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## Law no. 50/2004 of 24 August

### **Transposes to the national legal order Directive 2001/29/EC, of the European Parliament and of the Council, of 22 May, on the harmonisation of certain aspects of copyright and related rights in the information society (amending for the fifth time the Code of Copyright and Related Rights and for the first time Law no. 62/98, of 1 September).**

Pursuant to point c) of article 161 of the Constitution, the Assembly of the Republic hereby decrees, to be effective as general law of the Republic, the following:

#### Article 1 **Subject**

The present law transposes to the national legal order Directive 2001/29/EC, of the European Parliament and of the Council, of 22 May, on the harmonisation of certain aspects of copyright and related rights in the information society, and introduces amendments to Law no. 62/98, of 1 September.

#### Article 2 **Amendments**

Articles 68, 75, 76, 82, 176, 178, 180, 182, 184, 187 and 189 of the Code of Copyright and Related Rights, approved through Decree-Law no. 63/85, of 14 March, as amended by Laws no. 45/85, of 17 September, and 114/91, of 3 September, and by Decree-Laws no. 332/97 and 334/97, both of 27 November, hereinafter referred to as the Code, are hereby amended to read as follows:

#### «Article 68 [...]

- 1 - .....
- 2 - .....
  - a) .....
  - b) .....
  - c) .....
  - d) .....

- e) .....
  - f) .....
  - g) .....
  - h) Any use on a different work;
  - i) The direct or indirect, temporary or permanent reproduction, by any means and in any form, in whole or in part;
  - j) The making available to the public of the work, 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;
  - l) [*Former point j).*]
- 3 - .....
- 4 - .....
- 5 – Lawful distribution acts, through the first sale or other transfer of ownership, exhaust the right to distribute the original or copies thereof, as tangible articles, of a work in the European Union.

Article 75  
[...]

1 – From the reproduction right shall be exempted the temporary acts of reproduction which are transient, incidental or accessory, and which represent an integral and essential part of a technological process and whose sole purpose is to enable a transmission in a network between third parties by an intermediary, or a lawful use of a protected work and which have no independent economic significance, including, to the extent that they meet these conditions, the acts which enable browsing as well as acts of caching to take place, as well as those which enable transmission systems to function efficiently, provided that the intermediary does not modify the information in the transmission and does not interfere with the lawful use of technology, according to the uses widely recognised by industry, to obtain data on the use of the information, and generally the merely technological processes of transmission.

2 – The following uses of a work, without the consent of the author thereof, shall be deemed lawful:

- a) The reproduction of the work, for exclusively private purposes, on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, as well as the reproduction on any medium made by a natural person for a private purpose and for ends that are neither directly nor indirectly commercial;
- b) The reproduction and making available to the public, through the media, for purposes of information, speeches, addresses and conferences made in public which do not fall within the categories provided for in article 7, by extract or standard form;
- c) The regular selection of periodic press articles, under the form of press reviews;
- d) The fixation, reproduction or public communication, by any means, of fragments of literary or artistic works, where the inclusion thereof in reports of current events is justified by the information purpose to be achieved;
- e) The reproduction, in whole or in part, of a work made previously available to the public, provided that such reproduction is accomplished by public libraries, public archives, public museums, non-commercial centres for

documentation or scientific or educational establishments, and that such reproduction and the respective number of copies are not intended for the public, are limited to the needs of the activities of such establishments and do not aim at procuring direct or indirect economic or commercial advantage, including the acts of reproduction necessary to the preservation and archive of any works;

