

**LAW OF THE REPUBLIC OF BELARUS
ON COPYRIGHT AND RELATED RIGHTS¹**
(No. 194-3, of August 11, 1998)²

TITLE I. GENERAL PROVISIONS

Article 1. Subject of the Law

This Law governs the relations arising from the creation and exploitation of scientific, literary and artistic works (copyright) and of performances, phonograms and the programs of broadcasting or cable distribution organizations (related rights).

Article 2. Legislation of the Republic of Belarus on Copyright and Related Rights

The legislation of the Republic of Belarus on copyright and related rights consists of the provisions of the Constitution of the Republic of Belarus, the Civil Code of the Republic of Belarus, of this Law, of Presidential Decrees and Orders and of other legislative acts.

Article 3. International Treaties

Where an international treaty to which the Republic of Belarus is party contains rules different from those specified in this Law, the provisions of the international treaty shall be applicable.

Article 4. Basic Concepts

For the purposes of this Law, the terms given below shall have the meaning specified:

"author" means the natural person whose creative effort has brought about the creation of a work;

"audiovisual work" means a work consisting of a series of interconnected images (with or without sound accompaniment) that create an impression of movement and that is intended to be made visible and (where the images are accompanied by sounds) audible; audiovisual works include cinematographic works and other works expressed by means comparable to cinematography (television films, video films and like works) regardless of the manner in which they are initially or subsequently fixed;

"database" means a body of materials, data or information, which by reason of the selection or arrangement of its contents constitutes the result of creative work; the concept of a database does not include the computer program providing electronic access to the contents of the database;

"reproduction" means the making of one or more copies of a work or of the subject matter of related rights in any material form whatsoever, including permanent or ephemeral storage in digital form by electronic means;

"recording" means the fixing, with technical aids, of sounds or images, or of both, in a material form that permits them to be repeatedly perceived, reproduced or communicated;

"rights management information" means any information which identifies the author, the work, the performer, the performance, the phonogram producer, the phonogram, the broadcasting or cable distribution organization, the programs transmitted by radio or cable or the owner of any right afforded by this Law, or any information about the conditions and terms of use of the work, the performance, the phonogram or the

¹ INTELLECTUAL PROPERTY LAWS AND TREATIES - JUNE 1999. COPYRIGHT AND NEIGHBORING RIGHTS LAWS AND TREATIES. BELARUS – Text 1-01, page 001–015.

² *Official Russian title:* ЗАКОН РЕСПУБЛИКИ БЕЛАРУСЬ ОБ авторском праве и смежных правах.

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program transmitted by radio or cable, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a performance, a phonogram, a recording of a program transmitted by radio or cable or appears in connection with the communication or making available to the public of a work, a recorded performance, a phonogram or a program transmitted by radio or cable;

"performer" means the actor, singer, musician, dancer or any other person who performs, sings, recites, declaims, plays a musical instrument, dances or in any other way presents a literary or artistic work or a work of folklore;

"cartographic work" means a map or atlas devoted to a specific thematic subject;

"computer program" means an organized set of instructions and data enabling a specific result to be obtained with the aid of a computer and recorded on a material carrier, together with its accompanying electronic documentation;

"folklore" means works consisting of characteristic elements of the traditional artistic heritage (folk tales, folk poetry, folk songs, instrumental folk music, folk dances and plays, artistic forms of folk customs and the like);

"disclosure of a work" means the act performed with the author's consent which first makes the work accessible to the public by publication, public presentation, public performance or by other means;

"public domain" means such subject matter of copyright or related rights in which economic rights are no longer valid or do not exist;

"publication" means the making available to the public of copies of a work or phonogram with the consent of the author or other holder of copyright or related rights, in sufficient quantity to meet the reasonable needs of the public, by sale, rental or other transfer of ownership or of possession of copies of the work or phonogram;

"broadcasting" means communication to the public of works, performances, phonograms or programs of broadcasting or cable distribution organizations by wireless means, including by satellite; the transmission of coded signals constitutes broadcasting if the broadcasting organization makes available to the public means for decoding or if it authorizes such making available;

"program of a broadcasting or cable distribution organization" means a program created by the broadcasting or cable distribution organization itself or, on its instructions and with its funds, by another organization;

"work of applied art" means a work of art applied to articles intended for practical use, whether a work of handicraft or a work produced by an industrial process;

"producer of an audiovisual work" means the natural or legal person who has taken the initiative and responsibility of producing an audiovisual work; in the absence of proof to the contrary, the person whose name or designation is shown on the work shall be considered the producer of the audiovisual work;

"phonogram producer" means the natural or legal person who has taken the initiative and responsibility for first recording the sounds of a performance or of other sounds; in the absence of proof to the contrary, the person whose name or designation is shown on the phonogram shall be considered the producer of the phonogram;

"rental" means making the original or a copy of a work or of the subject matter of related rights temporarily available to the public for commercial purposes;

"public performance" means the performance of a work by reciting, playing, dancing or in any other manner, including technical means (in the case of an audiovisual work, public performance means the presentation of the images accompanied by sound in their normal sequence), in places where persons may be present who are not members of the usual family circle or its immediate acquaintances;

"public presentation" means the presentation of the original or of a copy of a work directly or on the screen by means of a transparency, a cinematographic image or by television or any technical or other means (in the case of an audiovisual work, public presentation means the presentation of individual images without respecting their sequence) in places where persons may be present who are not members of the usual family circle or its immediate acquaintances;

"reprographic reproduction" means the facsimile reproduction in one or more

copies, regardless of the dimensions and form thereof, of originals or copies of written or other graphic works by means of photocopying or with the aid of other technical means other than those of publishing; reprographic reproduction does not include the storage or reproduction of such copies in electronic or optical form or in any other machine-readable form;

"communication to the public" means the transmission by wire or by wireless means of the images, the sounds, or the images and sounds, of a work, a performance, a phonogram or a program of a broadcasting or cable distribution organization in such manner that the images or sounds are perceived by persons outside the usual family circle or its immediate acquaintances in places sufficiently distant from the place of origin of the transmission for it to be impossible, without such a transmission, for the images and sounds to be perceived there; communication of a work to the public also means the fact of making available to the public a work in such manner that any person may have access thereto at the place and time of his own choice;

"technological measure" means any device, product or component that is an integral part of a means, device or product intended to prevent or impede infringement of copyright or related rights afforded by this Law;

"phonogram" means any exclusively sound recording of performances or other sounds or representations of sounds; the recording of sounds incorporated in an audio-visual work does not constitute a phonogram;

"copy of a work" means any copy of the work whatever the material form it is made in;

"copy of a phonogram" means the duplicate of a phonogram on any physical medium, made directly or indirectly from the phonogram and incorporating all or some of the sounds recorded thereon.

