

# Law on the Promotion and Protection of Intellectual Property\*

(Decree No. 604 of July 15, 1993)

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## TITLE ONE

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<sup>1</sup> Titles Three and Four of this Law, which relate to industrial property, will be published in the legislative insert, *Industrial Property Laws and Treaties*, of a forthcoming issue of this review (*Editor's note*).

## Sole Chapter Preliminary Provisions

*Art. 1.* The provisions contained in this Law are intended to afford sufficient and effective protection to intellectual property by establishing the foundations on which it may be promoted, developed and protected.

Intellectual property comprises literary, artistic, scientific and industrial property.

*Art. 2.* In the event of dispute, the provisions contained in the international treaties and conventions ratified by El Salvador shall take precedence over those of this Law.

*Art. 3.* This Law shall not apply to marks, trade names and advertising slogans or signs, which shall be governed by the Central American Convention for the Protection of Industrial Property, to which El Salvador is party.

## TITLE TWO ARTISTIC, LITERARY OR SCIENTIFIC PROPERTY

### Chapter I Nature and Entitled Persons

*Art. 4.* The author of a literary, artistic or scientific work shall have an exclusive property right in it called copyright.

*Art. 5.* Copyright shall include prerogatives of abstract, intellectual and moral character which constitute the moral rights, and prerogatives of patrimonial character which constitute the economic rights.

*Art. 6.* The moral rights of the author shall be imprescriptible and inalienable and shall include the following:

- (a) the right to publish the work in whatever form, to whatever extent and in whatever manner he considers appropriate;
- (b) the right to withhold his name or use a pseudonym on his publications;
- (c) the right to destroy, remake or withhold the work or keep it unpublished;
- (d) the right to retract, that is, to recover the work, amend it or correct it after it has been disclosed, but this right may not be exercised without indemnification of the owner of the rights for any damages and prejudice caused to him thereby; this right shall lapse on the death of the author;
- (e) the right to retain and assert authorship of the work;
- (f) the right to oppose the plagiarizing of the work;
- (g) the right to demand that his name or pseudonym be published on every copy of the work or mentioned in connection with every act of public communication thereof;
- (h) the right to object to his name or pseudonym appearing on the work of a third party or on a work that has been disfigured;

- (i) the right to safeguard the integrity of the work by objecting to any distortion, mutilation, alteration or abridgment of the work or the title thereof, including that done by the acquirer of the material embodiment of the work;
- (j) the right to object to any use of the work that would be detrimental to his honor or reputation as an author.

Violation of any of the foregoing rights shall give rise to redress for damages and indemnification for prejudice.

*Art. 7.* The economic rights of the author consist in the right to derive economic benefit from the use of the works, which includes the following in particular:

- (a) the right to reproduce the work by fixing it in a material form according to any process that allows it to be communicated to the public in an indirect and durable manner, or to make copies on all or part of the work; this may be achieved by mechanical reproduction methods such as printing, lithography, photocopying, cinematography, phonographic recording, magnetic recording, photography and any other form of fixation; the reproduction of improvisations, speeches, readings and in general all public recitations by means of stenography, typewriting and other comparable processes is also included;
- (b) the right to execute and perform a work created expressly for that purpose, by direct and immediate communication to the public through theater performance, musical and choreographic performance, cinematographic and television adaptation and the preparation of any other type of public show;
- (c) the right to disseminate the work by any medium serving to transmit sounds and images, such as telephone, radio, television, cable, teleprinter, satellite or any other that is already known or may be developed in the future;
- (d) the right of distribution of the work, that is, the right to make copies thereof available to the public by sale or any other form of transfer of ownership; however, where the marketing of the copies takes place by sale, this right shall lapse after the first such sale, barring legal exceptions, in which case the owner of the economic right shall retain the right to authorize or prohibit the renting of such copies and also the right to amend the work, communicate it to the public and reproduce it;
- (e) the right to import or export, or authorize the import or export of, copies of his lawfully manufactured works, and the right to prevent the import or export of unlawfully manufactured copies.

*Art. 8.* The economic rights may be transferred for any reason or bequeathed on death. In the exercise of this right the author or his successors in title may also order, authorize or forbid the use of the work, in its entirety or in part, for commercial purposes or for the making of arrangements, adaptations and translations thereof.

The owner of this economic right may prevent any form of public communication of the work that is made without his consent or in violation of legal provisions; he may likewise demand indemnification for damages and prejudice caused to him by failure to respect his rights.

*Art. 9.* Public communication is the act by which the work becomes accessible to the public by any means or process, and also the procedures to be observed for the work to become accessible to the public.

The following shall be acts of public communication:

- (a) stage performances, recitations, presentations and public renderings of dramatic, dramatico-musical, literary and musical works in any form and by any process;
- (b) public projections or showings of audiovisual works;
- (c) the broadcasting of any works by radio or any medium for the wireless dissemination of signs, sounds or images;
- (d) the transmission of any work to the public by wire, cable, optic fiber or other comparable process;
- (e) the retransmission of the broadcast or televised work by any of the media mentioned in the foregoing subparagraphs and by a broadcasting organization other than the original organization;
- (f) the receiving, in a place accessible to the public and by any appropriate means, of the work broadcast by radio or television;
- (g) the public presentation and display of works of art or reproductions thereof;
- (h) public access to computer data bases by means of telecommunication systems, where the said data bases incorporate or constitute protected works;
- (i) the dissemination of signs, words, sounds or images by any known or as yet unknown process.

*Art. 10.* The following shall be owners of copyright:

- (a) the natural person who created the work or took part in the creation thereof;  
the author shall be presumed to be the person whose name, signature or distinguishing mark identifies him as such on the work, in the absence of proof to the contrary;
- (b) the first publisher in the case of anonymous or pseudonymous works whose author has not revealed his identity;
- (c) each of the authors, in equal shares, in the case of a work of joint authorship, unless otherwise agreed;  
on the ownership of composite, collective and audiovisual works, the provisions of [Chapter II of Title Two](#) of this Law, [Sections C](#) and [D](#), shall apply;
- (d) in works created for a natural person or legal entity by virtue of an employment contract or in performance of a public duty, the original owner of the moral and economic rights shall be the author; it shall however be presumed, in the absence of proof to the contrary, that the economic rights in the work have been assigned to the person on whose instructions the work was made and to the extent necessary for his usual activities at the time of its creation, which implies authorization to disclose it and to exercise the moral rights as necessary for the exploitation thereof.

*Art. 11.* A foreigner who publishes a work in El Salvador shall enjoy the same rights as Salvadorians. Works published abroad shall enjoy protection on the national territory according to the provisions of international treaties and conventions in force and ratified by El Salvador. In other cases the benefits of protection and Salvadorian law shall be subject to the requirement of reciprocity, and the author shall prove that he has complied with the formalities laid down for his protection in the laws of the country in which the work was published.

## Chapter II Protection Regime

## Section A Protected Works

*Art. 12.* This Law shall protect works of the mind expressed in tangible form, whatever the means or form of expression, merit or purpose thereof, provided that the said works have the character of intellectual or personal creations, that is, originality.

*Art. 13.* The creations referred to in the foregoing Article shall include all literary, scientific and artistic works, such as books, pamphlets and writings of whatever nature and length, including computer programs; musical works with or without words; works of oratory, three-dimensional works and works of applied art; written or recorded versions of lectures, speeches, lessons, sermons and other works of the same type; dramatic or dramatico-musical and choreographic works; stage adaptations of dramatic or operatic works; works of architecture or engineering; globes, atlases and maps pertaining to geography, geology, topography, astronomy or any other science; photographs, lithographs and engravings; audiovisual works, that is, silent, spoken or musical cinematographic works; works of radio or television broadcasting, models or creations that have artistic value in the field of clothing, furniture, decoration, ornamentation, hairdressing and jewellery or precious objects; plans or other graphic reproductions and translations; all other works that by analogy may be considered included within the same generic categories as the works specified.

*Art. 14.* Without prejudice to the rights in the original work, translations, adaptations, transformations or arrangements of works shall also be eligible for protection, as shall anthologies or compilations of various works or data or other material, including data bases in machine-readable or another form which, by the selection or arrangement of their subject matter, constitute original creations.

*Art. 15.* Works protected by copyright that are published in newspapers and magazines shall not thereby lose their protection.

The protection of the law shall in no case apply to the information content of news reports in newspapers; it shall however apply to the text and graphics thereof insofar as they constitute original creations.

*Art. 16.* The title of a work that is protected in terms of this Law may not be used by a third party unless, owing to its generic or descriptive character in relation to the contents of the same work, it constitutes a necessary designation.

No one may use the title of another person's work as a means of creating confusion in the mind of the public and thereby taking undue advantage of the literary or commercial success thereof.

## Section B Special Protection

*Art. 17.* The name or headline of a printed, projected or broadcast periodical publication may give rise to an exclusive right of use for the entire time of the publication or broadcasting and for a year thereafter.

*Art. 18.* The literary or artistic pseudonym is an exclusive and entirely personal right of the natural person who is the author; its use shall be protected by law without any need for prior deposit with the Commercial Registry.

*Art. 19.* The right to publish epistolary letters shall belong to the writer, who to exercise that right shall require the consent of the addressee, except where publication has no effect on the latter's honor or interests.

The addressee may for his part make use of the letters in defense of his person or interests.

*Art. 20.* Documents stored in official archives may not be published by individuals without the permission of the authority responsible for them, in the case of first publication, except for documents of strictly historical character that are stored in the Archives of the Nation.

### *Section C Complex Works*

*Art. 21.* A work to which two or more authors contribute shall be called a complex work. A complex work may be:

- (a) a work of joint authorship, where two or more authors make one and the same work which is objectively indivisible because it is impossible to distinguish the part contributed by each;
- (b) a composite work, where the work is the result of the combining of two or more identifiable parts created by different authors;
- (c) a collective work, where the work is merely the organized combination of independent works.

