution network by users constitutes a necessary requirement for the legitimate reception of broadcasting, sounds, images and other kinds of information offered to the public.

If repeaters and capture devices are used, the place of broadcasting shall be considered as the place from which the radio-telegraph signal is sent to such devices; similarly, in case of cable broadcasting, the place of broadcasting shall be considered as the place from which the signal is sent to the distribution network.

##### **Art. 68**

If radio and television broadcasting is made in such a way as to be receivable only by means of a decoder, broadcasting shall be considered as destined to be received by the public if such device is offered to the public, free of charge or against payment or fee, by the broadcaster or on its behalf or with its consent or knowledge.

Decoder shall be intended as any physical or logical means allowing its user to satisfactorily receive broadcasting.

#### **Art. 69**

If the author's remuneration is fixed in a way proportional to the number of representations made, the assignee shall submit the accounts at least once a year, unless the contract specifies a shorter time-limit.

The accounts shall include at least the number of representations made during that period, by specifying the date and modalities of each of them, as well as the royalties due or paid to the author.

The author shall have the right to control the accuracy of the accounts submitted by the assignee, or to have them controlled by a third party of his choice.

#### **Art. 70**

The royalties due to the author shall constitute a preferential credit in favour of the assignee.

#### **Art. 71**

The rights assigned to the assignee shall fully cease to have effect upon expiry of the time-limit envisaged by the contract, without the need for any formal notice by the author.

#### **Art.72**

The assignee shall make the representation in such a way as to guarantee respect for copyright.

#### **Art. 73**

The provisions of this Chapter shall also apply to contracts concluded by the producers of audiovisual works and covering representations of said works.

### **TITLE IV**

#### **Specific provisions regarding certain works**

##### **Chapter I: Magazines and newspapers**

#### **Art. 74**

If an article is sent to a magazine or newspaper, for the purposes of reproduction, by a person not belonging to the editorial staff and without previously signed contractual agreements, the author shall regain the right to use it if sixty days have elapsed since the article was sent and the author has not received any acceptance notice, or when, following acceptance, the article has not been published within six months since the date of acceptance.

#### **Art. 75**

Without prejudice to the provisions in d) of Article 28, the author shall not object the changes made by the director of the newspaper concerning the form of the article that are required by the nature or the purposes of the newspaper.

In the articles to be reproduced without indicating the author, the director's right envisaged in the preceding paragraph shall also include the deletion or reduction of some parts of the article.

#### **Art. 76**

The publisher of the magazine or newspaper shall not be required to keep or return articles not reproduced that he has received without having requested them.

### **Chapter II: Models and drawings, architectural works, computer programmes**

#### **Art. 77**

Unless otherwise agreed upon, the assignment of the right to economic exploitation of models and drawings or of computer programmes shall entail the right of the assignee to modify the work.

#### **Art. 78**

The author of an architectural work shall not object any modifications that are necessary during its realization or when the work has already been realized.

#### **Art. 79**

The cases mentioned in the preceding articles of this Chapter shall not prejudice the author's right envisaged in e) of Article 28.

### **Chapter III: Sound recordings**

#### **Art. 80**

The production and dissemination of sound recordings shall be governed by the rules pertaining to publishing contracts.

#### **Art. 81**

Moreover, the parties shall have the right to grant the producer an authorisation to represent the work consisting in the sound recording, with the right to grant sublicences.

Without prejudice to the provisions envisaged in Article 51 above, the authorisation granted to the producer according to the preceding paragraph shall be considered, unless otherwise agreed upon, as granted for an unlimited number of representations and for a period equal to that of the producer's right to market copies of the recording, under the last paragraph of Article 58.

Without prejudice to the remuneration due to the author by virtue of the publishing contract, he shall be entitled, in exchange for the authorisation mentioned in the preceding paragraph, to a remuneration proportional to the number of representations made by the producer or by his successors in title.