TITLE II. COPYRIGHT

Chapter 1. Subject Matter of Copyright

Article 5. Scope of Copyright

(1) Under this Law, copyright shall extend to scientific, literary and artistic works, whether disclosed or not, that exist in a material form, whatever their purpose or merits, with the exception of the works listed in Article 8 of this Law.

(2) The provisions of this Law shall apply

— to works whose authors are nationals of the Republic of Belarus or who have their domicile on the territory of the Republic of Belarus, irrespective of the place of first publication;

— to works published for the first time or existing on the territory of the Republic of Belarus, whatever the nationality or domicile of the author;

— to other works protected on the territory of the Republic of Belarus in accordance with the international treaties to which the Republic of Belarus is party.

(3) A work shall also be considered published for the first time on the territory of the Republic of Belarus if, within the 30 days following the date of its first publication outside the territory of the Republic of Belarus, it is published on the territory of the Republic of Belarus.

Article 6. Subject Matter of Copyright

(1) Copyright shall extend to scientific, literary and artistic works existing in a material form

— written (manuscript, typewritten, musical score, etc.);

— electronic (computer program, electronic database);

— sound and video recording (magnetic, optical, electronic);

— figurative (painting, drawing, image from a cinematographic film or from a television or video film, photography);

— three-dimensional (sculpture, model, structure).

(2) Any part of a work (including its title) that meets the conditions of paragraph (1) of this Article and can be exploited separately shall afford entitlement to copyright.

(3) Copyright in a work shall be independent of the ownership of the material object in which the work is expressed.

The transfer of the ownership of a material object or of the right of possession of the material object shall not as such imply any transfer of any copyright whatsoever in the work expressed in that object.

Article 7. Works Protected by Copyright

(1) The following shall be protected by copyright:

- literary works (including computer programs and databases);
- scientific works (articles, monographs, reports);
- dramatic, dramatic-musical works and other works with a scenario;
- choreographic works and mimed works;
- musical works with or without accompanying text;
- audiovisual works;
- works of painting, graphics, sculpture and other works of figurative art;
- works of applied art;
- works of architecture, urban planning and park and garden design;
- photographic works;
- maps, plans, sketches and other works relating to architecture, geography, topography and other sciences and technologies;
- other works.

(2) The following shall also be protected by copyright:

- derivative works such as translations, adaptations, stage adaptations, musical arrangements, reviews, annotations and analyses;
- collections such as encyclopedias, anthologies, atlases and other composite works that constitute, by reason of the selection or arrangements of their contents, the result of creative work.

Derivative works and collections shall be protected by copyright whether or not the works on which they are based or which they themselves include are protected by copyright.

(3) Computer programs shall be protected as literary works and protection shall extend to all types of programs, including applications software and operating systems, regardless of the language and form in which they are expressed, including the source code and the object code.

Databases and other compilations, whatever their form, which, by reason of the selection and arrangement of the material, constitute the result of an intellectual effort, shall be protected as such. Such protection shall not extend directly to the data or materials themselves and shall not prejudice any copyright therein.

Article 8. Works Not Protected by Copyright

(1) The following shall not be protected by copyright:

- official documents (laws, court decisions and other texts of a legislative, administrative or judicial nature) and official translations thereof;
- State emblems and official signs (flags, armorial bearings, anthems, decorations, monetary signs and the like);
- works of folklore of which the authors are unknown.

(2) Copyright shall not extend to ideas, processes, systems, methods of functioning, concepts, discoveries or simple information as such even if expressed, represented, explained or illustrated in a work.

Article 9. Origin of Copyright

(1) A scientific, literary or artistic work shall be eligible for copyright by virtue of the mere fact of its creation. The origin and exercise of copyright shall not require the performance of any formality.

(2) In order to have his exclusive economic rights recognized, the holder may use a copyright notice which should be placed on every copy of the work and consist of the following three elements:

- a circled capital letter "C": ©;

- the name (designation) of the holder of the exclusive economic rights;
- the year of first publication of the work.

(3) In the absence of proof to the contrary, the person named as the author on the original or on a copy of the work shall be deemed the author thereof (presumption of ownership).

(4) Where a published work is anonymous or pseudonymous (unless the author's pseudonym leaves his identity in no doubt), the publisher whose name or designation is shown on the work shall be presumed, in the absence of proof to the contrary, to represent the author in accordance with this Law and, in that capacity, shall be empowered to defend and exercise the author's rights.

This provision shall remain in force until such time as the author of the work reveals his identity and claims authorship of the work.

Article 10. Works of Joint Authorship

(1) The copyright in a work that is the product of the joint creative work of two or more persons (work of joint authorship) shall belong jointly to the joint authors, whether or not it constitutes an indivisible whole or is composed of parts each with a relevance of its own.

A part of a work shall be deemed to have a relevance of its own if it can be exploited independently of the other parts of the same work.

Unless otherwise agreed between the joint authors, each joint author may exploit, as he sees fit, that part of a work with a relevance of its own that he has created.

(2) The right to exploit the whole work shall belong jointly to the joint authors.

The relations between the joint authors may be the subject of an agreement between them.