- f)* The reproduction, distribution and making publicly available, for the purposes of education and teaching, of parts of a published work, provided that they aim exclusively at the purpose of teaching in such establishments and do not aim at procuring direct or indirect economic or commercial advantage;
- g)* The inclusion of quotations or abridgments of works of others, whatever their type and nature, to support one's own doctrines, or for purposes such as criticism, discussion or teaching, and to the extent required by the specific purpose;
- h)* The inclusion of short pieces or fragments of works of others in works of one's own for teaching purposes;
- i)* The reproduction, public communication and making publicly available of works for the benefit of people with a disability, which are directly related to the disability, to the extent strictly required by the specific disability and provided that they do not procure direct or indirect economic advantage;
- j)* The performance and public communication of officially adopted hymns or patriotic songs and of works of an exclusively religious nature in the course of acts of worship or religious practises;
- l)* The use of the work for the purpose of advertising associated to the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;
- m)* The reproduction, public communication or making available to the public of articles on current economic, political or religious discussion topics or of broadcast works or other subject-matter of the same nature, in cases where such use is not expressly reserved;
- n)* The use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;
- o)* The communication or making available to the public, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of libraries, museums, public archives and schools, of protected works not subject to purchase or licensing terms which are contained in their collections or property;
- p)* The reproduction of works carried out by social institutions pursuing non-commercial purposes, such as hospitals or prisons, provided that they are broadcasted;
- q)* The use of works, such as architecture or sculpture works, made to be maintained permanently in public places;
- r)* The incidental inclusion of a work or other subject-matter in other material;
- s)* The use of a work in connection with the demonstration or repair of equipment;
- t)* The use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing or repairing the building.

3 – The distribution of copies lawfully reproduced is also lawful, to the extent justified by the purpose of the act of reproduction.

4 – The ways of exercising the uses provided for in the preceding paragraphs shall not jeopardize the normal operation of the work, nor cause any unjustified harm to the legitimate interests of the author thereof.

5 – Any contractual clauses that aim at removing or preventing the normal exercise by beneficiaries of uses provided for in paragraphs 1, 2 and 3 of this article shall be null and void, without prejudice to the freedom of the parts to agree on the respective forms of exercise, namely as regards the amounts of the fair remuneration.

#### Article 76

[...]

1 - .....

*a)* .....

*b)* In the cases of points *a)* and *e)* of paragraph 2 of the preceding article, of a fair remuneration to be granted to the author, and, in the analogue scope, to the editor for the entity which has carried out the reproduction;

*c)* In the case of point *h)* of paragraph 2 of the preceding article, of a fair remuneration to be granted to the author and to the editor;

*d)* In the case of point *p)* of paragraph 2 of the preceding article, of a fair remuneration to be granted to the rightholders.

2 – The reproduced or quoted works, in the cases of points *b)*, *d)*, *e)*, *f)*, *g)* and *h)* of paragraph 2 of the preceding article, shall not be mistaken for the work of whoever uses them, nor the reproduction or quotation thereof be extensive so as to harm the interest in such works.

3 – The right to bring together in a volume the works referred to in point *b)* of paragraph 2 of the preceding article shall fall solely in the author thereof.

#### Article 82

[...]

1 - .....

2 – The determination of the regime of collection and allocation of the amount of the sum referred to in the preceding paragraph shall be defined through decree-law.

3 - .....

#### Article 176

[...]

1 - .....

2 - .....

3 - .....

4 – Phonogram shall mean the registry that results from the fixation in a material medium of sounds proceeding from a provision or from other sounds, or from a representation of sounds.

5 - .....

6 – Copy shall mean the material medium wherein sounds and images, or the representation of such sounds and images, are reproduced, in separate or cumulatively, directly or indirectly picked up from a phonogram or videogram, and

wherein such sounds or images, or their representation, fixed therein, are incorporated, in whole or in part.

7 – Reproduction shall mean the acquisition of copies of the direct or indirect, permanent or temporary fixation, by any means and in any form, in whole or in part of such fixation.

8 - .....

9 – Broadcasting organization shall mean the entity that carries out sound or visual broadcasting, and broadcasting shall mean the transmission of sounds or images, or the representation of such sounds and images, in separate or cumulatively, by wire or wireless, namely through radio waves, fibre-optic, by cable or satellite, intended for the reception by the public.

