

# **DECREE NO. 33-98**

## **THE CONGRESS OF GUATEMALA**

### **CONSIDERING:**

The Constitution of the Republic recognizes and protects the copyright as an inherent right of the human person, ensuring their holders the enjoyment of exclusive ownership of his work, in accordance with the law and international treaties to which the Republic of Guatemala is a party;

### **CONSIDERING:**

The Republic of Guatemala, as part of the International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on October 26, 1961, and the Convention for the Protection of producers of Phonograms against unauthorized Duplication of their Phonograms, adopted at Geneva on October 29, 1971, should promote, through its domestic legislation, the necessary mechanisms to adequately protect the rights of Performers, producers of phonograms and Broadcasting Organizations;

### **CONSIDERING:**

The development of new technologies for the dissemination of works has enabled new forms of theft of intellectual property, so it is necessary that the legal regime that protects the rights of Authors, Performers, Producers of Phonograms and broadcasting Organizations, contain provisions that allow these rights are truly and effectively recognized and protected in accordance with current requirements, to encourage as' intellectual creativity and dissemination of works created by the authors.

### **SO:**

In exercise of the powers conferred by Article 171 a) of the Constitution of the Republic of Guatemala

### **DECREES:**

The following:

## **LAW ON COPYRIGHT AND RELATED RIGHTS<sup>1</sup>**

### **TITLE I**

### **CHAPTER ONE**

### **GENERAL DISPOSITION**

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<sup>1</sup> Published in the Official Gazette on May 21, 1998, from June 21, 1998 in force

**ARTICLE 1.** This law is of public order and social interest, and aims to protection of the rights of authors of literary and artistic works, performers performers, producers of phonograms and broadcasting organizations.

**ARTICLE 2<sup>2</sup>.** In the matter regulated by this Law, nationals of any country enjoy the same rights, legal remedies and legal means to defend their rights, the Guatemalans. The works published abroad are protected in the national territory, in accordance treaties and international conventions approved and ratified by the Republic of Guatemala. The performances, phonograms and broadcasts, whose holders are foreign citizens enjoy the same protection.

**ARTICLE 3.** The enjoyment and exercise of copyright and neighboring rights recognized in this law they are not subject to the formality of registration or any other and are independent and compatible with each other and in relation to property and other rights aimed the support material to which the work is embodied, artistic interpretation, production phonographic or industrial property rights. The works of art created for purposes Industrial also be protected by this law in terms of its artistic content.

**ARTICLE 4<sup>3 4</sup>.** For the purposes of this Act means:

**Performer:** Every actor, singer, musician, dancer or other person represents a role, sing, deliver, declaim, interpret or execute literary works in any form or artistic or expressions of folklore.

**Cable distribution:** The operation by which the signals carrying signs, sounds, images or images and sounds produced electronically or otherwise, are transmitted at a distance wire, cable, optic fiber or other conductive device, known or unknown, for the purposes of his public reception.

**Communication to Public<sup>5</sup>:** Any act by which one or more persons, assembled or not in the same Instead, at the same time or at different times, including when each elect, can access to a work, by any means or process, analog or digital, known or know, serve to transmit signs, words, sounds or images. All necessary process leading to the work is accessible to the public, it is communication.

**Copy:** Material support containing the work or sound recording, as a result of an act playback.

**Illicit copying:** Unauthorized reproduction in writing by the right holder in copies which they imitate or external characteristics of legitimate copy of a work or phonogram.

**Distribution to the public<sup>6</sup>:** Make available to the public the original or a copy of the work or phonogram through sale, lease, loan, importation or any other transfer of ownership.

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<sup>2</sup>Reformed by Article 82 of Decree No. 11-2006 of the Congress

<sup>3</sup> Reformed by Article 1 of Decree No. 56-2000 of the Congress

<sup>4</sup> Reformed by Article 83 of Decree No. 11-2006 of the Congress

<sup>5</sup> Reformed by Article 83 of Decree No. 11-2006 of the Congress

<sup>6</sup> Reformed by Article 83 of Decree No. 11-2006 of the Congress

Also it includes making it available through a system individualized digital transmission, which allows copies to be obtained, at the request of a member of the public.

**Disclosure:** making the work or phonogram to the public by any means or process.

### **Issue** <sup>7</sup>

**Fixation**<sup>8</sup>: Incorporation of sounds or their representations in a physical medium that allows they are perceived, reproduced or communicated to the public.

**Phonogram**<sup>9</sup> any fixation of the sounds of a performance or other sounds, or a representation of sounds other than in the form of a fixation incorporated in a work cinematographic or audiovisual.

**Ephemeral recording:** audio or audiovisual fixation of a performance or a broadcast, broadcast made by a broadcasting organization using its own means, for a transitional period and for its own broadcasts.

**Effective technological measure**<sup>10</sup>: technology, device or component that in the ordinary course of its operation, controls access to protected works, performances and protected phonograms or any other protected material, or protects any copyright or right related to copyright.

**Anonymous work:** One in which no identity of its author is mentioned, by the will of this or It is ignored.

**Audiovisual work:** Any creation expressed by a series of associated images, with or without incorporated sound, which is intended essentially to be shown through apparatuses projection or any other means of communication of image and sound, regardless of the characteristics of the support material that contains it.

**Collective work:** a work created by several authors on the initiative and under the responsibility of a person, natural or juridical, who published under his name and where it is not possible to identify various contributions and their authors.

**Work of applied art** artistic creation with utilitarian functions or incorporated in an article or a useful good, whether a work of handicraft or produced on an industrial scale.

**Derivative work:** creation resulting from the adaptation, translation, arrangement or other transformation of an original work, provided is a separate creation possessing originality.

**Work in collaboration:** The created jointly by two or more individuals.

**Individual Work:** The created by a single individual.

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<sup>7</sup> Reformed by Article 83 of Decree No. 11-2006 of the Congress

<sup>8</sup> Reformed by Article 83 of Decree No. 11-2006 of the Congress

<sup>9</sup> Reformed by Article 83 of Decree No. 11-2006 of the Congress

<sup>10</sup> Reformed by Article 83 of Decree No. 11-2006 of the Congress

**Unpublished work:** That has not been communicated to the public, with the consent of the author, under no way, not even orally.

**Original work:** The primeval creation.

**Posthumous work:** That which has not been published during his lifetime.

**Pseudonymous works:** One in which the author presents under a pseudonym that does not identify.

**Broadcaster:** The radio or television company that transmits program to the public.

**Loan:** Provision of copies of the work or a sound recording, for use by limited and no economic or commercial direct or indirect benefit time, made by a natural person, an institution or organization, whatever its form of legal constitution, whose services are accessible to the public or to anyone.

**Audiovisual Producer:** Company or person who takes the initiative, coordination and responsibility for the conduct of the audiovisual work.

**Phonogram Producer**<sup>11</sup>: natural or legal person who takes the initiative and has the responsibility for the first fixation of sounds of a performance or performance, or other sounds or representations of sounds.

**Program:** Every set of images, sounds, or images and sounds, registered or not, and signals finally joined his communication to the public.

**Computer program:** The work consists of a set of instructions expressed words, codes, plans or any other form, which when incorporated into a support machine-readable, it is able to make a computer to execute a particular task or certain result.

**Public:** Set of people together or not in the same place, they have access by any medium, to a work, artistic performance or phonogram, regardless of whether they can do the same time or at different times or places.

**Publication**<sup>12</sup>: The act of providing the public with the authorization of the right holder, copies of a work or phonogram in reasonable amount.

**Broadcasting**<sup>13</sup>: Wireless transmission or satellite images and sounds or their representations to be received by the public, including wireless transmission encrypted signals where the means for decrypting are provided to the public by an entity diffusive or with his consent.

**Reproduction**<sup>14</sup>: Make by any means, one or more copies of a work, performance, or phonogram fixed, either total or partial, permanent or temporary, including its temporary storage in electronic form and in all media.

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<sup>11</sup> Reformed by Article 83 of Decree No. 11-2006 of the Congress

<sup>12</sup> Reformed by Article 83 of Decree No. 11-2006 of the Congress

<sup>13</sup> Reformed by Article 83 of Decree No. 11-2006 of the Congress

<sup>14</sup> Reformed by Article 83 of Decree No. 11-2006 of the Congress

**Retransmission:** the simultaneous or subsequent transmission by wireless means or by wire, cable, fiber optic or other analog or digital, known or procedure of an issue caused by a broadcaster or cable distribution.

**Satellite:** Any device in extraterrestrial space capable of receiving and transmitting or retransmit signals.

**Signal:** All vector electronically and capable of transmitting programs produced.

**Collective Management Society:** All non-profit civil association, duly registered, that obtained by the Registry of Intellectual Property authorization to act as collecting society in accordance with the provisions of this law.

**Transmission:** The distance communication through broadcasting, cable distribution or other analog or digital, known or unknown, images, sounds procedure, images sound, data or other content.

**Fair use:** Use that does not interfere with the normal exploitation of the work or cause harm to the legitimate interests of the author.

**Videogram:** audiovisual fixation incorporated into material carriers such as videocassettes, ideo disks, digital disks, digital tape or other media, known or unknown.

## **TITLE II COPYRIGHT CHAPTER I SUBJECT**

**ARTICLE 5.** Author is the individual who makes the intellectual creation. Only people natural can be authors of a work; however, the state, the entities of law public and legal entities may be holders of the rights under this Act for authors, in the cases mentioned in it.

**ARTICLE 6.** author of a work, unless proved otherwise, to the natural person is considered whose name or known pseudonym is indicated on it, or spell out in declamation, execution, representation, interpretation or any other form of public dissemination of that work. When the work is disclosed anonymously or under a pseudonym unknown, the exercise of copyright corresponds to the editor until such time as the author does not reveal his identity.

**ARTICLE 7.** The rights in a work created in collaboration correspond to allcoauthors, proindiviso, unless otherwise agreed or proven ownership of each of them, in which case each partner owns the rights on the part of authoring. To disclose and modify a work created in collaboration, it requires the consent of all authors; failing agreement, solve the competent judge. Disclosed work, no coauthor may unreasonably withhold consent for exploitation, in the way which was published.

**ARTICLE 8<sup>15</sup>.** In the audiovisual work, the author is the director of it. However presumed, unless otherwise agreed, the economic rights in the work have been assigned to the producer in the form provided for in Article 27 of this Law.

**ARTICLE 9.** In the case of collective works, it is presumed, unless otherwise agreed, the authors have assigned unlimited and exclusive ownership of the economic rights to the natural or juridical person who published under his own name, who is also empowered to exercise the moral rights in the work.

**ARTICLE 10<sup>16</sup>.** In the works created for a natural or legal person, on request, in compliance with an employment relationship or exercising a public function, the original owner of the moral and economic rights is the natural person who created the work or took part in his creation. However it is presumed, unless otherwise agreed, the economic rights in the work

have been transferred in favor of whom the charge or the employer, as appropriate, in the terms and the limits laid down in Article 75 of this law, which also implies authorization for assignee disclose and exercise the defense of the moral rights to the exploitation of the work, provided it is not prejudicial to the integrity thereof or paternity the author. In case of conflict between the provisions of this Act and the Labour Code, shall prevail first when conflict arises out of or relates to copyright.

**ARTICLE 11<sup>17</sup>** Computer programs is presumed, unless otherwise agreed, he or the authors of the work have assigned their rights to the producer heritage in unlimited and exclusive, which implies authorization to disclose the work and exercise the defense of rights moral insofar as this is necessary for the operation of the computer program. Unless proved otherwise, that is producer of the computer program the person is presumed or entity that appears as such in it.

