

**LAW No. 9.739 OF 17 DECEMBER 1937 ON LITERARY AND ARTISTIC PROPERTY AS AMENDED BY LAWS No. 17.616 of 10 January 2003, No. 17.805 of 26 August 2004 and No. 18.046 of 24 October 2006 ON COPYRIGHT AND RELATED RIGHTS<sup>1</sup> (ANNOTATED)**

*ARTICLE 1*

This law protects the author's moral rights in any literary, scientific or artistic creation and recognizes his right of ownership over the productions of his thought, science or art, subject to the provisions of general law and the following articles.

**Likewise, on the basis of the provisions arising from this law, it protects the rights of the artists, performers, producers of phonograms and broadcasting organizations. This protection shall not affect in any way that of copyright for the protected works. Consequently, any of the provisions contained in this law in favour of copyright may not be construed to the detriment of such protection.<sup>2</sup>**

*ARTICLE 2*

**Copyright in the works protected by this law includes the author's exclusive right to alienate, reproduce, distribute, publish, translate, adapt, transform, communicate or make available to the public such works, in any form or by any process.**

**The right to reproduce a work includes the fixation of the work or production protected by this law, in any form or by any process, including the making of copies, their electronic storage - whether permanent or temporary-, which enables its perception or communication.**

**The right to distribute a work includes the making available to the public of the original or of one or more copies of the work or production, by means of sale, exchange or other form of transfer of ownership, rental, loan, importation, exportation or any other form whether now known or hereafter devised, which implies the exploitation of it.**

**The right to publish a work includes the use of the printing press, lithography, polygraph and other similar processes; the transcription of improvisations, speeches, readings, etcetera, even if they are made in public, and likewise the recitation in public by means of stenography, dactylography and other means.**

**The right to translate a work includes not only the translation into languages, but also the translation into dialects.**

**The right to communicate a work to the public includes: the public performance of dramatic, dramatico-musical, literary and musical works, by any means or process, be it with the direct participation of performers, or received or generated by mechanical, optical or electronic instruments or processes, or from a sound or**

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<sup>1</sup> This publication incorporates all legal provisions of Law No. 9.739 of 17 December 1937 as amendments thereto. The text in "bold" shows the resulting amendments.

<sup>2</sup> Final paragraph added by art. 1 of law 17.616 promulgated on 10 January 2003 and published in the Official Gazette on 17 January 2003.

audiovisual recording, or other source; the public projection or exhibition of cinematographic works and other audiovisual works; the transmission or retransmission of any work by radio or other means of wireless communication, or by wire, cable, optic fibre or other analogous process serving for the dissemination of signs, words, sounds or images, whether or not on subscription or payment; the making available, at a place accessible to the public or by means of any suitable instrument, of the work transmitted or retransmitted by radio or television work; the public exhibition of works of art or their reproductions.

In general, public communication includes any act through which the work is put within reach of the public, by any means (wire or wireless) or process, including the making available to the public of the works, in such a way that members of the public may access to these works from a place and at a time individually chosen by them.<sup>3</sup>

### *ARTICLE 3*

This right is limited in time, in accordance with the following articles, without prejudice to the special provisions passed by law in respect of foundations or other kind of entailments.

However, the rights to which the State, the Municipality or any other public entity, in matters governed by this law, shall be recognized in perpetuity.

### *ARTICLE 4*

The legal Protection for this right shall be provided in all cases and to the same extent irrespective of the nature or the origin of the work or of its author's nationality, and without distinction of philosophic, Political or economic school, sect or tendency.

### *ARTICLE 5*

**Copyright protection shall cover the expression of ideas, procedures, methods of operation or mathematical concepts, but not those ideas, procedures, methods or concepts per se.**

**For the purposes of this law, the intellectual, scientific or artistic production comprises:**

**Musical compositions with or without printed words, or in records, cylinders, wires or films, following any process of printing, recording or perforation, or any other medium of reproduction or performance: geographic charts, atlas and maps; writings of any nature.**

**Pamphlets.**

**Photographs.**

**Illustrations.**

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<sup>3</sup> Writing given by article 2 of law No. 17.616.

**Books.**

**Professional opinions and court pleadings.**

**Dramatic works, of any nature or extent, with or without music.**

**Works of applied art relating to science or teaching.**

**Audiovisual works, including cinematographic works, made and expressed by any means or process whatsoever.**

**Works of drawing and craftwork.**

**Documents or scientific and technical works.**

**Works of architecture.**

**Works of painting.**

**Works of sculpture.**

**Formulae of exact, physical or natural sciences, provided they are not protected by special laws.**

**Works broadcast on radio or television.**

**Texts and apparatus for teaching.**

**Engravings.**

**Lithography.**

**Choreographic works whose arrangement or stage production "mise en scène" is made in a written form or by other process.**

**Original literary, dramatic or musical works, where they constitute a creation.**

**Pantomimes.**

**Literary pseudonyms.**

**Plans or other graphic or statistic graphic productions, irrespective of the method of printing.**

**Designs or creations having artistic value as regards dress design, furniture, scenery, ornamentation, headdress, finery or fine objects, provided that they are not protected by the legislation in force on industrial property.**

**Computer programs, whether source or object programs; compilations of data or other materials, in any form, which by reason of the selection or arrangement of their contents constitute creations of intellectual nature. This protection does not cover those data or materials per se, and this is so without prejudice to any**

copyright subsisting in respect of such data or materials contained in the compilation. The expression of ideas, pieces of information and algorithms, in so far as it is formulated in original sequences ordered in a suitable manner in order to be used by a data processing device or an automatically controlled device, shall be protected in the same way.