#### **Art. 82**

The provisions of Chapter IV, Title IV of this law shall apply to the representation authorisation envisaged in the preceding Article.

The producer shall include in the accounts also representations made by his successors in title.

#### **Art. 83**

Sound recordings shall not be marketed if they do not bear the following indications firmly affixed thereto:

- a) title of the reproduced work;
- b) name, pseudonym or initials of the author;
- c) name of the interpreter or performer. Orchestral or theatrical groups shall be indicated with their usual name;
- d) name of the producer;
- e) date of manufacture.

#### **Chapter IV: Photographs**

##### **Art. 84**

The duration of the protection period of photographs shall be thirty years starting from their production.

##### **Art. 85**

If a photograph was obtained during the fulfilment of and in compliance with an employment or job contract, or on commission, the employer or the client shall be, unless otherwise agreed upon, the assignees of the right to economic exploitation of the work.

##### **Art. 86**

By way of derogation from the provisions of Article 48, the assignment of the original negative or equivalent reproduction of a photograph, even if not resulting from a written deed, shall entail, unless otherwise agreed upon, the assignment of the right to economic exploitation of the work.

##### **Art. 87**

The copies of photographs shall indicate the date of production and the author's name; in the case envisaged in Article 85 above, they shall also indicate the employer or client.

#### **Chapter V: Correspondence by letter and portraits**

##### **Art. 88**

Correspondence by letter, family and personal memoirs and private writings shall not be reproduced or disseminated without the author's or the addressee's consent.

With regard to sound recordings, photographs and audiovisual works of a private nature, also the consent of the persons represented shall be necessary in case they are recognisable.

Without prejudice to the provisions of this law pertaining to the protection of moral copyright, reproduction and dissemination of the works mentioned in the preceding paragraph shall not be allowed after the death of the persons, different from the author, mentioned in the first paragraph of this Article if their spouses, children, brothers, sisters or parents object such reproduction and dissemination.

##### **Art. 89**

The consent mentioned in the preceding Article shall not be necessary when knowledge of the work is required



for the purpose of civil, criminal or administrative proceedings or in order to defend personal or family honour or reputation.

#### **Art. 90**

The portrait of a person shall not be disseminated or reproduced without this latter's consent.

After the death of the person portrayed, the provisions of the third paragraph of Article 88 shall apply.

#### **Art. 91**

Besides the cases envisaged in Article 89, the person's consent shall not be required when reproduction or dissemination of the photographic portrait or of the portrait included in the audiovisual work are justified by the person's celebrity or public office, by scientific, educational or cultural purposes or when they are connected with facts, events or ceremonies that took place in public or were of public interest.

#### **Art. 92**

Unless otherwise agreed upon, photographic portraits or portraits included in the audiovisual work made on behalf of the person portrayed shall entail the assignment to this latter of the right to economic exploitation of the work.

### **Chapter VI: Rights of interpreters and performers**

#### **Art. 93**

Interpreters and performers of dramatic, literary or musical works shall be entitled to a fair remuneration by the person making a sound or audiovisual recording or a radio and television broadcasting of the work, irrespective of any possible remuneration for the performance activity.

#### **Art. 94**

Interpreters and performers shall have the right to object the dissemination of sound recordings and audiovisual works deriving from their performance that may prejudice their reputation or honour.

#### **Art. 95**

The provisions envisaged in the preceding articles of this Chapter shall not apply if the performance takes place in the context of the production of a sound recording, of an audiovisual work or of a radio and television broadcasting and if the interpreter's performance has been remunerated accordingly.

#### **Art. 96**

For the purpose of the provisions envisaged by this Chapter, interpreters and performers shall include:

- a) anyone who performs a part of the dramatic, literary or musical work that is particularly relevant from an artistic point of view, even if only in a minor role;
- b) orchestra and chorus directors;
- c) orchestras and choruses, as well ballet groups, provided that the part they perform has, per se, an artistic value.