To reproduce a work of joint authorship it shall be necessary to obtain the consent of the majority, in which case dissenters shall only be obliged to contribute to the cost of disclosure by deduction from any profits that may be derived from such disclosure, unless otherwise agreed.

In the case of the composite work and the collective work, the person who organizes and directs the work shall be considered the overall author thereof, and those who are the authors of parts that are recognizable as self-contained contributions within the whole shall be considered individual coauthors.

The author of the whole work may order the reproduction thereof, but the individual authors may oppose such reproduction if it would adversely affect their economic or moral rights; if they are unable to make their opposition in time, they shall be entitled to indemnification on proof of prejudice to either category of rights or to both. In the event of a dispute over reproduction, the competent court shall decide the matter, to which end it shall mainly take the public interest into account, so that, if it considers the dissemination of the work essential to general culture, that interest shall prevail over private interests provided that the economic interests of all of the parties shall be assured if it rules in favor of reproduction.

The parties concerned may agree to make their rights subject to conditions different from those provided for in this Section.

*Art. 22.* In literary-musical collaborations, the rights shall belong equally to the author of the literary part and to the author of the musical part.

Each author may nevertheless exploit his work separately provided that the coauthor expressly authorizes him to do so.

The provisions of the foregoing paragraphs shall apply also to choreographic and mimed works.

*Art. 23.* In the case of a work made by two or more authors, each of them may apply for the deposit of the complete work.

Where the authors seeking the deposit of one and the same work are two or more, they shall appoint a common representative.

*Art. 24.* The owners of the copyright in the individual contributions that form part of a complex work may disclose those contributions separately, but the disclosure may not take place

until three months have elapsed since the completion of the disclosure of the work of which they form an integral part.

### *Section D Audiovisual Works*

*Art. 25.* The following shall be considered coauthors of an audiovisual work made in collaboration:

1. the director;
2. the author of the plot;
3. the author of the adaptation;
4. the author of the script and dialogue;
5. the author of any music specially composed for the work;
6. the author of the drawings in the case of animated cartoons.

Where the audiovisual work is derived from a preexisting work that is still protected, the author of the original work shall be considered on the same footing as the authors of the new work.

*Art. 26.* The director shall be entitled to exercise the moral rights in the audiovisual work, without prejudice to those belonging to the other coauthors in relation to their contributions, or to those that may be exercised by the producer in accordance with this Law, unless otherwise agreed.

*Art. 27.* Where one of the coauthors refuses to complete his contribution or is prevented from doing so by circumstances beyond his control, he may not object to the use of the part of his contribution already made for the completion of the work, in which case he shall nevertheless retain the authorship of that contribution and enjoy the rights deriving therefrom.

Each of the coauthors may, unless otherwise agreed, freely avail himself of the part of the work that constitutes his personal contribution for exploitation in a different genre.

*Art. 28.* The audiovisual work shall be considered completed when the final version has been established as provided in the agreement between the director and the producer.

*Art. 29.* It shall be presumed, in the absence of proof to the contrary, that the person, whether natural person or legal entity, whose name appears as such on the work is the producer of the audiovisual work.

*Art. 30.* The contract between the authors of the audio-visual work and the producer shall, unless otherwise agreed, imply unlimited and exclusive assignment to the producer of the economic rights recognized by this Law, and authorization to decide on the disclosure of the said work.

The producer may exercise the moral rights in the audiovisual work in his own name to the extent necessary for the exploitation thereof, unless otherwise agreed and without prejudice to the rights of the authors.

*Art. 31.* The provisions of this Section shall apply *mutatis mutandis* to broadcast works.

### *Section E Computer Programs*

*Art. 32.* Computer program, in the sense of a source program or object program, means the literary work constituted by a set of instructions expressed in words, codes, plans or any other form which, on being incorporated in an automated reading device, is capable of making a computer, that is, an electronic or similar device capable of processing information, carry out a particular task or produce a particular result.



It is presumed, in the absence of proof to the contrary, that the person who is named as such in the customary manner on the work is the producer of the computer program.

*Art. 33.* The contract between the authors of the computer program and the producer shall, unless otherwise agreed, imply unlimited and exclusive assignment to the latter of the economic rights recognized in this Law, and also authorization to decide on the disclosure of the said program and exercise the moral rights therein to the extent necessary for exploitation.

### *Section F Works of Architecture*

*Art. 34.* The author of a work of architecture may not object to any alterations that may prove necessary in the course of construction or thereafter, but he shall be given preference for the design and creation of such alterations, unless otherwise agreed.

Where alterations are made without the author's consent, he may deny his authorship of the work so altered, whereupon the owner shall be prohibited from invoking the name of the author of the original design in the future, the said author being relieved of all liability for imperfections or faults that appear as a result of the alterations made.

The parties concerned may agree on conditions different from those set forth in this Article.

### *Section G Three-Dimensional Works*

*Art. 35.* Three-dimensional works are those whose purpose is to appeal to the aesthetic senses of the person contemplating them, such as paintings, drawings, engravings and lithographs but with the exception of photographs, works of architecture and audiovisual works.

*Art. 36.* The contract by which the material object embodying a work of art is disposed of shall confer on the acquirer the right to display the work in public, either free of charge or for a consideration, unless otherwise agreed.

*Art. 37.* In the case of the resale of works of three-dimensional art, either by auction or through a professional art dealer, the author, and on his death his heirs or legatees, shall enjoy the right to collect two percent of the resale price from the seller.

The resale royalty provided for in this Article shall be collected and distributed by a collective administration organization, where such an organization exists, unless the parties agree on another means of collection and distribution.

*Art. 38.* The portrait or bust of a person may not be placed on the market without the consent of the person himself or of his heirs on his death. Publication of the portrait shall be free, however, where it is associated with scientific, educational or cultural purposes in general, or with facts or events of interest to the public or which have manifested themselves or occurred in public.

### *Section H General Exceptions to Protection*

*Art. 39.* Laws, regulations, agreements and other enactments issuing from the corresponding bodies of the Government of the Republic may be published individually or in collections by individuals after they have been published by the Government, subject to adherence to the official text, without any need for authorization by the Government. They may likewise be inserted without authorization in newspapers and in works whose nature or object justifies their being quoted, commented on, criticized or copied word for word.

*Art. 40.* Judgments handed down by courts of any kind may be published, except where legally provided otherwise, if the contents thereof are not contrary to morality or proper practice.

Written matter filed by the parties to any action shall be the property of those parties, who may publish them without any limitations other than those provided for in [Article 6](#) of the Constitution.

*Art. 41.* It shall be lawful to reproduce short fragments of literary, scientific or artistic works in publications or chrestomathies or for the purposes of teaching, science or literary criticism or research, provided that the source from which they are taken is unmistakably specified, provided also that the texts reproduced are not altered and that the reproduction does not adversely affect the normal exploitation of the work or prejudice the legitimate interests of the author.

Short fragments may be published in translated form for the same purposes and subject to the same restrictions.

*Art. 42.* Letters of interest to the public may be published if they are not detrimental to the honor or interests of the sender or addressee and provided that they do not contravene the limitations specified in [Article 6](#) of the Constitution. The economic proceeds from publication shall accrue to the author or his successors in title.

### Chapter III Use of Works

*Art. 43.* The owner of the copyright shall have the exclusive right to authorize or prohibit the communication or broadcasting of the protected work to the public by cable, satellite or any other medium using signals that serve to disseminate sounds or images, or by any other means of communication or broadcasting.

The act of public communication of any work, effected on the territory of El Salvador, shall generate profit in favor of the owner of the copyright and such other persons as have rights in the work under the law, without prejudice to any criminal sanctions to which it might give rise.

*Art. 44.* The following communications shall be lawful without the authorization of the author or payment of remuneration:

- (a) those made in the family circle, provided that there is no direct or indirect gainful intent;
- (b) those made for the benefit of the public in the course of official acts, religious ceremonies and charity functions, provided that the public may attend them free of charge and that none of the participants in the communication receives specific remuneration for his involvement in the event; notwithstanding the provisions of the preceding subparagraph, where funds are collected in the course of various activities, they must be set aside for the exclusive benefit of the general public;
- (c) those recognized as being for exclusively educational purposes and which take place in teaching establishments, provided that there is no gainful intent;
- (d) those made for the benefit of the blind and other handicapped persons, provided that the said persons may attend the communication free of charge and that none of the participants in the event receives specific remuneration for his involvement;
- (e) those that are made in trading establishments solely for the purpose of the demonstration, for the benefit of customers, of receiving, reproduction or other similar apparatus, or for the sale of the sound or audiovisual media in which the works are embodied;

- (f) those made because they are essential to the conduct of a judicial or administrative investigation;
- (g) speeches, interviews or statements made or given by members of duly authorized political parties;
- (h) those made by musical soloists or groups at private gatherings where there is no gainful intent;
- (i) those made by musical soloists or groups at public meetings, provided that admission is free of charge.

*Art. 45.* With regard to works that have already been lawfully disclosed, the following shall be allowed without the consent of the author or remuneration:

- (a) production of one copy of the work for the personal and exclusive benefit of the user, who shall have made it himself with his own facilities, provided that the normal exploitation of the work is not affected and the legitimate interests of the author are not unjustifiably prejudiced thereby;
- (b) photomechanical reproduction for exclusive personal use, such as by photocopying and microfilming, provided it is confined to small parts of a protected work or to works that are out of print. Any use of the parts reproduced for other than personal purposes, made by any means or process and in competition with the author's exclusive right to exploit his work, shall be treated as unlawful reproduction;
- (c) the reproduction by reprographic means, to the extent justified by the purpose, of articles, brief extracts or lawfully published short works for teaching or the holding of examinations at educational institutions, provided that there is no gainful intent and that such use is made in accordance with proper practice;
- (d) the production of single copies of works by libraries or archives that do not pursue profit-making purposes, where the copy forms part of the permanent stocks, with a view to preserving that copy and replacing it in case of need, or for the replacement, in the permanent stocks of another library or archive, of a copy that has been mislaid, destroyed or rendered unusable, provided that it is not possible to acquire another original in a reasonable time or on reasonable terms;
- (e) the reproduction of a work for the purpose of judicial or administrative proceedings, to the extent justified by the purpose;
- (f) the reproduction of a work of art on permanent display in a street, square or other public place in an artistic medium different from that used for the making of the original; with regard to buildings, this right shall be limited to the outer walls;
- (g) the production of a single copy of a computer program exclusively for security or back-up purposes;
- (h) the storage of the computer program in the internal memory of the computer hardware for the sole purpose of its operation by the user.