10 - .....

#### Article 178

#### **Power to authorize or to prohibit**

1 – Performers have the exclusive right to do or authorize, on their own or through their representatives:

*a)* The broadcasting and communication to the public, by any means, of their provision, except where such provision is, on its own, a broadcasted provision or where it is carried out based on a fixation;

*b)* .....

*c)* The direct or indirect, temporary or permanent reproduction, by any means and in any form, in whole or in part, without their consent, of the fixation of their provisions where they have not been authorized, where the reproduction is carried out for purposes other than those for which consent has been given or where the first fixation has been done pursuant to article 189 and the respective reproduction aims to purposes other than those provided for therein;

*d)* The making available to the public of their provision 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.

2 – Where performers authorize the fixation of their provision for broadcasting purposes to a cinematographic, audiovisual or videographic producer or to a broadcasting organization, is it deemed that they have transmitted their broadcasting and public communication rights, maintaining the right to enjoy an inalienable, fair and single remuneration, for all authorizations referred to in paragraph 1, except for the right provided for in point *d)* of the preceding paragraph. The management of the single remuneration shall be exercised through a collective agreement between the users and the entity of collective management representing the respective category, which deems itself to be appointed to manage the rights of all holders thereof in such category, including those who are not registered therein.

3 – The inalienable and fair remuneration to be settled pursuant to the preceding paragraph shall also comprise the authorization for new transmissions, retransmissions and the marketing of fixations obtained for exclusively broadcasting purposes.

4 – The right provided for in point *d)* of paragraph 1 shall only be exercised by an entity of collective management of rights of artists, which is deemed to be appointed to manage the rights of the holders thereof, including those who are not registered therein, and where such rights are managed by more than one management entity, the

right holder shall be entitled to decide which entity to address in order to claim for his rights.

Article 180

[...]

1 –All disclosure of a provision shall indicate the name or pseudonym of the artist, even if abridged, save a convention to the contrary or where the way of using the performance imposes the omission of such reference.

2 - .....

Article 182

[...]

Usages that distort, maim and disfigure a performance, that undermine the purposes thereof, or that affect the honour or reputation of the artist shall be unlawful.

Article 184

[...]

1 – The direct or indirect, temporary or permanent reproduction of the phonogram or of the videogram, by any means or in any form, in whole or in part, and the distribution to the public of copies thereof, as well as the respective import and export, are subject to the authorization of the producer of such phonogram or videogram.

2 – The transmission by any means, the public disclosure and the making available to the public of the phonogram or of the videogram, 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, are also subject to the authorization of the producer of such phonogram or videogram.

3 - .....

4 - .....

Article 187

[...]

1 - .....

a) .....

b) .....

c) .....

d) The making available to the public of their broadcastings, by wire or wireless means, including by cable or satellite, in such a way that members of the public may access them from a place and at a time individually chosen by them;

e) The communication to the public of their broadcastings, where such communications are made in places accessible to the public against payment of an entrance fee.

2 - .....

## Article 189

[...]

- 1 - .....
  - a) .....
  - b) Excerpts of a provision, phonogram, videogram or broadcasting, provided that the resort to such excerpts is justified for information or criticism purposes or any other purpose for which quotations or abridgements are authorized, pursuant to point g) of paragraph 2 of article 75;
  - c) .....
  - d) .....
  - e) .....
  - f) .....
- 2 - .....
- 3 – The limitations and exceptions which fall upon copyright apply to the associated rights thereof, in all that is compatible with the nature of such rights.»