And, finally, any production of the domain of intelligence.<sup>4</sup>

#### *ARTICLE 6*

The rights recognized in this law are independent from the ownership of the material object in which the work is incorporated.

The enjoyment and exercise of the said rights shall not be subordinated to any formality or registration and they are both independent from the existence of protection for the work in the country of origin.

In order that the holders of works and other rights protected by this law are, unless proven otherwise, considered to be such and are consequently admitted before the administrative or judicial authorities, to sue the infringers, their names appearing on the work, performance, phonogram or broadcast, in the usual form, shall be sufficient.<sup>5</sup>

#### *CHAPTER II HOLDERS OF THE RIGHT*

#### *ARTICLE 7*

The holders of the right, with the limitations provided below, are:

- a) The author of the work and his successors;
- b) His collaborators;
- c) The person acquiring the work in any mode;
- ch) Translators and those who, in any form, duly authorized, act in already existing works (by revising, adapting, modifying them, etc.) to make the new resulting work;
- d) The performer of a literary or musical work giving his performance; the producer of phonograms making his phonogram; and the broadcasting organization making its broadcasts;<sup>6</sup>**
- e) The State.

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<sup>4</sup> Writing given by art. 3 of law 17.616.

<sup>5</sup> Writing given by art. 4 of law 17.616.

<sup>6</sup> The writing of subparagraph d) is that of art. 5 of law 17.616 .

*CHAPTER III  
THE AUTHOR AND HIS SUCCESSORS*

*ARTICLE 8*

Copyright, of patrimonial nature, is transmissible in all forms established by law. The contract, in order to be valid, must necessarily be drawn up in writing, but it may not be opposed to third parties but from the time of its entry in the Registry.

Where the contract is executed in a foreign country, its registration may be made before the diplomatic or consular authorities of Uruguay.

*ARTICLE 9*

**In the event of a resale of works of art or sculpture made at auction, in a commercial establishment or through the agency of a broker or dealer, the author, and on his death, his heirs or legatees - until the time the work passes to public domain -, shall have the inalienable and unrenounceable right to receive from the seller 3% (three per cent) on the resale price. The auctioneers, brokers or dealers that participate in the resale shall be withholding agents on the author's share in the price of the resold work and shall be obliged to pay such amount, within the period of thirty days following the auction or negotiation, to the author or the corresponding administration entity. The non observance of this obligation on the part of the auctioneer, broker or dealer, shall make him jointly liable for the payment of the said amount.<sup>7</sup>**

**In the cases of resale mentioned in this article, the amount to which the State is entitled to receive by way of public domain paid from 3% (three per cent) on the price, shall be intended for the Grant Fund for Culture laid down in paragraph one of article 238 of [Law N° 17.930](#) of 19 December 2005. The sums payable and which have not still been paid by the individuals obliged thereto shall also be given to the said Fund.<sup>8</sup>**

**Let it be declared by way of interpretation of [articles 9 and 42, paragraph A\), of Law No 9.739](#), of 17 December 1937, in the writing given by article 6 of [Law No 17.616](#), of 10 January 2003, that the works of art or sculpture mentioned in the said article 9, fallen in the public domain, being the subject of resale effected in the conditions stated in the same law (at auction, in a commercial establishment or through the agency of a broker or dealer), shall be subject to the payment of a tariff of 3% (three per cent) on the resale price established therein, in the same terms and conditions.<sup>9</sup>**

*ARTICLE 10*

During the lifetime of the author, the third part of the copyright sums that the work may give following the date of its legal protection or the date it is effectively put on the market shall be unattachable.

<sup>7</sup> Writing given by art. 6 of law 17.616 . **ART. 30 OF LAW 18046 ALSO AMENDS ART. 42**

<sup>8</sup> Final paragraph of art. 30 of law 18046 of 17 October 2006.

<sup>9</sup> Art. 30 of law 18046 of 17 October 2006.

#### ARTICLE 11

The right to publish an unpublished work, to reproduce a published work or to deliver the work under contract, constitutes moral rights not susceptible of condemnation.

#### ARTICLE 12

Irrespective of the terms of the assignment or disposal of rights under contract, the author shall have over his work the right:

1. To demand that his name or pseudonym and the title of his work are mentioned in all publications, performances, broadcasts, etc, that should be done of his work;
2. To control the publications, performances, reproductions or translations of the work, and to object that the title, text, composition, etc. thereof are suppressed, supposed, altered, etc.;
3. To correct or modify the work disposed of, provided this does not alter the nature or purpose of the work and does not prejudice the right of bona fide acquiring third parties.

#### ARTICLE 13

Where serious moral reasons arise, the author shall have the right to withdraw his work and shall indemnify the interested assignees, publishers or printers for the damage unjustly caused. As a guarantee for such indemnification, he may be compelled by the Judge to previously give security therefor.

The right laid down in this article is personal and unassignable.

#### ARTICLE 14

The author shall retain his right of ownership during his lifetime, and his heirs or legatees, for a period of **fifty** years following the death of the author.

**The works and the rights related thereto protected by this law that may be in the public domain without the terms of protection provided for in this law not having expired, shall automatically return to the public domain, without prejudice to the rights that third parties have obtained over the reproductions of such works and rights related thereto during the period of time they have been in the public domain. The period of time during which the works referred to in the foregoing paragraph have been in the public domain shall not be discounted from those fifty years.**

**This article shall apply in relation to artists or performers.**

In the case of posthumous works, the right of the heirs or legatees shall last for **fifty** years following the death of the author.

If the work is not published, performed or exhibited within ten years following the death of the author, it shall fall in public domain.