**ARTICLE 11 bis.<sup>18</sup>** When a worker who is not bound by his employment contract exercise of an activity intended to produce computer programs, produce one computer program related to the field of activities of his employer, or by use of data or media that have access by reason of their employment, shall communicate immediately this fact to his employer in writing, at his request, will provide for written the necessary information on the usefulness of its creation. If within one month from the date on which he had delivered this communication, or that he had been informed by any other means of creation of computer program, whichever period overcomes earlier, the employer notifies in writing to worker interest in obtaining the economic rights in the work, entitled preferred to acquire them. If the employer notifies his interest in the work, the worker is entitled to a equitable remuneration, or to a share of profits, royalties or income product Marketing computer program, as established by contract between the parts. Failing agreement between the parties, the remuneration shall be fixed by a judge, by the procedure under the Labour Code.

**ARTICLE 12.** derivative works, is the author who, with the permission of the owner, makes

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<sup>15</sup> Reformed by Article 2 of Decree No. 56-2000 of the Congress

<sup>16</sup> Reformed by Article 3 of Decree No. 56-2000 of the Congress

<sup>17</sup> Reformed by Article 4 of Decree No. 56-2000 of the Congress

<sup>18</sup> Reformed by Article 5 of Decree No. 56-2000 of the Congress

adaptation, translation or transformation of the original work. The publication of the derivative work. You must include the name or pseudonym of the original author. When the original work is in the public domain, the holder of the derivative work has all This Act gives rights on its version, but can not preclude others from using the same original to produce different versions work.

**ARTICLE 13.** The right to publish private correspondence corresponds to its author, who for I do need express consent of the recipient, unless the publication would not affect the honor or interests of the latter. The recipient can use letters or correspondence received in defense of his person or his interests.

**ARTICLE 14.** The expressions of folklore belong to the cultural heritage of the country and will be object of specific legislation.

## **CHAPTER II OBJECT**

**ARTICLE 15** works all productions are considered in the literary scientific field, and artistic, whatever the mode or form of expression, provided they constitute a creation original intellectual. In particular, the following:

- a) The views expressed in writing letters, signs or conventional marks, including Computer programs;
- b) lectures, addresses, sermons and other works expressed orally;
- c) musical compositions with or without words;
- d) dramatic and dramatic-musical;
- e) choreographic and mimed;
- f) Audiovisual;
- g) The fine arts such as drawings, paintings, sculptures, engravings and lithographs.
- h) architecture;
- i) photographic and expressed by a process analogous to photography;
- j) of applied art;
- k) illustrations, maps, sketches, plans, sketches and plastic works relating to geography, topography, architecture or science.

The above list is illustrative and not exhaustive, so enjoy the protection of this law, both known works such as those to be created in the future.

**ARTICLE 16.** Also considered works without prejudice to the copyright on works originating, where appropriate:

- a) translations, adaptations, musical arrangements and other transformations of a work;
- b) anthologies, dictionaries, compilations, databases and the like, when the selection or arrangement of the contents constitute an original creation.

**ARTICLE 17.** The title of a work which is protected under the terms of this law does not may be used by a third party, unless its generic or descriptive character in relation with the contents of those, constitutes a necessary designation. In the case of works concerning traditions or legends, this protection can not be invoked. No one may use the title of another's work as a means of creating confusion in the public or to take unfair advantage of literary or commercial success or reputation of the author.

## **CHAPTER III CONTENT**

**ARTICLE 18.** The copyright comprises moral and economic rights, which parenthood protect the integrity and use of the work.

**ARTICLE 19.** The moral right of the author is inalienable, imprescriptible and inalienable. It includes the power to:

- a) To demand at all times the authorship of the work, in particular, require the mention of his name or pseudonym as the author of the work, in all reproductions and uses thereof;
- b) object to any distortion, mutilation or other modification of the work, without their prior express consent or any modification or use of the work that detracts or prejudicial to his honor or reputation as an author;
- c) Keep your unpublished or anonymous or dispose by will work well remain after of his death. The postponement for the dissemination of the work can only be done up seventy-five years after his death.
- d) <sup>19</sup>
- e) <sup>20</sup>
- f) <sup>21</sup>

**ARTICLE 20.** Upon the death of the author, only transmitted to their heirs without limit time, the exercise of the rights referred to in subparagraphs a) and b) of Article 19 of this Law. In the absence of heirs, the exercise of those rights for the State.

**ARTICLE 21**<sup>22</sup>. <sup>23</sup>The economic rights or property gives the owner of copyright, the powers to use directly and personally the work, assign all or part of their rights thereon, and to authorize or prohibit the use and exploitation by third parties. Only holders of copyright and who are expressly authorized by them, shall right to use the work in any way, shape or by any process and therefore their part authorize or prohibit any of the following acts:

- a) The reproduction and total or partial fixation of the work in any type of material support, format or medium, temporary or permanent, by any known method or meet;
- b) translation into any language, language or dialect;
- c) Adaptation, arrangement or transformation;
- d) The communication to the public, directly or indirectly, by any means or medium, known or, in particular the following acts:
  - 1) declamation, performance;
  - 2) public projection or display;
  - 3) Broadcasting;
  - 4) Transmission by wire, cable, fiber optics, or other similar process;
  - 5) Retransmission by any of the means specified in paragraphs 3 and 4 above;
  - 6) Diffusion of signs, words, sounds and / or images through loudspeakers, phone, similar electronic devices, cable distribution or any other means;
  - 7) Public access to databases and computers via telecommunications; and
  - 8) Public access to their works for members of the public may access them from where and when they choose;

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<sup>19</sup> Deleted by Article 84 of Decree No. 11-2006 of the Congress

<sup>20</sup> Deleted by Article 84 of Decree No. 11-2006 of the Congress

<sup>21</sup> Deleted by Article 84 of Decree No. 11-2006 of the Congress

<sup>22</sup> Reformed by Article 07 of Decree No. 56-2000 of the Congress

<sup>23</sup> Reformed by Article 85 of Decree No. 11-2006 of the Congress

e) The distribution to the public of the original or copies of his work, either through sale, lease, loan or any other form. When the distribution duly authorized by the right holder is made through sale, the right to control subsequent sales extinguished only when the first sale of the original or copies of the work any occurred within the Guatemalan territory, except in the case provided for in Article 38 of this Law and any other legal exceptions. is not extinguished by the authorized distribution through sale, reproduction rights, lease, loan, modification, adaptation, arrangement, transformation, translation, importation or communication to the public.

f) The import and export of copies of their works or phonograms lawfully manufactured and import and export of copies made without their consent.

**ARTICLE 22.** The various forms of use referred to in Article 21 of this law are independent of each other. The authorization for a particular use does not apply to others. The assignment of the rights to exploit their works does not prevent the author from publishing, gathered in a selection or complete collection.

**ARTICLE 23.** The copyright is attached. They may be seized copies or reproductions of a published work, as well as economic product perceived by the exploitation of economic rights and credits from those rights.

**ARTICLE 24.** copyright is protected only the way in which the author's ideas are described, explained, illustrated or incorporated in the works. They are not subject of the ideas contained in literary and artistic works, the ideological content or technician scientific works, nor the industrial or commercial exploitation. The findings, knowledge and teaching and research methods They are not protected by copyright.

**ARTICLE 25.** The works protected by copyright appearing in publications or periodic emissions not thereby lose their legal protection. The protection of the law not will apply to the information content of journalistic news published by any media, but the text and graphical representations of them.

#### **CHAPTER IV SPECIAL PROVISIONS FOR CERTAIN CATEGORIES OF WORKS FIRST SECTION AUDIOVISUAL**

**ARTICLE 26** <sup>24</sup> producer of an audiovisual work, unless the contrary is assumed, the natural or juridical person who appears as such in it.

**ARTICLE 27**<sup>25</sup> For the audiovisual production contract work, are presumed assigned to producer unlimited and exclusive economic rights derivatives thereof. Also it presumed that the producer has been authorized to decide on the disclosure or non-disclosure of the work, bring it under the various formats for attachment and spreading, exercise and defense of the moral rights in the audiovisual work.

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<sup>24</sup>Reformed by Article 07 of Decree No. 56-2000 of the Congress

<sup>25</sup>Reformed by Article 08 of Decree No. 56-2000 of the Congress

**ARTICLE 28<sup>26</sup>.** The producer of the audiovisual work, to display it to the public, should mention, besides its name and director, the author of the script or script, the author of the work on which the audiovisual work and the author or authors of the musical compositions inspired incorporated in the audiovisual work.

**ARTICLE 29.** If one of the authors, for whatever reason, can not complete its contribution, not. You may oppose the party already made or to be used to designate a third party to conclude the work. In this case, will the quality of author for the part that made and shall enjoy the rights derived therefrom.

## **SECTION TWO COMPUTER PROGRAMS AND DATABASES**

**ARTICLE 30.** Computer programs are protected on the same terms as the works literary. This protection extends to operational programs as both programs applications, whether in source or object code and whatever its form or mode of expression. The technical documentation and manuals using a program enjoy the same protection provided for computer programs.

**ARTICLE 31<sup>27</sup>** The leasehold included in the literal e) of Article 21 of this law does not apply to leases whose essential purpose is not the program computer itself. Placing on the market of the original or authorized copies of a computer program, with the consent of the rightholder, does not extinguish the right to authorize the rental or copies of such loan, or any other established in Article 21 of this Law.

**ARTICLE 32.** The reproduction of a computer program, including for personal use, require the authorization of the rights holder, other than the copy made in order exclusive to replace the legitimately acquired copy when it no longer can be used for damage or loss. However, both copies can not be used simultaneously.

**ARTICLE 33.** It shall be lawful the introduction of a program in the internal memory of the computer serve only for purposes of using the program by the user. It is not lawful use of the program by several people by installing networks, stations work or other similar procedure without the consent of the rightholder.

**ARTICLE 34.** The authors or owners of a computer program may authorize the amendments necessary for the proper use of the programs. No modification is adaptation of a program created by the user, for exclusive use, when the amendment is necessary for the use of this program or to better use thereof.

**ARTICLE 35.** compilations or databases, whether they be machine-readable or otherwise, they are considered collections of works for purposes of protection Under this law. This protection does not extend to the data or material contained in the compilations or prejudice on existing copyright on them.

## **THIRD SECTION PLASTIC WORKS**

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<sup>26</sup>Reformed by Article 09 of Decree No. 56-2000 of the Congress

<sup>27</sup> Reformed by Article 10 of Decree No. 56-2000 of the Congress

**ARTICLE 36.** The disposal of the material object in which is embedded a work of art, not acquirer produces for the transfer of exploitation rights of the author. Acquirer you can, however, display the work publicly, either free of charge, unless otherwise agreed opposite.

**ARTICLE 37.** The author of a work of art has the right to require the owner of the work, access to it, where this is necessary for the exercise of their moral rights or equity and thereby not affect the reputation or honor of the owner.

**ARTICLE 38.** In case of resale of original works of art, carried out by public auction or through a professional dealer in works of art, the author or, where applicable, their heirs or legatees, enjoy the right to charge the vendor ten percent (10%) of the price of the sale. This right shall be collected and distributed by a collective management organization, if any, to unless the parties agree otherwise do so. This provision also applies to the sale that is made of the original manuscripts authors or composers.

**ARTICLE 39.** The portrait or bust of a person may not be used for profit without the consent of the person himself and killed it with that of his heirs. However, the publication of the picture is free when it relates to scientific, educational or cultural purposes in general or to facts or events of public interest or the rates have been developed in public. People who own for artistic or advertising pictures or photographs, have rights pecuniary available to the respective contract.

#### **SECTION FOUR MUSICAL WORKS**

**ARTICLE 40.** The term musical works includes musical compositions, with or without letter, dramatic and musical works.