*Art. 46.* It shall be permissible, without the consent of the author or payment of remuneration, to make brief quotations from lawfully published works, subject to the obligation to name the author and source, and on condition that such quotations are made in accordance with proper practice and to the extent justified by the purpose.

*Art. 47.* It shall likewise be lawful, without consent or remuneration, and provided that the author and source are named:

- (a) to reproduce and distribute through the press, or to transmit by any means, topical articles on economic, social, artistic, political or religious matters publicized in mass communication media, provided that the reproduction or transmission have not been expressly reserved;
- (b) to disseminate, in connection with the reporting of current events on sound or audiovisual media, images or sounds from the works seen or heard in the course of the said events, to the extent justified by the informatory purpose;
- (c) to disseminate in the press or transmit by any means, as news on current events, speeches, debates, addresses, sermons and other works of similar character enacted in public, and also speeches given in public and addresses given in the course of judicial proceedings, to the extent justified by the informatory purpose and without prejudice to the right retained by the authors of the works disseminated to publish them separately or in the form of a collection.

*Art. 48.* It shall be lawful for broadcasting organizations, without the consent of the author or payment of any particular remuneration, to make an ephemeral recording of a work that they have the right to broadcast, which they shall do using their own facilities and for use in connection with their own broadcasts. Nevertheless, the broadcasting organization shall destroy the recording within six months following the making thereof, except where a longer period has been agreed with the author, but the recording may be preserved in official archives when it has exceptional documentary character.

*Art. 49.* The adaptation of a computer program by the user himself and for his exclusive use shall not constitute alteration of the work.

## **Chapter IV Transfer of Rights**

*Art. 50.* Copyright shall be transferable on death. Economic rights may be transferred for any reason.

*Art. 51.* Any transfer *inter vivos* shall be deemed to have taken place for a consideration, unless expressly agreed otherwise.

The transfer shall be confined to the right or rights assigned, the forms of exploitation expressly provided for in the contract and the time and the contractually agreed territorial scope.

*Art. 52.* The transfer of rights by the assignee to a third party by means of an instrument *inter vivos* may not take place without the consent of the assignor, given in writing, unless otherwise agreed.

Such consent shall not be necessary where the transfer takes place as a result of the winding up or change of ownership of the assignee's business.

*Art. 53.* Assignment granted for a consideration shall confer on the author a proportional share in the proceeds derived by the assignee from exploitation of the work, in an amount agreed upon in the contract.

Fixed remuneration may be specified in the following cases:

- (a) where the basis for the calculation of proportional remuneration cannot be determined practically;

- (b) where the means of supervising the application of proportional participation are lacking;
- (c) where the cost of the work of calculation and supervision is not in reasonable proportion to the sum that the author's remuneration would attain;
- (d) where the use of the work is of incidental character in relation to the subject matter exploited, or if the work, used with others, does not constitute an essential component of the intellectual creation of which it forms part;
- (e) in the case of book publication, where this involves scientific works, dictionaries, anthologies and encyclopedias, prefaces, notes, introductions and presentations, illustrations of a work, reduced-price popular editions, or translations provided that the translator so requests.

*Art. 54.* Disputes arising between the assignor and assignee shall be settled in a summary proceeding under mercantile law, except where the parties agree to submit such disputes to arbitration.

*Art. 55.* The owner of the economic rights may likewise grant third parties, for a specified time, a non-exclusive license for use, which shall be governed by the provisions of the contract concerned and those that relate to the assignment of rights, *mutatis mutandis*.

*Art. 56.* Contracts for the assignment of rights and those for licenses for use shall be made by public deed, and may be recorded at the Commercial Registry pursuant to the provisions of [Chapter XII](#) of this Law.

Contracts entered into abroad shall be subject to the formalities applicable in the place of their conclusion and, in order to have legal effect in El Salvador, they shall undergo the procedure of authentication and Spanish translation, where necessary, required by ordinary legal provisions.

## Chapter V Publishing Contracts

*Art. 57.* The publishing contract is a contract by which the author or his successors in title assign, without exclusiveness, the right to publish, distribute and disclose the work to another person, called the publisher, on the latter's own account.

Except as provided in [Article 53](#) of this Law, under (e), and provided that the persons concerned do not provide for different remuneration, the share of the assignor shall not be less than 10 percent of the public selling price of the copies of the work that are sold.

*Art. 58.* Publishing contracts shall specify:

- (a) the identity of the author, publisher and work;
- (b) whether or not the work is unpublished;
- (c) the number of editions authorized;
- (d) the period for the release of copies of the first or sole edition;
- (e) the number of copies constituting each edition;
- (f) the copies reserved for the author, for critical reviews and for the promotion of the work;
- (g) the remuneration payable to the author, calculated according to [Article 53](#);

- (h) the period within which the author has to deliver the original of the work to the publisher;
- (i) the quality of the edition;
- (j) the method of setting the price of copies.

The provisions of [Article 56](#) of this Law shall be applicable to such contracts.

The omission of one or more of the requirements contained in the foregoing subparagraphs shall not invalidate the contract; in such a case the provisions of the following Article shall apply.

*Art. 59.* In the absence of any express provision in the contract, it shall be understood that:

- (a) the work has already been published before;
- (b) the publisher is assigned the right to produce a single edition, which must be available to the public within one year following the delivery of the copy to the publisher in such a condition as will allow the work to be reproduced;
- (c) the minimum number of copies constituting the first edition is 2,000;
- (d) the number of copies reserved for the author, for critical review and for promotion is five percent of the whole edition, proportionally distributed for each of the said purposes;
- (e) the remuneration of the author is 15 percent of the price of each copy sold to the public;
- (f) the author shall deliver the original copy of the work to the publisher within a period of 90 days following the date of the contract;
- (h)<sup>2</sup> the edition shall be of average quality, as determined by custom and practice;
- (i) the public selling price of the copies shall be set by the publisher.

*Art. 60.* The publisher shall be under the following obligations:

- (a) to publish the work in the agreed form without making any alteration that the author has not agreed to;
- (b) to mention on each copy the title of the work, the name or pseudonym of the author and of the translator, if any, except where the latter have insisted on anonymous publication. For the purposes of the international protection of the work under treaties ratified by El Salvador, the notice of reserved rights and of the year of first publication, preceded by the © symbol, the year and place of the edition and of previous editions and the address of the editor and printer;
- (c) to submit galley proofs to the author, unless otherwise agreed;
- (d) to distribute and disseminate the work within the period and on the conditions specified and in accordance with proper practice;
- (e) to pay the agreed remuneration to the author where it is proportional, and to pay the amounts accruing to him every six months, except where a shorter period has been specified in the contract. If a fixed amount of remuneration has been agreed upon, it shall be payable as from the moment at which the copies are available for distribution and sale;

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<sup>2</sup> There is no subparagraph (g) in the published text of the original Law (*Editor's note*)

- (f) to submit to the author, on the conditions specified in the foregoing subparagraph, a statement of account with an indication of the date and print-run of the edition concerned, the number of copies sold and the deposit for his collection, and with a mention of the position regarding copies rendered unusable or destroyed by accident or force majeure;
- (g) to allow the author to verify the documents and other evidence supporting the statement of account, and also to supervise the deposits in which the copies constituting the addition are kept;
- (h) to comply with the procedures laid down in the Regulations for the checking of print-runs;
- (i) to apply for the deposit of the work in the name of the author when the latter has not done so himself;
- (j) to return to the author the original of the work of which the edition has been made once the printing and production operations have been completed.

*Art. 61.* The author shall be under the following obligations:

- (a) to deliver to the publisher, in due form and by the agreed time limit, the original of the work to be published;
- (b) to answer to the publisher for the authorship and originality of the work, and also for the undisturbed exercise of the rights assigned;
- (c) to correct the proofs of the print-run, unless otherwise agreed.

*Art. 62.* Until such time as the work is published, the author may make any alterations to it that he considers appropriate, provided that such alterations do not change the character and purpose thereof; he shall however pay the increase in costs caused by the alterations where they exceed the limit recognized by custom and the contractually stipulated maximum percentage of corrections.

*Art. 63.* In the case of a contract of specific duration, the rights of the publisher shall lapse as of right on expiration of the term.

Notwithstanding the foregoing, the publisher may sell the copies still in stock at the normal price during the three years following the expiration of the term, except where the author prefers to remainder the copies at a 40 percent discount off the public selling price, or as otherwise agreed.

*Art. 64.* If, after the publication has been available to the public for three years, no more than 30 percent of the copies have been sold, the publisher may, after notifying the author accordingly, sell off the remaining copies at a price below the agreed price.

The author shall, within the 30 days following such notification, choose between acquiring those copies at a 50 percent discount off the normal public selling price or, in the case of proportional remuneration, collecting 10 percent of the settlement price invoiced by the publisher, unless otherwise agreed.

*Art. 65.* The death of the author before the completion of the work shall terminate the contract as of right.

Nevertheless, if the author dies or if it becomes impossible for him to complete the work after having delivered to the publisher a considerable portion thereof that could be published, the latter may, at his discretion, either consider the contract terminated or take it as having been fulfilled with respect to the completed portion, subject to a proportional reduction in the agreed remuneration,

except where the author or his heirs express the wish that the work remain unpublished if incomplete. In that case, if the assignor or his heirs subsequently assign the right to publish the work to a third party, they shall indemnify the publisher for any damages and prejudice caused him by the termination of the contract.