If the work of the joint authors constitutes an indivisible whole, none of them shall be entitled to prohibit the exploitation of the work without valid reason.

Article 11. Copyright in Composite Works

(1) The author of a collection or of any other composite work (compiler) shall enjoy copyright in the selection and arrangement of the materials that he has made insofar as that selection or arrangement constitutes the result of a creative effort (compilation).

The compiler shall enjoy copyright subject to respect for the rights of the authors of each work included in the composite work.

Each of the authors of the works included in the composite work shall have the right to exploit his own work independently of the composite work, unless the author's contract provides otherwise.

Notwithstanding the copyright of the compiler, any third party may make an independent selection or arrangement of the same materials for the purposes of creating a composite work of his own.

(2) The exclusive right to exploit encyclopedias, encyclopedic dictionaries, collections of scientific works—published in either one or several installments—newspapers, reviews and other periodical publications as a whole shall belong to the person who has published such works. Such person shall have the right to mention his name or to demand such mention whenever such publications are exploited.

The authors of the works included in such publications shall maintain their exclusive right to exploit their works independently of the publication of the whole work, unless otherwise stipulated in the author's contract.

Article 12. Copyright in Derivative Works

(1) Translators and other authors of derivative works shall enjoy copyright in the translations, adaptations, arrangements or any other transformations made by them, subject to respect for the rights of the author of the work.

(2) Notwithstanding the copyright of the translator or other author of a derivative work, third parties may make their own translations or transformations of the same work.

Article 13. Copyright in Audiovisual Works

(1) The following shall be recognized as authors of an audiovisual work: the director or maker, the author of the scenario, the author of the musical work, with or without words, that has been specially created for the audiovisual work.

(2) The conclusion of a contract for the making of an audiovisual work shall constitute assignment, by the authors of the work to the producer thereof, of the exclusive rights of reproduction, distribution, public performance, communication to the public, and also the exclusive rights of subtitling and dubbing, unless otherwise provided in the contract. These rights shall subsist throughout the period of validity of the copyright in the audiovisual work.

The producer of the audiovisual work shall have the right to mention his name or demand such mention be made whenever the work is exploited.

(3) The author of a musical work, with or without words, shall maintain his right to remuneration for public performance of the work where an audiovisual work incorporating the musical work concerned is exploited.

(4) The authors of the works constituting the audiovisual work, whether preexisting or created for the audiovisual work, shall each enjoy copyright in their own works and may exploit them independently of the audiovisual work.

Article 14. Copyright in Service-Related Works

(1) The moral rights in a work created in the course of an assignment or service obligation (service-related work) shall belong to the author of the work.

(2) The economic rights in service-related works shall belong to the employer, unless otherwise provided by the contract concluded between the employer and the author.

(3) The author of a service-related work may not prohibit the employer from disclosing the work.

Chapter 2. Copyright

Article 15. Moral Rights

(1) The author shall enjoy the following moral rights in relation to his work:

- the right to have his authorship of the work recognized (right of authorship);
- the right to exploit the work or to authorize the exploitation thereof, either with the mention of his true name or his pseudonym or without any name being given, that is to say anonymously (right to be named);
- the right to the protection of the work, including the title thereof, against any distortion or other derogatory act liable to prejudice his honor or dignity (right to the protection of the author's reputation);
- the right to disclose the work or to authorize its disclosure in any form (right of disclosure).

(2) The author shall have the right to renounce a decision taken earlier to disclose his work (right to reconsider or of withdrawal) provided that the user is indemnified for any damages, including lost earnings, attributable to that decision. If the work has already been disclosed, the author shall be required to make his withdrawal known to the public. He shall then have the right to withdraw from circulation, at his own expense, those copies of the work that have already been made. The provisions of this paragraph shall not apply to service-related works.

(3) Moral rights shall belong to the author independently of his economic rights and the author shall retain them even when the exclusive right to exploit the work is assigned.

Article 16. Economic Rights

(1) The author or any other holder of copyright shall enjoy the exclusive right to perform or authorize the following acts:

- reproduction of the work;
- distribution of the original or copies of the work by sale or any other mode of transfer of ownership; where the original or copies of a lawfully published work have

been put into circulation with the authorization of the author by sale or any other mode of transfer of ownership, their subsequent distribution on the territory of the Republic of Belarus shall not require the authorization of the author (of the holder of copyright) and shall not give rise to the payment of remuneration;

— rental of the original or copies of computer programs, databases, audiovisual works, musical scores or works fixed on phonograms, independently of the ownership of the original or the copies of the works concerned; this right shall not apply to computer programs if the program itself is not the essential object of the rental nor to audiovisual works unless the rental gives rise to large scale copying of the works concerned, which would substantially infringe the exclusive right of reproduction;

— import of copies of works, including copies made with the authorization of the author or other holder of copyright;

— public presentation of an original or a copy of a work;

— public performance of the work;

— broadcasting of the work;

— communication to the public of the work by any other means;

— translation of the work;

— adaptation or other transformation of the work.

(2) Unless otherwise provided by contract, the author of an accepted architectural project shall have the right to require the commissioning party to allow him to take part in the realization of his project at the stage of the production of the documentary material relating to the construction or at the stage of the actual construction of the building or other structure.

(3) The author shall be entitled to remuneration for each form of exploitation of his work.

(4) The rights of authors (or other holders of copyright) set out in this Article shall be subject to the limitations specified in Articles 18 to 21 of this Law and which shall apply insofar as the uses in question do not unjustifiably prejudice the normal exploitation of the work and do not without valid reason violate the legitimate interests of the author (or other holder of copyright).

Article 17. Resale Royalty

For each public resale of a work of fine art or an original manuscript of a writer or a composer (by auction or sale in an art gallery, exhibition, shop, etc.), the seller shall pay to the author remuneration representing 5% of the resale price (resale royalty).

This right shall be inalienable and may be transferred only to the legal heirs or those designated in the author's will for the duration of the copyright.