**ARTICLE 41.** Except as otherwise agreed by the parties especially in the dramatic-musical works commercial exploitation is allowed separately from the work to which they belong, those extracts not encompass entire acts.

**ARTICLE 42.** The author of a dramatic-musical work has also rights set out in Articles 19 and 21 of this law, the right to monitor the management and allocation of the main roles of his work.

#### **CHAPTER IV<sup>28</sup> SECTION FIVE NEWSPAPER ARTICLES**

**ARTICLE 42 bis.**<sup>29</sup> Unless otherwise agreed, the authorization for the use of articles in newspapers, magazines or other media, granted by an author unrelated dependence on the newspaper company, only give the publisher or owner of the publication insert it right for once, without prejudice to the other economic rights of the author or the holder thereof. If it is an author hired under employment relationship, it may not reserve the right to reproduction of newspaper article deemed to have given in to the company or through

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<sup>28</sup> Added by Article 11 of Decree 56-2000 of the Congress of the Republic

<sup>29</sup> Added by Article 12 of Decree 56-2000 of the Congress of the Republic

communication, unless otherwise agreed. However, the author shall retain their rights regarding the standalone edition of its productions as a collection. The provisions of this article applies similarly to the drawings, cartoons, graphics, cartoons, photographs and other works liable to be published in newspapers, magazines or other media.

## **CHAPTER V TERM OF PROTECTION**

**ARTICLE 43**<sup>30</sup> Except as otherwise provided in this Act, the economic rights protect throughout the life of the author plus seventy-five years after his death. When try to works created by two or more authors, the period shall start after the death of the last coauthor. The copyright can be transferred by inter vivos and upon death; where by cause of death, shall be in accordance with the provisions of the Civil Code. In the case of foreign authors first published outside the territory of the Republic of Guatemala, the term of protection shall not exceed recognized by the law of the country where the work has been published; however, if that acordase greater protection than the They granted by this Act, the provisions of the latter.

**ARTICLE 44.**<sup>31</sup> In the case of computer programs and collective works, the term of protection shall be seventy-five years from the first publication or, default, the completion of the work. By "first publication" it means the production of copies made accessible to the public, Available in quantities that can meet their reasonable needs, taking into account the nature of the work.

**ARTICLE 45**<sup>32</sup> In the case of an anonymous or pseudonymous works, the term of protection contase will start from the first publication or, failing that, of their realization. In If legally verify the identity of the author, the period shall be calculated in the form referred to in Article 43 of this Law.

**ARTICLE 46.** In the case of formal works by several volumes, which have not been published in the same year, or brochures or periodical installments, the period shall start with respect to each volume, or delivery from the respective publication.

**ARTICLE 47**<sup>33</sup> In the case of audiovisual works, the period is counted from the first authorized publication of the work, provided that such publication occurs within seventy five (75) years after execution. Otherwise, the period is counted from the performance.

**ARTICLE 48.** The terms of protection provided in this chapter are computed from January next year following that in which the event giving them start to happen. The expiration of term of protection, the works will be in the public domain.

**ARTICLE 49.** The State or its public entities, municipalities, as well as universities and other educational establishments in the country, shall enjoy the protection established by law, but, where they are declared heirs of copyright and have not made use thereof within five years from the respective declaration, the work shall the public domain.

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<sup>30</sup> Reformed by Article 13 of Decree 56-2000 of the Congress of the Republic.

<sup>31</sup> Reformed by Article 14 of Decree 56-2000 of the Congress of the Republic

<sup>32</sup> Reformed by Article 15 of Decree 56-2000 of the Congress of the Republic

<sup>33</sup> Reformed by Article 86 of Decree No. 11-2006 of the Congress

**TITLE III  
RELATED RIGHTS  
CHAPTER I  
GENERAL DISPOSITION**

**ARTICLE 50**<sup>34</sup> Protection of Performers, Producers of Phonograms and broadcasters, does not affect in any way the protection of rights copyright as provided in this Act. None of the provisions of this Title. It can be interpreted so as to reduce such protection. Similarly, the protection offered to copyright in any way affect the protection of related rights. By consequently, none of the provisions relating to copyright may interpreted prejudice to the provisions of this Title.

**ARTICLE 51**<sup>35</sup> Related rights shall enjoy protection within seventy-five (75) counted from January 1 of the following year year year in which the event occurred that gave rise to such rights, in accordance with the following rules:

- a) In the case of phonograms and performances recorded on them, from the date of first authorized publication; or if the first authorized publication has not occurred within next fifty (50) years fixing; the term of protection start run from fixing;
- b) In the case of performances not recorded on a phonogram, from the date the performance; and
- c) In the case of broadcasts, from the date of transmission.

**ARTICLE 52.**<sup>36</sup> Any act of transfer or disposal of the rights referred to in this title must be in writing.

**CHAPTER II  
INTERPRETER ARTISTS OR EXECUTANTS**

**ARTICLE 53**<sup>37</sup> The performers, and rights-holders have the right exclusive to authorize or prohibit the fixation, reproduction, communication to the public by any means, broadcasting or any other use of their performances and executions. Excepted from this provision audiovisual performers. When a phonogram published for commercial purposes is used in any form of public communication, performers, whose performances are fixed in that they are entitled to financial compensation.

**ARTICLE 54.** Unless otherwise provided, it is understood that:

- a) The authorization to broadcast does not imply permission to allow other bodies relay broadcasting the performance;
- b) The authorization to broadcast does not imply the authorization to fix the interpretation or performance;

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<sup>34</sup> Reformed by Article 87 of Decree No. 11-2006 of the Congress

<sup>35</sup> Reformed by Article 88 of Decree No. 11-2006 of the Congress

<sup>36</sup> Reformed by Article 16 of Decree 56-2000 of the Congress of the Republic

<sup>37</sup> Reformed by Article 89 of Decree No. 11-2006 of the Congress

- c) The authorization to broadcast and fix the performance does not imply the authorization to reproduce the fixation; and
- d) The authorization to fix the performance and to reproduce this fixation does not imply authorization to transmit the interpretation or performance from the fixation of their reproductions.

**ARTICLE 55.** When several performers participate in the same execution, authorization will be given by the director of the group and in the absence thereof, by the Most of its members.

**ARTICLE 56.** For the exercise of the rights recognized in the present law, orchestras and vocal or instrumental groups will be represented by the director of the group or by a president legally constituted.

**ARTICLE 57.** Performers also have the personal, inalienable,inalienable and perpetual to link their name or pseudonym artistic interpretation and oppose the distortion or mutilation of it. The death of the artist will apply, as appropriate, which has Article 20 of this Law.

### **CHAPTER III Phonogram Producers**

**ARTICLE 58.**<sup>38</sup> Producers of phonograms have the exclusive right to authorize or prohibit reproduction, dissemination, distribution and direct or indirect communication to the public or otherwise, or through use of phonograms or reproductions and making available to the public of phonograms by any means, so that members public may access them from a place and at the moment they choose. The distribution right includes the power to authorize the distribution of phonograms, and whether by sale, lease or otherwise. When the distribution is make by selling this right is extinguished after the first sale, except legal exceptions. When the distribution is made through leasing, placing on the market of the original or authorized copies of the phonogram does not extinguish it. The import duty includes the power to authorize or prohibit the import of copies phonograms lawfully manufactured and prevent the importation of copies made without the authorization of the rightholder.

**ARTICLE 59.** Whoever performs or make publicly perform a sound recording in any way published for commercial purposes must obtain prior written authorization of its producer and paying this remuneration.

**ARTICLE 60.** The producer or his representative will collect the amount owed by users public performance of phonograms and distributed with the artists, in the proportions contractually agreed with them. In default of the contract, half of the amount received by the producer, net of expenses collection and administration, will be paid by him to the performers, who not having held special agreement, they shall divide it among them as follows:

- a) Fifty percent will be paid to the interpreter, understood as the singer or group voice or other artist appearing in the foreground of the label of the phonogram;
- b) Fifty percent will be paid to the accompanying musicians and choir members, who

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<sup>38</sup> Reformed by Article 90 of Decree No. 11-2006 of the Congress

I participated in the fixing, divided equally between them. If these do not lay claim these sums, within twelve months, the producer must deliver to the association the occupational category, those who must allocate exclusively for welfare purposes of its members.

**ARTICLE 61.** In cases of infringement of the rights recognized in this chapter, shall exercise the actions from both the phonographic producer and the assignee thereof.

## **CHAPTER IV BROADCASTERS**

**ARTICLE 62.**<sup>39</sup> Broadcasters have the exclusive right to authorize or ban:

- a) The fixation of their broadcasts and their broadcasts on a physical basis or support material; even fixing any image or sound or image and sound isolated, broadcast on the broadcast or transmission;
  - b) The reproduction of fixations of their broadcasts or their broadcasts by any means, known or;
  - c) the retransmission of their broadcasts or transmissions by any means or process, known or; and
  - d) The communication to the public of their broadcasts or transmissions when provided in places which the public can access, by paying an admission fee or places that the public can access for the purpose of using or purchasing products or services
- any kind equivalent protection is recognized bodies established in this article or Source stations perform their transmissions via cable, fiber optic or other similar procedure.

## **TITLE IV LIMITATIONS OF PROTECTION CHAPTER ONE**

**ARTICLE 63.** The works protected by this Law may be lawfully communicated, without need authorization from the author or payment of any remuneration when communication:

- a) is conducted in an exclusively domestic environment, provided that there is an interest economic, direct or indirect, and that communication be not deliberately disseminated to exterior, in whole or in part, by any means.
- b) is effected exclusively educational purposes in the course of the activities of an institution of teaching staff and students of that institution, provided that communication not for profit, direct or indirect, and that the audience consists solely of the staff and students of the school or parents or teachers of students and others directly linked to the activities of the institution.
- c) it is essential for the practice of a judicial or administrative proceedings.

**ARTICLE 64.**<sup>40</sup> With regard to works already disclosed is also permitted without authorization author, in addition to the provisions of Article 32:

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<sup>39</sup> Reformed by Article 17 of Decree 56-2000 of the Congress of the Republic

<sup>40</sup> Reformed literal d) by Article 91 of Decree No. 11-2006 of the Congress

- a) reproduction by reprographic means of articles or brief excerpts from works lawfully published, for teaching or conducting examinations in educational institutions, provided there is no profit and that such use does not interfere with the normal exploitation of the work or prejudice the legitimate interests of the author;
- b) The individual reproduction of a work by libraries or files that have no profit, when the copy is in its permanent collection, in order to preserve that and replace it if necessary, or to replace a similar copy in the permanent collection of another library or archive, when it has been lost, destroyed or unutilized, if not possible to acquire the copy deadline or reasonable terms;
- c) The reproduction of a work for judicial or administrative proceedings;
- d) reproduction for personal use of a work of art exhibited permanently in public or on the exterior facade of buildings, executed by an art that is places different from that used for the preparation of the original, provided that the author's name indicated, if it is dealing, and the title of the work, if any, and the place where it is.

**ARTICLE 65.** It is allowed the public lending of the lawful copy of a work expressed by written by a library or archive whose activities not directly or indirectly have late profit.

**ARTICLE 66.**<sup>41</sup> shall be lawful without authorization of the right holder and without payment of remuneration, with an obligation to mention the source and name of the author of the work used, if indicated.

- a) reproduce and distribute through the press, broadcasting or cable transmission or other means dissemination of articles published in newspapers or newspapers or magazines on topics economic, political or religious current, in which the transmission, distribution or reproduction public does not have specific reservation;
- b) reproduce and make available to the public, on the occasion of information concerning current events through photography videograms, broadcasting or cable transmission, fragments of works seen or heard in the course of such events, the extent justified by the purpose of information;
- c) Using any form of communication to the public for information about facts topical, political speeches, legal, dissertations, addresses, sermons and other works Similar delivered in public, the authors retain the exclusive right to publish for other purposes;
- d) Include in one's own work fragments of other nature written, audio or audiovisual and works of plastic character, photographic or similar, always concerned works have already been disclosed and that their inclusion is by way of quotation or for analysis purposes teaching or research.

