

## SAN MARINO

## Law on the Protection of Copyright

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## TABLE OF CONTENTS\*\*

	<i>Articles</i>
Title I: Provisions on the Acquisition and Ownership of Copyright	
Chapter I : Copyright .....	1 to 4
Chapter II : Works .....	5 to 13
Chapter III : Derived Works .....	14 to 16
Chapter IV : Authors .....	17 to 22
Chapter V : Authors of Audiovisual Works and Sound Recordings .....	23 to 26
Title II: Content of Copyright	
Chapter I : Moral Rights .....	27 to 31
Chapter II : Economic Exploitation of the Work .....	32 to 35
Chapter III : Term of Protection .....	36 to 43
Chapter IV : Disclosure .....	44 to 47
Title III: Means of Exercise of the Rights of Economic Exploitation of the Work	
Chapter I : General Provisions .....	48 to 51
Chapter II : Publishing Contracts .....	52 to 61
Chapter III : Audiovisual Production Contract .....	62 & 63
Chapter IV : Performance Contract .....	64 to 73
Title IV: Special Provisions on Certain Works	
Chapter I : Magazines and Newspapers .....	74 to 76
Chapter II : Designs, Works of Architecture, Computer Programs .....	77 to 79
Chapter III : Sound Recordings .....	80 to 83
Chapter IV : Photographs .....	84 to 87
Chapter V : Correspondence and Portraits .....	88 to 92
Chapter VI : Rights of Performers .....	93 to 97
Chapter VII : Fair Uses .....	98 to 101

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Title V: Final Provisions

Chapter I	: Withdrawal of Copies of the Work . . . . .	102 to 106
Chapter II	: Area of Application . . . . .	107 to 111
Chapter III	: Civil Sanctions . . . . .	112 to 116
Chapter IV	: Criminal Sanctions . . . . .	117 & 118
Chapter V	: Transitional Provisions . . . . .	119 & 120
Chapter VI	: Entry Into Force . . . . .	121

TITLE I

PROVISIONS ON THE ACQUISITION AND OWNERSHIP OF COPYRIGHT

Chapter I: Copyright

*Article 1.* The author of a protected work shall enjoy copyright by virtue of the mere fact of the creation of the work.

Copyright is an intellectual property right comprising attributes of moral character and attributes of economic character, with the possibility of economic exploitation deriving therefrom, that are provided for in this Law.

Copyright is conferred on all protected works, regardless of the genre, form of expression, purpose, merit and essential aesthetic and artistic value thereof.

*Article 2.* The protection of the work starts at the moment of its creation.

The work shall be considered created, independently of any publication or disclosure, by virtue of the mere fact of the author's idea having been realized, even incompletely.

Uncompleted works shall be protected to the extent of the completion thereof.

*Article 3.* The author shall likewise benefit from the rights conferred by this Law where he has created the work on commission or by virtue of other contractual relations.

*Article 4.* Copyright is independent of the ownership of the physical object.

The owner of the physical object is not invested, by virtue of such ownership alone, with any of the rights provided for in this Law.

Copyright has no bearing on the property right in the physical object or on the prerogatives attaching thereto; this property right shall not however prevent the bringing of actions to ensure the protection of copyright as provided in this Law.

Chapter II: Works

*Article 5.* The following original works are protected:

- (a) works of literary, dramatic, musical or artistic character;

- (b) sound recordings and audiovisual works;
- (c) designs and models.

*Article 6.* Works of literary character are protected regardless of their form of expression, whether written or oral, and include the following:

- (a) words and texts intended to be sung or recited within the framework of musical works or as accompaniment thereto;
- (b) works expressed by means of conventional signs or digital formulae;
- (c) computer programs.

*Article 7.* Works of dramatic character also include choreographic and mimed works, even those intended to be performed or executed with a musical work or as accompaniment thereto.

*Article 8.* Works of musical character include music of all kinds, whatever the means by which they are to be performed.

*Article 9.* Graphic works, photographs, sculptures and all combinations thereof, and also works of architecture and drawings, plans, scale models or other representations thereof, are deemed to be works of artistic character.

Graphic works include works of painting, drawing, engraving and similar figurative art, including stage scenery and sketches thereof, even those produced by means of mechanical or electronic instruments.

Sculptures include also castings, models and mock-ups.

Photographs are understood to be all forms of printing of visible light or other rays by means of which an image is formed or may be reproduced by any method or with the aid of any device, and which do not form part of an audiovisual work.

Works of architecture include buildings, even those intended to be dismantled or removed at short notice, and also the parts and ornamentation thereof.

*Article 10.* Sound recordings are understood to be reproductions and recordings of sounds, including the reproduction or recording of all or part of a work of literary, dramatic or musical character, which may be reproduced in audible form, whatever the medium on which the recording was done or the manner of reproduction.

*Article 11.* Audiovisual works are understood to be recordings and reproductions of moving images, in any manner or medium, with or without sound accompaniment.

*Article 12.* Designs and models are understood to be configurations of industrial or craft products that impart to the products concerned, either by their shape or by a particular arrangement of lines or colors, a particular ornamental appearance or usefulness.

Designs and models include the topographies of semiconductor products.

*Article 13.* Topographies of semiconductor products are understood to be sequences of interconnected images, regardless of the manner of their representation and the material on which they are fixed, representing the three-dimensional configuration of the layers constituting a semiconductor product, each of which reproduces the design or part of the design of the semiconductor product at any stage in its development or manufacture.