## Article 3

### **Addition**

To the Code of Copyright and Associated Rights is hereby added Title VI, with the heading “Protection of technological measures and electronic rights-management information”, integrating articles 217 to 228 thereof, which shall read as follows:

### «Article 217

#### **Protection of technological measures**

- 1 – The provision of adequate legal protection shall be ensured, pursuant to the terms provided for in this Code, to rightholders of any copyright or any right related to copyright, as well as to the *sui generis* rightholders provided for in Decree-Law no. 122/2000, of 4 July, except for computer programs, against the circumvention of any effective measure of a technological nature.
- 2 - For the purposes of the preceding paragraph, the expression «measure of a technological nature» shall mean any technology, device or component that, in the normal course of its normal operation, is designed to prevent or restrict acts, in respect of protected works, provisions or productions, which are not authorised by the intellectual property rightholder, and which do not concern:
  - a) A protocol;
  - b) A format;
  - c) An algorithm;
  - d) Methods regarding encryption, scrambling or transformation.
- 3 – The measures of a technological nature shall be deemed «effective» where the use of a protected work, provision or production is controlled by the rightholders through the application of an access control or a protection process, such as encryption, scrambling or other transformation of the protected work, provision or production or a copy control mechanism, which ensures that the objective of protection is achieved.

4 - The application of technological measures of access control is defined voluntarily and on an optional basis by the holders of the work's reproduction rights, where this is explicitly authorized by the intellectual creator thereof.

#### Article 218

##### **Penal protection**

1 - Whoever circumvents any effective measure of a technological nature, not being authorized thereto, which the person concerned carries out in the knowledge thereof, or with reasonable grounds to know, shall be punishable by a penalty of a maximum of one year of imprisonment or a fine penalty up to a 100 days.

2 – The attempt shall be punishable with a fine of up to 25 days.

#### Article 219

##### **Preliminary acts**

Whoever, not being authorized thereto, accomplishes the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or holds possession for commercial purposes of devices, products or components or the provision of services which:

- a) Are promoted, advertised or marketed for the purpose of circumvention of; or
- b) Have only a limited commercially significant purpose or use other than to circumvent; or
- c) Are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective measures of a technological nature; is punishable by a penalty of a maximum of 6 months of imprisonment or a fine penalty up to a 20 days.

#### Article 220

##### **Extension to agreements**

Any effective measure of a technological nature arising from agreements, from authority decisions or from the voluntary application by rightholders of any copyright or any right related to copyright, which aims at enabling the free use to beneficiaries, pursuant to this Code, enjoys the legal protection provided for in the preceding articles.

#### Article 221

##### **Limitations to the protection of technological measures**

1 – The effective measures of a technological nature shall not be an obstacle to the normal exercise by beneficiaries of the free uses provided for in points *a), e), f), i), n), p), q), r), s)* and *t)* of paragraph 2 of article 75, in point *b)* of article 81, of paragraph 4 of article 152 and in points *a), c), d)* and *e)* of paragraph 1 of article 189 of the Code, in their direct interests, and the holders thereof shall carry out the legal deposit, before

the Inspectorate-General for Cultural Activities (IGAC), of the means that enable them to benefit from the lawful forms of use.

2 – In order to comply with the provision of the preceding paragraph, rightholders shall adopt the appropriate voluntary measures, such as the establishment and application of agreements between rightholders or their representatives and interested users.

3 – Where an effective measure of a technological nature prevents or restricts the use or fruition of a free use on the part of the beneficiary who has legal access to the protected good, for reason of an omission of conduct, the injured person may request of the IGAC the access to the means deposited pursuant to paragraph 1.

4 – The Commission for Mediation and Arbitration, established by Law no. 83/2001, of 3 August, shall be competent to solve disputes on matters under consideration, the decisions thereof being subject to the right to apply to the Court of Appeals, with a merely devolutive effect.

5 – Non-compliance with the decisions of the Commission for Mediation and Arbitration may render the offender liable to the provision of article 892-A of the Civil Code.

6 – Court proceedings of processes provided for in the preceding paragraph are deemed of an urgent nature, in order to enable the conclusion thereof within three months at the most.

7 – The regulation for the operation of the Commission for Mediation and Arbitration shall ensure the principles of procedural equality of parties and of the adversary system and shall define the rules regarding the determination and settlement of charges due on account of preparation and costs of processes.