**ARTICLE 67.** Lectures or lessons given at educational establishments may be freely annotated and collected but is prohibited publication or reproduction, in whole or part without the written authorization of the person who gave.

**ARTICLE 68.** The publication of laws, decrees, regulations, orders, resolutions, judicial and administrative bodies decisions and official translations of those texts, you can freely made provided that you stick to the official publication. Translations and compilations made by individuals of these texts will be protected as original works.

**ARTICLE 69.** The publication of the portrait or photograph of a person only for purposes informative, scientific, cultural, educational or when it relates to facts or events public or

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<sup>41</sup> Reformed literal a) Article 92 of Decree No. 11-2006 of the Congress

social interest, if not undermined the prestige or reputation of the person and that such publication does not go against morality or decency.

**ARTICLE 70.** It shall be lawful execution of Phonograms and receiving radio transmissions or television, which are made, for demonstration purposes clientele within establishments trade exhibit and sell receiving equipment, reproduction or other similar or supports containing sound or audiovisual works used.

**ARTICLE 71.** Broadcasters may, without permission of the author or payment of special remuneration, make ephemeral recordings using their own equipment and use in their own broadcasts, of a work that have the right to broadcast. Without But the broadcasting organization must destroy the recording within six months counted from its realization, unless it has been agreed with the author a longer period. The recording may be preserved in official archives when you have a documentary exceptional.

## **TITLE V TRANSFER OF ECONOMIC RIGHTS CHAPTER ONE**

**ARTICLE 72.**<sup>42</sup> Economic rights may be transferred, in whole or in part by any title shall be evidenced in writing. Any transfer between living is presumed made to consideration, unless expressly agreed otherwise.

**ARTICLE 73.** The transfer of copyright and related rights is limited to right or rights assigned, the forms of exploitation expressly provided, the term the territorial scope specified. If not mentioned the term transfer is for five years; if not established the territory, it means the country in which the transfer is made; and if not specify the methods of operation, the transfer is limited to that which is deducted necessarily the contract itself and is essential to fulfill the purpose of it.

**ARTICLE 74.**<sup>43</sup> transfer is null use of all the works that the author may create in the future, and the provisions for which the author undertakes not to create works. He transfer agreement should be in writing.

**ARTICLE 75.** The transfer of exploitation rights of the work created under a employment or custom shall be governed by the agreement in the contract. In the absence of written agreement, is. He presumed that the exploitation rights have been granted exclusively and with the scope necessary for the exercise of the normal activity of the assignee at the time of delivery work done.

**ARTICLE 76.** The transfer of economic rights conferred legitimacy to the assignee prosecute violations affecting the powers which he has granted, subject right that belongs to the author.

**ARTICLE 77.** The transfer of rights by the assignee may be fully or partially and it does not require the transferor's authorization, unless expressly agreed otherwise.

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<sup>42</sup> Reformed by Article 18 of Decree 56-2000 of the Congress of the Republic

<sup>43</sup> Reformed by Article 93 of Decree No. 11-2006 of the Congress

**ARTICLE 78.** Any person who acquires the right to use will have to fulfill the obligations assumed by the transferee under its contract with the author. The purchaser liable to the author severally with the transferor for the obligations assumed by one in the respective contract; as well as compensation for damages it may cause by breach of any of these contractual obligations.

**ARTICLE 79.**<sup>44</sup>The remuneration of the author may be agreed in proportion to income obtained by the assignee for the use of his work or for a fixed amount.

**ARTICLE 80.** The second paragraph of Article 79 does not apply to:

- a) Collective works;
- b) works in collaboration;
- c) audiovisual works;
- d) Works created by custom and salaried author;
- e) prologues, annotations, introductions and presentations;
- f) Works that are incidental to the activity or material object to which intended;
- g) Works that do not constitute an essential element of the intellectual creation in which it is integrated.

**ARTICLE 81.** The author of a work written may grant licenses to third parties to perform acts covered by his economic rights. A license may be exclusive or not; No license is considered exclusive if not expressly stated in the respective contract. The exclusivity granted to the transferee, faculty to exploit the work to the exclusion of another person, including the assignor himself, and, unless otherwise agreed Otherwise, the grant non-exclusive licenses to third parties.

**ARTICLE 82.** The obligations by lease or license of copyright have the same privilege that workers in insolvency procedures or assignees licensees.

**ARTICLE 83.** The transfer of copyright for exploitation through modalities editing, representation, execution, production of audiovisual works and fixing works, is shall be governed by the specific provisions of this law to such cases, and that is not provided, so established in this chapter. The conditions not provided for in the contracts of assignment of copyright, including remuneration, shall be determined according to the customs of matter that concerned the contract.

**TITLE VI  
CONTRACTS ON COPYRIGHT AND RELATED RIGHTS  
CHAPTER I  
AGREEMENT EDITION**

**ARTICLE 84.** By the publishing contract, the owner of the copyright in a literary, scientific or artistic, or their successors, granted under certain conditions, to a person called the publisher, the right to reproduce his work and sell the copies, in exchange for a remuneration. The editor will edit at your own risk, work and deliver to the author the agreed remuneration.

**ARTICLE 84 bis.**<sup>45</sup> Title VI of the Act applies only to contracts signed in, Guatemala.

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<sup>44</sup> Reformed by Article 94 of Decree No. 11-2006 of the Congress

<sup>45</sup> Added by Article 95 of Decree No. 11-2006 of the Congress

**ARTICLE 85.** The publishing contract of a work does not imply the alienation of rights property of the author of it. The editor will not have more rights than reproduce and sell copies of the work under the conditions agreed in the contract. Which must be formalized in writing. The right granted to a publisher to publish several separate works do not include the right of publishing them together in a single volume and vice versa.

**ARTICLE 86.** The publishing contract may be agreed for a specified period or a number set of issues, specifying the number of copies that will each issue. If no contract or within parties lays nor the number of editions, is understood to cover a single edition. Unless otherwise agreed, if an editor exhausted reeditare not work within eighteen months, the author may request termination of the contract. In the case of a contract given time, the rights of the publisher shall expire when the last edition produced within the term, and if it be a number of issues, having exhausted the last. To this end, it considers that an edition is exhausted when the publisher can not meet demand public, or when the number of copies in their possession does not exceed one hundred.

**ARTICLE 87.** In the case of an anonymous work and appeared after the author of the same, the publisher is obliged to pay the corresponding rights for the exploitation of their work. Failure to reach an agreement on the payment amount, the provisions shall apply Article 83 of this Law. If the publisher has acted in bad faith, the author shall also be entitled to the compensation appropriate.

**ARTICLE 88.** The author has to deliver to the publisher within the period specified in the contract, the work It will be edited in a way that allows normal playback. The publisher may not, without the written consent of the author, make changes, abbreviations or additions to the work.

**ARTICLE 89.** The author has the right to make corrections to their work, amendments or improvements it deems appropriate, before the work goes to press; however, when the corrections or improvements make the printing more costly, you are obliged to indemnify the publisher's expenditure. This right is retained by the author in the successive editions of his work, always recognizing the editor the expenses incurred it.

**ARTICLE 90.** In case of loss or destruction of an unpublished work, the charge should cover the following compensation:

- a) If it occurs while the work is held by the author, it must pay the publisher the sum received by way of advance, plus the necessary expenses that the publisher may have incurred.
- b) If it occurs while the work is held by the publisher, it must pay the author its fees and damages, moral and property caused.

**ARTICLE 91.** The editor will include the name or pseudonym of the author in each of the copies and publish the work within the period stipulated in the contract. If that deadline is not established, it is understood that is one year. If the work was anonymous, it will be recorded that fact. In the case of translations, compilations, adaptations and other versions, plus the name of the author of the original work or his pseudonym, include the name of the translator, compiler, adapter or author of the will version. If in the case of translation it should also include the title of the work in the original language.

**ARTICLE 92.** If the publishing contract had fixed deadline for completion, and the expiry of that, the conservare editor unsold copies of the work, the owner of the copyright may buy them at cost plus ten percent. The deadline for exercising this right will be one month from the date of expiry of the period, after which the publisher may continue selling them under the same conditions.

## **CHAPTER II CONTRACT PUBLIC PERFORMANCE**

**ARTICLE 93.** By the contract of representation or public performance, the author of a work literary, dramatic, musical, dramatic-musical, mimed or choreographic or right samll, assigns or authorizes a natural or legal person, the right to represent or perform his work publicly, in exchange for remuneration. The contract may contain provisions regarding the actors who play the main papers, wardrobe details and description of the scenario.

**ARTICLE 94.** The parties may enter into the contract for a fixed term or for a certain number representations to the public. In both cases, the employer is obliged to perform first performance within the period specified, or failing that, within six months the date of signing the contract. Otherwise, it will terminate the contract and the author is not obliged to return the compensation received by him.

**ARTICLE 95.** In the absence of contractual provisions, the employer acquires the concession exclusively for the performance of the play for six months after its release. He author of the work can not have it performed by a third, while the employer who accepted first it has completed the agreed number, except representations if the contract with him without exclusivity.

**ARTICLE 96.** The employer is required to:

- a) Represent the work under the conditions stated in the contract, without introducing modifications agreed to by the author and announce to the public by title, author's name and, where appropriate, name of the translator or adapter;
- b) Allow the author supervise the performance of the work; Y
- c) Keep the main performers or directors of the orchestra and choir, if they were chosen according to the author.

**ARTICLE 97.** The author's participation in box office revenue has the quality of a deposit with the entrepreneur, available to the author, and not be affected by any embargo issued against the assets of the employer. If the employer, when requested by the author, will deliver them its shareholding in deposit, the competent judicial authority, on request, order the suspension of the representations of the work or the retention of the product of the inputs, without prejudice to the right the author to terminate the contract and initiating actions as may be appropriate.

**ARTICLE 98.** Without the authorization of the owner of copyright or related, may be delayed radio, television, speaker services or other similar electronic means, or run on auditions or public performances, any musical compositions with or without words, the user must pay the appropriate financial compensation. The owner, partner, manager, director or responsible for the activities of establishments shall be jointly liable with the organizer of the show for rights violations respective carried out in such areas. In public shows with live interpreter intervention, companies and individuals responsible for its organization and

the public authorities are obliged to prohibit the audience recording of the show, by any means, without permission written by the author, performer and phonographic or videographic producer concerned.

**ARTICLE 99.** The person who is responsible for the management of the entities or establishments, where acts of public performance of musical works are performed, it is required to:

a) Write down daily, the title of each musical work performed, the name of the author and composer thereof, artists or performers involved, the director of the group or orchestra, in its case, and the name of phonographic or videographic producer, when the public performance is made from a phonogram or videogram.

b) Send the information to each of the associations or management companies

They represent the rights of authors, performers and producers frames and video recordings.

**ARTICLE 100.** The administrative authorities to authorize public performances, not issue the permits if the responsible representation or not execution certifies the authorization of the owners of the respective rights.

### **CHAPTER III CONTRACT WORK FIXING**

**ARTICLE 101.** By fixing the contract work, the author authorizes a natural person or legal, to include it in an audiovisual work or phonogram for reproduction and distribution, to change a previously agreed remuneration.

**ARTICLE 102.** Unless otherwise agreed, the author's remuneration shall be in proportion to the value of copies sold and will be paid to the author in half-yearly settlements, from the Initial date of circulation. For this purpose, the producer must keep an accounting system that allows checking the number of copies produced and sold.