A semiconductor product is understood to be any product composed of a substrate and a surface layer of semiconducting material consisting of one or more layers of conducting, insulating or semiconducting material arranged according to a predetermined three-dimensional pattern which is intended essentially to perform an electronic function.

### Chapter III: Derived Works

*Article 14.* Works derived from a preexisting work are protected in the name of their author, independently of and without prejudice to the copyright in the works from which they are derived.

The provisions of the foregoing paragraph shall be without prejudice to the rights conferred on the author of the original work under this Law, and in particular under Article 28(c) below.

*Article 15.* Derived works include translations, adaptations, transformations and arrangements of preexisting works, and also works resulting from the combining of other works or parts of works or borrowings from such works, or again from the modification of an original work or from additions to such a work.

*Article 16.* The title and layout of the work are also protected insofar as they are original in character.

Use of the title and layout of a work to distinguish a work of the same genre in a manner liable to cause confusion is unlawful, even after the term of protection has expired.

### Chapter IV: Authors

*Article 17.* In the absence of proof to the contrary, that person shall be deemed to be the author who is named as such, in the customary manner, when the work is disclosed. The author shall also be considered named when the work is disclosed under a pseudonym, abbreviation or conventional sign well known to be that of the author.

*Article 18.* The authors of anonymous or pseudonymous works shall enjoy all the rights conferred by this Law.

With the exception of the case referred to in the second paragraph of the foregoing Article, such authors, as long as they have not revealed their identity, shall be represented in the exercise of the rights of economic exploitation conferred by copyright by the person who originally disclosed the work.

Rights acquired by third parties prior to the revelation of the author's identity shall in any event be preserved.

*Article 19.* The author of an anonymous or pseudonymous work has the right to reveal his identity at any time, including by testamentary provision.

His identity may also be revealed by his heirs or successors in title.

*Article 20.* The copyright in a collective work in the creation of which two or more persons have participated belongs jointly to all the coauthors.

Where the making of a work is the result of activity organized and directed by contract, the person who organizes and directs the creative activity is likewise considered the author.

*Article 21.* For the purpose of the exercise of the rights of economic exploitation deriving from copyright, the collective works shall be considered the undivided property of all the coauthors.

In the absence of agreement to the contrary, to be proved in writing, the parts of the work shall be considered of equal value.

Each of the coauthors may exercise his moral rights individually; he may not however object without legitimate grounds to the disclosure, modification or transformation of the work where such action has been accepted by the other coauthors representing the majority of the shares in the ownership of the work.

Where the individual contributions are separable, each author shall in addition have an exclusive right in the work resulting from his contribution.

The author shall not through the exercise of his exclusive right prejudice the exploitation of the collective work as a whole.

*Article 22.* The author of the original work shall not be considered the author of the derived work if he has not participated in the creation thereof.

### Chapter V: Authors of Audiovisual Works and Sound Recordings

*Article 23.* Without prejudice to the provisions of Article 20 of this Law, the authors of the scenario, adaptation and dialogue, the composer of the original music and the director shall, in the absence of proof to the contrary, be considered the coauthors of an audiovisual work.

Notwithstanding the provisions of Article 22 above, whenever the audiovisual work is derived from a preexisting work which, at the time of the creation of the audiovisual work, is still protected by copyright, the authors of the preexisting work shall be assimilated to the authors of the derived work.

*Article 24.* Notwithstanding 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 is understood to be the person, whether natural person or legal entity, who takes the initiative and the responsibility for the making of the work.

*Article 25.* The provisions of Article 24 shall apply *mutatis mutandis* to sound recordings and to performances of literary, dramatic and musical works.

*Article 26.* Notwithstanding the provisions of the fourth paragraph of Article 21, the authors of the scenario, adaptation and soundtrack of an audiovisual work may not use their contributions in another work of the same nature without the producer's consent.

## TITLE II

### CONTENT OF COPYRIGHT

#### Chapter I: Moral Rights

*Article 27.* Moral rights are the author's right to respect for his authorship and for the integrity of the work.

Those rights are personal, perpetual, inalienable and imprescriptible; they are transferable *mortis causa* to the heirs and legatees of the author and to their successors in title.

Where the heirs, legatees and their successors in title are unknown or have not accepted the succession or legacy, moral rights shall be awarded collectively to the people of San Marino and be exercised by the Secretary of State for Home Affairs.

*Article 28.* Moral rights confer on the author the right, among other things:

- (a) not to disclose the work;
- (b) to claim authorship of the work and to proceed against any appropriation of authorship by third parties;
- (c) to object to any distortions, transformations and modifications of the work not authorized by him;
- (d) to object to all uses of and to all acts in relation to the work that would be prejudicial to his honor or reputation;
- (e) to demand, without prejudice to the right to disclose the work anonymously or under a pseudonym, 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 63 and in Article 79;
- (f) to withdraw the work from circulation according to the procedure and conditions provided for in this Law.

*Article 29.* The author or coauthor of the audiovisual work who refuses to complete his contribution to the work or is unable to do so may not object to the use by the producer, for the purposes of the completion of the work, of the part of his contribution that he has already completed.

He may, however, without prejudice to his moral or economic rights, insist on not being mentioned among the coauthors of the work.

*Article 30.* The fact that the author asks not to be mentioned as such shall not constitute any forfeiture or restriction of his copyright.

The rights provided for in Article 19 of this Law in particular are reserved.