*Art. 66.* The bankruptcy or receivership of the publisher shall terminate the contract where the work has not been printed. In the case of complete or partial printing, the contract shall subsist until such time as the copies have been printed. The contract shall continue until its term if, at the time of the declaration of bankruptcy, printing has started and the publisher is capable, in the opinion of the court, having given sufficient guarantees, of completing the printing.

*Art. 67.* The provisions of this Chapter shall be applicable as appropriate to contracts for the publication of musical works. Nevertheless, where the publisher acquires from the author a temporary or permanent share in all or some of the other economic rights in the work, the contract shall be rescinded as of right if the publisher does not place on sale a sufficient number of written copies for the work to be disseminated within the six months following the date of the contract, or if, in spite of being requested to do so by the author, the publisher does not place on sale new copies of the work where the initial print-run has been exhausted.

The author may seek rescission of the contract if the musical work has not generated any profits in three years and the publisher fails to show that he has taken definite steps to disseminate the work.

## **Chapter VI**

### **Stage and Musical Performance Contracts**

*Art. 68.* Under stage and musical performance contracts, the author or his heirs assign to a natural person or legal entity, called the impresario, the right to perform a literary, dramatic, musical, dramatico-musical, mimed or choreographic work in public for remuneration.

*Art. 69.* The contracts referred to may be concluded for a specified term or for a specified number of public performances.

The provisions of [Article 56](#) of this Law shall apply to such contracts.

*Art. 70.* The impresario shall undertake to guarantee to the author or his representatives that they may inspect the performance and attend performances free of charge, to pay the agreed remuneration punctually as specified in [Article 53](#), to submit to the author or his representatives the exact program of the performance, noting to that end the works used and the authors thereof in the plans; and, where remuneration is proportional, to submit a true and properly documented account of his revenue.

*Art. 71.* The impresario shall be obliged to ensure that the performance takes place under technical conditions that guarantee the integrity of the work and the honor and reputation of its author.

*Art. 72.* The provisions on performance contracts shall likewise be applicable, as appropriate, to other forms of communication to the public referred to in [Article 9](#) of this Law.

## **Chapter VII**

### **Phonographic Recording Contract**

*Art. 73.* Under a phonographic recording contract the author of a musical work authorizes a producer of phonograms, without granting him exclusive rights, to record or fix a work against



remuneration with a view to its reproduction on phonographic disc, magnetic tape, film or any other comparable medium or device for the purpose of the reproduction and sale of copies.

The authorization given to the producer of phonograms shall not include the right of public performance of the work embodied in the phonogram. The producer shall make that reservation on the label affixed to the disc, device or machine on which the phonogram is reproduced.

The provisions of [Article 56](#) of this Law shall apply to such contracts.

*Art. 74.* The producer shall be obliged to state the following particulars on all originals or copies of the phonogram:

- (a) the titles of the works and the names or pseudonyms of the authors, and those of any arrangers or adapters; if the work is anonymous, it shall be so stated;
- (b) the names of the performers, the collective names of the orchestral or choral groups and the names of their directors;
- (c) the abbreviated name of the collective administration organization to which the authors and performers belong;
- (d) a notice of reserved rights in the phonogram, consisting of the (P) symbol followed by the year of first publication, for the purposes of the international protection referred to in [Article 60](#) of this Law, under [\(b\)](#);
- (e) the name of the phonogram producer.

Any particulars that cannot, for want of space, be printed direct on the originals or copies embodying the reproduction shall be compulsorily printed on the packaging or inlay cards.

*Art. 75.* The phonogram producer shall be obliged to keep a registration system that enables him to prove to the authors and performers the number of reproductions sold, and he shall allow the latter to verify the exactness of his payment of remuneration by inspecting vouchers, offices and stocks either in person or through an authorized representative.

*Art. 76.* The provisions of this Chapter shall be applicable as appropriate to literary works that are used as the text of a musical work, or in the form of a recitation or reading for recording on a phonogram with a view to reproduction and sale.

## **Chapter VIII Compulsory Licenses**

*Art. 77.* The compulsory translation and reproduction licenses provided for in the international conventions ratified by El Salvador shall be granted by the competent court subject to compliance with the requirements laid down in the said conventions.

## **Chapter IX Neighboring Rights**

*Art. 78.* The protection granted to rights neighboring on copyright shall in no way affect the protection of the copyright in scientific, artistic or literary works. Consequently, none of the provisions in this Chapter may be interpreted in a manner that detracts from such protection, and in the event of dispute the provisions most favorable to the author shall always prevail.

*Art. 79.* The owners of the neighboring rights recognized in this Chapter may invoke all the provisions relating to authors and their works insofar as they are consistent with the nature of their own rights.

### *Section A Performers*

*Art. 80.* For the purposes of this Law, performer means any actor, singer, musician, dancer or other person who interprets a role, sings, recites, declaims or in any way performs a literary or artistic work.

*Art. 81.* Performers or their successors in title shall have the right to authorize or prohibit the fixation, reproduction or communication to the public of their performances by any means or process. They may not however object to communication when it takes place on the basis of a recording made with their prior consent and published for commercial purposes. Performers shall likewise have the moral right to have their names or pseudonyms associated with their performance, and to prevent any distortion thereof that might be prejudicial to their honor or reputation.

*Art. 82.* Orchestras, vocal ensembles and other groups of performers shall appoint a representative for the purposes of the exercise of the rights recognized by this Law. Where no such appointment has been made, the director or leader shall be responsible for representation.

### *Section B Phonogram Producers*

*Art. 83.* Phonogram producers authorized under a phonographic recording contract shall have the right to authorize or prohibit the reproduction of their phonograms, and also the importation, rental, distribution to the public or other use, in any form or on any medium, of copies of their phonograms.

*Art. 84.* The phonogram producer shall agree with the performers and the orchestras or orchestra leaders on the remuneration accruing to them from sales of the phonograms.

### *Section C Broadcasting Organizations*

*Art. 85.* Broadcasting organization means the radio or television organization that broadcasts programs to the public.

Broadcasting organizations shall enjoy the right to authorize or prohibit:

- (a) the retransmission of their broadcasts;
- (b) the recording of their broadcasts on a physical medium;
- (c) the reproduction of recordings made without their consent, except:
  1. in the case of a use for private purposes;
  2. where short fragments have been used for the purposes of reporting on current events;
  3. in the case of an ephemeral recording made by a broadcasting organization using its own facilities and for the purpose of its own broadcasts;
  4. when the use involved is solely for teaching or research purposes;
- (d) communication to the public of their television broadcasts where the said broadcasts are made in places accessible to the public against payment of a charge for admission.

## Chapter X Term of Protection

*Art. 86.* The term of protection of the rights provided for in this Law shall be as follows:

- (a) If the author is a natural person, the protection shall comprise his lifetime and 50 years, counted from the day of his death, in favor of his heirs or successors in title. Where a complex work is involved, the 50 years shall be counted as from the death of the last surviving coauthor, and should one die without heirs while others survive, his share shall be added to those of the survivors.
- (b) In the case of an anonymous or pseudonymous work whose author has not disclosed his identity, the term of protection shall be 50 years counted from the first disclosure. Where the authorship of an anonymous or pseudonymous work, or the identity of the holder of the rights in it, is legally established, the provisions of the foregoing subparagraph shall apply.
- (c) Where the holder of the rights in a work is a legal entity, the term of protection shall be 50 years counted from January 1 of the year following that of first publication or, failing that, that of the making or disclosure of the work.
- (d) For audiovisual works and computer programs, protection shall be for 50 years counted from the first publication thereof or, failing that, from the completion thereof.
- (e) The protection of the rights of producers of phonograms shall be 50 years counted from January 1 of the year following that in which the sounds incorporated in the phonogram were first recorded.
- (f) The protection of the rights of performers shall be 50 years counted from January 1 of the year following that of the performance in the case of unrecorded performances, or that of publication where the performance is recorded on a sound or audiovisual medium.
- (g) The protection of the rights of broadcasting organizations shall be 50 years counted from January 1 of the year following that in which the broadcast took place.

*Art. 87.* Where the State is made the heir, legatee or donee of copyright and fails to avail itself of the rights within five years of the transfer taking place, the work shall fall into the public domain. If it does do so, the work shall fall into the public domain in accordance with the provisions of the foregoing Article.

*Art. 88.* The exercise of the moral rights previously held by the author shall pass to his heirs, but the right to object to any use of the work in a manner that would detract from his reputation as an author or his honor may in addition be exercised by his surviving ascendants, descendants and spouse, insofar as they are not his heirs.

## Chapter XI Violation and Defense of Rights

*Art. 89.* It shall be a violation of copyright to commit any act that in any way discredits or prejudices the moral or economic interests of the author, such as:

- (a) the use, without the author's consent, of the title of a work that effectively distinguishes that work to identify another work of the same kind, where there is a risk of confusion between the two;

- (b) the publication by any means of a written text without the consent of the author, whether or not it is done in his name;
- (c) the printing by the publisher of more than the agreed number of copies, no account being taken of the surplus of five percent for compliance with his obligations towards the public authorities and for advertising purposes;
- (d) the translation, adaptation, arrangement or transformation of a work without the consent of the author or his successors in title;
- (e) the publication of a work with deletions, amendments or alterations that have not been authorized by the author or his successors in title, or with errors that constitute serious adulteration;
- (f) the publication of anthologies or compilations without the consent of the authors concerned or their successors in title;
- (g) the performance, dissemination, rental, communication or reproduction of works in any form and by any means for profit-making purposes without the authorization of the author or his successors in title;
- (h) the performance, exhibition and display of the work in places other than those agreed upon;
- (i) the adaptation or transformation or the making of any other version of another person's work or a part thereof without the consent of the author concerned or his successors in title;
- (j) the performance of a work with deletions, amendments or alterations that have not been authorized by the author or his successors in title;
- (k) adaptations, arrangements or limitations that amount to insidious reproduction of the original;
- (l) the retransmission of a broadcast by any wire or wireless means without the consent of the broadcasting organization;
- (m) the reproduction, importation or exportation for conventional purposes, sale and rental of reproductions or copies of protected works, either in their entirety or in part, without the consent of the owner of the rights, including the performances of performers, phonograms and broadcasts.