**ARTICLE 103.** The author or his representatives and the producer may, jointly or separately, initiate appropriate legal action for unlawful use of works audiovisual and sound recordings.

### **TITLE VII REGISTRATION OF WORKS CHAPTER ONE**

**ARTICLE 104.**<sup>46</sup> The Registry of Intellectual Property has the main attribution, without prejudice what have other laws guarantee legal security of authors, holders related and holders of the respective rights and economic rights assignees and give adequate publicity to works, instruments and documents through of registration, when requested by holders. In addition, the Registry of Intellectual Property is the competent administrative authority to:

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<sup>46</sup> Reformed by Article 19 of Decree 56-2000 of the Congress of the Republic

- a) To receive the deposit and make the corresponding registration of works for which it request their authors or right holders;
  - b) To receive the deposit and make the corresponding registration of phonographic productions and the artistic performances and productions for radio and television performances that are fixed in a tangible medium, when requested by their holders;
  - c) Sign agreements and contracts in any way confer, alter, transfer, restrict or disposal on property copyright or related rights and authorizing modifications or alterations to a work, when requested by one or all parties or by law. For the purposes of this subparagraph, it will suffice accompany the respective application a summary of the agreement or contract containing at least the information set in the regulations of this law;
  - d) To consider and decide Records operation authorization request as collecting societies that promote associations without profit purposes;
  - e) To exercise its own initiative, or upon application, monitoring and inspection on the activities of the collecting societies and the activities of its directors and / or representatives legal and impose the sanctions provided in this law;
  - f) To exercise its own initiative or upon request from the monitoring and inspection activities that may lead to the exercise of the rights recognized by this law or treaties on law Copyright and Related Rights is part Guatemala. Everyone is obliged to provide the facilities and provide all information and documentation that, for purposes of this faculty, it is required by the Registry of Intellectual Property;
  - g) to register the Director General, the members of the Board and Committee Surveillance collecting societies, elected or appointed by the management body corresponding;
  - h) To conduct the registration of the appointment of legal representatives and agents of the collecting societies. Such appointments and mandates will not take legal effect, but until they have been registered in the Registry of Intellectual Property;
  - i) Impose sanctions established by this law to collecting societies or the members of the Board of Directors, Supervisory Committee and the Director General of the same when it is determined that they, with their performances, incurred in violation or breach of legal, statutory or regulatory obligations;
  - j) intervene by conciliation in conflicts that arise concerning the enjoyment or exercise of the rights recognized in this law or treaties on the subject of Copyright and Related Rights is part of Guatemala, when requested by the parties. Nor shall the Registry of Intellectual Property conciliation call the parties when deemed appropriate. It develops regulations concerning the faculty referred to in this literal;
  - k) Develop outreach programs, training and training on rights Intellectual property;
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- l) Perform such other functions and powers established by law or respective regulations. The Registry of Intellectual Property, through the Ministry of Economy, may conclude cooperation agreements with other national entities for purposes of transferring copies or copies of works submitted for deposit and registration. Deposits and inscriptions corresponding to this law refers to be subject to the payment of rates determined by the tariff established by governmental decree.

**ARTICLE 105.** The registration of works and productions protected by this law is declaratory and not establishing rights; consequently, the lack or failure to register does not prejudice the protection of them or the rights established by this law. Notwithstanding this, the registration presumes that the facts and acts recorded therein, unless the opposite. Any entry except the rights of others.

**ARTICLE 106.** To proceed with the registration of a work, the author or his legal representative must file an affidavit, in duplicate, which shall contain:

- a) The full names of the holders of copyright surname and, where appropriate, the editor or producer; age, marital status, occupation, nationality and address;
- b) The title, description and detailed composition of the work and its bibliographic data relevant; number of pages, format, composition, place and date of issue, name of publisher, and place and date of first publication or fixation, as applicable;
- c) If the work is a compilation or derivative creation of another work, the identification of the work primitive;
- d) Any other relevant information to more accurately identify the work, and as the existence, ownership or duration of copyright. Checked the falsity of the affidavit submitted shall be deducted against responsible for criminal actions and the corresponding civil rights violation established in this law.

**ARTICLE 107.** In the case of a work made by several authors, any of them may for registration of the complete work and if acting jointly, shall appoint a common representative.

When two or more persons applying for registration of the same work, this will be recorded in the terms of the first application, without prejudice to the right to dispute the registration.

**ARTICLE 108.** Along with the application, the applicant must submit a copy of the work and

proof attesting have made payment in Article 104 of this law refers to. When In the case of already published works, the copy will accompany the latest edition. In the case of plastic works such as sculptures, drawings, engravings, lithographs, drawings or models, whether applied or not, shall be accompanied, in the absence thereof, of the color photographs work, taken from different angles. In the case of audiovisual works, interested parties may attach a copy of the work or photographs of the main scenes, accompanied by an account of the plot and where appropriate, a copy of the corresponding score.

**ARTICLE 109.** To register a work written under a pseudonym, will accompany the application, sealed, identification data of the author. The Registrar will open the envelope, attendance of witnesses, when requested by the registrant, the publisher of the work or its assignees, or by court order. The opening of the envelope shall be to establish the author's identity and its relationship to the work. From the foregoing shall be recorded in the minutes.

**ARTICLE 110.** The Registry of Intellectual Property may by order permit replacement of deposit copy in certain creative genres, for accompaniment documents that allow sufficiently identify the characteristics and content of the work or production subject to registration.

**ARTICLE 111.** The inscriptions and documents in the Land Registry Intellectual are public; however, in the case of computer programs, access to documents will only be allowed with the permission of the copyright holder, or his successor in title by injunction. The works submitted as unpublished for purposes of registration in the Register of the Intellectual property may only be consulted by the author of it.

**ARTICLE 112.** In the event a dispute arises regarding the rights protected by this law, it must be ventilated before the courts. As it were applicable, the provisions concerning the

registration of works shall apply to the registration of productions protected by related rights.

**TITLE VIII  
COLLECTING SOCIETIES  
CHAPTER ONE**

**ARTICLE 113.**<sup>47</sup> Holders of copyright and related rights may be civil associations non-profit so that, once obtained the respective registration, may request authorization as collecting societies for the defense and administration of the economic rights recognized by this law. These associations are governed by the general provisions of the Civil Code and special in this law and its regulations, and the provisions of its statutes and subject to inspection and State monitoring, through the Intellectual Property Registry. Associations applying for authorization as collecting societies may only having as purposes envisaged in this law, without prejudice to their complementary activities cultural and welfare nature, and they may not hold any political or religious activity.

**ARTICLE 113 bis.**<sup>48</sup> The authorization of a non-profit association for operation as a collective management society may be granted by the Land Registry Intellectual when meeting the following requirements are set:

- a) The association has been constituted and obtained its legal personality in accordance with established for this purpose in Article 113 of this law;
- b) that has the human, technical and basic material and financial resources for the fulfillment of its purposes;
- c) stating that the association is composed mostly of members Guatemalan origin or foreigners resident in Guatemala, rightholders in a same kind of works or productions;
- d) That members of the association must be accorded appropriate rights of participation in the decisions of the entity;
- e) That in the distribution rules, after deduction of administrative expenses to the percentage maximum provided for in the statutes, and in any case shall not exceed thirty percent, ensure equitable distribution among right holders in proportion to the actual use of works, artistic performances, or phonograms, as appropriate;
- f) Have a minimum membership regulations, tariffs and distribution;
- g) verifying the effectiveness of the management abroad or foreign repertoire national territory by elements that ensure the conclusion of contracts of representation mutual associations or societies with the same purposes that work abroad. He Intellectual Property Registry will make the relevant valuation;
- h) Any other information that according to the Registry of Intellectual Property is required.

**ARTICLE 114.** For the defense of economic rights of its members, societies CMOs are considered mandatory for these by the simple act of affiliation to same.

**ARTICLE 115.** Unless otherwise agreed, are functions of collecting societies the following:

- a) To represent their members before the judicial and administrative authorities, in all general and particular issues of interest to them, unless the partners decide to exercise by Meanwhile the corresponding actions for infringement of their rights;

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<sup>47</sup> Reformed by Article 20 of Decree 56-2000 of the Congress of the Republic

<sup>48</sup> Added by Article 21 of Decree 56-2000 of the Congress of the Republic

- b) negotiate with users the conditions of authorizations to carry out acts including rights to administer and corresponding remuneration, and give those authorizations;
- c) To collect and distribute to its members, remuneration rights from them They correspond. To exercise this attribution associations will be considered agents of their members by the simple act of membership in them;
- d) enter into agreements with foreign collective management companies of the same activity or management;
- e) To represent the country to foreign companies who have contract representation before judicial and administrative authorities in all matters of their interest, being empowered to appear in court on their behalf;
- f) To ensure the safeguarding of national artistic and intellectual tradition;

**ARTICLE 116.** Once authorized collective management societies, will be legitimated to exercise the rights under management and enforce them in all kinds of procedures administrative and judicial, regardless of title and more proof that their own statutes. Except proof to the contrary, it is presumed that society has representation rights claimed.

**ARTICLE 117.** shall contain the statutes of collecting societies:

- a) The name of the entity;
- b) The purpose or purposes, provided the rights that can be managed;
- c) Classes of rightholders covered by the administration, and participation of each category of owners, in the direction or management of the entity;
- d) The conditions for the acquisition and loss of quality associated;
- e) The rights of partners and represented;
- f) The obligations of partners and represented and the disciplinary regime are subject;
- g) Government bodies and their powers;
- h) The procedure for the election of officers;
- i) The initial capital and planned economic resources;
- j) The rules for the approval of the rules for collection and distribution;
- k) The system of control and supervision of the economic and financial management of the company;
- l) The opportunity to present the balance sheet and report of activities undertaken annually, and the procedure for verification of balance and documentation; Y
- m) The fate of the assets of the company, in case of dissolution.

**ARTICLE 118.** The collective management societies accepted as partners holders rights protected by this law, upon request and duly evidencing their capacity as such. The statutes determine the form and conditions of admission and withdrawal of admission. Foreign partners whose rights are administered by a collecting society, directly or on the basis of agreements with similar foreign companies, shall enjoy the same treatment as partners who are nationals or have their residence in the country. The collecting societies will always be obliged to accept the administration of rights of the association.

**ARTICLE 119.** The partners may in no case be expelled. Statutes will determine where appropriate the suspension of social rights. To agree suspension is required seventy-five percent (75%) of the votes represented at the session of the General Assembly in which the agreement is made. The suspension does not involve deprivation or retention or perceptions economic rights.

**ARTICLE 120.**<sup>49</sup> The collecting society shall contain at least the following organs: the General Assembly, a Management Board and a Supervisory Committee. The management company collective shall be required to have external audit. also you have a Director General, who shall be appointed by the Board. Who presides over the Board and the Director General, They have the legal representation of the company, without prejudice to other charges that provision of the statutes also have the legal representation of the entity. Every collecting society shall register in the Registry of the Intellectual Property regulations issued.

The General Assembly is the supreme body of the entity and appoint the members of the other organs. The General Assembly belongs, among others:

- a) To approve or reject the financial statements and annual report of the entity;
- b) To approve or reject the report of the Monitoring Committee;
- c) Appoint the external audit;
- d) To approve the amendment of the Constitution;
- e) Any other powers to establish its statutes, while not contravene provisions of this law.