### **Art. 97**

Interpreters and performers of a work shall enjoy the right to see their name permanently displayed when the work, sound recordings and audiovisual works are disseminated.

## **Chapter VII: Free uses**

### **Art. 98**

Provided that the work has previously been disseminated, the following uses shall be free:

- a) private and free of charge representation of a work, provided that it is made within the family or among friends;
- b) copies or reproductions strictly reserved to private use by the copyist and not destined to collective use, except for copies of works intended to be used for purposes identical to those for which the original work was created;
- c) analysis and brief quotation of other works, justified by the critical, polemic, pedagogic, scientific or informative character of the work in which they are included;
- d) dissemination, as news of current events, through the press or radio and television broadcasting, of speeches delivered within political, administrative, judicial or academic assemblies, public political meetings or official ceremonies, even in their entirety;
- e) parody and caricature of a pre-existing work;
- f) reproduction of State or Public Administration acts or of judicial acts, even in their entirety, without prejudice to the rules governing State secret or otherwise restricting the dissemination of such acts.

### **Art. 99**

The reproduction of previously disseminated works in the context of judicial proceedings shall be permitted.

Whenever it is necessary to examine, in the framework of criminal judicial proceedings, a work not previously disseminated, such examination shall be carried out so as to prevent the work from being made public.

In any case, a work shall not be considered as disseminated on the sole ground that it has been examined in the framework of judicial proceedings.

## **Article 100**

The reproduction of news and information shall be permitted provided that it is in conformity with the codes of conduct for journalists and that the source is quoted.

### **Art. 101**

The reproduction or slavish imitation of the configuration of a work in other works of the same kind shall be prohibited when such configuration or imitation may cause confusion with regard to the work or the author.

Similarly, the reproduction of columns used in a periodical publication or audiovisual work, which is so regular as to identify the usual and typical content of the work, shall be prohibited.

The title of a newspaper, magazine or another periodical publication or audiovisual work shall not be

reproduced in another work of the same kind before three years have elapsed since the termination of its previous use.

## **TITLE V**

### **Final provisions**

#### **Chapter I: Withdrawal of the work from dissemination**

##### **Art. 102**

The author may exercise the right provided for in f) of Article 28 in case of very serious moral or philosophic reasons and subject to prior compensation of those who have purchased the right to economic exploitation of the work or of the assignees of some rights of exploitation deriving therefrom.

##### **Art. 103**

The right to withdraw the work from dissemination shall be personal, non-transferable, inalienable and shall terminate when the author dies.

Any author wishing to exercise such right shall notify this intention to any person indicated in the preceding Article and to the Ministry of Internal Affairs, which shall publish a notice to that effect in the Official Bulletin of the Republic.

##### **Art. 104**

The compensation due to the persons referred to in Article 102 may be agreed among the interested parties or settled by the judicial authority.

In case of agreement, this shall be approved, through an unchallengeable decision, by the Law Commissioner, who shall verify that the terms of the agreement provide for a fair balance of the competing interests.

In the absence of an agreement, any interested party may request the Law Commissioner, by lodging an appeal, to provide for the settlement of the compensation.

The Law Commissioner shall deliver an unchallengeable judgement also ordering enforcement of the withdraw of the work, payment of the compensation and provision of adequate guarantees.

##### **Art. 105**

Without prejudice to the procedure envisaged in Article 104, all interested parties may lodge an appeal before the Law Commissioner against the exercise of the right to withdraw the work when they deem that the necessary requirements are not fulfilled.

The Law Commissioner shall deliver an unchallengeable judgement.

##### **Art. 106**

The Law Commissioner shall also be exclusively competent to order, subject to the payment of an adequate security and upon request of the author, the application of provisional measures necessary to guarantee the effective exercise of the right to withdraw the work from dissemination.

Such measures shall be adopted through an unchallengeable order, after having heard all interested parties.