The staff or commission agents of a person who commits acts of copyright violation, or any other person engaging in a working activity of any type against remuneration on his behalf, shall in no way be liable for those acts, even as accomplices.

*Art. 90.* Without prejudice to the corresponding criminal actions, the owners of the rights conferred by this Law may institute proceedings before the competent courts seeking the cessation of the violation of any of their rights and compensation for damages and prejudice.

Cessation of the violation of rights shall include:

- (a) the immediate cessation of the unlawful activity;
- (b) a prohibition on any resumption of the violation by the infringer;
- (c) the withdrawal of unlawful copies from the market;

- (d) the disablement of molds, plates, printing blocks, negatives and other objects used mainly for the unlawful reproduction and, where necessary, the destruction of those objects;
- (e) the removal or holding under lock and key of apparatus used for the unauthorized communication to the public.

The owner of the rights infringed may request the destruction of the unlawful copies or the surrender to him at cost price of those copies and of the material used for the reproduction, which price shall be set against the indemnification payable for damages and prejudice.

The indemnification for damages and prejudice shall be calculated, with respect to the loss of earnings to be compensated, on the basis of one of the following criteria, at the discretion of the aggrieved party:

- (a) the profits that the owner of the rights could have expected to make had the infringement not occurred;
- (b) profits that the infringer made as a result of the infringing acts;
- (c) the price or royalty that the infringer would have paid to the owner of the rights had a contractual license been agreed upon, due account being taken of the market value of the subject matter of the infringed rights and any contractual licenses that may already have been agreed upon.

*Art. 91.* In the event of a violation of rights, or where there is a justified fear that such a violation might occur or a violation already committed might be repeated, the court shall, on verification of the prior circumstances and the validity of the complaint by the plaintiff, decree, at the request of the owner of the rights violated, and subject to the provision of security set according to the actual or potential damages and without notification of the infringer, one or more of the following precautionary measures which, depending on the circumstances, may be necessary for the immediate protection of the said rights:

- (a) the preventive seizure of the cash earnings derived from the unlawful use;
- (b) the preventive seizure of the unlawfully produced copies;
- (c) the suspension of the unauthorized acts of reproduction, communication or distribution, as appropriate;
- (d) the prohibition of the importation or exportation of the unlawfully produced copies, which it shall do by issuing the appropriate orders to the Directorate General of Customs Revenue.

The suspension of a public show that is making unlawful use of protected works, performances or productions may be decreed by the court of the place in which the infringement occurs, even if the said court is not competent to rule on the main issue.

The seizure referred to in this Article under (b) shall be without effect on any person who may have acquired an unlawfully produced original or copy in good faith for his personal use.

Any person who applies for the precautionary measures referred to in this Article shall institute the appropriate proceedings within the eight days following that on which any of the said measures was decreed, failing which he shall be liable for any damages and prejudice caused.

*Art. 92.* Any person bringing action under this Chapter shall be obliged to state, at the same time as he brings the action, the legal capacity in which or the representation by virtue of which he is acting.

## Chapter XII Deposit and Registration of Rights

*Art. 93.* The Commercial Registry shall be responsible for processing:

- (a) applications for the deposit of protected works, phonographic productions of artistic performances and broadcast productions recorded on a material medium;
- (b) the registration of instruments or contracts by which the rights recognized in this Law are transferred, assigned or licensed.

*Art. 94.* The application for deposit shall state the name of the author, publisher, performer, producer or broadcaster, as appropriate, the title of the work, performance or production, the date of disclosure or publication and any other particulars specified in the Regulations under this Law.

The applicant shall submit the following for the purposes of the deposit:

- (a) a copy of any printed work;
- (b) copies of unprinted works;
- (c) a copy of the phonogram or audiovisual work;
- (d) in the case of sculptures, drawings and other pictorial works, a photograph, which for a sculpture shall show the front and side views;
- (e) in the case of models or works of art or science applied to industry, a copy or photograph, accompanied by a written account of characteristics or details that cannot be judged from a copy or photograph;
- (f) with regard to photographs, plans, maps and the like, a copy thereof;
- (g) with regard to architectural and engineering projects and designs, a copy of the relevant set of plans.

The Commercial Registry may, in a guideline, allow the deposit of a copy to be replaced, in the case of certain creative genres, by the submission of documents that enable the characteristics and contents of the work or production filed for deposit to be adequately identified.

If the application complies with the specified requirements, the appropriate certificate of deposit shall be issued to the person concerned.

*Art. 95.* Deposit or registration shall, in the absence of proof to the contrary, attest to the existence of the work, performance or phonographic or broadcast production, and to the fact of its disclosure or publication, as well as to the authenticity of the instruments by which rights recognized by this Law are totally or partly transferred or which grant representation for the administration or disposal thereof.

In the absence of proof to the contrary, it shall be presumed that the persons named in the Commercial Registry are the owners of the protected rights attributed to them.

*Art. 96.* The formalities laid down in the foregoing Articles shall not be constitutive of rights, having mere declaratory character for the better legal security of the owners and as a means of proving their rights. Consequently, failure to deposit shall not prejudice either the enjoyment or the exercise of the rights recognized in this Law.

*Art. 97.* Collective administration organizations shall register their articles of incorporation and statutes and also their tariffs, internal regulations, rules on collection and distribution and representation contracts with foreign organizations.

Collective administration organizations shall not be obliged to register license contracts for the use of the rights of their members.

*Art. 98.* The Commercial Registry shall in addition have the following responsibilities:

- (a) supervision of those who use protected works, performances and productions, whether natural persons or legal entities, insofar as such use gives rise to the enjoyment and exercise of the rights provided for in this Law;

where, in the course of the said supervision, the rights provided for in this Title are seen to be infringed. the Commercial Registry shall report to the Office of Public Prosecution of the Republic, in order that the appropriate investigations and action may be put in hand;

- (b) arbitration where the persons concerned so request in disputes arising between owners of rights, between collective administration organizations, between such organizations and their members or those that they represent and between administration organizations or owners of rights and the users of the works, performances or productions protected under this Title;

the right of those concerned to appeal to the competent court where they are not in agreement with the ruling handed down by the Registry shall be reserved;

- (c) operation of the information center on national and foreign works, performances and productions deposited at the Registry and on registered instruments and contracts relating to copyright and neighboring rights;
- (d) periodical publication of the bulletin of copyright and neighboring rights;
- (e) promotion of wider awareness of the protection of intellectual rights, and operation as the organ of information and cooperation both with specialized international organizations and with the intellectual property offices of other countries;
- (f) such other functions and responsibilities as are specified in laws and regulations.

*Art. 99.* The appropriate regulations shall determine the systems of deposit and registration and provide for such control and other machinery as may be necessary for the smooth and adequate implementation of the provisions of this Chapter.

### **Chapter XIII**

#### **Collective Administration**

*Art. 100.* Collective administration organizations may be set up to defend the economic rights, as recognized in this Law, of their members or those that they represent or of the members of foreign organizations of the same type; the said organizations shall be governed by the provisions of this Chapter.

Collective administration organizations shall be authorized, in the terms deriving from their own statutes and from the contracts that they conclude with foreign organizations, to exercise the rights entrusted to their administration and to assert them in their capacity as legal representatives in all kinds of administrative and judicial proceeding.

*Art. 101.* Collective administration organizations shall provide their members and those that they represent with complete and detailed periodical information on all the activities of the organization that may have a bearing on the exercise of their rights. Similar information shall be

sent to the foreign organizations with which representation contracts have been concluded for the national territory.

*Art. 102.* Collective administration organizations shall be empowered to collect and distribute the remuneration deriving from the use of the works and sound and audiovisual recordings entrusted to them for administration, as provided in this Law and in the statutes of the said organizations, to which end they shall:

1. negotiate with any person so requesting for the grant of non-exclusive licenses for the use of the rights under management, subject to reasonable conditions and remuneration;
2. establish the general tariffs that determine the remuneration payable for the use of their repertoires.

Nevertheless, the foregoing shall always be without prejudice to such forms of individual use of one or more works of any kind as require specific individual authorization by the owner.

*Art. 103.* Collective administration organizations shall be set up in one of the corporate forms provided for in the Code of Commerce.

*Art. 104.* The distribution of the royalties collected shall take place among the owners of the rights under administration, according to a system previously arranged and approved as provided in the organization's statutes.

## **TITLE THREE INDUSTRIAL PROPERTY**

### **Chapter I General Provisions**

*Art. 105.* The right to obtain a protection title for an invention, utility model or industrial design shall belong to the natural person who makes it, or to his heirs. This right may be transferred by *inter vivos* transaction or by succession.

The same right shall belong to the natural person or legal entity on whose instructions an invention, utility model or industrial design is made.

### **Chapter II Inventions**

*Art. 106.* Invention means an idea applicable in practice to the solution of a specific technical problem. An invention may relate to a product or to a process.

*Art. 107.* Patents shall not be available for the following:

- (a) discoveries, scientific theories and mathematical methods;
- (b) schemes, rules or methods for doing business, performing purely mental or intellectual acts and playing games;
- (c) methods for treatment of the human or animal body by surgery, therapy or diagnosis, with the exception of products for the application of any of those methods;
- (d) inventions the publication or industrial or commercial exploitation of which would be contrary to public policy or morality; exploitation of the invention shall not be



considered contrary to public policy or morality solely because it is prohibited or restricted by a legal or administrative provision.

*Art. 108.* Annual fees shall be payable for the maintenance in force of a patent or pending patent application. Payment shall be made before the corresponding annual period begins. The first annual fee shall be paid before the start of the third year following the filing date of the patent application. Two or more such fees may be paid in advance.

A period of grace of six months shall be allowed for the payment of an annual fee, subject to payment of the prescribed surcharge. The patent or patent application, as the case may be, shall remain in full force throughout the period of grace.

Failure to pay any annual fee under this Article shall cause the patent or patent application, as the case may be, to lapse as of right.