Without prejudice to the auditing standards established in the statutes, states financial and accounting records and documentation of the entity will be subject to analysis and opinion of the external audit. The report of the external audit, financial statements and accounting records and documentation, will be made available to members in advance fifteen days before the date of the respective General Assembly. The call for the holding of the General Assembly shall inform the members through published at least twice in the official gazette notices and another the largest circulation in the country, with no less than fifteen days prior to the date of celebration. The resolutions legally adopted by the General Assembly are binding even for members who were not present or shall vote against, except the right to challenge them judicially when they are contrary to public policy, the law and its regulations, statutes and regulations collecting society. The challenge must be exercised judicially by the procedure of incidents within fifteen days of the date on which he had place the general assembly.

The approval of the regulations and the annual budget will be function of the General Assembly a proposal of Board of Directors.

**ARTICLE 121**<sup>50</sup> People who are part of the governing bodies of a society of CMOs, may not appear in similar bodies of other related entity of this matter. They may not be regular members or alternates of the Board, Supervisory Committee or CEO of a collecting society, the following:

- a) related to each other, to the fourth degree of consanguinity and second of affinity;
- b) The spouses or who estuvieren united in fact;
- c) The artistic directors, entrepreneurs, owners, partners, representatives or lawyers to Debit service entities collecting society or have pending litigation with her;
- d) relatives to the fourth degree of consanguinity or second degree, spouses or they were who actually joined with officials or staff of the Registry of Property Intellectual established in the regulations of this law.

The members of the Board of Directors, Supervisory Committee and the Director General, at the time of assume office and annually within the first fifteen days of January, should

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<sup>49</sup> Reformed by Article 22 of Decree 56-2000 of the Congress of the Republic

<sup>50</sup> Reformed by Article 23 of Decree 56-2000 of the Congress of the Republic

submit to the Registry of Intellectual Property, contained in affidavit affidavit of not fall within any of the incompatibilities referred to in this law.

**ARTICLE 122.**<sup>51</sup> The collecting societies are required to provide their and represented members, periodic detailed information on all activities organization that may concern the exercise of their rights. Similar information should be sent to associations or foreign companies which maintain contract representation. They are also obliged to provide the Intellectual Property Registry entire information required for himself and provide access to books and documents in order verify compliance with the legal and statutory standards.

**ARTICLE 123.**<sup>52</sup> The collecting societies are empowered to collect and distribute corresponding to the use of works and sound recordings remuneration which administration entrusted to them, being able to set tariffs apply for the use thereof. The distribution of collected duties will equally among the rightholders administered, as approved in the statutes. For the distribution of royalties collected the following principles apply:

- a) The distribution will be made in proportion to the use of works, performances or productions;
- b) The distribution of rights to which foreigners will be on the same terms established for the distribution of rights to which Guatemalans;
- c) The right to claim settlement on undistributed rights prescribed in five years, counted from the day following the date corresponding distribution. Therefore, the undistributed royalties collected within 5 years due to lack of identification or documentation of the works or productions must be distributed in proportion to the use of works, performances or productions, properly identified or documented, for the same period of collection.

**ARTICLE 124.** No remuneration collected by a collective management company can be used for any purpose other than the distribution to its members in order, after deducting respective administration expenses, unless authorized by the General Assembly Associated. The directors of the company will be jointly and severally liable for the infringement of this disposition.

**ARTICLE 125.** To allow the realization of shows and public performances of works and phonograms protected, government authorities and any other competent, should finding that has obtained authorization from the right holders and institutions CMOs, if any, and has made the payment of the fee set forth in the corresponding tariffs.

## TITLE IX EFFECTIVE ENFORCEMENT OF RIGHTS CHAPTER ONE

**ARTICLE 126.**<sup>53</sup> Fees shall be approved by the General Assembly on the proposal of the Board Directive and shall be published in the official gazette, charging effect from the next day publication. They also must be published in the official gazette and in another major circulation annual financial statements approved by the General Assembly of the Society CMOs.

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<sup>51</sup> Reformed by Article 24 of Decree 56-2000 of the Congress of the Republic.

<sup>52</sup> Amended by Article 25 of Decree 56-2000 of the Congress of the Republic

<sup>53</sup> Reformed by Article 26 of Decree 56-2000 of the Congress of the Republic.

**ARTICLE 126 bis.**<sup>54</sup> In case of breach of legal obligations and / or regulatory by the collecting societies and / or its officers and directors, the Registry Intellectual Property, established the contrary, must a reasoned resolution, impose the corresponding penalty according to the seriousness of it. Sanctions may include:

- a) Private warning, addressed to the Board;
- b) Public reprimand;
- c) Fine;
- d) Temporary suspension of the authorization as collecting society; Y
- e) definitive cancellation of the authorization as collecting society.

In the cases referred to in paragraphs d) and e), the Intellectual Property Registry may designate one oversight board for the term duration of the suspension or during the time it takes the process settlement of collective management entity exercised. In the event of temporary suspension, directors, managers or legal representatives of a collecting society may not enter into any contract or carry out operations her name, except those necessary for the conservation of the social heritage. The violation of this rule will make them jointly liable for damages thereby placing the collecting society or to third parties. The regulations of this law will develop cases where appropriate every sanction and as regards the oversight board, as appropriate designation.

**ARTICLE 127.**<sup>55</sup> is for the Public Prosecutor the exercise of criminal action against the responsible for crimes and offenses punishable on Copyright and Rights Related in the Penal Code and other laws. The owner or licensee of the rights infringed may lead to criminal prosecution denouncing the violation of such rights or accede to the already initiated by the Public Prosecutor entity is obliged to act directly and immediately against those responsible. You may also urge prosecution any association or organization representing a production sector or consumers.

**ARTICLE 128.**<sup>56 57</sup>The public prosecutor, ex officio or at the request of the right holder or injured party, having knowledge of an unlawful act, within the time limits called for by the provisions of the Criminal Procedure Code, shall require the competent court to authorize any of the precautionary measures set out in this law or in the aforementioned code necessary to safeguard the rights recognized and protected by this law, and the international treaties on the subject of the Republic of Guatemala is a party, and that they are in breach, or when the violation is imminent. To this end, the prosecution judge that the request for precautionary measures will be appropriate when the circumstances and Available evidence leading to the assumption that the infringement has occurred or that there the risk of occurrence. Submitted the application to the competent court, it shall be obliged to order measures precautionary matter of urgency in accordance with the applicable procedural provisions, authorizing the Attorney General to proceed with his execution with the help of the authority police necessary.

**ARTICLE 128 bis.**<sup>58 59</sup> It may issue the following precautionary measures in case of criminal proceedings:

- a) The immediate cessation of malfeasance or illegal trade of the copyrighted work;

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<sup>54</sup> Added by Article 27 of Decree 56-2000 of the Congress of the Republic.

<sup>55</sup> Reformed by Article 28 of Decree 56-2000 of the Congress of the Republic

<sup>56</sup> Reformed by Article 29 of Decree 56-2000 of the Congress of the Republic.

<sup>57</sup> Reformed by Article 96 of Decree No. 11-2006 of the Congress

<sup>58</sup> Added by Article 30 of Decree 56-2000 of the Congress of the Republic

<sup>59</sup> Reformed by Article 97 of Decree No. 11-2006 of the Congress

- b) The search and registration of public or private property open or closed, which made in accordance with the provisions in this regard in the Criminal Procedure Code, including search and inspection of computer equipment or computers to set the use or illegal reproduction of software in accordance with Article 32 of this Law;
- c) The seizure of movable and immovable property and, among others, of bank accounts in the name of individual companies or individuals identified as possible perpetrators are or accomplices responsible for the unlawful act complained and impoundment of the net proceeds of revenue possible offender;
- d) Kidnapping or immediate confiscation of illegally made copies or copies of works or sound recordings; or, of goods unlawfully incorporate works or phonograms; the materials and instruments used to produce them, to transport, store, distribute, offer them for sale, lease or communicate to the public in any form and evidence documentary on the crime. It is not necessary to individually identify items subject to confiscation in accordance with the court order, if they belong to the general categories specified in the order. The goods shall be seized or sequestered in deposit  
Public ministry;
- e) The suspension of customs clearance of copies or copies unlawfully made of works or phonograms, or seizure of goods unlawfully incorporate works or phonograms, which are to enter Guatemala, which will be controlled in a tank the customs authorities;
- f) The order of review of the financial records of individuals or legal entities identified as possible perpetrators of the illegal act;
- g) The kidnapping of accounting records or computer equipment containing them, the individual or legal persons identified as possible perpetrators of the illegal act;
- h) The temporary closure of the premises or business in which illegal copies of works are or or phonograms or any infringing materials and instruments used merchandise for produce them. This measure will be maintained for the period necessary to ensure the outcome of the process and may not rise as there is a risk that the infringement or other violation is repeated at the rights established in this law and treaties concerning copyright and rights related that is part of the Republic of Guatemala; and
- i) The precautionary or protective measures, aids or coercive measures which, according to circumstances seem more suitable to temporarily secure the cessation of the wrongful act, the protection of the rights recognized in this Act or the preservation of evidence or evidence relating to an actual or imminent violation. Instruments and objects of crime who have fallen into seizure or kidnapping will be considered as evidence against those responsible for the unlawful act.

**ARTICLE 128 ter.**<sup>60</sup> If there is agreement between the victim and the person or persons accused of criminal offense and the first has been successfully compensated for the damage caused and has been paid, or it is properly secured the damage caused by the crime, may be terminate the legal proceedings initiated at any stage of the process.

**ARTICLE 128 quarter**<sup>61</sup> addition to the criminal penalties under the Penal Code, criminal proceedings the judicial authorities shall also have the authority to:

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<sup>60</sup> Added by Article 31 of Decree 56-2000 of the Congress of the Republic

<sup>61</sup> Added by Article 98 of Decree No. 11-2006 of the Congress

a) order the confiscation of goods which are suspected pirated material and implements used in the commission of the crime of violation of copyright and rights related assets that can be traced to the infringing activity and any documentary evidence relevant to the crime. It is not necessary to individually identify the items subject to seizure as result of the court order if they belong to the general categories specified in the order;

b) Order, among other provisions:

- 1) Confiscation of assets that are traceable to the infringing activity;
- 2) The confiscation and destruction of all goods illicitly copied without compensation or compensation of any kind to the accused in order to prevent the goods Pirated re-enter the commercial circuits;
- 3) The seizure and destruction of materials and implements used in the creation of articles offenders.

**ARTICLE 129.**<sup>62 63</sup> Where the holder of a right protected by this law hath probable cause to assume that an import or export of products that infringe prepares its rights, you can:

- a) To request the relevant customs authorities to suspend the import or export in question, for a period not exceeding ten working days; or
- b) request the competent judge to order the customs authorities to suspend the release that import or export.

Notwithstanding the foregoing, the customs authorities must apply ex officio border measures before the competent judicial authorities if they suspect that there are goods imported, exported or in transit infringe a right protected by this law, without complaint mediate Formal part of a private entity or the right holder.

**ARTICLE 130.**<sup>64</sup> The holder of the right to request border measures referred the Article 129 of this law shall provide the customs authorities or the competent judge, sufficient evidence that, at first glance, there is infringement, and must provide sufficient information to reasonably expect that held by the holder to the goods suspected to be recognized easily. The requirement to provide sufficient information shall not unreasonably discourage the use of these procedures. To request that the provisions and guarantees relating to this shall apply measures precautionary measures established for civil proceedings. Executed the suspension of the import or export of the goods in question infringing, the customs authority which issued shall immediately notify the importer or exporter of the same and the applicant of the measure. Within ten working days from the date of notification to the applicant without received a judicial order to keep it in force, the customs authority rise from trade suspension and order the release of the detained goods. It incur responsibility the officer who fails to comply with the timely lifting of the suspension. Without prejudice to the obligation to protect confidential information, the authorities ordered the border measure may give the person who submitted the request unhindered access to the goods or products retained so that you can inspect and obtain evidence Further in support of its claim. The importer or exporter shall enjoy the same right. This activity will take place in the presence of the appropriate authority and give notice thereof to the opposing party. In any case, if the authority determines that the goods or products held violate a right

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<sup>62</sup> Reformed by Article 99 of Decree No. 11-2006 of the Congress.