The validity of the order shall be subject to the payment of the security and shall terminate by right if, within one month, the approval of the agreement on the compensation due to the persons indicated in Article 102

above is not requested and the appeal envisaged in the third paragraph of Article 104 is not lodged.

If none of the cases envisaged in the preceding paragraph apply, or if the author does not, within the time-limits agreed upon, fulfil the obligations imposed on him by the judgement referred to in the last paragraph of Article 104, the validity of the order or of the judgement shall terminate by full right and the author shall compensate for any damage possibly suffered by the persons indicated in Article 102.

## **Chapter II: Scope of application**

### **Art. 107**

This law shall apply to the works by San Marino authors, irrespective of the place where these were first disseminated, and to the works by foreign authors disseminated for the first time on the territory of the Republic.

If works are disseminated through radio and television broadcasting, the place of dissemination shall be the place where broadcasting takes place, which is determined on the basis of Article 67 above.

This law shall also apply to audiovisual works and sound recordings whose producer is a San Marino citizen or a company established according to the legislation of the Republic and having here its place of business and permanent establishment.

### **Art. 108**

The works not covered by the preceding Article shall be protected according to what envisaged in international conventions to which the Republic is a party.

### **Art. 109**

With regard to works not protected by virtue of Articles 107 and 108, this law only provides for a protection de facto equivalent to that granted by the author's national legislation to the works of San Marino authors first disseminated on the Republic's territory.

If the author is stateless or if his nationality is disputed, the work shall be protected by the law of the State where it was first disseminated.

### **Art. 110**

A work protected by this law on the basis of de facto equivalence as envisaged by Article 109 shall not enjoy in any way a protection period exceeding the shortest one between the protection period granted to the work by the foreign legislation, as determined by virtue of the last two paragraphs of the preceding Article, and that granted by the same foreign legislation to the work of a San Marino author first disseminated on the Republic's territory.

If, according to the foreign legislation, protection is subject to registration formalities or a period of compulsory authorisation is included in the protection period, or the granting of the protection, as well as its duration or extension, are subject to particular charges, conditions or duties, the work referred to in the first paragraph of Article 109 shall be subject to equivalent conditions.

### **Art. 111**

De facto equivalence shall be established by means of a Regency Decree upon proposal of the Congress of State, after having heard the opinion of the Minister of Foreign Affairs.

The decree shall specify the conditions to which the granting of the protection is subject according to the

provisions of Article 110.

### **Chapter III: Civil sanctions**

#### **Art. 112**

Anyone damaged in the exercise or legal ownership of copyright or of some rights of its economic exploitation, which he enjoys by law or by virtue of a contract, may start legal proceedings to remedy the de facto situation causing the violation and to obtain compensation for the damage.

#### **Art. 113**

If the violation provided for in the preceding Article consists in the work's illegal reproduction, dissemination or import into the territory of the Republic, the injured party may request that the violator be sentenced to compensate an amount four times the damage suffered.

Without prejudice to the possibility for the injured party to prove that he has suffered a more serious damage, the damage shall be considered equal to the proceeds directly or indirectly obtained or to be obtained by the violator following the acts envisaged in the preceding paragraph.

For the purpose of the application of the provisions in this Article, the fault shall be presumed when the acts provided for in the first paragraph are established.

#### **Art. 114**

Anyone who reasonably fears a violation of copyright or of some rights of its economic exploitation, which he enjoys by law or by virtue of a contract, may start legal proceedings to obtain that his right be established and violation be prevented.

The possibility to start legal proceedings as envisaged in this Article shall not prejudice the right to start legal proceedings as provided for in Articles 112 and 113 against the same persons to obtain compensation for the damage already suffered.

#### **Art. 115**

Anyone wishing to start any of the proceedings mentioned in the preceding articles of this Chapter may lodge an appeal before the Law Commissioner so that the latter orders the provisional enforcement of inhibiting, precautionary or preventive measures necessary to safeguard the effective exercise of the right or to guarantee the payment of the credit and of the compensation for the damage.