If the heirs are minors, the period shall commence as from the date they have legal representation for that purpose.<sup>10</sup>

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<sup>10</sup> Text pursuant to the amendment provided for in art. 7° of law 17.616.

#### *ARTICLE 15*

In the case of works of joint authorship, the term of ownership of the heirs or legatees shall be calculated as from the death of the last co-author. In the event of the death of one co-author who does not have any successors or forced heirs, the proceeds of the work, to which he would have been entitled for **fifty** years following his death, shall be transferred to General Revenue.<sup>11</sup>

#### *ARTICLE 16*

On the death of the author, the right to defend the integrity of his work shall be transmitted to his heirs, and subsidiarily, to the State.

The work shall not be the subject of any editing or correction, not even with the consent of the author's successors in title, without specially marking the added or modified passages.

#### *ARTICLE 17*

**In the case of anonymous or pseudonymous works, the duration shall be fifty years as from the date on which the work has been lawfully made available to the public, unless the author reveals his identity before such period of time has expired, in which case, the provisions of article 14 of this law shall be applied.**

**In the case of collective works, the patrimonial right shall lapse fifty years after their publication or, in the absence of such publication, after their duly authorized making or disclosure.**

**The periods established in articles 14 and following articles shall be calculated from 1st January of the year following that of the death of the author or, otherwise, that of the duly authorized making, disclosure or publication of the work.**<sup>12</sup>

#### *ARTICLE 18*

**The patrimonial rights recognized in favour of the producers of phonograms and broadcasting organizations shall have a term of fifty years counted from:**

- A) 1st January of the year following that of the publication, in the case of phonograms and recorded performances.**
- B) 1st January of the following year in which the performance has been made, in the case of performances that are not recorded.**
- C) 1st January of the following year in which the broadcast has been made, in the case of radio broadcasts.**<sup>13</sup>

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<sup>11</sup> Text pursuant to the amendment provided for in art. 7° of law 17.616.

<sup>12</sup> Writing given by article 8 of law 17.616.

<sup>13</sup> Writing given by article 9 of law 17.616.

#### *ARTICLE 19*

By reason of the fact that a work has been obtained, reproduced or performed without the payment of the corresponding amount, by the tolerance of the author, it shall not mean that the author has waived his ownership.

#### *ARTICLE 20*

The photographs, statues, paintings and other artistic forms that represent a person shall be considered to be his ownership, including the right to reproduction, provided that they have been commissioned.

There shall be excepted any work made spontaneously by the artist, with the authorization of the person represented in the work, in which case the author shall have full rights thereto, in his capacity as such.

#### *ARTICLE 21*

The portrait of a person may not be put on the market without the express consent of such person, and upon his death, the death of his spouse, his children or his parents.

The person who has given his consent may revoke it, and in such event, he shall indemnify for damages.

The person shall be free to publish the portrait where this is made for scientific, didactic and, in general, cultural purposes or where this is related to facts or events of public interest which have taken place in public.

**ARTICLE 22.- Unless agreed to the contrary, the authorization for the use of articles in periodicals, magazines or other media of social communication, granted by the author without employment relation with the media organization, only confers on the publisher or owner of the publication the right to utilize it once and once only, the other patrimonial rights of the assignor or licensor being safeguarded.**

**The rights of authors by virtue of employment relations shall be presumed to be assigned only for the use of the organization or the communication medium he works for.**

**The use of the article in media or with purposes other than those for which the author has been hired shall have the author's authorization.**

**Each time the article is republished, totally or partially, the author of the article shall be identified as he was the first time.**<sup>14</sup>

**ARTICLE 23.- In all cases, the author shall retain the rights in respect of the publication independently from his production.**<sup>15</sup>

**ARTICLE 24.- The provisions in the foregoing articles shall be applied in an analogous form to drawings, cartoons, caricatures, photographs and other works susceptible of publication in periodicals, magazines or other media of social communication.**<sup>16</sup>

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<sup>14</sup> Art. 1, Law 17805 of 17 August 2004

<sup>15</sup> Art. 2, Law 17805 of 17 August 2004

<sup>16</sup> Art. 3, Law 17805 of 17 August 2004



#### *ARTICLE 25*

Political, scientific or literary speeches and, in general, conferences on intellectual matters, may not be published if the author has not authorized so. Parliamentary speeches may be freely published except where the publication is made for profit-making purposes, in which case the author's authorization shall be necessary.

There shall be excepted the journalistic information.

#### *CHAPTER IV COLLABORATION*

#### *ARTICLE 26*

The work of collaboration constitutes indivisible ownership and, consequently, co-authors are conferred equal rights therein, unless agreed to the contrary. (Article 1755 of the Civil Code).

#### *ARTICLE 27*

The collaborators of a collective compilation shall not be considered, in the absence of an express agreement, to be the authors of their collaboration, in which case the work shall belong to the editor.

#### *ARTICLE 28*

Collaboration is presumed, unless proven otherwise:

- a) In musical compositions accompanied with words;
- b) In dramatic works with music;
- c) Where, should exist plurality of authors, the ownership may not be divided without altering the nature of the work, and
- d) In choreographic and pantomimic works.

#### *ARTICLE 29*

**Collaborators exercising the right provided for in article 26, may publish, translate or reproduce the work, without other condition than respecting the profit to which the other collaborators are entitled.**

**Where an audiovisual work is concerned, co-authors are presumed to be, unless proven otherwise: the director or producer, the author of the plot, the author of the adaptation, the author of the script and dialogues, the composer if there may be any, and the designer in the case of animated designs.**

**It is presumed, unless otherwise agreed, that the authors of the audiovisual work have transferred their exclusive patrimonial rights to the producer, who is also invested with the right to modify or alter it, and is also authorized to decide upon its disclosure.**

The authors of musical works or composers shall retain the right to receive remuneration over the public communication of the audiovisual work, including the public exhibition of cinematographic films, and the rental and sale of the physical media, unless otherwise agreed.