*Article 31.* The exercise of moral rights shall be independent of the exercise of the rights of economic exploitation and of the economic rights of the author in relation to the work, and shall in no way infringe those rights.

#### Chapter II: Economic Exploitation of the Work

*Article 32.* The author has the exclusive right to exploit his work economically in any form and manner.

This right includes in particular the possibility of using the work by means of reproduction or disclosure.

*Article 33.* The right of economic exploitation of the work is transferable *inter vivos* or *mortis causa*, either in its entirety or separately for each of the privileges constituting it.

*Article 34.* The right of economic exploitation of the work shall lapse on expiration of the term of protection of the work provided for in this Law.

Until that term expires, the said right shall be unconditional and imprescriptible and may not be acquired by prescription, usucaption, appropriation or any enforceable act.

The provisions of the foregoing paragraph shall in no way prejudice the rights and possibilities of action of third parties with respect to sums received or to be received by the author or his successors in title in exchange for the disposal of the right of economic exploitation of the work.

*Article 35.* The rights in the various uses of the work shall be independent of each other.

The assignment or licensing to third parties of some of them shall not constitute assignment or licensing of all the others, or of the right of economic exploitation of the work.

### Chapter III: Term of Protection

*Article 36.* Unless otherwise provided in this Law, works are protected for the author's lifetime and for a period of 50 years following the end of the calendar year in which the author's death occurred.

*Article 37.* In the case of a work resulting from inseparable contributions by two or more authors, protection shall extend to the end of the 50th year following the end of the calendar year in which the death of the last surviving coauthor occurred.

Where the contributions of the various authors are separable, however, the protection of each shall be determined pursuant to Article 36 in relation to the life of the author thereof; unless otherwise provided in this Law, the work as a whole shall be protected for 60 years following the end of the calendar year in which the first disclosure thereof occurred.

*Article 38.* Except in the case referred to in the second paragraph of Article 17, anonymous and pseudonymous works are protected up to the end of the 60th year following the end of the calendar year in which the first disclosure thereof occurred.

However, where the author's identity is revealed before the said period expires, the term of protection of the work shall be determined as provided in Articles 36 and 37.

*Article 39.* The term of protection of works disclosed after the author's death shall be 60 years following the end of the year of the first disclosure of the said works, provided that this occurs within the 30 years following the author's death.

*Article 40.* The term of protection of audiovisual works, regardless of the length of the authors' lives, shall be until the end of the 50th year following the end of the

calendar year in which the first disclosure of the said works occurred.

However, where the work is not disclosed in the 50 years following the date of its production, the term of protection shall expire at the end of the 50th year following the end of the calendar year in which the work was made.

*Article 41.* Designs shall be protected for 15 years following the end of the year of the first disclosure thereof.

*Article 42.* Computer programs shall be protected for 10 years following the end of the year of the first disclosure thereof.

*Article 43.* Where the work is disclosed in two or more separate parts, the term of protection shall be calculated separately for each part according to the year of the disclosure thereof.

### Chapter IV: Disclosure

*Article 44.* Any act by means of which the work is brought to the notice of the public, especially through performance or reproduction, shall constitute disclosure thereof.

A work brought to the notice of the public without gainful intent by the author or by his heirs or legatees, either within the normal family circle or in the course of social relations, shall not be considered disclosed.

*Article 45.* Performance is understood to be the communication of the work to the public by any means, including public recitation, execution or dramatic performance, public presentation and public showing, and also by the communication in a public place of a work that is the subject of a radio or television broadcast.

A radio or television broadcast is understood to be the transmission, by any form of telecommunication, of sounds, images, documents, data and messages of any kind.

Emission towards a satellite shall be treated as performance.

*Article 46.* Reproduction consists in the fixing of the work in a physical medium of any kind that permits the indirect communication of the work to the public.

It may in particular be carried out by printing, drawing, engraving, molding, casting and any other process of graphic and three-dimensional art, photography, cinematography and mechanical or magnetic recording.

*Article 47.* The list of means of performance and reproduction of a work given in Articles 45 and 46 of this Law is indicative in character and in no way exhaustive.

TITLE III  
MEANS OF EXERCISE OF THE RIGHTS OF  
ECONOMIC EXPLOITATION OF THE WORK

**Chapter I: General Provisions**

*Article 48.* All disposals of the right of economic exploitation of the work and of the rights of use deriving therefrom shall be evidenced in writing on pain of nullity.

The provisions of the foregoing paragraph shall not be applicable to the transfer of the physical object incorporating the work insofar as such transfer does not constitute any form of assignment to the transferee of the right of economic exploitation of the work.

*Article 49.* The right of economic exploitation of the work may be assigned to third parties for a consideration or free of charge.

Assignment of the right of economic exploitation of the work shall constitute transfer to the assignee of all prerogatives attaching thereto, except where this Law provides otherwise.

*Article 50.* Unless expressly provided otherwise in this Law, any assignment of the right of economic exploitation of future works shall be null and void.

An arrangement is lawful whereby the author undertakes, for a period of not more than five years, to license to a third party, on set conditions, certain rights in the use of future works, provided that the contract expressly specifies each of those rights and the maximum number of works involved.

Where the author does not succeed in producing the works provided for in the contract by the appointed time, the contract itself shall not be terminated but the remuneration accruing to the author may be reduced accordingly.

*Article 51.* The contract by which a given right of use of the work is licensed to a third party shall specify at least, on pain of nullity:

- (a) the rights to which the contract relates;
- (b) the territory on which those rights may be exercised;
- (c) the period for which the license is granted;
- (d) the remuneration accruing to the author.