8 – The provisions of the preceding paragraphs shall not prevent rightholders from applying effective measures of a technological nature in order to limit the number of authorized reproductions regarding private use.

#### Article 222

##### **Exception**

The provision of the preceding article shall not apply to protected works, provisions or productions made available to the public following an agreement between rightholders and users, so that members of the public may access them from a place and at a time individually chosen by them.

#### Article 223

##### **Electronic rights-management information**

1 - The provision of adequate legal protection is ensured, pursuant to the terms provided for in this Code, to rightholders of any copyright or any right related to copyright, as well as to the *sui generis* rightholders provided for in Decree-Law no. 122/2000, of 4 July, except for computer programs, against the infringement of electronic rights-management information devices.

2 – For the purposes of the preceding article, «electronic rights-management information» shall mean any information provided by rightholders which identifies the protected works, provisions or productions, or information about the terms and conditions thereof, as well as any numbers or codes that represent such information.

3 – The legal protection shall fall upon any electronic rights-management information present in the original or in the copies of protected works, provisions or productions or where such information appears in connection with any communication to the public.

#### Article 224

##### **Penal protection**

1 – Whoever without authority, if such person knows, or has reasonable grounds to know, wilfully performs any of the following acts,:

- a) The removal or alteration of any electronic rights-management information;
- b) The distribution, importation for distribution, broadcasting, communication or making available to the public of protected works, provisions or productions from which electronic rights-management information has been removed or altered without authority, if such person knows that by so doing he is inducing, enabling, facilitating or concealing an infringement of any rights of intellectual property; shall be punishable by a penalty of a maximum of 1 year of imprisonment or a fine penalty up to a 100 days.

2 – The attempt shall be punishable with a fine of up to 25 days.

#### Article 225

##### **Seizure and confiscation of goods**

1 – As regards the crimes provided for in the preceding articles, the following additional penalties may apply:

- a) Seizure of instrumentalities used to carry out crimes, including the obtained unlawful proceedings;
- b) The cancellation, and where appropriate, the destruction of instrumentalities, devices, products and services, used solely with the purpose of facilitating without authority the removal or circumvention of effective measures of a technological nature, or which enable the removal or alteration, without authority, of electronic rights-management information.

2 – The destination of seized goods shall be determined in the final court verdict.

#### Article 226

##### **Civil liability**

Civil liability arising from the infringement of rights provided for in the preceding articles is independent of the criminal proceedings that may arise therefrom; however both lawsuits may be filed jointly.

#### Article 227

##### **Injunctions**

1 – In case of an infringement of rights or where there are grounds to believe that such infringement is imminent, rightholders may request of the court that it decrees

injunctions provided for in general law, which, according to the circumstances, are deemed necessary in order to ensure the urgent protection of the right.

2 – The provision of the preceding paragraph shall apply where intermediaries, whose services are used by a third party to infringe a copyright or related right, may be applied injunctions provided for in the general law, without prejudice to the power of rightholders to notify intermediaries, previously and directly, of the unlawful acts, aiming at the non-production or ceasing of effects thereof.

#### Article 228

### **Protection through other legal provisions**

The protection provided for in this Code is without prejudice to provisions concerning rules of a different nature, regarding in particular patent rights, trade marks, design rights, utility models, topographies of semi-conductor products, type faces, conditional access, access to cable of broadcasting services, protection of national treasures, legal deposit requirements, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, the law of contract.»

#### Article 4

### **Remuneration**

Article 217 of the Code of Copyright and Related Rights, included in the “Final Provisions”, shall be remunerated similarly to article 229, in compliance with the addition resulting from the provision of article 3 of the present law.

#### Article 5

### **Repeal**

Articles 179 and 212 of the Code of Copyright and Related Rights are hereby revoked.

#### Article 6

### **Amendments to Law no. 62/98 of 1 September**

Articles 1, 2, 3, 4, 6 and 9 of Law no 62/98, of 1 September, are hereby amended to read as follows:

#### «Article 1

[...]