Without prejudice to the rights of authors, the producer may, unless otherwise specified, defend his moral rights over the audiovisual work.

It is presumed, unless otherwise agreed, that the producer of the audiovisual work is the natural person or the legal entity being mentioned as producer in the work, in the usual form.

It is presumed, unless otherwise agreed, that the authors of the creations referred to in the paragraph about computer programs and databases of article 5 of this law, have transferred the exclusive and unlimited patrimonial rights therein to the producer, which implies the authorization to decide upon their disclosure and to exercise the moral rights therein.

The authors, unless otherwise agreed, may not object to the fact that the producer makes or authorizes changes or successive versions of such creations.

Where the creations referred to in the paragraph about computer programs and databases of article 5 of this law, have been made by virtue of employment relations, whether public or private, whose total or partial subject is of similar nature as that of such creations, it is presumed that the author has authorized the employer or commissioner, unlimitedly and exclusively, to exercise the patrimonial rights and the moral rights, unless otherwise agreed.<sup>17</sup>

#### *ARTICLE 30*

In the case of an anonymous or pseudonymous work, the publisher or the producer shall be entitled to copyright, in so far as he does not disclose his incognito name and enforces his capacity of such.

#### *CHAPTER V ACQUIRERS*

#### *ARTICLE 31*

The acquirer in any mode of one of the works protected by this law replaces the author in all his obligations and rights, with the exception of those that, due to their nature, are personal. (Articles 9, 10, 11, 12, 13 and 19).

#### *ARTICLE 32*

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<sup>17</sup> Writing given by art. 10 of law 17.616 . The text thereof amends article 29 of law No. 9.739 of 17 December 1937, in the writing given by art. 1 of law 9.769 of 25 February 1938.

If the assignee or acquirer of the right omits to make perform or reproduce the work, pursuant to the terms of the contract or in the absence of such terms, in accordance with the uses and nature and purpose of which the work has been made, the author or his successors in title may request the fulfillment of the contracted obligation. Where a year expires without the fulfillment of such obligation, the assignee shall lose his acquired rights without restitution of the paid price; and shall deliver the original of the said work. The author or his heirs may also claim indemnification for damages.

This provision is of public order, and the acquirer may only elude it by reason of force majeure or fortuitous event which is not ascribed to him.

#### *COMMON PROVISION*

##### *ARTICLE 33*

The right to economic exploitation by the acquirer shall belong to him for fifteen years following the death of the author, and shall be transmitted, upon the expiration of such period, to his heirs, who shall enjoy the ownership of such right as provided for in article 14.

#### *CHAPTER VI TRANSLATORS AND ADAPTORS*

##### *ARTICLE 34*

Unless otherwise agreed, translators are holders of copyright over the translation, provided it has been made with the consent of the original author.

They have the same right over the translation of works fallen into the public domain, but in this case, they may not prevent other versions of such work from being published in the same language or in any other.

##### *ARTICLE 35*

Any person who revises, copies, extracts, adapts, abridges, reproduces or parodies original works, shall have the ownership of those works, provided they have made so with the authorization of the authors.

#### *CHAPTER VII* **THE RIGHTS OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS**<sup>18</sup>

##### *ARTICLE 36*

The performer of a literary or musical work shall have the right to claim remuneration on his performance transmitted or re-transmitted by radio, television, or recorded or fixed in a record,

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<sup>18</sup> Writing given by art. 11 of law 17.616.

film, tape, wire or any other material substance or medium suitable for sound or visual reproduction. Upon failure to reach an agreement, the amount of remuneration shall be established in summary proceedings by the competent judicial authority.

*ARTICLE 37*

The performer of a literary or musical work shall have the right to object to the disclosure of his performance, where the reproduction of such performance is made in such a way that it may cause serious or unjust prejudice to his artistic interests.

*ARTICLE 38*

Where the performance has been given by a choir or an orchestra, the conductor of the choir or orchestra shall have the right of objection.

*ARTICLE 39*

**Exclusive rights of performers, producers of phonograms and broadcasting organizations:**

**A) Performers have the exclusive right to authorize:**

**the reproduction of their performances fixed on phonograms, by any process or in any form; the making available to the public of the original and the copies of their performances fixed on phonograms, by means of sale or other transfer of ownership; the commercial rental to the public of the original and the copies of their performances fixed on phonograms; the making available to the public of their performances fixed on phonograms, whether by wire or by wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them.**

**Likewise, they enjoy the right to authorize: the broadcast and the communication of their non-fixed performances to the public, except where the performance is in itself a performance broadcast by radio; and the fixation of their non-fixed performances.**

**B) Right of the producers of phonograms. The producers of phonograms shall enjoy the exclusive right to authorize: the reproduction of their phonograms, by any process or in any form; the making available to the public of the original and the copies of their phonograms, by means of sale or other transfer of ownership; the commercial rental of the original and the copies of their phonograms to the public even after their distribution has been organized by themselves or with their authorization; the making available to the public of their phonograms, by wire or by wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them.**

**C) Broadcasting organizations have the exclusive right to authorize: the re-transmission of their broadcasts, whether direct or recorded, by any means or process now known or hereafter devised; the making available to the public of their broadcasts, whether by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them. The fixing on any medium, whether sound or audiovisual, of their broadcasts, including that of any isolated image transmitted in the broadcast or transmission; the reproduction of their broadcasts.**

Likewise, broadcasting organizations shall have the right to receive equitable remuneration for the public communication of their broadcasts or transmissions, where such communication occurs in places to which the public may have access against payment for an admission charge or ticket. Where a broadcasting organization, without the authorization of the author, and without payment of a special remuneration, makes ephemeral recordings using its own equipment, and such to be used once and once only, in its own broadcasts, of a work over which it has the right to broadcast, is considered to be lawful. The said recording shall be destroyed within a period of three months, unless a longer period has been agreed upon with the author. However, the said recording may be kept in official archives, also without the authorization of the author, where it has exceptional documentary character.