Unless otherwise agreed, the licensee may not transfer to third parties or sublicense the licensed rights.

**Chapter II: Publishing Contracts**

*Article 52.* A publishing contract is a contract under which the author or his successors in title grant a third party the right to manufacture or have manufactured a number of copies of the work that is specified or specifiable by contract, and the person concerned is responsible

for ensuring the publication and commercial distribution thereof.

Without prejudice to the provisions of Article 51 above, the publishing contract shall specify, on pain of nullity, the minimum and maximum numbers of copies of the work that are to be manufactured, and the period within which the publisher undertakes to commence distribution of the work.

*Article 53.* Unless otherwise agreed, rights provided for in the publishing contract shall be deemed to be granted exclusively to the publisher for the territory specified in the contract and for the entire duration of the contract.

*Article 54.* The author shall guarantee to the publisher the peaceful exercise of the rights provided for in the publishing contract.

The author shall in particular make it possible for the publisher to manufacture and distribute the work; he shall present the publisher, within the agreed time, with the subject matter to be published in a form that admits of normal manufacture.

Unless otherwise agreed or technically impossible, the subject matter to be published that is provided by the author shall remain the property of the latter; the publisher shall be responsible for its safekeeping from the time at which it is handed to him to the expiration of a period of one year following the completion of manufacture.

*Article 55.* The publisher shall manufacture the edition in the agreed form, and may not make any alteration to the work without the written consent of the author.

The publisher shall, unless otherwise agreed, cause the name, pseudonym or mark of the author to appear on every copy of the work.

Without prejudice to any special agreement thereon between the parties, the publisher shall be bound to manufacture the work and to undertake distribution thereof within the customary time; the publisher shall moreover exercise due diligence in ensuring the continued distribution of the work.

The obligations of the publisher shall be determined in relation to practice within the profession.

*Article 56.* The author's remuneration shall be calculated either as a lump sum or in proportion to the profits that the publisher makes from the distribution of the work.

Where the remuneration is calculated as a lump sum, the author may not claim any additional payment from the publisher, except where the profits made by the latter on the distribution of the work are clearly out of all proportion to the remuneration collected by the author; in such case the judicial authority competent under ordinary legislation may, in its judgment, order the publisher to pay the author an amount sufficient to restore the balance of the contract.

The action referred to in the foregoing paragraph shall be brought within two years following the date of the first disclosure of the work, and the author shall be responsible for submitting proof of the manifest injustice of the remuneration originally received.

The acceptance by the author of an offer of additional payment on the part of the publisher shall preclude judicial action; similarly, where such action has already been brought, the publisher may put an end to the proceedings by making an offer of additional payment, considered appropriate and approved by the competent judicial authority.

The order of approval shall not be subject to appeal and shall constitute an enforceable instrument in the author's favor.

Where the author's remuneration is set in proportion to the profits that the publisher has made from the distribution of the work, the provisions of Articles 57 and 58 shall be applicable.

*Article 57.* The publisher shall be responsible for submitting an account at least once every year, except where a shorter interval is stipulated in the contract.

The account shall specify at least the number of copies manufactured in the course of the period under review, with an indication of the date and of the print run of every edition or reprint, the number of copies in stock, either with the publisher or with third parties, the number of copies destroyed or rendered unusable by mishap or force majeure, the number of copies distributed free of charge for promotional purposes, the number of copies sold and their price, and also the royalties payable or paid to the author.

The author shall have the right to verify, or cause to be verified by a third party appointed by himself, the accuracy of the accounts submitted by the publisher.

*Article 58.* When during the currency of the contract the number of copies manufactured by the publisher proves insufficient to meet demand, the publisher shall exercise due diligence in manufacturing additional copies up to the maximum number provided for in the contract.

Where, even after the manufacture of the maximum number of copies, there remain unfulfilled requests to acquire the work, the publisher shall, at the author's request, proceed to manufacture a suitable number of additional copies; in the absence of agreement between the parties, the number of additional copies to be manufactured in response to every request made by the author shall be equal to one-tenth of the maximum number of copies provided for in the contract, and they shall be manufactured on the conditions originally laid down in the said contract.

Where the publisher fails to act on the author's request within the customary time, the publishing contract shall be considered terminated on account of the publisher and through his fault.

*Article 59.* The remuneration and royalties payable to the author constitute a preferred claim on the publisher.

*Article 60.* The rights conferred on the publisher end as of right on expiration of the period specified in the contract, without any need for formal notice to be served by the author.

On the lapse of the contract the publisher shall, unless otherwise agreed, proceed at his own expense to withdraw the unsold copies of the work from circulation and destroy them, subject to the right of the author to purchase the said copies for a price set by amicable agreement or, failing that, by an expert appointed by the *Tribunale Commissariale* at the instigation of the most diligent party.

However, where the remuneration of the author is proportional to the profits that the publisher has made from the distribution of the work, the publisher shall retain the right to continue to sell, at the normal price, those copies of the work that are still unsold on the expiration of the contract.

*Article 61.* A contract under which the authors assign to the publisher, for a consideration, the right of economic exploitation of a collective work to be produced shall be lawful, on condition that the work is identified in sufficient detail therein.

When the individual contributions of the coauthors are separable, the assignment of the right of economic exploitation of the collective work shall not constitute assignment of the right of economic exploitation of the work constituting each such contribution.