<sup>63</sup> Editor's Note: The last paragraph of Article 129 of this Act, amended by section 99 of Decree No. 11-2006, published in the Official Gazette on May 29, 2006, applies four (4) years after the entry into force of the Free Trade Agreement DR-CAFTA

<sup>64</sup> Reformed by Article 100 of Decree No. 11-2006 of the Congress

protected by this law, it shall be entitled to provide the right holder the names and addresses of the consignor, the importer and the consignee and the number of items in question.

**ARTICLE 131.** In order to justify the extension of the suspension of the release of the goods detained by the customs authorities, or to sustain an infringement action, the judge will allow the right holder to inspect the merchandise. Same right shall correspond to importer or exporter of the goods.

**ARTICLE 132.**<sup>65</sup> The competent judicial authority shall be entitled to require the holder of a law which has initiated a process of suspension reasonable pay a guarantee or surety equal sufficient to protect the accused and the competent authorities and to prevent abuses. Such warranty or guarantee may not be unreasonable so as to discourage the use of such procedures. This guarantee can be an instrument issued by a service provider financial to leave the importer, exporter or owner of the goods imported or exported safe from damages resulting from the suspension of the release of the articles if the competent authorities determine that the item is non-infringing. In the cases mentioned in the preceding paragraph, the judicial and administrative authorities I will have ordered the suspension of the import or export shall not be liable if I will have acted in good faith.

**ARTICLE 132 bis.**<sup>66</sup> Where the competent authorities determine that the goods are Pirated, they will be destroyed in accordance with a warrant, unless that the rightholder approve an alternative arrangement. In no case may the competent authorities allow export of pirated goods to allow it see subject to other customs, procedures except in exceptional circumstances.

**ARTICLE 132 ter.**<sup>67</sup> When an application fee or storage of goods is set in relation to border measures for the enforcement of intellectual property rights, the no charge shall be set at an unreasonable amount to deter the use of such measures.

**ARTICLE 133.**<sup>68</sup> Civilians processes to be promoted to assert rights They recognized in this law shall be processed in accordance with the established procedure of trial in Book II, Title II, Chapters I and II of the Civil and Commercial Code. Notwithstanding the provisions of this Article and any other provision of this Act that in civil and commercial cases, interested parties may also use methods alternative dispute resolution, such as conciliation and arbitration.

**ARTICLE 133 bis.**<sup>69 70</sup> who institutes or intends to bring a civil action on copyright or related rights, you may ask the judge to order security measures and emergency orders effective immediately in order to protect their rights, prevent or prevent the commission of an offense, avoid its consequences and obtain or preserve evidence. If Judge deems it necessary, in the same resolution that decrees the measures requested it may invite the actor prior to execution provide reasonable bond or other guarantee protect affected by the measure and the authority itself and to prevent himself abuses. This guarantee will not be

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<sup>65</sup> Reformed by Article 101 of Decree No. 11-2006 of the Congress

<sup>66</sup> Added by Article 102 of Decree No. 11-2006 of the Congress

<sup>67</sup> Added by Article 103 of Decree No. 11-2006 of the Congress

<sup>68</sup> Reformed by Article 32 of Decree 56-2000 of the Congress of the Republic.

<sup>69</sup> Added by Article 33 of Decree 56-2000 of the Congress of the Republic

<sup>70</sup> Reformed by Article 104 of Decree No. 11-2006 of the Congress

unreasonable to discourage the use of that procedure. The judge shall order the measures that tend to prudently protection right plaintiff or petitioner, such as:

- a) The immediate cessation of the infringement alleged by the rightholder;
- b) The seizure of infringing goods, including containers, packaging, packaging, labels, printed or advertising materials, equipment, machinery and other materials resulting from the offense or used to commit it and the means used to commit the infringement;
- c) The prohibition of the importation of the products, materials or means referred to in subsection previous;
- d) The confiscation and transfer to judicial deposits of products, materials or means referred to in subparagraph b);
- e) The necessary measures to prevent the continuation or repetition of the offense, including destruction of products, materials, equipment or means referred to in paragraph b);
- f) The suspension or cancellation of licenses or health records or other nature, are necessary for entry, distribution, sale or marketing of products offenders.

The judicial authorities shall require the complainant to establish evidence that reasonably you may have available in order to have sufficient certainty that the right is violated applicant or that such infringement is imminent.

**ARTICLE 133 ter.**<sup>71</sup> The judge shall order and enforce measures within you who requested

non-extendable period of two days. If the measures previously requested to demand, set period shall run from the filing of the bond or security required. All precautionary measures be processed and run without notification or intervention defendant, but they must be notified of this at the time of execution or immediately thereafter. The courts take the necessary measures to ensure that the request for precautionary measures be withheld, in accordance with provisions of paragraph e) of Article 133 of this law. If the measures are ordered before the action started, the same shall be void if who obtained them no corresponding demand within fifteen days, counting from the date on which the measures have been implemented.

**ARTICLE 133 quater.**<sup>72 73</sup> When precautionary measures are requested with demand or after this, you need not constitute any guarantee. Once granted or issued an order or injunction which would ensure the Following the process regarding the restoring pretension in a civil action, it can not be rendered ineffective by a reasonable bond or guarantee. The security or guarantee only It may be granted to achieve the lifting of the precautionary measures designed to ensure or protect a claim for damages in the strict sense.

**ARTICLE 133 quinquies.**<sup>74 75</sup> Without prejudice to the civil liabilities arising from the infringement of a copyright or related, the person performing any of the acts contained in

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<sup>71</sup> Added by Article 34 of Decree 56-2000 of the Congress of the Republic

<sup>72</sup> Added by Article 35 of Decree 56-2000 of the Congress of the Republic

<sup>73</sup> Reformed by Article 105 of Decree No. 11-2006 of the Congress.

<sup>74</sup> Added by Article 106 of Decree No. 11-2006 of the Congress.

<sup>75</sup> Editor's Note: The literal b) of Article 133 d applied three (3) years after the entry into force of the Free Trade Agreement DR-CAFTA.

this article, shall be subject to resources, guarantees and precautionary measures set in this Title:

- a) Sidestep or tries to circumvent unauthorized effective technological measures implemented by the author or rightholder, performers, phonogram producers, in the exercise of or corresponding to restrict or control access rights to works, performances, phonograms or other protected materials; or
- b) manufactures, imports, distributes, offers to the public, provide, sell, offer for sale; or other way traded in devices, products or components; or offers to the public or provide services what:
  - 1) are promoted, advertised or marketed for the purpose of circumventing a technological measure effective;
  - 2) Have only one commercial significant purpose or use other than limited circumvent effective technological measure; or
  - 3) Be designed, produced or performed primarily for the purpose of enabling or facilitating the circumventing an effective technological measure.

You can not be ordered to pay civil liability for damages, a library, an archive, educational institution or public body noncommercial broadcasting and non-profit, showing that not proceeded with the intention of engaging in a prohibited activity. The design, or the design and selection of parts and components for electronics consumer, telecommunications or computing products do not need to respond to a measure specific technology if the product does not violate the literal a) or b) above.

**ARTICLE 133 sexties.**<sup>76</sup> be considered lawful activities:

- 1) With respect to Article 133 literal d b) on the effective technological measures control access to a work, performance or phonogram, activities described in a), b), c) and d) of this paragraph are lawful, provided they do not harm the lawful protection or the validity of legal remedies against the circumvention of technological measures effective.

With regard to article 133 literal d b) on the effective technological measures protect any of the exclusive rights of copyright or related to a work, performance or or phonogram, the activity described in paragraph a) of this section is lawful, provided they do not harm the lawful protection or the validity of legal remedies against circumvention of effective technological measures:

- a) Activities of non-infringing reverse engineering, with respect to a copy obtained legally from a computer program, carried out in good faith on particular elements of that fifty computer program that the person involved in reverse engineering was not his disposal, with the sole purpose of achieving interoperability of a computer program created independently, with other programs;
- b) good faith activities that are not infringing, conducted by a researcher duly qualified has lawfully obtained a copy, a performance not fixed or following is attached to a copy of the work, performance or phonogram, or appears in connection with the communication or making available of a work, performance, or phonogram:
  - 1) information that identifies a work, performance, or phonogram, the author of the work, the performer of the performance or the phonogram producer or any holder of a right protected work, performance, or phonogram;
  - 2) information about the terms and conditions of use of the work, erformance, or phonogram; or

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<sup>76</sup> Added by Article 107 of Decree No. 11-2006 of the Congress

- 3) Any numbers or codes that represent such information.

The authority may require the owner of any right in the work, performance or performance, or phonogram provide information on rights management.

**ARTICLE 133 septies.**<sup>77</sup> Without prejudice to the liability resulting from the infringement of copyright or related, any person performing without authorization and knowingly or having reasonable grounds to know that induce, enable it, facilitate or conceal one infringement of a copyright or related right shall be civilly liable and subject to the resources, guarantees and precautionary measures set out in this title, when:

- a) removes or alters any rights management information;
- b) distributes or imports for distribution, information rights management, knowing that it has been removed or altered without authorization; or
- c) Distribute, import for distribution, transmit, communicate or make available to the public copies of works, performances or phonograms, knowing that information about rights management has been removed or altered without authorization.

This shall not apply to legally authorized activities performed by employees, officials or government contractors, for law enforcement, as well as performing intelligence activities, national defense, security or other government purposes similar. You can not be ordered to pay civil liability for damages to a library, an archive, educational institution and public body noncommercial broadcasting and non-profit, showing that not proceeded with the intention of engaging in a prohibited activity. It shall mean information rights management, when described in subparagraphs following is attached to a copy of the work, performance or phonogram, or appears in connection with the communication or making available of a work,

performance, or phonogram:

- 1) information that identifies a work, performance, or phonogram, the author of the work, the performer of the performance or the phonogram producer or any holder of a right protected work, performance, or phonogram;
- 2) information about the terms and conditions of use of the work, performance, or phonogram; or
- 3) Any numbers or codes that represent such information.

The authority may require the owner of any right in the work, performance.

**ARTICLE 133 octies.**<sup>78</sup> Without prejudice to the liability resulting from the infringement of a

copyright or related right shall be civilly liable and subject to resources, guarantees and precautionary measures set out in this Part, the person performing any activity following:

- a) Manufacture, assemble, modify, import, export, sell, lease or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system serves primarily for decoding or assists a satellite signal encoded, you have a program without the authorization of the lawful distributor of such signal; or

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<sup>77</sup> Added by Article 108 of Decree No. 11-2006 of the Congress.

<sup>78</sup> Added by Article 109 of Decree No. 11-2006 of the Congress.

b) Deliberately receive and distribute a signal having a program that originated as encrypted satellite signal knowing that was decoded without the authorization of the lawful distributor of the signal.

Any person aggrieved by the activities described in this article may take civil action, even people who have rights to encrypted programming signal or content.

**ARTICLE 134.**<sup>79</sup> Civil actions derived from the rights established in this law expire within five years from the date of knowledge of the violation of right or rights concerned. Criminal action may be exercised jointly or independently of the civil action and will expire under the rules set out in criminal law.