C) Common provision for performers and producers of phonograms.

Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for direct or indirect use of the phonograms published for commercial purposes for the broadcast or any communication to the public. In such case, the provision contained in article 36 shall not apply.

The said remuneration shall be claimed from the user by both of them or by the collective administration entity to which they delegate their collection.<sup>19</sup>

*CHAPTER VIII  
THE STATE AND PUBLIC-LAW ENTITIES.  
PUBLIC DOMAIN*

*ARTICLE 40*

The State, the Municipality and public-law entities are also holders of copyright, where, in any mode recognized by law, they acquire the ownership of one of the works protected by this law.

Where there is absence of successors in the categories provided for in article 14, or where the period of **fifty** years has expired, the work enters the public domain.

Where the holder is one of the legal entities referred to in this article, copyright shall be perpetual, and shall not be subject to any formality.<sup>20</sup>

*ARTICLE 41*

The State or the Municipality may expropriate copyright subject to the following reservations:

- a) Expropriation shall be conducted over each individual work, and shall be lawful only by reason of high public interest.
- b) The right to publish or broadcast a work may not be expropriated during the lifetime of the

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<sup>19</sup> Writing given by art. 12 of law 17.616.

<sup>20</sup> Amendment to duration introduced by the provisions of art. 7 of law 17.616.

author.

#### ARTICLE 42

Where a work falls into the public domain, any person may exploit it subject to the following limitations:

a) He shall abide by the tariffs laid down by the Copyright Council. The Executive Power, under the regulation of the law, shall ensure that those tariffs are moderate and general for each category of the works;

b) The publication, performance, broadcast, reproduction, etc., must be true and accurate. The Copyright Council shall ensure that this provision is observed without prejudice to the provisions of the following article.

**Let it be declared by way of interpretation of articles 9 and 42, paragraph A), of Law No 9.739, of 17 December 1937, in the writing given by article 6 of Law No 17.616, of 10 January 2003, that the works of art or sculpture mentioned in the said article 9, fallen in the public domain, being the subject of resale effected in the conditions stated in the same law (at auction, in a commercial establishment or through the agency of a broker or dealer), shall be subject to the payment of a tariff of 3% (three per cent) on the resale price established therein, in the same terms and conditions.**<sup>21</sup>

#### ARTICLE 43

Any citizen may report to the Copyright Council on the mutilation of a literary, scientific or artistic work, the additions, transpositions or serious errors in a translation, as well as any other deficiency that might adversely affect the merit of such works.

#### CHAPTER IX UNLAWFUL REPRODUCTION

#### ARTICLE 44

The following, among others, shall be special cases of unlawful reproduction:

A) Literary works in general:

**1. The printing, fixing, reproduction, distribution, communication or the making available to the public of a work without the consent of the author;**<sup>22</sup>

2. The reprinting made by the author or the publisher, breaking the terms of the agreement between them;

3. The printing by the publisher of a larger number of copies than that agreed;

4. The transcription, adaptation or arrangement of a work without the author's consent;

5. The publication of a work having deletions or alterations that have not been authorized by the author or having typographical errors which, due to their number and importance, constitute serious adulterations.

<sup>21</sup> Art. 30 of law 18046 of 17 October 2006.

<sup>22</sup> Writing given by art. 13 of law 17.616.

B) Dramatic, musical, poetic or cinematographic works:

**1. The performance or reproduction of works in any form and by any means, in theatres or public places, without the authorization of the author or his successors in title. For the purposes of this law, any such performance or reproduction shall be considered to be made in a public place where it takes place outside the domestic environment.**

**Nevertheless, those performances made within strictly family gatherings that take place outside the domestic environment shall be considered to be lawful where the following requirements are met:**

**i. The gathering shall not have gainful intent.**

**ii. Disco, audio services or alike shall not be used, and any live performer shall participate in the gathering.**

**iii. Only domestic (non-professional) music apparatus shall be used.**

**Within the framework of the powers recognized by this law, collective administration entities may verify whether the said requirements are met.**

**Gatherings that take place in teaching institutions, whether public or private, and in places intended for religious ceremonies shall not be considered to be unlawful either, provided they do not have gainful intent.**<sup>23</sup>

2. The performance in theatres, or places other than those agreed upon by the author and the assignee;
3. The appropriation of the words for a musical composition, or of the music for a written composition, or of any work for a cinematographic film, photographic records, etc., without the respective authors' consent;
4. The performance of a work with alterations or deletions not authorized by the author;
5. The performance of plays whose author has granted the exclusive rights therein to a specific organization or corporation;
6. The broadcast of figures or sounds by broadcasting stations or by any other process, without the authorization of the author or his successors in title, as well as their dissemination in public places, whether against payment for an admission charge or not, by means of loudspeakers, phonorecords, etc.
7. The performance of musical works in cinematographic films, without the authorization of the authors, even where they have authorized the synchronization of the works in question.

C) Sculptures, paintings, engravings and other artistic, scientific or technical works:

1. The copy or reproduction of a portrait by any process, without the author's consent,
2. The copy or reproduction of a portrait sculpture or photograph representing a person, where it has been commissioned and the said person has not authorized it.