*Art. 109.* Patents shall be granted for a non-renewable term of 20 years counted from the date on which the application was filed with the Commercial Registry.

Patents for medicines shall be granted for a non-renewable term of 15 years, counted from the date of the filing of the application at the Commercial Registry.

*Art. 110.* The patent application may not relate to more than one invention or group of inventions so linked as to form a single inventive concept.

The applicant may divide his application into two or more divisional applications, but none of the divisional applications may go beyond the disclosure in the initial application.

Each divisional application shall be entitled to the filing date of the initial application, but the fees prescribed for the filing of a patent application shall be payable, that paid for the initial application being entered as a credit.

*Art. 111.* An invention shall be patentable when it is susceptible of industrial application and novel and involves an inventive step.

*Art. 112.* An invention shall be considered susceptible of industrial application when the subject matter thereof may be produced or used in any kind of industry or production activity. To that end, the expression industry shall be understood in its broadest sense and shall include, among other things, agriculture, livestock breeding, mining, fishery, construction and services.

*Art. 113.* An invention shall be considered novel when it is not anticipated by prior art.

Prior art shall consist of everything disclosed or made accessible to the public, anywhere in the world, by publication in tangible form, oral disclosure, sale or marketing, use or any other means, prior to the filing date of the domestic patent application or, where appropriate, prior to the filing date of the foreign application the priority of which is claimed. Prior art shall likewise include the contents of a patent application pending before the Commercial Registry whose filing or priority date, as the case may be, is earlier than that of the application under examination, but only insofar as those contents are included in the earlier-dated application where that application is published.

For the purposes of loss of novelty, no account shall be taken of disclosure that has occurred in the course of the year preceding the filing date of the domestic application or, as the case may be, in the course of the year preceding the filing date of the application the priority of which is claimed, provided that such disclosure is the direct or indirect result of acts performed by the inventor himself or his successors in title, or of an abuse of confidence, breach of contract or other unlawful act committed against any of them.

The disclosure resulting from publication by an industrial property office in a patent grant procedure shall not be consistent with the exception provided for in the foregoing paragraph except

where the application that gave rise to the publication was filed by a person who was not entitled to be granted the patent, or where the publication occurred as a result of an error made by the industrial property office concerned.

*Art. 114.* An invention shall be considered to involve an inventive step if, for a person having ordinary skill in the technical field concerned, the invention would not have been obvious or could not obviously have been derived from the relevant prior art.

*Art. 115.* The patent shall give its owner the right to prevent third parties from exploiting the patented invention. By virtue of that right, and without prejudice to the limitations provided for in this Law, the owner of the patent shall have the right to proceed against any person who, without his consent, engages in any of the following acts:

- (a) where the patent has been granted for a product:
  - 1. manufacture of the product,
  - 2. offering for sale, sale or use of the product, or importation or storage thereof for any of those purposes;
- (b) where the patent has been granted for a process:
  - 1. use of the process,
  - 2. performance of any of the acts specified in the foregoing subparagraph in relation to a product directly obtained from the process.

The scope of the protection conferred by the patent shall be determined by the claims. The claims shall be interpreted in the light of the description and drawings.

*Art. 116.* The effects of the patent shall not extend:

- (a) to objects or goods transiting through the Republic or staying in its territorial waters, provided that they are not marketed on the national territory;
- (b) to a third party who, privately and on a non-commercial scale, or for non-profit-making purposes, performs acts in relation to the patented invention;
- (c) to a third party who, without any gainful intent, engages in the manufacture or use of the subject matter of the patented invention either for experimental purposes or for the purpose of scientific, academic or educational research;
- (d) to the marketing or use of a product after it has been legally placed on the market for the first time on the national territory.

The rights conferred by the patent may not be invoked against a person who, before the filing date or where applicable the priority date of the corresponding patent application, was already manufacturing the product or using the process constituting the invention on the territory of the Republic. That person shall have the right to continue to manufacture the product or use the process as before, but that right may only be assigned or transferred together with the establishment or business in which the manufacture or use has been taking place.

This exception shall not apply where the person has acquired knowledge of the invention through an act of bad faith.

*Art. 117.* The right to the patent shall belong to the inventor. Where two or more persons have made an invention jointly, the right to the patent shall belong to them jointly.

The right to the patent may be transferred by *inter vivos* transaction or by succession.

Where two or more persons have made the same invention independently of each other, the patent shall be granted to that person, or to the successor in title of any of the said persons, who files the first patent application or, where applicable, who claims the earliest priority date under [Article 144](#) of this Law.

*Art. 118.* Where an invention has been made in compliance with an employment contract or under a contract for professional services the object of which is to solve technical problems, the patent rights in the invention shall belong to the employer or to the person who contracted for the professional services, as appropriate, in the absence of contractual clauses to the contrary.

Where the invention has an economic value much greater than the parties could reasonably have expected when the contract was concluded, the inventor shall be entitled to special remuneration, which shall be set by the competent court in the absence of agreement between the parties.

*Art. 119.* Where a worker who is not obliged, under his employment contract, to engage in inventive activity makes an invention within the area of activity of his employer, or does so making use of data or means to which he has had access by virtue of his employment, the right to the patent shall belong to the said worker, subject to the following provisions:

- (a) where the patent obtained by the worker for the said invention is worked directly by himself, he shall pay the employer compensation for the use of the data or means to which he had access by virtue of his employment and which enabled him to make the invention; in the absence of agreement between the parties, compensation shall be fixed by the competent court;
- (b) in any case in which the right to the patent, the patent application or the patent granted for the said invention has to be made subject to an assignment or licensing contract, the employer shall be given preference for the acquisition of such rights; the worker shall to that end notify the employer, who shall exercise his preferential right and shall inform the worker accordingly within a period of 30 days counted from the date of the notification.

Any contractual clause less favorable to the inventor than the provisions of this Article shall be deemed unwritten.

### **Chapter III Utility Models**

*Art. 120.* Utility model means any shape, configuration or arrangement of elements of any artefact, tool, instrument, mechanism or other object, or of any part thereof, that makes for the better or different operation, use or manufacture of the object incorporating it, or which lends it some usefulness, advantage or technical effect that it did not have previously.

Utility models that are new and susceptible of industrial application shall be registrable.

*Art. 121.* The Commercial Registry shall issue the utility model patent, which shall have a non-renewable term of 10 years counted from the filing date of the application.

*Art. 122.* [Articles 108](#), [113](#), [115](#), [116](#), [117](#), [118](#) and [119](#) of this Law shall be applicable to utility models.

### **Chapter IV Industrial Designs**

*Art. 123.* Any two-dimensional or three-dimensional form which, on being incorporated in a utilitarian product, gives it a special appearance and is capable of serving as a reference or model for manufacture shall be considered an industrial design.

The protection afforded to an industrial design under this Law shall not include those elements or characteristics of the design that qualify as utility models.

*Art. 124.* The protection afforded to an industrial design under this Law shall not exclude or affect the protection to which the same design might be entitled under other legal provisions, especially those relating to copyright.

*Art. 125.* The protection of an industrial design that meets the conditions of [Article 131](#) shall be acquired in either of the following ways:

- (a) first disclosure of the industrial design in the country;
- (b) registration of the industrial design under this Law.

*Art. 126.* An industrial design shall be protected if it is new.

An industrial design shall be considered new if it has not been disclosed or made accessible to the public in the country by sale, marketing, use or any other means before any of the following dates, the earliest such date being applicable:

- (a) the date on which the person entitled to obtain protection discloses the industrial design in the country by any means;
- (b) the date on which that person files an application for registration of the industrial design in the Republic or, where applicable, the recognized priority date.

Where disclosure is the direct or indirect result of acts performed by the person to whom the rights or the protection belong, or in the case of breach of trust, failure to comply with a contract or an unlawful act to the detriment of the design, it shall continue to be considered novel insofar as the said acts occur within the two year prior to the date referred to in the preceding paragraph and subparagraphs.

*Art. 127.* An industrial design shall not be considered new when in itself it embodies only minor or secondary differences in relation to other, earlier designs, or only refers or applies to another type or category of product.

Industrial designs the disclosure of which would be contrary to public policy or morality shall not be protected.

*Art. 128.* The protection of the industrial design shall confer on its owner the right to prohibit third parties from exploiting it. By virtue thereof, and subject to the limitations provided for in this Law, the owner shall have the right to proceed against any person who, without his consent, manufactures, sells, offers for sale, uses, imports or stocks for any of those purposes a product that reproduces or incorporates the protected industrial design, or the appearance of which gives the same overall impression as the protected industrial design.

The performance of any of the acts referred to in the foregoing paragraph shall not be considered lawful by the sole fact of the reproduced or incorporated design being applied to a type or category of products different from those specified in the registration of the protected design.

*Art. 129.* The creator of the industrial design shall be entitled to be named as such in the corresponding registration and in official documents relating thereto except where, in a written declaration addressed to the Commercial Registry, he states that he does not wish to be named. Any

arrangement or agreement whereby the creator of the industrial design undertakes in advance to make such a declaration shall be null and void.

*Art. 130.* The registration of an industrial design shall expire after five years counted from the filing date of the domestic application.

*Art. 131.* The registration of an industrial design may be renewed for an additional period of five years by payment of the prescribed renewal fee.

The renewal fee shall be paid before the registration of the industrial design expires. A three-month period of grace shall be allowed for the payment of the fee, subject to the prescribed surcharge. The registration shall remain in full force throughout the period of grace.

The Commercial Registry shall record the renewal and publicize it by the insertion of a notice in the *Diario Oficial*.

## **Chapter V**

### **Transfer of Rights and Licensing**

*Art. 132.* The rights conferred by patents or certificates, as the case may be, may be transferred by *inter vivos* transaction and by succession. The documents attesting the transfer shall not be binding on third parties until they have been recorded at the Commercial Registry.

*Art. 133.* When reasons of emergency or national security have been declared and for as long as they persist, compulsory licenses may be granted for the exploitation of patents, provided that such grant is necessary to satisfy the basic needs of the population.