### Chapter III: Audiovisual Production Contract

*Article 62.* The contract for the production of an audiovisual work shall, unless otherwise agreed, constitute assignment to the producer of the right of economic exploitation of the work as a whole.

*Article 63.* The producer shall have the right to make all such alterations to the work as he considers necessary to ensure the best commercial exploitation, insofar as the alterations do not change the fundamental characteristics of the work and are not prejudicial to the reputation and honor of the authors thereof.

Without prejudice to actions to protect his own rights, each coauthor of an audiovisual work may, where he has not given prior approval to changes made to the work by the producer, avail himself of the right referred to in item (e) of Article 28 of this Law; persons assimilated to authors under the second paragraph of Article 23 shall moreover have the right to be assured that there will be no public mention of the fact that the audiovisual work is derived from their preexisting works.

The exercise by any one of the coauthors of the rights referred to in the preceding paragraph of this Article shall

not entail any change in the remuneration accruing to them.

#### Chapter IV: Performance Contract

*Article 64.* A performance contract is a contract under which the author or his successors in title grant a third party the right to perform the work on contractually specified conditions.

Without prejudice to the provisions of Article 51, the performance contract shall specify, on pain of nullity, the minimum and maximum numbers of performances that the beneficiary is authorized to effect, and the procedure according to which it should be done; however, where the author's remuneration is determined according to the number of performances, a contract in which the maximum number of performances is not stated shall be lawful on condition that it is not concluded for a period exceeding five years.

*Article 65.* Unless expressly so provided, the rights provided for under the performance contract shall not be deemed to be conferred exclusively.

Where exclusive rights are accorded to the beneficiary, the term of the contract may not exceed five years.

*Article 66.* A performance contract whose purpose is to authorize the making of a radio or television broadcast by electromagnetic transmission shall not constitute authorization to make a radio or television broadcast by cable, except where the broadcast is made by the same beneficiary at the same time as the radio or television broadcast by electromagnetic waves, and without any broadening of the geographical area defined by the contract.

*Article 67.* A radio or television broadcast by electromagnetic transmission is constituted by the transmission, by means of electromagnetic waves without the aid of a material medium, of sounds, images or other data:

- (a) which may be lawfully received by the public, or
- (b) which is made with a view to reception by the public.

The nature of the radio or television broadcast by electromagnetic transmission shall not be altered by the fact that the transmission is made through relay stations.

A radio or television broadcast by cable is constituted by transmission over a physical distribution network where the connection of receivers to the network is essential for the lawful reception of the broadcast of sounds, images and other data proposed to the public.

Where a broadcast is effected through relay stations, the place from which the electromagnetic signal is emitted towards such installations shall be considered the place of broadcasting; similarly, in the case of a cable transmission, the place from which the signal is emitted towards the cable distribution network shall be considered the place of broadcasting.

*Article 68.* Where a radio or television broadcast is effected in such a way as to be receivable only with the aid of a decoding device, the broadcast shall be considered transmitted for the purposes of reception by the public as soon as the said device is made available to the public, either free of charge or against payment of a fee or royalty, by or on behalf of the person who effects the broadcast, or with the agreement of that person, or where that person is aware of the fact.

Decoding device is understood to mean any physical or logical means whereby the user is assured of satisfactory reception of the broadcast.

*Article 69.* Where the remuneration accruing to the author is calculated in proportion to the number of performances given, the beneficiary of the authorization shall be responsible for submitting an account at least once every year, except where a shorter interval is stipulated in the contract.

The account submitted shall specify at least the number of performances given in the course of the period under review, with an indication of the date of each one and the manner in which it was given, and also the royalties payable or paid to the author.

The author shall have the right to verify, or cause to be verified by a third party appointed by him, the accuracy of the accounts submitted by the beneficiary of the authorization.

*Article 70.* The royalties payable to the author shall constitute a preferred claim on the beneficiary of the authorization.

*Article 71.* The rights granted to the beneficiary of the authorization shall end as of right on expiration of the period provided for in the contract, without the necessity of any formal notice on the part of the author.

*Article 72.* The beneficiary of the authorization shall ensure that the performance is given under such conditions that respect for the author's rights is guaranteed.

*Article 73.* The provisions of this Chapter shall also apply to the contract concluded by the producer of the audiovisual work for the performance of that work.

#### TITLE IV

#### SPECIAL PROVISIONS ON CERTAIN WORKS

##### Chapter I: Magazines and Newspapers

*Article 74.* If, an article is sent to a magazine or newspaper, for the purposes of reproduction, by a person who is not on the editorial staff and without any earlier contractual arrangements, the author thereof shall regain

the right to use it if he has not been advised of its acceptance within 60 days of its being sent or, in the event of acceptance, if the article has not been published within a period of six months following the date of acceptance.

*Article 75.* Without prejudice to the provisions of item (d) of Article 28, the author may not object to any changes in the form of the article that are dictated by the nature and aims of the newspaper and are made to the article by the chief editor thereof.

In the case of articles to be reproduced without the author being named, the right accorded to the chief editor by the foregoing paragraph shall extend to the deletion or abridgement of parts of the article concerned.

*Article 76.* The editor of the magazine or the newspaper shall not be bound either to retain or to return articles that have been sent to him without his having asked for them and which have not been reproduced.

## Chapter II: Designs, Works of Architecture, Computer Programs

*Article 77.* The assignment of the right of economic exploitation of designs or computer programs shall, unless otherwise agreed, give the assignee the right to alter the work.