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<sup>23</sup> Writing given by art. 14 of law 17.616.

3. The copy or reproduction of plans, façades or architectural solutions, without the author's consent.

D) Adaptations, arrangements or imitations which are supposed to be a hidden reproduction of the original.

#### *ARTICLE 45*

Reproduction is not unlawful:

1. The publication or broadcast by radio or the press, of works intended for the teaching of extracts, fragments of poetry and separate articles, provided that the author's name is mentioned therein, excluding the provisions of article 22.
2. The publication or broadcast by radio or the press, of oral lessons given by teachers, speeches, reports or statements given in deliberating assemblies, in Courts or in public meetings;
3. News, articles, news reporting or recordings of general interest, provided that their exact version is maintained and the source is mentioned;
4. Transcriptions intended for comments, reviews or polemics;
5. The faithful reproduction of laws, Codes, official acts and public documents of any nature;
6. The reproduction of plays that have been disposed of, where two years have elapsed since the assignee has carried out the performance;
7. The printing or reproduction, on the account of the author or his successors in title, of the literary works that have been disposed of, provided that one year has elapsed since the notification as provided for in 32;
8. The photographic reproduction of paintings, monuments, or allegoric figures exhibited in museums, parks or promenades, provided that the works thereof are considered to be soundly lying in the private domain;
9. The publication of dramatic or musical works on the part of the theatre director or impresario, provided that such reproduction has been made with the author's authorization;
10. The broadcasts of sounds or figures by State broadcasting stations, or by any other process, where such stations are not intended for commercial purposes and are intended exclusively for cultural purposes;
11. The performance by State bands or orchestras of short musical fragments or parts of works in music, in public programs, provided that this is carried out without gainful intent.

#### *CHAPTER X PENALTIES*

#### *ARTICLE 46*



**A) The person who publishes, sells, reproduces or makes reproduce by any means or instrument -totally or partially-; distributes; stores with a view to distribution to the public, or makes available to the public in any form or by any means, with gainful intent or with intent to cause unjustified damage, an unpublished or published work, a performance, a phonogram or broadcast, without the written authorization from its respective holders or successors in any title, or who claims to have rights therein or claims that any person other than the respective holder has rights therein, by infringing in any form the provisions of this law, shall be punished with a three-month prison sentence to a three-year penitentiary sentence.**

**B) The person who manufactures, imports, sells, rents or puts into circulation in any other form, devices or products, the parts or tools thereof, or renders any service with a view to prevent, deceive, suppress, neutralize or evade in any form, the technical mechanisms that the holders have implemented in order to protect their respective rights, shall be punished with the same sentence.**

**In addition to the aforementioned penalties, the Court shall order the confiscation and destruction, or shall rule to use any other means to suppress the infringing copies of the works or productions and their packing or packages, as well as all the items, devices or equipments used for their manufacture. In those cases where the equipments used to commit the said infractions are not intended for the sole purposes of carrying out such activity, the Judge shall substitute the destruction for the delivery of such equipments to official teaching institutions.**

**C) The person who alters or suppresses, without the authorization from the holder of the rights protected by this law, the electronic data supplied by the holders of copyright and related rights, to enable the administration of their patrimonial and moral rights, in such a manner that those rights may be damaged, shall be punished with a three-month prison sentence to a three-year penitentiary sentence. That same sentence shall be imposed on the person who distributes, imports for distribution purposes, broadcasts or communicates to the public, without authorization, copies of the works, performances or phonograms, knowing that such electronic information supplied by the holders of copyright or related rights, has been suppressed or altered without authorization.**

**D) The person who reproduces or makes reproduce, by any means or process, without gainful intent or without the intent to cause unjustified damage, a work, performance, phonogram or broadcast, without the written authorization from its respective holder, shall be punished with 10 UR (ten readjustable units) to 1.500 UR (one thousand five hundred readjustable units) penalty.<sup>24</sup>**

#### *ARTICLE 47*

**As a preparatory measure, the holders of the rights protected by this law may request a judicial inspection with a view to see the facts which infringe this law.**

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<sup>24</sup> Writing given by art. 15 of law 17.616.

Upon the basis of the new writing given to art. 46, paragraph A), art. 27 of law 17.616 has revoked Decree-Law No. 15.289 of 14 June 1982, on phonographic and videographic piracy.

This article (27) states that the new legal text shall not, by virtue of the said decree-law, be applied to the pending proceedings, but the said proceedings shall continue to be subject to Decree-Law 15.289.

The Judge may decree that the premises or place where an infringement has been denounced, are inspected, and an official report describing the facts seen and, where possible, those that may be considered evidence, shall be drawn up.

The inspection decreed by the Judge shall not require guarantee.

The judicial inspection shall be of reserved nature and shall be decreed without notice of the person against whom it is requested. <sup>25</sup>

#### *ARTICLE 48*

The Judge, at the request of the holder of the respective right or his representative, or the collective administration entities, shall order the adoption of precautionary measures necessary to avoid that the infringement is committed or that a violation already committed against the author's exclusive rights subsists or is repeated, and, in particular the following:

- 1) The immediate suspension of the activities for unlawful manufacture, reproduction, distribution, communication or importation, as appropriate.
- 2) The confiscation of the copies produced or utilized and of the material or equipments used for the infringing activity.
- 3) The seizure of the income obtained from the unlawful activity or, as the case may be, of the amounts payable by way of remuneration. <sup>26</sup>

#### *ARTICLE 49. <sup>27</sup>*

#### *ARTICLE 50*

In the case of dramatic, musical or cinematographic works, the nonpayment of copyright by the organization obliged to make such payment, shall also make the owner of the theatre or premises where the performance takes place, liable for such nonpayment.