After having heard without delay the party against whom the measure is to be executed, in order to obtain summary information, the Law Commissioner shall issue a decree.

In particularly serious or urgent cases, or if the party against whom the measure is to be executed has, on the territory of the Republic, no residence, habitual abode or a representative authorised to appear before the court, the Law Commissioner may decide not to hear the other party and to order the execution of the measure, possibly obliging the plaintiff to pay a security proportional to his economic possibilities and to the seriousness of the measure requested.

The decree shall be notified to the party against whom it shall be executed, prior to or, at the latest, at the time of its execution.

The execution may take place without any limitation as to the time and day.

#### **Art. 116**

The measures in the preceding Article shall cease to be effective if the plaintiff does not start legal proceedings on the merits within eight days since their execution.

Legal proceedings on the merits shall be started before San Marino Court even if the defendant has, on the territory of the Republic, no residence, habitual abode or a representative authorised to appear before the court.

If the party against whom the measure was executed is not summoned as defendant, he shall in any case be present during the proceedings on the merits, under penalty of nullity of the proceedings and upon initiative of any interested party.

The provisions in the preceding Article may be challenged only during the proceedings on the merits; however, if the decision on the merits is complex, the party against whom the measure was executed, as well as the defendant in the proceedings on the merits, may request the judge to rule provisionally on the validation of the measure.

Only in the case envisaged in the first paragraph of this Article, anyone who has suffered a damage concerning the execution of the measures indicated in Article 115 shall be authorised to start proceedings to obtain compensation for said damage.

### **Chapter IV: Criminal sanctions**

#### **Art. 117**

Anyone failing to comply with a measure ordered by the Law Commissioner pursuant to Art. 115 of this law shall be punished according to Article 259 of the Criminal Code, unless it constitutes a more serious offence. The action envisaged in this Article shall not suspend the civil action envisaged in the first paragraph of Article 116 of this law.

#### **Art. 118**

Anyone reproducing, disseminating, purchasing or holding for the purpose of disseminating, or introducing in the territory of the Republic works protected by this law, thus damaging the exercise or the ownership of copyright or of some rights of its economic exploitation, shall be punished with an administrative sanction ranging from 50,000 lira to 150,000 lira. This sanction shall be applied by the Law Commissioner on the basis of the report submitted to him by the Civil Police and the Gendarmerie.

### **Chapter V: Transitional provisions**

#### **Art. 119**

Works disseminated before the date of entry into force of this law shall be protected starting from that date and throughout the period envisaged in the provisions of Chapter III of the preceding Title II and calculated starting from the original date of dissemination; the provisions of Chapter II of this Title shall apply to these works.

#### **Art. 120**

For a period of two hundred and fifty days starting from the entry into force of this law, material objects in which the works envisaged in the preceding Article are embodied may be sold, although this is not authorised by the owner of copyright or by his successors in title, provided that such objects have been realized in the

Republic or, if realized abroad, imported to its territory before the date of entry into force of this law.

The burden of proof relating to the condition specified in the preceding paragraph shall lie on anyone wishing to exercise the right envisaged in said paragraph.

With regard to material objects imported from abroad, such proof may only be provided by submitting the document indicating the payment of the Single Stage Tax on Imports.

The material objects mentioned in the first paragraph of this Article shall be considered as imported from abroad unless otherwise proven; testimonial evidence of their manufacture on the territory of the Republic shall not be admitted.

## **Chapter VI: Entry into force**

### **Art. 121**

This law shall enter into force on the fifth day following that of its legal publication.

Done at Our Residence, this 30 January 1991/1690 since the Foundation of the Republic

THE CAPTAINS REGENT

Cesare Antonio Gasperoni – Roberto Bucci

THE MINISTER OF INTERNAL AFFAIRS

Alvaro Selva