*Article 78.* The author of a work of architecture may not object to alterations that prove necessary in the course of execution, or which it proves necessary to make to the completed work.

*Article 79.* In the cases provided for in the preceding Articles of this Chapter, the author's right under item (e) of Article 28 shall be reserved.

## Chapter III: Sound Recordings

*Article 80.* The production and release of sound recordings shall be governed by the provisions applicable to publishing contracts.

*Article 81.* The parties shall have the right to grant the producer, in addition, a license for the performance of the work embodied in the sound recording, and also the right to grant sublicenses.

Without prejudice to the provisions of Article 51, the license granted to the producer under the foregoing paragraph shall, unless otherwise agreed, be considered granted for an unlimited number of performances and for a period equal to that of the producer's right to market copies of the recording under the last paragraph of Article 60.

Without prejudice to the remuneration accruing to him under the provisions applicable to publishing contracts, the author shall be entitled, in exchange for the license provided for in the foregoing paragraph, to remuneration in relation to the number of performances effected by the producer or his successors in title.

*Article 82.* The provisions of Chapter IV of Title IV of this Law shall be applicable to the performing license provided for in the foregoing Article.

The producer shall be bound to include performances effected by his successors in title in the accounts that he submits.

*Article 83.* Copies of sound recordings may not be placed on the market unless the following particulars are indelibly shown:

- (a) title of the work reproduced;
- (b) name, pseudonym or mark of the author;
- (c) name of the performer; an orchestral or acting ensemble shall be identified by its usual name;
- (d) name of the producer;
- (e) date of manufacture.

## Chapter IV: Photographs

*Article 84.* The term of protection of photographs shall be 30 years from the date on which they were taken.

*Article 85.* Where the photograph has been taken during the currency of or pursuant to a contract for the rendering of services or the making of a work or on commission, the employer or the person who commissioned the work shall, unless otherwise agreed, be deemed to be the assignee of the right of economic exploitation of the work.

*Article 86.* Notwithstanding the provisions of Article 48, the transfer of the original negative or of an equivalent means of reproducing the photograph, even if not evidenced in writing, shall, unless otherwise agreed, constitute assignment of the right of economic exploitation of the work.

*Article 87.* Copies of the photograph shall carry a notice stating the date on which it was taken and the name of the author; in the case referred to in Article 85, they shall also give the name of the employer or of the person who commissioned the work.

## Chapter V: Correspondence and Portraits

*Article 88.* Letters exchanged in personal correspondence, family and personal records and writings of private

character may not be either reproduced or disclosed without the consent of the author and the addressee.

In the case of sound recordings, photographs and audiovisual works of private character, the consent of the persons heard or shown shall also be necessary if those persons are recognizable.

Without prejudice to the provisions of this Law on the protection of the author's moral rights, the reproduction and disclosure of the works mentioned in the foregoing paragraph shall not be allowed after the death of the persons, other than the author, mentioned in the first paragraph of this Article where the spouse, children, brothers and sisters or father and mother of the said persons object to such reproduction and disclosure.

*Article 89.* Consent under the foregoing Article shall not be necessary where knowledge of the work is required for the purposes of a civil, criminal or administrative judgment or for the defense of the honor or reputation of a person or family.

*Article 90.* The likeness of a person may not be disclosed or reproduced without the consent of that person.

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

*Article 91.* In cases other than those provided for in Article 89, the consent of the person portrayed shall not be necessary where the reproduction or disclosure of the photographic likeness or of the likeness embodied in an audiovisual work is justified by the notoriety of the person concerned or the public position occupied by him or by scientific, educational or cultural considerations, or where the reproduction or disclosure is connected with acts, events or ceremonies taking place in public or being in the public interest.

*Article 92.* Unless otherwise agreed, the photographic likeness or likeness embodied in an audiovisual work that has been produced on behalf of the person portrayed shall imply assignment to the said person of the right of economic exploitation of the work.

#### Chapter VI: Rights of Performers

*Article 93.* The performers of a dramatic, literary or musical work shall be entitled to equitable remuneration, regardless of any reward that they may receive for their performance, from any person who makes a sound or audiovisual recording or radio or television broadcast of the said work.

*Article 94.* Performers shall have the right to object to the release of sound recordings and audiovisual works derived from their performances that might be detrimental to their honor or reputation.

*Article 95.* The provisions of the foregoing Articles of this Chapter shall not apply where the performance occurs in connection with the production of a sound recording, audiovisual work or radio or television broadcast and where the performer receives payment for the purpose.

*Article 96.* For the purposes of the provisions of this Chapter, the following are considered performers:

- (a) persons who, in the dramatic, literary or musical work, play a part that has a degree of artistic relevance, even if only in a minor role;
- (b) orchestra conductors and choirmasters;
- (c) orchestral ensembles, choirs and ballet troupes, provided that their performance has an artistic value of its own.

*Article 97.* The performers of a work shall have the right to have their names prominently and permanently displayed when the works, sound recordings and audiovisual productions are released.

#### Chapter VII: Fair Uses

*Article 98.* The following shall be free, provided that the work has first been disclosed:

- (a) the private performance of a work carried out free of charge and exclusively within a family or circle of friends;
- (b) copies or reproductions that are strictly reserved for the private use of the person who makes them and are not intended for collective use, with the exception of copies of works intended to be used for purposes identical to those for which the original work was created;
- (c) analyses and short quotations justified by the critical, polemic, educational, scientific or informative character of the work in which they are incorporated;
- (d) the dissemination, even in their entirety, in the press or a radio or television broadcast, as news of current events, of speeches made in the course of political, administrative, judicial or academic gatherings, or at public meetings of a political nature and official ceremonies;
- (e) parodies and caricatures of preexisting works;
- (f) the reproduction, even in their entirety, of enactments of State or public administrations and also judicial enactments, without prejudice to the provisions governing State secrecy or otherwise limiting the dissemination of the said enactments.