This provision shall extend to the owners or leaseholders of the premises where choreographic shows or public dances are take place.

#### *ARTICLE 51*

**The prejudiced party, the author or successor in title is entitled to file civil action in order to make such unlawful activity stop, to recover damages and to obtain up to tenfold higher fine than the value of the infringing product.**

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<sup>25</sup> Writing given by art. 16 of law 17.616 of 10 January 2003.

<sup>26</sup> Writing given by art. 17 of law 17.616 of 10 January 2003.

<sup>27</sup> Revoked by art. 26 of law 17.616 of 10 January 2003.

**In all cases, subrogation action may be filed, in accordance with the provisions of article 1295 of the Civil Code.** <sup>28</sup>

#### *ARTICLE 52*

The author of a work, his successor in title, assignee or the person who represents him may request to the corresponding police authorities, **without prejudice to the obligations mentioned in article 49**, the necessary help to cancel a play or instrumental music or vocal performance or broadcast made without the author's consent, where they are made in places in which a sum of money is not charged for admission, or even where a sum of money is charged for admission, the respective programs have not been previously published in advance. In the cases where a sum of money is charged for admission, those programs have been published in advance, the request for help shall be made before the competent Justice of the Peace. **In all cases, the registration certificate issued by the National Library shall be produced or sufficient security shall be given. In the case of a foreign work, the denouncer shall produce the documentary evidence referred to in article 6 of this law.** <sup>29</sup>

#### *CHAPTER XI REGISTRATION OF WORKS*

#### *ARTICLE 53*

**The National Library shall keep copyright records, in which the interested parties may register their works and other intellectual property protected by this law.**

**The registration in the Registry referred to by this article is merely optional, therefore, its omission shall not prejudice in any manner the enjoyment and exercise of the rights recognized by this law. The request, collections, formalities, registration and publication system shall be carried out in accordance with the provisions of the corresponding regulation. All controversies arising by reason of such registrations in the Registry shall be settled by the Copyright Council.** <sup>30</sup>

#### *ARTICLE 54*

All transfers of copyright in the work at the request of the interested party, written upon stamped paper of \$ 0.50, shall also be registered in the same Registry, in order that they have legal effect.

#### *ARTICLE 55*

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<sup>28</sup> Writing given by art. 18 of law 17.616 of 10 January 2003.

<sup>29</sup> The text in bold, upon the basis of the express derogation of art. 49 and of the replacement of art. 6, has been repealed.

<sup>30</sup> Writing given by art. 19 of law 17.616.

For the registration of any disposal or transfer of a work, the acquirer shall pay a fee amounting to 20% on the disposal consideration.

The Executive Power shall have the power to change the tariffs referred to in the foregoing articles.

In no case shall such fee be lower than \$ 5.00.

*CHAPTER XII  
COPYRIGHT COUNCIL*

*ARTICLE 56*

The control on the observance of this law shall be exercised by the Copyright Council.

*ARTICLE 57*

**It shall be formed by five honorary members appointed by the Ministry of Education and Culture, which shall decide which member shall preside it. They shall carry out their duties for five years until the new members are appointed.**<sup>31</sup>

*ARTICLE 58*

**The constituted associations or those to be constituted in order to defend and administrate the patrimonial rights recognized by this law, shall, to this end, need the express authorization from the Executive Power in accordance with the provisions of this law and the regulatory decree.**

**These associations which shall be named collective administration associations, shall be civil associations without gainful intent, shall be legal entities and shall have their own patrimony and may not perform any religious or political activity.**

**The Executive Power, following the opinion requested to the Copyright Council, on account of the requirements provided for in this law, shall determine on the entities which shall be in charge of the collective administration with a view to represent the holders of works, publications, productions, performances and broadcasts. The collective administration entities may agree to unify their representation, for the purposes of carrying out their duties jointly before the users or of creating a collecting entity which shall be a legal person.**

**Copyright holders, artists, performers and producers of phonograms shall make an agreement with the broadcasting organizations or the associations to which they have conferred their representation, on the broadcast of their works, performances and phonograms. If the parties do not reach an agreement on the amount of the tariffs, any of such parties may request from the Copyright Council the formation of**

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<sup>31</sup> Writing given by art. 327 of law 16.170 of 27 December 1990.

an Arbitral Court within twenty days following the request. The Arbitral Court shall settle within the peremptory period of forty-five working days from its formation. While the controversy is settled, the authorization to broadcast the repertoire shall be considered to be granted, provided the previous tariff is being paid and without prejudice to the obligation of payment for the differences which may result from the arbitral proceeding. The regulatory decree shall establish the manner in which the Arbitral Court shall be formed and the proceedings relating to such arbitration. <sup>32</sup>