**ARTICLE 134 bis**<sup>80 81</sup> The judgment declaring to place any civil actions under this Act, in addition to ruling on the merits, as the case may be:

- a) order that infringing goods are seized without compensation, for you are destroyed as objects of illicit trade or, as applicable, your income would prevent the trade circuits after customs clearance, prevent or exported;
- b) Notwithstanding the preceding paragraph indicated in a), with the authorization of the rightholder affected, the judge may, if it deems it appropriate, that the goods are donated to private non-profit or public entities, so they can use it only works or social welfare activities, must be written proof of the donation;
- c) order the confiscation of materials and related instruments;
- d) Provide materials and tools that have been used in the production of infringing goods are promptly destroyed or, in exceptional circumstances, without compensation of any nature, are removed from commercial channels and are donated by the Judge private or public non-profit organizations for their exclusive use in works or activities welfare without compensation of any kind for its owner, and must be a written record of the donation. Contemplating requests for such destruction, a judge You can take into account, inter alia, the seriousness of the infringement and the rights of others who are holders of ownership, possession, or contractual or guaranteed participation;
- e) To prohibit infringing goods from entering commercial channels;
- f) To order the termination of all infringing acts and compliance with the steps required to prevent the consequences of these acts and their repetition, as well as the return of damage.

**ARTICLE 134 ter.**<sup>82 83</sup>The judicial authorities are empowered to order the infringer pay the right holder:

- a) adequate compensation for the damage suffered by the right holder as a result of infringement;
- b) The profits of the infringer attributable to the infringement and that have not been included in the computation the amount of damages referred to in the preceding paragraph. In determining damages for infringement of intellectual property, judicial

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<sup>79</sup> Reformed by Article 36 of Decree 56-2000 of the Congress of the Republic.

<sup>80</sup> Added by Article 37 of Decree 56-2000 of the Congress of the Republic

<sup>81</sup> Reformed by Article 110 of Decree No. 11-2006 of the Congress.

<sup>82</sup> Added by Article 111 of Decree No. 11-2006 of the Congress.

<sup>83</sup> Editor's Note: The literal b) of Article 134b applies three (3) years after the entry into force of Free Trade Agreement DR-CAFTA.

authorities shall consider, among others, the value of the goods or service under infringement based on the sale price suggested retail or other legitimate measure of value present the rightholder.

As an alternative to the preceding paragraph, the holder of the rights infringed may opt for determination of damage to ten times the market value they would have had the goods infringing decommissioned, seized or retained if they were legal products. happiness compensation shall be determined by the competent judicial authority in the domicile of the defendant with a amount sufficient to compensate the right holder for the harm caused and that deters future infringements.

**ARTICLE 134 quinquies.**<sup>84</sup> In civil, administrative and criminal proceedings on rights Copyright and Neighboring be presumed:

- a) The person whose name is indicated as author, producer, performer or publisher of a work, performance, or phonogram in the usual manner shall, in the absence of proof otherwise, assumed the right holder mentioned in such work, performance, or phonogram;
- b) In the absence of evidence to the contrary be presumed that the copyright or related right subsists in the subject.

**ARTICLE 134 sexties.**<sup>85</sup> Within any civil or commercial proceedings, judicial authorities competent may require or order the infringer to provide the right holder, all information that the infringer possesses on any person who is involved in any aspect of the infringement and about the means of production or distribution channels for goods or Violators services, including the identification of third parties involved in their production and distribution and distribution channels. Judicial authorities impose penalties when the offender fails to comply with orders issued by a judge, without prejudice to criminal liability incurred.

## TITLE X TRANSITIONAL AND FINAL PROVISIONS CHAPTER ONE

**ARTICLE 135.** The provisions of this law shall apply to existing national works they have not entered the public domain on expiry of protection under Decree 1037 Number of Congress. As for the protection of existing foreign works, they will be protected only if under the law of their country of origin they have not fallen into the public domain by expiry of protection, even if it is a minor the term of protection provided for in the legislation Guatemalan.

**ARTICLE 136** Repealed <sup>86</sup>

**ARTICLE 137** <sup>87</sup> The Ministry of Economy will transform the current Land Registry Industrial in the Registry of Intellectual Property. Pending establishment of the Registry Intellectual Property, the functions assigned by this law to be said Registry performed by the Registry of Industrial Property. The regulations of this law shall be issued within a period not exceeding 120 days from the effective date of this decree.

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<sup>84</sup> Added by Article 112 of Decree No. 11-2006 of the Congress

<sup>85</sup> Added by Article 113 of Decree No. 11-2006 of the Congress.

<sup>86</sup> Repealed by Article 38 of Decree 56-2000 of the Congress of the Republic.

<sup>87</sup> Reformed by Article 39 of Decree 56-2000 of the Congress of the Republic

**ARTICLE 137 bis.**<sup>88</sup> within a period not exceeding one year from the effective date of this law, the Attorney General of the Republic shall create and organize a Prosecutor for Crimes against Intellectual Property, which will be responsible for the exercise of public prosecution in the case of offenses under Intellectual Property. Meanwhile it creates and organizes this special prosecutor, know of such crimes prosecution offices currently established.

**ARTICLE 137 ter.**<sup>89</sup> The civil court actions, in terms of this law, which have been initiated prior to the effective date of this decree shall continue until their resolution pursuant to the provisions under which they were initiated.

**ARTICLE 138.**<sup>90</sup> Decree No. 1037 of the Congress are repealed, dated 8 February 1954, Law on Copyright in Literary, Scientific and Artistic Works; he Chapter VII of Book IV of Decree 2-70 of the Congress of the Republic, Code Commerce; and paragraphs a), d), e) and f) of paragraph 3 of Article 24-quarter of Decree 51-92 of Congress, Criminal Procedure Code, added by Article 4 of Decree 79-97 the Congress of the Republic.

**ARTICLE 139.** This Decree shall enter into force thirty days after its publication in the official gazette.

**GO TO THE EXECUTIVE BRANCH FOR SANCTION, ENACTMENT AND  
PUBLICATION.  
GIVEN IN THE PALACE OF THE LEGISLATIVE BRANCH, IN THE CITY OF  
GUATEMALA, THE TWENTY-EIGHT DAYS  
THE MONTH OF APRIL NINETEEN NINETY-EIGHT.**

**Rafael Eduardo Barrios Flores  
PRESIDENT**

**Ruben Dario Morales Veliz  
SECRETARY**

**Victor Ramirez Hernandez  
SECRETARY**

**NATIONAL PALACE: GUATEMALA, MAY NINETEEN NINETEEN NINETY-EIGHT.**

**PUBLISHED AND ENFORCED**

**Luis Alberto Flores Asturias  
PRESIDENT OF THE REPUBLIC ACTING**

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<sup>88</sup> Added by Article 40 of Decree 56-2000 of the Congress of the Republic.

<sup>89</sup> Added by Article 41 of Decree 56-2000 of the Congress of the Republic.

<sup>90</sup> Reformed by Article 42 of Decree 56-2000 of the Congress of the Republic

## ANNEXED

Decree No. 11-2006 of the Congress, besides approving amendments to the Act Copyright and Related Rights, Article 114 expressly amended Article 274 the Penal Code. The text of the reform, which entered into force on 30 May 2006, is the following:

**ARTICLE 114. Article 274** of the Criminal Code is amended, is amended as follows Article 274. Violation of copyright and related rights. Except the cases referred specifically in laws or treaties on the subject of the Republic of Guatemala is part, shall be punished with imprisonment of one to six years and a fine of fifty thousand to seven hundred fifty thousand quetzales who perform any of the following acts:

- a) Identify falsely as holder of a copyright, performer or performer, phonogram producer or body radio broadcasting;
- b) The distortion, mutilation, modification or other damage to the integrity of the work or honor and reputation of its author;
- c) The reproduction of a work, performance, phonogram or broadcast without the authorization of the author or owner of the corresponding right;
- d) Adaptation, arrangement or transformation of all or part of a copyrighted work without the authorization of the author or rightholder;
- e) The communication to the public by any means or process, of a protected work or phonogram without the authorization of the entitlement holder;
- f) Unauthorized distribution of reproductions of all or part of a work or phonogram through its sale, long-term lease, lease, lease option to purchase; loan or any other form;
- g) Fixation, reproduction or communication to the public by any means or process, an interpretation or performance without the authorization of the performer or the rightholder;
- h) The fixation, reproduction or retransmission of a broadcast transmitted by satellite, radio, wire, cable, optic fiber or any other means without the authorization of the rightholder;
- i) The communication to the public of a broadcast or transmission on a site to which the public can access by paying an admission fee, or in order to consume or purchase products or services without the authorization of the entitlement holder
- j) The publication of a protected work that has a title that was changed or removed, with or without alteration of the work;
- k) Manufacture, assemble, modify, import, export, sell, lease or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system serves primarily for decoding or assists a signal encoded satellite, which has a program without the authorization of the lawful distributor of said signal or reception and intentional distribution of a signal carrying a program which it originated as encrypted satellite signal knowing that was decoded without the authorization of the lawful distributor of the signal;
- l) With respect to effective technological measures, performing the following:
  - l.1 Act that circumvents or attempts to circumvent an effective technological measure that prevents or control access or unauthorized use of any work, performance, or phonogram protected; or

I.2 manufactures, imports, distributes, offers to the public, provide, sell, offer for sale or otherwise traffics in devices, products or components, or offered to the public or provide services that:

L.2.1 are promoted, advertised or marketed for the purpose of circumventing a effective technological measure;

L.2.2 Have only a commercially significant purpose or use limited other than circumventing an effective technological measure; or

L.2.3 are designed, produced, or interpreted or performed the purpose of enabling or facilitating the circumvention of an effective technological measure;

m) The performance of any act which induce, enable, facilitate or conceal an infringement of any the exclusive rights of authors; copyright holders, performers or performers or producers of phonograms broadcasters;

n) The removal or alteration, without authorization, information rights management;

o) The distribution or importation for distribution, information rights management, knowing that rights management information has been removed or altered without authorization to do so;

p) distribution, marketing, promotion, import, distribution or communication making available to the public, without authority, copies of works, performances or performances, phonograms or broadcasts, knowing that the information management rights was removed or altered without authorization;

q) The transportation, storage or concealment of reproductions or copies or any type of tangible medium of works, phonograms, performances or broadcasts protected or have been made without the consent of the author or rightholder corresponding;

r) Charging utilities use of works, performances, phonograms or protected broadcasts or performing any other activity of a typical company CMOs without permission;

s) The release of a new work without the author's consent of the rightholder corresponding;

t) The translation of a work wholly or partially without the authorization of the author or owner of corresponding right;

u) The distribution, without authorization, of a work or protected the original phonogram or its legal reproductions for sale, lease long-term lease, lease with option to purchase, loan or any other form;

v) The import or export of original copyrighted work or reproductions, for trade them in any medium or phonogram without the authorization of the owner of corresponding right.

The provisions n), o) and p) shall not apply to legally authorized activities performed by employees, officers, or government contractors, for law enforcement and theconducting intelligence activities, national defense, security or other purposes Similar government.

The exceptions contained in Article 133 of Decree Number 33-98 sexties Congress the Republic, Law on Copyright and Related Rights and its reforms, will also be applicable to the literal l) above. The design, or the design and selection of parts and components for electronics consumer, telecommunications or computing products do not need to respond to a measure specific technology if the product does not infringe the literal l) of this Article. It shall mean information rights management, when described in subparagraphs following is attached to a copy of the work, performance or phonogram, or appears in connection with the communication or making available of a work, performance, or phonogram:

1) information that identifies a work, performance, or phonogram, the author of the work, the performer of the performance or the producer of phonogram or any other holder of a right protected in the work, performance or performance, or phonogram;

2) information about the terms and conditions of use of the work, performance, or phonogram; or

3) Any numbers or codes that represent such information. effective technological measure; technology, device or component in the normal course of its operation, controls access to protected works, performances and phonograms protected or any other protected material; or protect a copyright or related right with copyright.

The assumptions contained in this provision shall be determined based on the provisions Applicable Law on Copyright and Related Rights.