1 – The present law governs the provision of article 82 of the Code of Copyright and Related Rights, approved through Decree-Law no. 63/85, of 14 March, as amended by Laws no. 45/85, of 17 September, and 114/91, of 3 September, by the law that transposes to the national legal order Directive 2001/29/EC of the European

Parliament and of the Council, of 22 May, and by Decree-Laws no. 332/97 and 334/97, both of 27 November.

2 – The provisions in this law shall not apply to computers, to their programs nor to their databases constituted by computer means, nor to fixation digital reproduction equipments.

## Article 2

[...]

In order to benefit authors, performers, editors and phonographic and videographic producers, an amount shall be included in the retail-selling price:

- a) Of any mechanical, chemical, electronic or other appliances that enable the fixation and reproduction of works as their sole or main purpose, with the exception of digital equipment;
- b) Of digital or analogue virgin material media, except for paper, provided for in paragraph 4 of article 3, as well as of fixations and reproductions which may be obtained from such media.

## Article 3

[...]

1 - The remuneration to be included in the retail-selling price of appliances for the fixation and reproduction of works and provisions corresponds to 3% of the selling price, before the application of VAT, established by the respective manufacturers and importers.

2 – Where the use is current and to serve the public through the practise of trade acts, the retail-selling price of work photocopies, electrocopies and further media shall include the remuneration corresponding to 3% of the selling price, before the application of VAT, amount which shall be managed by the legal person responsible for the collection and management of sums provided for in the law.

3 – For the purposes of the preceding paragraph, and in order to enable the correct enforceability, private and public entities that use, in the conditions above mentioned, appliances that enable the fixation and reproduction of works and provisions, shall sign agreements with the legal person referred to in the preceding paragraph.

4 – The retail-selling price, before the application of VAT, of each medium, whether analogue or digital, shall include a remuneration, as follows:

Medium	Remuneration (in euros)
<b>Analogue:</b>	
Audio tapes	0,14
Video tapes (VHS)	0,26
<b>Digital:</b>	
<b>CD:</b>	
CD R audio	0,13
CD R data	0,05
CD 8 cm	0,27
Minidisk	0,19

CD RW audio	0,19
CD RW data	0,14
<b>DVD:</b>	
DVDR	0,14
DVDRW	0,30
DVDRAM	1,00

Article 4  
[...]

1 - *[Former body of article.]*

2 – For the purposes of application of the exemptions provided for in the preceding paragraph, the bodies comprised therein shall present, when purchasing appliances and media, a declaration issued by the legal person responsible for the collection and management of amounts provided for in the present law, wherein shall be stated that the use thereof is integrated in one of the exemption situations provided for.

Article 6  
[...]

1 - .....

2 - .....

3 - .....

4 – Disputes that arise due to the application of the provision of the preceding paragraph shall be settled by compulsory arbitration, pursuant to general law.

5 - .....

6 - .....

7 - .....

8 - .....

Article 9  
[...]

1 – The sale of equipment or media, in infringement of the provisions of paragraphs 1, 2 and 4 of article 3, is deemed a breach liable to a fine from € 500 to € 5000.

2 - *[Former paragraph 3.]*

3 - *[Former paragraph 4.]*

4 – The proceeds from the application of fines provided for in the present article are deemed revenue for the State and for the Inspectorate-General for Cultural Activities, respectively at the percentages of 60% and 40%.»

Article 7  
**Addition to Law no. 62/98, of 1 September**

To Law 62/98, of 1 September, is hereby added a new article 8, which shall read as follows, current article 10 being renumbered consistently:

«Article 8  
**Regulation**

The subject-matter comprised in this law which need processual or procedural definition shall be subject to approval through regulatory decree.»