The collective administration entities shall be obliged to: <sup>33</sup>

1. Distribute, for periods no longer than one year, the remunerations collected on the basis of their rules of apportioning, with the single deduction of administrative expenses of infrastructure according to the function and of administration, and of an additional expense intended exclusively for the social and social security activities or services in favour of their associates.
2. Submit for approval before the Copyright Council the percentages approved by the Regular General Assembly relating to administrative discounts, administrative expenses and expenses intended for the activities of social and social security nature, including, if the case may be, the reimbursement of expenses of those who hold a position in the Managing Commission.
3. Maintain a periodic communication, intended for its associates, with the information relating to the entity's activities which may be of interest as to the exercise of the associates' rights, and which shall contain, at least, the entity's annual report, the audit report and the text of the decisions taken by its managing departments that directly affect the administration of which they are in charge. Such information shall be sent to the foreign entities with which agency agreements for the Uruguayan territory are maintained, unless such obligation is not established in the said agreements.
4. Submit the annual report and the accounting documentation to the analysis of an external audit appointed by the Assembly held the previous year or in the year of its formation, and whose report shall be part of the collection available to the associates, without prejudice to the analysis and report to which the internal auditing departments are entitled, in accordance with the bylaws.
5. Lay down just and equitable tariffs to determine the remuneration payable for the use of its repertoire, whether belonging to Uruguayan or foreign holders residing or not in the Republic, and maintain such tariffs available to the public.
6. Use distribution systems that exclude arbitrariness under the principle of equitable sharing among the rightholders, in a manner effectively proportional to the utilization of works, performances or productions, whatever the case may be. <sup>34</sup>

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<sup>32</sup> Writing given by article 20 of law 17.616.

<sup>33</sup> The writing that follows refers to articles 21 to 24 of law 17.616.

<sup>34</sup> Art. 21 of law 17.616.

Collective administration entities may not retain, for more than two years, funds whose beneficiaries have not been individualized.

Where the said period expires, these funds shall be distributed among the Uruguayan and foreign holders represented by the entity, in proportion to the sums they would have received for the utilization of their works, performances or productions, whatever the case may be.<sup>35</sup>

For the purposes of the authorization and inspection regime provided for in this law, the Executive Power and the Copyright Council may request from the collective administration entities any type of information, and may order inspections or audits.<sup>36</sup>

Collective administration entities shall be qualified, in the terms resulting from their own bylaws, to exercise the rights entrusted to their administration, whether for Uruguayan or foreign holders, and to enforce them in any kind of administrative and judicial procedures, being so invested with the fullest powers in representation in proceedings, including abandonment and transaction.

The said entities shall be obliged to prove in writing that the holders of the rights they intend to exercise have entrusted the administration of the rights in question to them.

Such qualification and representation shall be without prejudice to the right to which the author, performer, producer of phonograms and broadcasting organization, or successors or successors in title are entitled to exercise directly the rights recognized by this law.<sup>37</sup>

#### *ARTICLE 59*

The Copyright Council shall have the status of legal entity.

#### *ARTICLE 60*

It shall be governed by Bylaws which must be submitted to the approval of the Executive Power.

#### *ARTICLE 61*

In addition to the control on the observance of this law, the Copyright Council shall have the following duties:

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<sup>35</sup> Art. 22 of law 17.616.

<sup>36</sup> Art. 23 of law 17.616.

<sup>37</sup> Art. 24 of law 17.616.

1. To administrate and take care of the literary and artistic assets incorporated in the public and the State domain;
2. To file civil actions and raise criminal denouncements in Court, in the name of the State;
3. To act as arbitrator in conflicts arising in unions or groups of authors or producers, where appointed in such capacity;
4. To give an opinion or make a decision on the controversies arising before the administrative and judicial authorities, in matters related to this law, so far as required ;
5. To perform the other duties entrusted to them by the regulation of this law.

#### *ARTICLE 62*

The proceeds on account of fees, fines, etc., to which the public or the State domain are entitled, shall be intended preferably for the Services of Art and Culture. <sup>38</sup>

#### *ARTICLE 63*

**Where the National Customs Direction or the rightholders protected by this law having valid grounds to suspect that an importation of goods to the Uruguayan territory is being made or arranged, such goods having, in accordance with the terms of the applicable legislation, been manufactured, distributed or imported or are intended for distribution, without the authorization from the intellectual property rightholder, they may request before the competent Court of First Instance, that special controlling measures are taken in respect of such goods, that preventive seizure or precautionary suspension of the respective customs clearance is carried out. All elements of judgment on which the suspension rests shall be produced, and a decision on these measures shall be taken within a period of twenty-four hours without further formalities and without the need for guarantee.**

**The Judge may rule the requested measures, in which case, once adopted, they shall be notified to the interested parties. If ten working days counted from the date of notification to the rightholder or his representative have expired, and there is no evidence that the corresponding civil or criminal actions have been filed, the preventive measures shall have no effect, and the goods clearance shall be ordered, without prejudice to the responsibilities in which the person having promoted such measures has incurred. <sup>39</sup>**

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<sup>38</sup> The manner of disposal of the funds to which the public domain is entitled has been amended by the following provisions:

Law 16.297 of 12 August 1992 in its article 1 creates the National Fund for the Dramatic Art which shall be intended for the support and dissemination of the dramatic art all over the Uruguayan territory; on the other hand, art. 6 provides that the said Fund shall be formed with "A) All collections from the Ministry of Education and Culture in accordance with the provisions of art. 62 of law 9.739 of 17 December 1937. Law 16.624 of 10 November 1994 (National Fund for Music) provides in art. 6 par. A) that "The sums collected by the Ministry of Education and Culture, in accordance with the provisions of art. 62 of law 9.739 of 17 December 1937, as amended by par. A) of art. 6 of law 16.297n of 17 August 1992, by way of all musical rights in the public domain, including publicity".

<sup>39</sup> Writing given by art. 25 of law 17.616.

*ARTICLE 64*

In accordance with the provisions of article 18, of the 1886 Berne Convention, the Executive Power shall address the International Bureau of Intellectual Property, based in that city, to officially communicate the sanction of this law and the adherence of the Oriental Republic of Uruguay to such Convention, for the purposes of establishing the immediate reciprocity with the signatory countries thereof.

*ARTICLE 65*

The Executive Power shall regulate this law.

*ARTICLE 66*

This law is hereby passed.