Chapter 3. Limitation of Economic Rights

Article 18. Reproduction of Works for Personal Use

(1) Notwithstanding the provisions of Article 16 of this Law and subject to compliance with the provisions of paragraphs (3), (4) and (5) of this Article, it shall be permitted, without the consent of the author (or other holder of copyright) and without payment of remuneration, for a natural person to reproduce in a single copy and for exclusively personal purposes a lawfully published work.

(2) The provisions of paragraph (1) of this Article shall not apply to the reproduction

— of works of architecture in the form of comparable buildings and structures;

— of databases or substantial parts of databases;

— of computer programs, except in the cases provided for in Article 21 of this Law;

— of musical scores and books (in their entirety) by reprographic reproduction.

(3) The author (or other holder of copyright), the performer and the phonogram producer (or their successors in title) may receive remuneration for the reproduction of an audiovisual work or of a work fixed on a phonogram. The remuneration shall be paid

— by the manufacturers of equipment (sound recorders, video recorders, etc.) and of recording mediums (tapes, cassettes, optical discs, compact discs, etc.) habitually used for reproducing works for personal purposes, with the exception of equipment and recording mediums exported abroad; and

— by the importers of the aforementioned equipment and mediums except where the importing is done by an individual for personal purposes.

(4) The remuneration shall be collected by an organization for the collective administration of economic rights. Failing agreement between the representatives of the manufacturers and importers referred to in paragraph (3), on the one hand, and the organization for the collective administration of economic rights, on the other, the amount of the remuneration and the conditions for its payment shall be determined by the Council of Ministers of the Republic of Belarus.

(5) The organization for the collective administration of economic rights shall apportion the remuneration between the authors of the works (or other holders of copyright) referred to in paragraph (3) of this Article, the performers and the phonogram producers referred to in Article 36(2) of this Law when it may be presumed that the works have been reproduced for personal purposes in accordance with paragraph (1) of this Article. Failing agreement between the various groups of authors (or other holders of copyright) and/or the performers and the phonogram producers (or their successors in title) concerning the apportionment of the remuneration, the percentages shall be determined by the Council of Ministers of the Republic of Belarus.

Article 19. Use of a Work Without the Author's Consent and Without Payment of Remuneration

The following shall be authorized without the author's consent and without payment of remuneration, but provided that the name of the author whose work is used and the source of the borrowing are mentioned:

— the quotation for scientific or research purposes, for teaching, polemic, critical or informational purposes and to the extent justified by the intended purpose, of extracts from lawfully published works;

— the use of extracts from lawfully published works for the purpose of illustration in publications, radio or television broadcasts or sound or video recordings of an educational nature, and to the extent justified by the intended purpose;

— the reproduction in newspapers or the communication to the public of articles lawfully published in newspapers or periodicals on current economic, political, social or other topics, insofar as the author has not expressly prohibited such reproduction or communication to the public;

— the reproduction in newspapers or the communication to the public of speeches, addresses, lectures and other works of like nature given in public, to the extent justified by the informational purpose;

— the reproduction or communication to the public, in connection with the reporting of current events, of works that are seen or heard in the course of such events, to the extent justified by an informational purpose;

— the reproduction in Braille or by other special means for the benefit of the blind, with the exception of works created specially for such means of reproduction;

— the reproduction or communication to the public of works of architecture, works of fine art and photographic works permanently located in a public place, unless the presentation of the work constitutes the main purpose of the reproduction or communication to the public or if it is used for commercial purposes;

— the reproduction of lawfully disclosed works for the purposes of judicial or administrative proceedings;

— the performance of lawfully disclosed works during religious services; it shall not be compulsory in such cases to mention the name of the author and the source of the borrowing.

Article 20. Reprographic Reproduction of Works by Libraries, Archive Services and Teaching Establishments

It shall be permissible, without the consent of the author or other holder of copyright and without payment of remuneration, but provided that the name of the author whose work is used and the source of the borrowing are mentioned, to make a reprographic reproduction in one copy and without gainful intent

— of a lawfully published work where such reproduction is made by a library or archive service and its purpose is to replace copies that have been lost, destroyed or rendered unusable;

— of isolated articles or succinct works lawfully published in collections, newspapers or other periodical publications, or of short extracts from lawfully published written works, if the reproduction is done by a library or archive service and its purpose is to meet the requirements of natural persons who will make use of the copies so obtained for study or research purposes;

— of isolated articles or succinct works lawfully published in collections, newspapers or other periodical publications, or of short extracts from lawfully published written works, if the reproduction is done by a teaching establishment and the copy obtained is intended for classroom use.

Article 21. Reproduction of Computer Programs

(1) Any person lawfully in possession of a copy of a computer program may make a copy of the computer program provided that the copy is intended solely for archiving or for the replacement of a lawfully acquired copy in the event of the latter having been lost, destroyed or rendered useless, on the understanding that the copy of the computer program may not be used for other purposes and that it must be destroyed if the possession of the copy of the computer program ceases to be lawful.

(2) Any person lawfully in possession of a copy of a computer program may adapt the computer program in order to ensure its interoperability with other computer programs provided that the information obtained by means of such adaptation is not used for the development of other computer programs similar to the one that has been adapted nor for the performance of any other act prejudicial to copyright.

Chapter 4. Term of Copyright

Article 22. Term of Copyright Protection

(1) The right of authorship, the right to be named and the right to protection of the author's reputation shall be protected without limitation in time.

Economic rights shall subsist throughout the lifetime of the author and for 50 years after his death, except as provided by this Article.

(2) Copyright in an anonymous or a pseudonymous work shall subsist for 50 years as from the date of first lawful publication of the work.

If a work has not been lawfully published within the 50 years following its creation, the term of copyright shall be 50 years as from first communication to the public of the work made with the consent of the author in a form other than publication.

If a work has been neither lawfully published nor communicated to the public in any other manner with the consent of the author within the 50 years following its creation, the term of copyright shall be 50 years as from the date of creation of the work.