Licenses granted under the foregoing paragraph shall be neither transferable nor exclusive.

*Art. 134.* Compulsory licenses shall be granted by the competent jurisdiction, and they shall specify the remuneration payable according to the particular circumstances of each case, due account being taken of the economic value of the authorization; the remuneration shall be awarded to the owner of the patent by virtue of the license granted; the manner in which payment is to be made to the owner shall likewise be specified.

*Art. 135.* The owner of the patent or certificate may, by agreement, grant licenses for the exploitation thereof, which shall be recorded at the Commercial Registry before they are binding on third parties.

## **Chapter VI**

### **Processing**

*Art. 136.* The application for an invention or utility model patent shall be filed with the Commercial Registry together with a description, one or more claims, such drawings as may be appropriate, an abstract and proof of payment of the prescribed application fee.

The application shall specify the name and other necessary particulars of the applicant, the inventor and the agent, if any, and the name of the invention or utility model.

The applicant for a patent may be a natural person or a legal entity. If the applicant is not the inventor, the application shall contain a statement in which the applicant justifies his entitlement to the grant of the patent.

The patent application shall give the name of the office and the date and number of the filing of any application for a patent or other protection title that may have been filed, or of any title that

may have been granted in dealings with another industrial property office and which refers either totally or partly to the same invention claimed in the application filed in the Republic.

*Art. 137.* A patent application shall not be accepted for processing and shall not be given a filing date unless, at the time of filing, it contains at least the following elements:

- (a) the identity of the applicant and his address in El Salvador for the purposes of notifications;
- (b) a document containing the description of the invention;
- (c) a document containing one or more claims;
- (d) proof of payment of the prescribed application fees.

The element specified under (c) in the foregoing paragraph may be submitted within the two months following the filing of the application without the filing date assigned to the application being affected thereby.

If the application refers to drawings that have not been submitted at the time of filing, the application shall be assigned a filing date, but it shall not be processed until such time as the drawings, which have to be submitted within the following two months, have been received, except where the applicant states in writing that any reference to drawings contained in the application is to be regarded as not having been made and consequently without effect.

If the documents or drawings concerned are not filed within the individual periods provided for in the preceding two paragraphs, the application shall be considered abandoned and shall become public property.

*Art. 138.* The description shall disclose the invention in a manner sufficiently clear and complete for it to be evaluated and for a person skilled in the technical field concerned to be able to carry it out.

The description shall give the name of the invention or utility model and shall include the following information:

- (a) the area of technology to which it refers or applies;
- (b) the prior art known to the applicant that might be considered useful for the understanding and examination of the invention or utility model, and references to previous documents and publications relating to the technology concerned;
- (c) a description of the invention or utility model in terms that allow the technical problem and the solution provided to be understood and explain the advantages of the invention or utility model in relation to earlier technology;
- (e)<sup>3</sup> a description of the best method known to the applicant for carrying out the invention or making the utility model, using examples and references to drawings;
- (f) the manner in which the invention or utility model may be produced or used in any activity, except where that is clearly apparent from the description or the nature of the invention or model.

Where the invention refers to a biological product or process requiring the use of biological material that is not available to the public and cannot be so described that the invention may be carried out by a person skilled in the art, the description shall be completed with the deposit of such material at a depositary institution that complies with the requirements specified in the Regulations

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<sup>3</sup> There is no subparagraph (d) in the published text of the Law (*Editor's note*).

under this Law. In such a case the deposit shall be made not later than on the filing date of the domestic application or, where priority is claimed, not later than on the priority date.

Where the deposit of biological material is made to complete the description, that fact shall be specified in the description, together with the name and address of the depositary institution, the date of the deposit and the number assigned to it by the institution. The nature and characteristics of the material deposited shall likewise be described where necessary for the disclosure of the invention.

*Art. 139.* The submission of drawings shall be indispensable where they are necessary for the understanding, evaluation or carrying out of the invention or making of the utility model.

*Art. 140.* The claims shall define the subject matter for which patent protection is sought. The claims shall be clear and concise and be totally supported by the description.

*Art. 141.* The abstract shall contain the essence of what is disclosed in the description and a summary of the claims and any drawings, and where appropriate shall include the chemical formula or the drawing that best illustrates the invention or utility model. The abstract shall make it possible to understand the essential features of the technical problem and the solution provided by the invention or utility model, and also the main use thereof.

The abstract shall serve exclusively for technical information purposes, and shall not be used to interpret the scope of protection.

*Art. 142.* The application for registration of an industrial design shall be filed with the Commercial Registry. It shall identify the applicant and the creator of the design, and specify the type or category of goods to which the design will be applied and the class or classes to which the products belong according to the relevant classification, and also such other particulars as are specified in the relevant regulatory provisions.

The application shall be accompanied by graphic representations of the design as required by the relevant regulatory provisions, and by proof of payment of the prescribed fees.

An application for registration of an industrial design shall not be accepted for processing and shall not be assigned a filing date unless, at the time of filing, it contains at least the following elements:

- (a) the identity of the applicant and his address in El Salvador for the purposes of notifications;
- (b) a graphic representation of the industrial design;
- (c) proof of payment of the prescribed fees.

*Art. 143.* The application for a patent or registration certificate and the accompanying documents shall all be written in Spanish.

If the accompanying documents submitted are in another language, a period of six months from the filing date of the application shall be allowed for them to be submitted in the form of certified translations; if they are not, the application shall be considered abandoned and shall become public property.

*Art. 144.* When a patent or certificate is applied for after having been applied for in other countries, the priority date accorded it shall be that of the filing of the first such application, provided that the domestic application is filed in the Republic within the periods prescribed by the international treaties or conventions ratified by El Salvador or, failing that, within 12 months following the filing date of the application in the other country, subject to reciprocity.

The following rules shall apply to the claiming of the right of priority:

- (a) the claim of priority shall be made on the filing of the application, and shall specify the country or office in which the priority application was filed, the date of that filing and the number assigned to the priority application;
- (b) within the six months following the filing of the application in the Republic, a copy of the priority application shall be filed together with a description, drawings and claims, the conformity of which shall have been certified by the industrial property office that originally received the application, and certification, issued by the same office, of the filing date of the priority application; these documents shall be submitted in duly authenticated form, and shall be accompanied by translations where appropriate;
- (c) for one application, and where appropriate for one claim of a given application, either multiple priorities or partial priorities originating with two or more different offices may be claimed; in such case the priority period shall be counted from the earliest priority date claimed, and the right of priority shall cover only those elements of the application filed in the Republic that were contained in the application or applications the priority of which is claimed.

*Art. 145.* As from the date on which the applicant informs a person in a notarial document that he has filed an application for registration, or following the publication thereof, no person may exploit the claimed invention, utility model or industrial design. If any person infringes this provision, he shall be responsible for any damages and prejudice caused in the event of the patent or certificate applied for being granted.

The pending application and the annexes thereto shall be confidential until such time as they are published.

*Art. 146.* The Commercial Registry shall publish the application for an invention or utility model patent *ex officio* immediately after it has satisfied itself that the application complies with the minimum requirements laid down in this Law. The applicant may in any case request in writing that his application be published.

Publication of the application shall be announced in a notice in the *Diario Oficial*. The Regulations shall specify the contents of the notice.

As from the publication of the notice in the *Diario Oficial*, any person may, at the offices of the Commercial Registry, inspect the file concerning the published patent application. Any person may obtain copies of the documents contained in the file of a published application, provided that he proves his interest therein and pays the prescribed fees.

The file of a pending application may not be consulted by third parties before publication of the application if the applicant has not given his consent in writing, except where the person who wishes to consult the file shows that the applicant has served notice on him to discontinue all industrial or commercial activity, invoking the pending application. Applications that have been withdrawn or allowed to lapse prior to publication may likewise not be consulted without the written consent of the applicant.

*Art. 147.* When all the requirements and conditions laid down for an application for registration of an industrial design have been complied with, the application shall be publicized in a notice published in the *Diario Oficial*. At the request of the applicant, publication may be deferred for a maximum period of 12 months following the filing date of the application. A request for deferment of publication shall be made in the application or within the 15 working days following



the date of filing. On expiration of the period of deferment allowed, the application shall be published.

Where deferment of publication for a period of less than 12 months has been requested, the request may be renewed once for a further period without exceeding the specified maximum period. This request shall be made before the period of deferment granted expires.

*Art. 148.* The applicant for a patent or registration certificate may withdraw his application while it is still pending, in which case the application shall become public property. If the application is withdrawn before publication has been ordered, it shall not be published and shall be shelved and held in reserve; it shall then be possible to file a new application, but, if the new application is itself withdrawn, the original application shall become public property even though it has not been published.

*Art. 149.* As from the publication of the application, any interested party may file comments with the Commercial Registry, including information or documents, regarding the patentability of the invention, utility model or industrial design registration.

The Commercial Registry shall notify the applicant of comments as soon as they are received. The applicant may submit such counter-comments or documents as suit his interests in response to the comments notified to him.

The submission of comments shall not suspend the processing of the application, and the person filing them shall not thereby become party to the proceedings.

*Art. 150.* The applicant may convert the patent application into a utility model or industrial design application and vice versa when it is inferred from the contents of the application that it does not conform to what has been applied for.

The applicant may effect the conversion of the application only within the 90 days following the date of filing or within the 30 days following the date on which the Commercial Registry gave notice of the objections.

*Art. 151.* In the case of a patent application, the Commercial Registry shall order the conduct of a substantive examination of the invention or utility model at the written request of the applicant. The request may be made at any time after the application has been assigned a filing date, but it may no longer be made after six months have elapsed following the date on which the publication of the patent application was announced in the *Diario Oficial*. The request for examination shall be accompanied by proof of payment of the prescribed examination fees.

If the request for examination is not filed within the period specified in the foregoing paragraph, the application shall be considered abandoned and instructions shall be given for it to be shelved, whereupon it shall immediately become public property.