Article 8  
**Repeal and transitory regime**

Articles 5 and 7 and paragraph 2 of article 9 of Law no. 62/98, of 1 September, are hereby repealed, however they shall remain in force until the entry into force of the Decree-Law referred to in paragraph 2 of article 82 of the Code of Copyright and Related Rights.

Article 9  
**Application over time**

The provisions of articles 2, 3 and 4 of the present law, in transposition of the directive and with immediate effectiveness, shall take effect as from 22 December 2002, without prejudice to operation acts already performed and to vested rights of third parties, save for provisions on penal matters.

Article 10  
**Republication of Law no. 62/98, of 1 September**

Law no. 62/98, of 1 September, with the amendments which result from articles 6 to 8, is republished in Annex I hereof, which is an integral part of the present law.

Approved on 1 July 2004.

The President of the Assembly of the Republic, *João Bosco Mota Amaral*

Promulgated on 6 August 2004.

Let it be published.

The President of the Republic, JORGE SAMPAIO.

Counter-signed on 11 August 2004.

The Prime Minister, *Pedro Miguel de Santana Lopes*.

## ANNEX I

### **Law no. 62/98, of 1 September**

### **Governs the provision of article 82 of the Code of Copyright and Related Rights**

#### «Article 1

#### **Subject**

1 – The present law governs the provision of article 82 of the Code of Copyright and Related Rights, approved through Decree-Law no. 63/85, of 14 March, as amended by Laws no. 45/85, of 17 September, and 114/91, of 3 September, by the law that transposes to the national legal order Directive 2001/29/EC of the European Parliament and of the Council, of 22 May, and by Decree-Laws no. 332/97 and 334/97, both of 27 November.

2 – The provisions in this law shall not apply to computers, to their programs nor to their databases constituted by computer means, nor to digital fixation and reproduction equipments.

#### Article 2

#### **Compensation due for the reproduction or recording of works**

In order to benefit authors, performers, editors and phonographic and videographic producers, an amount shall be included in the retail-selling price:

- a) Of any mechanical, chemical, electronic or other appliances that enable the fixation and reproduction of works as their sole or main purpose, with the exception of digital equipment;
- b) Of digital or analogue virgin mediums, except for paper, provided for in paragraph 4 of article 3, as well as of fixations and reproductions that may be obtained from such mediums.

#### Article 3

#### **Determination of the remuneration amount**

1 - The remuneration to be included in the retail-selling price of appliances for the fixation and reproduction of works and provision corresponds to 3% of the selling price, before the application of VAT, established by the respective manufacturers and importers.

2 – Where the use is current and to serve the public through the practise of trade acts, the retail-selling price of work photocopies, electrocopies and further media shall include the remuneration corresponding to 3% of the selling price, before the application of VAT, amount which shall be managed by the legal person responsible for the collection and management of amount provided for in the law.

3 – For the purposes of the preceding paragraph, and in order to enable the correct enforceability, private and public entities that use, in the conditions above mentioned, appliances that enable the fixation and reproduction of works and provisions, shall sign agreements with the legal person referred to in the preceding paragraph.

4 – The retail-selling price, before the application of VAT, of each medium, whether analogue or digital, shall include a remuneration, as follows:

Medium	Remuneration (in euros)
<b>Analogue:</b>	
Audio tapes	0,14
Video tapes (VHS)	0,26
<b>Digital:</b>	
<b>CD:</b>	
CD R audio	0,13
CD R data	0,05
CD 8 cm	0,27
Minidisk	0,19
CD RW audio	0,19
CD RW data	0,14
<b>DVD:</b>	
DVDR	0,14
DVDRW	0,30
DVDRAM	1,00

#### Article 4 Exemptions

1 – The remunerations referred to in the preceding articles shall not be due where the equipment or media are exclusively acquired by audiovisual communication bodies or by producers of phonograms or videograms for their own productions or by bodies which use them for purposes exclusively connected to assistance to people with a visual or hearing disability, as well as, pursuant to a joint order from the Ministers for Finance and for Culture, by non-profit-making entities of a cultural nature for the use thereof in projects of a relevant public interest.