If, during such period, the author of an anonymous or pseudonymous work reveals his identity or if his identity is no longer in doubt, the provisions of paragraph (1) of this Article shall apply.

(3) The economic rights in a work of joint authorship shall subsist for the lifetime of the last surviving joint author and for 50 years after his death.

(4) Any time limit laid down in this Article shall be calculated as from January 1 of the year following that in which the legal act that marks the starting point of the time limit occurred.

Article 23. Public Domain

(1) On expiry of the term of the economic rights in the subject matter of copyright or related rights, such subject matter shall fall into the public domain.

Where the subject matter of copyright or related rights has never enjoyed protection on the territory of the Republic of Belarus, it shall likewise be deemed to have fallen into the public domain.

(2) The subject matter of copyright or related rights that has fallen into the public domain may be used freely by any natural or legal person without payment of remuneration.

neration. However, the moral rights shall be respected.

(3) The Council of Ministers of the Republic of Belarus may determine those cases in which use on the territory of the Republic of Belarus of the subject matter of copyright or related rights that has fallen into the public domain shall give rise to the payment of royalties, as also the conditions of payment.

Article 24. Transfer of Copyright by Succession

(1) Copyright shall be transferable by succession. The right of authorship, the right to be named and the right to protection for the reputation of the author shall not be transferable by succession. The heirs of the author and his executors may exercise the defense of those rights without limitation in time.

If an author has no heirs, the rights concerned shall be defended by an official body of the Republic of Belarus specifically empowered to that end.

(2) An author may, under conditions identical with those for the designation of an executor, state the person to whom he entrusts the protection of his moral rights after his death. That person shall assume his powers for the whole of his lifetime.

Failing such instruction, the protection of the author's moral rights shall be exercised after his death by his heirs or by an official body of the Republic of Belarus specifically empowered to that end if the author has no heirs.

Chapter 5. Assignment or Licensing of Economic Rights

Article 25. Assignment or Licensing of Economic Rights. Authors' Contracts

(1) The economic rights of an author may be assigned or licensed in whole or in part and may be transmitted with a view to use on the basis of an author's contract.

Any assignment or licensing of economic rights shall be the subject of a contract in writing, signed by the author and the person (copyright holder) to whom the economic rights are assigned or licensed. Only the rights that are clearly stated in the contract shall be considered to have been assigned or licensed. The right to exploit a work that was unknown at the time of conclusion of the contract may neither be assigned nor licensed.

(2) Authors' contracts for the assignment of exclusive economic rights shall permit only that person to whom the rights have been assigned to exploit the work by a specified means and within the limits set by the contract, and shall afford that person the right to prohibit any comparable exploitation of the work by others.

The right to prohibit exploitation of the work by others may be exercised by the author of the work where the person to whom the exclusive rights have been assigned does not himself assert that right.

(3) Authors' contracts for the licensing of non-exclusive economic rights shall permit the licensee to exploit the work under the same conditions as the holder of the economic rights who has licensed those rights to him or as other persons who have obtained authorization to exploit the work by the same means.

Article 26. Contents of Authors' Contracts

(1) Authors' contracts shall specify: the modes of exploitation of the work (the specific rights assigned or licensed under the contract); the period and the territory for which the rights are assigned or licensed; the amount of remuneration payable for each of the modes of exploitation of the work or the method for calculating the amount of that remuneration, the procedures and periods for the payment of the remuneration; and such other conditions as the parties may consider necessary for the contract concerned.

If the author's contract does not specify the period for which the rights are assigned or licensed, the author may terminate it on expiry of a period of five years as from its conclusion, subject to six months' notice.

If the author's contract does not specify the territory for which the rights are assigned or licensed, the rights concerned by the contract shall have effect only on the territory of the Republic of Belarus.

(2) The amounts and conditions for payment of the author's remuneration for the exploitation of a literary, scientific or artistic work shall be set out in the author's contract

and/or in the contracts concerning the right to exploit the work that users are required to conclude with other copyright holders or with the organizations for the collective administration of the economic rights of authors.

(3) The author's contract shall specify remuneration in the form of a percentage of the revenue derived from exploitation of the work by the intended means or in the form of a lump sum or in any other manner. The amounts of the author's remuneration may not be less than the minimum rates laid down by the Council of Ministers of the Republic of Belarus.

Where, in the author's contract for the publication or other form of reproduction of a work, remuneration is calculated as a lump sum, the contract shall specify the maximum print-run of the work.

(4) The rights assigned or licensed under the author's contract may not be reassigned or relicensed, in whole or in part, to third parties, unless the contract expressly so provides.

(5) Any clause in an author's contract that imposes limits on the author regarding the future creation of works on a given subject or in a given field shall be null and void.

(6) Any clauses of an author's contract that are contrary to the provisions of this Law shall be null and void.

Article 27. Form of Authors' Contracts

(1) The author's contract shall be in writing. If it concerns the use of a work in the periodical press, it may be concluded by word of mouth.

(2) Contracts for the sale of copies of computer programs or databases shall be deemed concluded in writing if their conditions (conditions for using the program or the database) are set out in a suitable manner on the copies of the program or of the database.

Article 28. Contractual Liability

Any party that fails to comply with the obligations of the contract shall be liable in accordance with the legislation of the Republic of Belarus.

TITLE III. RELATED RIGHTS

Article 29. Persons Enjoying Related Rights

(1) Performers, phonogram producers and broadcasting or cable distribution organizations shall enjoy related rights.

(2) Performers shall be required to exercise the rights set out in this Title without infringing the rights of the author of the work performed.

(3) The phonogram producer or broadcasting or cable distribution organization shall exercise its rights set out in this Title within the limits of the rights that the performer and the author of the work recorded on the phonogram or broadcast or transmitted by cable have granted them by contract.

(4) The origin and exercise of the related rights afforded under this Title shall not be subject to compliance with any formality. The phonogram producer and the performer may, in order to publicize their economic rights, make use of a reserved rights notice which should be placed on every copy of the phonogram and should consist of the following three elements:

- a circled capital letter "P": ©;
- the name (or designation) of the holder of the exclusive economic rights;
- the year of first publication of the phonogram.