*Article 99.* The reproduction in the course of a judicial proceeding of works that have already been disclosed shall be lawful.

Where it is necessary, in the course of a judicial proceeding of criminal character, to examine a work that

has not yet been disclosed, the examination shall be conducted in such a way that the work itself does not come to the notice of the public.

In any event, a work shall not be considered disclosed on the sole ground that it has been examined in the course of a judicial proceeding.

*Article 100.* The reproduction of news and information on current events shall be lawful on condition that the codes of conduct of journalism are respected and sources are mentioned.

*Article 101.* The reproduction or slavish imitation of the configuration of a work in other works of the same kind shall be prohibited where that configuration or the imitation is liable to create confusion as to the work or the author thereof.

It shall likewise be prohibited to reproduce columns or headings that appear in a publication or audiovisual work of periodical character with sufficient frequency for the usual and typical content of the work to be identified thereby.

The title of a newspaper, magazine or other publication or audiovisual work of periodical character may not be reproduced in other works of the same kind until three years have elapsed since its most recent use ended.

## TITLE V FINAL PROVISIONS

### Chapter I: Withdrawal of Copies of the Work

*Article 102.* Where very serious moral or philosophical considerations dictate, the author may avail himself of the faculty provided for in item (f) of Article 28, subject to prior indemnification of any person who may have acquired the right of economic exploitation of the work or who may be the assignee of any of the rights of use deriving therefrom.

*Article 103.* The right to withdraw the work from circulation shall be personal and intransferable and not susceptible of renunciation, and shall end on the death of the author.

The author who intends to avail himself of the said right shall advise any person referred to in the preceding Article and also the Secretary of State for Home Affairs accordingly, who shall publish a notice to that effect in the Official Gazette of the Republic.

*Article 104.* The indemnity accruing to the persons referred to in Article 102 may be either agreed upon between the parties concerned or set by the judicial authority.

In the event of agreement, the agreement shall be officially approved, in a decree not subject to appeal, by the *Commissario della Legge*, which shall satisfy itself that the terms of the agreement strike a fair balance between the interests involved.

In the absence of agreement, any of the parties concerned may appeal to the *Commissario della Legge* to set the indemnity.

The *Commissario della Legge* shall pronounce in a ruling not subject to appeal which shall also order the carrying out of the withdrawal of the work, the payment of the indemnity and the provision of appropriate guarantees.

*Article 105.* Independently of the procedure under Article 104, all dissenting parties may lodge an appeal with the *Commissario della Legge* against the exercise of the faculty of withdrawal of the work if they consider that the prerequisites for such action are not present.

The *Commissario della Legge* shall pronounce in a ruling not subject to appeal.

*Article 106.* The *Commissario della Legge* shall moreover be exclusively competent to order, at the request of the author and subject to the provision of adequate security, such provisional measures as are necessary to ensure the effective exercise of the right to withdraw the work from circulation.

Those measures shall be instituted by decrees not subject to appeal after all dissenting parties have been heard.

The validity of the decree shall be subject to the provision of security, and shall end as of right if, within one month, official approval has not been sought for the agreement on the indemnity accruing to the persons referred to in Article 102 above and no appeal under the third paragraph of Article 104 has been lodged.

Where any of the circumstances provided for in the foregoing paragraph obtains, or where the author does not, within the time limits set therein, fulfill the obligations imposed on him by the ruling handed down under the last paragraph of Article 104, the decree or ruling shall become inoperative as of right, and the author shall be bound to indemnify the persons referred to in Article 102 for any prejudice that they may have sustained.

### Chapter II: Area of Application

*Article 107.* This Law is applicable to the works of authors of San Marino, regardless of the place of first disclosure, and to the works of foreign authors the first disclosure of which occurred on the territory of the Republic.

Where the work is disclosed by means of a radio or television broadcast, the place of disclosure shall be deemed to be that in which the broadcast occurred, as determined by the provisions of Article 67.

This Law shall also apply to audiovisual works and sound recordings the producer of which is a citizen of San Marino or a company set up under the laws of the Republic and having its headquarters and a permanent establishment therein.

*Article 108.* Works that do not belong to the categories provided for in the foregoing Article shall be protected according to the provisions of the international conventions to which the Republic is party.

*Article 109.* This Law shall apply to works not protected under the provisions of Articles 107 and 108 only to the extent of granting *de facto* protection equivalent to that which the author's national legislation grants in respect of the works of authors of San Marino first disclosed on the territory of the Republic.

If the author is stateless or of disputed nationality, due regard shall be had to the protection granted by the law of the State in which the work was first disclosed.

*Article 110.* A work protected under this Law by virtue of a system of *de facto* equivalence within the meaning of Article 109 may not in any event be allowed a term of protection greater than that allowed it by the foreign law, determined according to the foregoing Article, or than that allowed by the same foreign law for the works of authors of San Marino first disclosed on the territory of the Republic, whichever is the shorter.

If the foreign law makes protection subject to compliance with a registration formality, incorporates a period of compulsory licensing in the term of protection or makes the grant of protection, its duration or its renewal subject to obligations, conditions or charges, the work referred to in the first paragraph of Article 109 shall be made subject to equivalent conditions.