2 – For the purposes of application of the exemptions provided for in the preceding paragraph, the bodies comprised therein shall present, when purchasing appliances and media, a declaration issued by the legal person responsible for the collection and management of amounts provided for in the present law, wherein shall be stated that the use thereof is integrated in one of the exemption situations provided for.

#### Article 5 Legal person

1 – The entities legally established that represent authors, performers, editors, phonographic and videographic producers shall constitute a non-profit-making legal person, of an associative or cooperative nature, that shall aim at the collection and management of amounts provided for in the present law.

2 – The bylaws of the legal person shall govern, among others, the following subject-matters:

- a) Subject and duration;
- b) Name and registered office;
- c) Management bodies;

- d) Ways of collecting the remunerations established by the present law;
- e) Criteria for the distribution of remunerations among members of associated entities, including modes for distribution and payment to beneficiaries who are not registered in the respective bodies, but who are presumed to be represented by them;
- f) Advertising of management determinations;
- g) Rights and duties of members;
- h) Structure and internal organisation, namely a provision for the establishment of two autonomous departments for the collection and management of remunerations received, that respectively correspond, on the one hand, to the copy of works reproduced in phonograms and videograms, and on the other hand, to the copy of works edited in paper or electronically;
- i) Dissolution and destination of assets.

3 – The legal person shall organize itself and act in order to integrate as members the bodies that are established in the future and that request the integration therein, where such bodies prove to be representative of the interests and rights aimed to be protected, for the purpose of ensuring the principles of equality, representativeness, freedom, pluralism and participation.

4 – Disputes that arise due to the application of the provision of the preceding paragraph shall be settled by compulsory arbitration, pursuant to general law.

5 – The legal person may sign agreements with public and private entities that use equipment for the fixation and reproduction of works and provisions, with or without profit-making purposes, in order to ensure the legitimate copyright and related rights established in the respective Code.

6 – The fiscal council of the legal person shall be ensured by a statutory auditor (SA).

7 – The legal person shall publish annually the report and accounts of its exercise in a newspaper of national scope.

8 – The entity that is established in the future to carry out the management of remunerations obtained shall adapt in due time to the legal provisions governing collective management societies.

## Article 6

### **Monitoring commission**

1 – A commission is hereby established, which shall be presided by a representative of the State appointed by order of the Prime Minister, and one half of the persons of which shall be appointed by bodies representative of rightholders, one quarter of the persons shall be appointed by bodies representative of manufacturers or importers of the media and appliances mentioned in article 3 and one quarter of the persons shall be appointed by bodies representative of consumers.

2 – The bodies invited to appoint the members of the commission, as well as the number of persons to be appointed by each one of them, shall be determined by order of the Minister for Culture.

3 – The Commission shall meet at the least once a year, convened by its president or following the receipt of a written requirement of a majority of the members thereof, to assess the implementation conditions of the present law.

4 – The determinations of the commission shall be approved by a majority of the members present, and the president thereof shall hold a casting vote.

Article 7  
**Breaches**

1 – The sale of equipment or media, in infringement of the provisions of paragraphs 1, 2 and 4 of article 3, is deemed a breach liable to a fine from € 500 to € 5000.

2 – The monitoring of the compliance of provisions of the present law shall be incumbent upon the Inspectorate-General for Cultural Activities as well as upon all police and administrative authorities.

3 – Breach proceedings and fine application shall be incumbent upon the Inspectorate-General for Cultural Activities.

4 – The proceeds from the application of fines provided for in the present article are deemed revenue for the State and for the Inspectorate-General for Cultural Activities, respectively at the percentages of 60% and 40%.»

Article 8  
**Regulation**

The subject-matter comprised in this law which need processual or procedural definition shall be subject to approval through regulatory decree.

Article 9  
**Entry into force**

The present law shall enter in to force on the 30th day after that of its publication.