(5) In the absence of proof to the contrary, the person shown as the holder of the exclusive economic rights on each copy of the phonogram shall be deemed the performer or phonogram producer (presumption of ownership of related rights).

Article 30. Scope of Related Rights

(1) The provisions of this Law on the protection of the rights of performers shall apply

- to any performer who is a national of the Republic of Belarus;
- to any performer who is not a national of the Republic of Belarus, but whose

performance

- took place on the territory of the Republic of Belarus;
- was recorded on a phonogram protected under the provisions of this Law; or
- has not been recorded on a phonogram, but has been included in a program broadcast or transmitted by cable that is protected in accordance with the provisions of this Law.

(2) The provisions of this Law on the protection of phonograms shall apply to

- any phonogram of which the producer is a national of the Republic of Belarus or is a legal person with headquarters located on the territory of the Republic of Belarus;
- any phonogram of which the producer is not a national of the Republic of Belarus or is not a legal person with headquarters located on the territory of the Republic of Belarus, but which has been published for the first time on the territory of the Republic of Belarus or has been published on that territory within 30 days of the date of its first publication in another State.

(3) The provisions of this Law on the protection of the programs of broadcasting or cable distribution organizations shall apply to the programs of any organization with headquarters on the territory of the Republic of Belarus which transmits by means of transmitters located on the territory of the Republic of Belarus.

(4) The provisions of this Law shall also apply to performers, phonogram producers and broadcasting or cable distribution organizations of which the rights are protected on the territory of the Republic of Belarus in accordance with the international treaties to which the Republic of Belarus is party.

Article 31. Rights of Performers

(1) A performer shall enjoy the following exclusive rights in his performance:

- the right to be named;
- the right to protection of the performance against any distortion or other derogatory act liable to prejudice his honor or dignity (right to the protection of the performer's reputation);
- the right to exploit his performance in any form, including the right to remuneration for each form of use of the performance.

(2) The exclusive right to exploit a performance shall mean the right to carry out or authorize the following acts:

- broadcasting or cable communication of the performance to the public insofar as the performance used for that purpose has not been previously broadcast and if the broadcast or cable communication to the public is not made on the basis of a recording;
- recording of a hitherto unrecorded performance;
- reproduction of the recording of a performance;
- broadcasting or cable transmission of the recording of a performance insofar as such recording was originally made for non-commercial purposes;
- distribution of the original or copies of a performance fixed on a phonogram by sale or other mode of transfer of ownership;
- rental of the original or copies of a performance fixed on a phonogram;
- communication to the public of a performance fixed on a phonogram in such a manner that any person may have access to it at the place and time of his choice.

(3) The exclusive right of the performer under the fourth indent of paragraph (2) of this Article shall not apply if

- the initial recording of the performance was made with the consent of the performer;
- the reproduction of the performance is made for the same purposes as the recording of the performance to which the performer consented;
- the reproduction of the performance is made for the same purposes as the recording that was made pursuant to the provisions of Article 36 of this Law.

(4) The authorizations to carry out the acts referred to in paragraph (2) of this Article shall be granted by the performer or, in the case of a group performance, by the head of the group, in a written contract concluded with the user.

(5) The authorizations to carry out the acts referred to in the second, third and fourth

indents of paragraph (2) of this Article shall not be required for the rebroadcasting of a performance, the recording for broadcasting purposes and the reproduction of that recording by broadcasting or cable distribution organizations if they are expressly provided for in the contract concluded by the performer with the broadcasting or cable distribution organization.

The amount of the remuneration to be paid to the performer for such use shall also be laid down in the contract.

(6) The conclusion of a contract for the making of an audiovisual work by the performer and the producer shall constitute transfer by the performer of the rights referred to in paragraph (2) of this Article.

The licensing of such rights by the performer shall be confined to the use of the audiovisual work and, unless otherwise provided in the contract, shall not extend to the rights in any separate use of the sound or images fixed in the audiovisual work.

Article 32. Rights of Phonogram Producers

(1) The phonogram producer shall enjoy the exclusive right to exploit his phonogram in any form, including the right to remuneration for each type of use of the phonogram.

(2) The exclusive right to exploit the phonogram shall mean the right to carry out or authorize the following acts:

- reproduction (direct or indirect) of the phonogram;
- adaptation or any other transformation of the phonogram;
- distribution of the original or copies of the phonogram by sale or any other mode of transfer of ownership;
- importing copies of the phonogram for the purposes of distribution, including copies made with the authorization of the phonogram producer;
- rental of the original or copies of the phonogram;
- communication to the public of the phonogram by wire or wireless transmission in such a manner that any person may have access to it at the place and time of his choice.

(3) Where copies of a lawfully published phonogram have been placed on the market with the authorization of the performer and of the phonogram producer by way of sale or any other mode of transfer of ownership, their subsequent distribution on the territory of the Republic of Belarus may be effected without the consent of the performer and the phonogram producer and without payment of remuneration. The right of rental shall belong to the performer and the phonogram producer independently of the ownership of the original or the copies.

Article 33. Use of a Published Phonogram for Commercial Purposes

(1) Notwithstanding the provisions of Articles 31 and 32 of this Law, the following shall be authorized without the consent of the producer of a phonogram published for commercial purposes and of the performer whose performance is recorded on the phonogram, but subject to payment of remuneration:

- public performance of the phonogram;
- broadcasting of the phonogram;
- communication of the phonogram to the public in any other form.

For the purposes of this Article, phonograms that have become accessible to the public by wire or wireless transmission in such a way that any person may have access to them at the place and time of his choice shall be deemed published for commercial purposes.

(2) The collection, distribution and payment of the remuneration provided for in paragraph (1) of this Article shall be effected by one of the organizations for the collective administration of the economic rights of phonogram producers and/or performers.