*Article 111.* *De facto* equivalence shall be recognized by a Decree of the Regents on a proposal by the Congress of State, on the advice of the Secretary of State for Foreign Affairs.

The said Decree shall specify the conditions to which the grant of protection under the provisions of Article 110 is subject.

### Chapter III: Civil Sanctions

*Article 112.* Any person who is prejudiced in his exercise or ownership of copyright or of any of the rights of economic exploitation deriving therefrom, which rights vest in him by law or by contract, may bring a court action to effect the elimination of the factual situation constituting the violation, and also to secure compensation for prejudice sustained.

*Article 113.* Where the violation referred to in the foregoing Article consists in the unlawful reproduction,

disclosure or importation of the work into the territory of the Republic, the aggrieved party may request that the person responsible for the violation be condemned to pay damages equivalent to four times the prejudice sustained.

Without prejudice to the possibility accorded to the aggrieved party of proving that he has sustained a serious prejudice, the damage done shall be deemed to be equivalent to the profits that the person responsible for the violation has or might have derived, either directly or indirectly, from the accomplishment of the acts referred to in the foregoing paragraph.

For the purposes of the application of the provisions of this Article, where the acts referred to in the first paragraph are ascertained, fault shall be presumed.

*Article 114.* Any person who has reason to fear a violation of copyright or of one of the rights of economic exploitation deriving therefrom, which rights vest in him by law or by contract, may bring a court action to have his rights confirmed and the violation prohibited.

The exercise of the action provided for in this Article shall be without prejudice to the right to bring action under Articles 112 and 113 against the same persons, with a view to securing compensation for damages already sustained.

*Article 115.* Any person who intends to bring one of the actions provided for in the preceding Articles of this Chapter may appeal to the *Commissario della Legge* to order the provisional execution of such measures of prohibition, prevention or restraint as are necessary to ensure the effective exercise of his rights or to ensure the settlement of his claim and payment for damages.

The *Commissario della Legge* shall pronounce by decree after having heard without delay, for the purpose of eliciting summary information, the party against whom the measure in question is to be executed.

In cases of particular seriousness or urgency, or where the party against whom the measure is to be executed has no domicile or usual residence or representative authorized to engage in legal proceedings on the territory of the Republic, the *Commissario della Legge* may dispense with the hearing of the parties and order the execution of the measure, where appropriate requiring the plaintiff to deposit security commensurate with his economic resources and the seriousness of the measure applied for.

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

The decree shall be enforceable without any restriction as to the date or time of day.

*Article 116.* The measures referred to in the foregoing Article shall cease to apply if the plaintiff fails to bring an action on the merits of the case within eight days following the execution of the said measures.

The action on the merits of the case shall be brought before the *Tribunale Commissariale*, including where the defendant has no domicile, usual residence or representative competent to engage in legal proceedings on the territory of the Republic.

Even if he has not been summoned as defendant, the party against whom the measure has been executed shall be called upon, on the initiative of any of the interested parties, to be present at the judgment on the merits, failing which the action may not proceed.

Opposition to the measures referred to in the foregoing Article shall be possible only in connection with the judgment on the merits; however, where the ruling on the merits seems complex, the party against whom the measure has been executed and also the defendant in the substantive action may request the court to rule provisionally on the validity of the measure.

In the case provided for in the first paragraph of this Article, any person who has suffered a prejudice due to the execution of the measures referred to in Article 115 may validly bring an action seeking compensation for damages.

#### Chapter IV: Criminal Sanctions

*Article 117.* Any person who refuses to comply with a measure ordered by the *Commissario della Legge* under Article 115 of this Law shall be punished under Article 259 of the Criminal Code, except where the offending act constitutes a more serious offense. The action provided for in this Article shall have no staying effect on the civil action referred to in the first paragraph of Article 116 of this Law.

*Article 118.* Any person who reproduces, discloses, acquires or stocks with a view to disclosure or brings into the territory of the Republic works that are protected by this Law, thereby obstructing the exercise or ownership of copyright or one of the rights of economic exploitation deriving therefrom, shall be punished with a fine of

50,000 to 150,000 lire. The sanction shall be imposed by the *Commissario della Legge* on a report from the civil and State police authorities.

#### Chapter V: Transitional Provisions

*Article 119.* Works disclosed prior to the date of entry into force of this Law shall be protected as from that date and for the term specified in the provisions of Chapter III of Title II of this Law, calculated from the original date of disclosure; the provisions of Chapter II of this Title shall be applicable to those works.

*Article 120.* Copies of the works referred to in the foregoing Article may be sold, even without the authorization of the owner of the copyright or his successors in title, for a period of 250 days following the entry into force of this Law, on condition that they have been manufactured on—or if manufactured abroad have been imported into—the territory of the Republic prior to the date of entry into force of this Law.

Any person intending to avail himself of the provisions of this Article shall provide proof that the conditions specified in the foregoing paragraph are met.

With respect to copies imported from abroad, such proof may only be provided by submission of documentary evidence of payment of the Single Tax (*Imposta Monofase*).

In the absence of proof to the contrary, the copies referred to in the first paragraph of this Article shall be deemed to have been imported from abroad; testimonial evidence of their manufacture on the territory of the Republic shall not be acceptable.

#### Chapter VI: Entry Into Force

*Article 121.* This Law shall enter into force on the 15th day following the legal publication thereof.