Article 34. Rights of Broadcasting Organizations

(1) Except as provided in this Law, the broadcasting organization shall enjoy the exclusive right in relation to its program to exploit it in any form and to grant authorization to use it, including the right to remuneration for the grant of such

authorization.

(2) The exclusive right to authorize use of its program shall mean the right of the broadcasting organization to authorize the following acts:

- broadcasting of its program by another broadcasting organization;
- communication of the program to the public by cable;
- recording of the program;
- reproduction of the recording of the program;
- communication of the program to the public in places where a charge is made for admission;
- public distribution of the recording of the program or of copies of the recording of the program by way of sale, rental or any other mode of transfer of ownership; except in the case of rental, this right shall not apply to the recording of a program or to copies of the recording of a program that have been placed on the market on the territory of the Republic of Belarus with the authorization of the broadcasting organization by way of sale or other mode of transfer of ownership; the broadcasting organization shall maintain its rental right independently of ownership of the recording of the program or of its copies.

(3) The exclusive right of the broadcasting organization under the fifth indent of paragraph (2) of this Article shall not extend to those cases where

- the program has been recorded with the consent of the broadcasting organization;
- the program is reproduced for the same purposes as those for which it was recorded under the provisions of Article 36 of this Law.

Article 35. Rights of Cable Distribution Organizations

(1) Except as provided in this Law, the cable distribution organization shall enjoy the exclusive right in relation to its program to exploit it in any form whatsoever and to grant authorization to use it, including the right to remuneration for the grant of such authorization.

(2) The exclusive right to authorize use of the program shall mean the right of the cable distribution organization to authorize the following acts:

- communication by cable to the public of its program by another cable distribution organization;
- broadcasting of the program;
- recording of the program;
- reproduction of the recording of the program;
- communication of the program to the public in places where a charge is made for admission;
- public distribution of the recording of the program or of copies of the recording of the program by way of sale, rental or other mode of transfer of ownership; except in the case of rental, this right shall not apply to the recording of the program or to copies of the recording of the program that have been placed on the market on the territory of the Republic of Belarus with the authorization of the cable distribution organization by way of sale or other mode of transfer of ownership; the cable distribution organization shall maintain its rental right independently of the ownership of the recording of the program or of its copies.

(3) The exclusive right of the cable distribution organization under the fifth indent of paragraph (2) of this Article shall not extend to those cases where

- the program has been recorded with the consent of the cable distribution organization;
- the program is reproduced for the same purposes as those for which it was recorded under the provisions of Article 36 of this Law.

Article 36. Limitation on the Rights of Performers, Phonogram Producers and Broadcasting or Cable Distribution Organizations

(1) It shall be permissible without the consent of the performer, phonogram producer and broadcasting or cable distribution organization and without payment of

remuneration, to make use of the performance, the program broadcast or transmitted by cable or the recording thereof, and to reproduce phonograms

— for inclusion in a report on current events of short extracts from the performance, the phonogram or the broadcast or cabled program;

— for the exclusive purposes of teaching or scientific research;

— for quotation in the form of short extracts from the performance, the phonogram or the broadcast or cabled program, on condition that the quotation is for informational purposes and on the understanding that a broadcasting or cable distribution organization may only make use, for the purposes of a program, of copies of a phonogram published for commercial purposes if the provisions of Article 33 of this Law are complied with;

— in the other cases of limitation of the economic rights of the authors of scientific, literary and artistic works provided for by this Law.

(2) The reproduction of the phonogram by a natural person for exclusively personal purposes shall be authorized without the consent of the performer and the phonogram producer.

(3) The provisions of Articles 31, 32, 34 and 35 of this Law concerning the authorization of the performer, the phonogram producer and the broadcasting organization shall not apply to the making of an ephemeral recording of a performance or a program, to the reproduction of such recording or to the reproduction of a phonogram published for commercial purposes if the ephemeral recording or the reproduction is made by a broadcasting organization using its own equipment and for the purposes of its own programs, on condition that

— the broadcasting organization has obtained prior authorization to broadcast the performance or the program of which an ephemeral recording has been made or reproduced under the provisions of this paragraph;

— the ephemeral recording is destroyed within the period laid down for ephemeral recordings of literary, scientific and artistic works made by broadcasting organizations under the provisions of Article 37 of this Law; however, a single copy may be preserved in official archives if it is of a purely documentary nature.

(4) The application of the limitations provided for in this Article shall not prejudice either the normal exploitation of the phonogram, the performance or the broadcast or cabled program, or recordings thereof, or the normal exploitation of the literary, scientific or artistic work incorporated therein, and it shall likewise not prejudice either the legitimate interests of the performer, the phonogram producer or the broadcasting or cable distribution organization or those of the authors of the works concerned.

Article 37. Ephemeral Recordings Made by Broadcasting Organizations

(1) A broadcasting organization may, without the consent of the author and without payment of additional remuneration, make an ephemeral recording of a work for which it has obtained the right of broadcasting, on condition that it makes such recording with its own equipment and for the purposes of its own programs.

(2) The broadcasting organization shall be required to destroy such recording within six months following its making, unless a longer period has been agreed with the author of the recorded work. The recording may be preserved without the consent of the author of the work in the archives of the broadcasting organization if it is of a purely documentary nature.

Article 38. Term of Related Rights

(1) The performer's moral rights (right to be named and right to protection of his reputation), afforded by Article 31 of this Law, shall be protected without limitation in time.

The economic rights afforded by this Law to performers shall subsist for 50 years as from the first fixation of their performances.

(2) The economic rights afforded by this Law to phonogram producers shall subsist for 50 years after first publication of the phonogram or for 50 years after the first fixation if the phonogram has not been published during such period.

(3) The rights afforded by this Law to broadcasting or cable distribution organizations shall subsist for 50 years as from the first broadcast or cable transmission made by such organization.

(4) All periods referred to in paragraphs (1) to (3) of this Article shall be calculated as from January 1 of the year following that in which took place the legal event acting as the point of departure for the period.

(5) The right to authorize the use of a performance, phonogram or broadcast or cabled program and the right to remuneration shall pass to the heirs (or to the successors in title in the case of a legal person) of the performer, phonogram producer or broadcasting or cable distribution organization for the duration of the non-elapsed portion of the terms laid down in paragraphs (1) to (3) of this Article.

(6) The economic rights of the performer, the phonogram producer or the broadcasting or cable distribution organization may be assigned or licensed in whole or in part and may be transferred with a view to utilization on the basis of a contract drawn up in accordance with the same conditions as those set out in Article 25(1) of this Law.

(7) On expiry of the term of the economic rights in the subject matter of related rights, that subject matter shall fall into the public domain.

TITLE IV. PROTECTION OF COPYRIGHT AND RELATED RIGHTS

Article 39. Infringement of Copyright and Related Rights

(1) Any natural or legal person who does not comply with the requirements of this Law shall be in infringement of copyright or related rights.

(2) Copies of a work, a recorded performance, a phonogram or a broadcast or cabled program that are manufactured, distributed or otherwise used in infringement of copyright or related rights shall be deemed infringing copies.

(3) Copies of works, recorded performances, phonograms or broadcast or cabled programs protected in the Republic of Belarus in accordance with this Law that are imported into the Republic of Belarus without the consent of the holder of the copyright or related rights shall also be deemed infringing copies.

(4) Any person who infringes the copyright or related rights afforded by this Law shall be liable under the legislation of the Republic of Belarus.

(5) The following shall also be deemed infringements of copyright or related rights:
— any act, including manufacture, importing for the purposes of distribution or the distribution (sale, rental) of devices, or the provision of services, carried out by a person not having authorization, who knows or who has reasonable grounds to know, that such act will enable or facilitate the circumvention of the technological measures provided for by this Law for protecting copyright or related rights, and of which the principal aim or commercial result is to circumvent such measures;

— the removing or altering of any electronic rights management information without the consent of the holder of copyright or related rights;

— the distribution, importing for the purposes of distribution, broadcasting or communication to the public without the authorization of the holder of copyright or related rights of works, recorded performances, phonograms or broadcast or cabled programs with respect to which electronic rights management information has been removed or altered without the authorization of the right holder.

(6) Any copy of a work, a recorded performance, a phonogram or a broadcast or cabled program on which rights management has been removed or altered without the authorization of the holder of copyright or related rights or which has been manufactured without the authorization of the holder by means of a device used in an unlawful manner as referred to in the second indent of paragraph (5) of this Article, shall be deemed an infringing copy in accordance with paragraphs (2) and (3) of this Article.

Article 40. Copyright and Related Rights Sanctions

(1) The holder of copyright or related rights may, for the protection of his rights, institute proceedings, in accordance with the established procedure, before a court or other body, depending on their attributions.

(2) The holder of copyright or related rights may require

- recognition of his copyright or related rights;
- restoration of the situation obtaining prior to the infringement of the copyright or related rights;
- cessation of the acts that infringe or are liable to infringe his copyright or related rights;
- payment of damages, including loss of earnings;
- surrender, in place of the payment of damages, of revenue derived by the infringer from the infringement;
- payment, in place of damages or the surrender of revenue, of an indemnity in an amount of between 10 and 50,000 times the minimum salary, at the discretion of the court having regard to the nature of the infringement;
- the adoption of such other measures provided for in legislative texts as are recognized for the defense of copyright or related rights.

The choice between the measures referred to in the fifth, sixth and seventh indents of paragraph (2) shall be made by the holder of the copyright or related rights.

(3) The infringing copies of works, recorded performances, phonograms or broadcast or cabled programs shall be subject to compulsory confiscation ordered by the court hearing matters of copyright and related rights.

The court may order confiscation of any materials and equipment, including the devices referred to in the second indent of Article 39(5) of this Law, used in an unlawful manner for the manufacture and reproduction of copies of works, recorded performances, phonograms or broadcast or cabled programs, and their transmission to the Treasury.

(4) Infringing copies of a work, recorded performance, phonogram or broadcast or cabled program may be handed over on request to the holder of the copyright or related rights.

(5) Infringing copies of a work, recorded performance, phonogram or broadcast or cabled program for which the holder of copyright or related rights has not requested that they be handed over shall be destroyed or transmitted to the Treasury.

Article 41. Provisional Measures

(1) The court may decide to prohibit the defendant from performing certain acts (manufacture, sale, import or other use referred to by this Law, and also the transport, stocking or storage with a view to placing on the market copies of works, recorded performances, phonograms or broadcast or cabled programs that are allegedly infringing, including the unlawful use of the devices referred to in the second indent of Article 39(5) of this Law).

(2) The court may order the preventive seizure, either descriptive or actual, of all allegedly infringing copies of works, recorded performances, phonograms or broadcast or cabled programs, and also the descriptive seizure of the materials and equipment intended for their manufacture, including the unlawfully used devices referred to in the second indent of Article 39(5) of this Law.

(3) Where sufficient evidence has been gathered to prove infringement of copyright or related rights and liability for a criminal sanction under the law, the body responsible for the inquiry or the examination of the case or the court shall be obliged, pending the outcome of civil proceedings in progress or likely to be instituted, to take provisional measures, in the form of the location and descriptive seizure of allegedly infringing copies of works, recorded performances, phonograms or broadcast or cabled programs, and also of materials and equipment intended for their manufacture, including the unlawfully used devices referred to in the second indent of Article 39(5) of this Law and, where appropriate, in the form of actual seizure and delivery to a custodian.

Article 42. Collective Administration of Economic Rights

(1) Organizations for the collective administration of the economic rights of authors, performers, phonogram producers and other holders of copyright or related rights may be established for the exercise and protection of the economic rights of those persons in cases where the individual exercise of such rights is hampered by difficulties of a

practical nature.

(2) The conditions for the establishment and operation of such organizations shall be laid down by the legislation of the Republic of Belarus.