*Art. 152.* The purpose of the substantive examination shall be to verify compliance with the conditions of patentability provided for in this Law, and also with the requirements relating to the description, claims, drawings and abstract and those relating to unity of invention.

For the conduct of the substantive examination, the Commercial Registry may seek technical support from research institutes, university teaching centers, international organizations and the opinions of outside experts in accordance with the provisions of the Regulations under this Law.

The Commercial Registry may accept or request reports on the state of the art and patentability reports drawn up by national or regional industrial property offices abroad in conformity with the provisions of the Regulations under this Law.

*Art. 153.* For the purposes of the substantive examination, the Commercial Registry may request the applicant to provide, duly translated into Spanish, one or more of the following documents pertaining to foreign applications mentioned in the application:

- (a) a copy of the foreign application and its accompanying documents;
- (b) a copy of any communication or report that refers to the findings of anticipation searches or examinations made in relation to the foreign application;
- (c) a copy of the patent or other protection title granted on the basis of the foreign application.

Where the application filed in El Salvador includes inventions so claimed in two or more foreign applications that none of them fully covers the claims of the application filed, the Commercial Registry may request the applicant to file the documents mentioned in the foregoing subparagraphs that relate to the other foreign applications and either fully or partly correspond to the application filed in El Salvador.

*Art. 154.* Where necessary for a better decision on the grant of a patent or on the validity of a granted patent, the Commercial Registry may request the applicant or owner of the patent to submit the following documents:

- (a) a copy of any judgment or ruling by which the foreign application has been rejected or the grant sought in the foreign application has been refused;
- (b) a copy of any judgment or ruling by which the patent or other protection title granted on the basis of the foreign application has been cancelled or invalidated.

*Art. 155.* If the applicant, having the requested information or documentation at his disposal, fails to submit it within a period of 90 days following the date of the request, the patent shall be refused.

*Art. 156.* Where the Commercial Registry is satisfied that the requirements and conditions laid down in the Law have been complied with, it shall grant the patent or register the industrial design, and shall issue the appropriate certificate to the applicant.

Patents and certificates shall be recorded in a special register.

*Art. 157.* A copy of every final judgment rendered by the competent judicial authorities in relation to patents or registration certificates shall be sent to the Commercial Registry to ensure due compliance.

The grant shall be published in the *Diario Oficial*.

*Art. 158.* The patent or certificate shall be issued in the name of the Nation, invoking the authorization of the Government, shall be signed by the Registrar and shall bear the seal of the Office; it shall consist of the decree granting it, accompanied by duplicates of the description and drawings.

*Art. 159.* The descriptions, drawings, specimens and samples relating to granted patents or certificates shall be kept at the Commercial Registry and made available to any person wishing to acquaint himself with them; they shall be communicated to any person who so requests, and copies of written matter shall be provided against payment of the prescribed fees.

*Art. 160.* The Commercial Registry shall publish quarterly, in its official bulletin, an account of the patents or certificates granted, together with the descriptions and drawings necessary for the understanding of the inventions, utility models and industrial designs granted. A copy of the said

publication shall remain at the Commercial Registry to be consulted by any person wishing to do so.

*Art. 161.* The Commercial Registry shall apply the current patent, utility model and industrial design classifications for the systematic classification of the relevant documents according to the technical subject matter concerned.

## Chapter VII Invalidation and Lapse

*Art. 162.* Patents and certificates shall terminate in the following cases:

- (a) by court ruling;
- (b) by expiration of the periods laid down in this Law;
- (c) by partial or total written renunciation.

*Art. 163.* Any patent or certificate registration shall be declared invalid in the following cases:

- (a) if it has been granted for an invention, utility model or industrial design that does not comply with the requirements laid down in this Law;
- (b) if the disclosure of the invention in the patent is not sufficiently clear for a person skilled in the relevant technical field to be able to carry it out, or if the claims are not supported by the disclosure;
- (c) if as a result of an amendment or division of the application, the patent granted contains claims that refer to subject matter not disclosed in the application as originally filed;
- (d) if the patent or certificate has been granted to a person not entitled to such grant.

Where the grounds for invalidation affect only one claim or part of a claim, only that claim or part shall be declared invalid. Where appropriate, invalidation may be pronounced in the form of a limitation of the corresponding claim.

*Art. 164.* The invalidation of a patent or certificate may be sought before the competent courts by interested parties, those working or otherwise engaged in the same industry and the Public Prosecutor of the Republic.

Where the action claims that the patent or certificate has been granted to a person not entitled to it, invalidation may be sought only by the person to whom the said rights do belong.

*Art. 165.* Patents and certificates shall lapse in the following cases:

- (a) on expiration of the maximum period of validity provided for in this Law, in which case lapse shall occur as of right, without any need for a declaration;
- (b) where the fees, and where payable the prescribed surcharge, have not been paid as provided in this Law.

Patents shall also lapse where the circumstances that gave rise to the grant of a compulsory license persist two years after the grant of the first such license.

Declarations of lapse shall be made by the Commercial Registrar.

*Art. 166.* Declarations of invalidity and lapse and renunciations shall be published in the *Diario Oficial* and mentioned in the relevant register entry.

*Art. 167.* The effects of the declaration of invalidity or lapse and of the renunciation shall be that the inventions, utility models or industrial designs concerned shall become public property.

In the event of renunciation, if it is made only partly, only that part that has been renounced shall become public property, the patent or certificate remaining valid with respect to the other parts.

## Chapter VIII Violation and Defense of Rights

*Art. 168.* Where a patent or the registration of an industrial design has been applied for or obtained by an unentitled person, or to the detriment of another person entitled to obtain the patent or registration, the person adversely affected thereby may claim his rights before the competent court, seeking to have the pending application or the granted patent or registration transferred to him, or to have himself recognized as the applicant for or owner of the rights.

Actions claiming rights shall be barred after five years following the date of grant of the patent or registration, or, if there is no patent, after two years of exploitation.

*Art. 169.* The owner of rights protected by a patent or certificate under this Law may institute proceedings against any person who infringes those rights. He may also bring action against the person who performs acts that give a clear indication of an imminent infringement.

In the case of joint ownership of rights, any of the joint owners may institute proceedings in the event of infringement of those rights without having to seek the consent of the other joint owners, unless otherwise agreed.

*Art. 170.* An exclusive licensee whose license is registered, or one who holds a compulsory license or a license in the public interest, may institute proceedings against any third party who commits an infringement of the licensed rights. To that end, if the licensee has not been mandated by the owner of the rights to bring action, he shall prove, on initiating the action, that he has requested the owner to bring action and that more than a month has elapsed without action being brought. Before the said period elapses, the licensee may apply for the taking of the precautionary measures provided for in this Chapter. The owner of the rights infringed may at any time appear personally in proceedings.

Any registered licensee and any beneficiary of a registered right or entry in the Register that is affected by the infringement shall be entitled to appear in person in proceedings at any time. To that end the action shall be brought to the notice of all persons with recorded rights in relation to the infringed right.

*Art. 171.* Where a patent protects a process for the making of a new product and the product is made by a third party, it shall be presumed, until the opposite is proved, that the product has been made by means of the patented process.

*Art. 172.* One or more of the following measures may be sought in an action for infringement of the rights conferred by a patent or by the registration of an industrial design:

- (a) cessation of the act or acts infringing the rights;
- (b) indemnification for damages and prejudice sustained;
- (c) seizure of the objects resulting from the infringement and of the means that served mainly for the commission of the infringement;

- (d) transfer of the ownership of the objects or means referred to in the foregoing subparagraph, in which case the value of the said property shall be set against the amount of the indemnification for damages and prejudice;
- (e) such measures as are necessary to prevent the continuation or recurrence of the infringement, including the destruction, where indispensable, of the means seized by virtue of [subparagraph \(c\)](#) of this Article;
- (f) publication of the condemnatory judgment, and notification thereof to the persons concerned, at the expense of the infringer.

*Art. 173.* For the purpose of calculating indemnification for damages and prejudice, the part corresponding to loss of earnings that has to be indemnified shall be estimated on the basis of one of the following criteria:

- (a) the profits that the owner of the rights would have been expected to make had the infringement not occurred;
- (b) the profits made by the infringer as a result of the infringing acts;
- (c) the price or royalty that the infringer would have paid to the owner of the rights had a contractual license been agreed upon, due account being taken of the market value of the subject matter of the infringed rights and any contractual licenses that may already have been granted;
- (d) any other criteria that the court may consider appropriate.

*Art. 174.* Any person who brings an action for infringement of an industrial property right protected by this Law may apply for the ordering of immediate precautionary measures to ensure the effectiveness of the action or of the compensation for damages and prejudice. The precautionary measures may be made subject to the provision of adequate security.

Any of the following may be ordered as precautionary measures:

- (a) the immediate cessation of the infringing acts;
- (b) the preventive seizure, withholding or deposit of the objects involved in the infringement and of the means that served mainly for the commission of the infringement.

If the infringement action is not brought within 10 working days following the imposition of a precautionary measure, the latter shall be without effect as of right, and the plaintiff shall be liable to provide indemnification for damages and prejudice caused by him.

*Art. 175.* The action for infringement of the rights conferred by this Law shall be barred after two years following the date on which the owner became aware of the infringement, or five years following the date on which the infringing act was last committed, the period which lapses first being applicable.

*Art. 176.* [Article 92](#) of this Law shall be applicable to the provisions of this Chapter.

## TITLE FOUR

### Sole Chapter Industrial and Trade Secrets

*Art. 177.* Any information shall be considered an industrial or trade secret that is applicable in industry or trade, including agriculture, livestock breeding, fishery and the mining, processing and construction industries, and also all kinds of service, which a person keeps in confidence and which for him is intended to secure or maintain a competitive or economic advantage over third parties in the conduct of economic activities, and with regard to which reasonable measures or action have been taken to preserve its confidentiality and restrict access to it. Information constituting an industrial or trade secret shall necessarily relate to the nature, characteristics or purposes of the products, to production methods or processes or to the means or forms of distribution or marketing of goods or rendering of services.

Information that is public property, that is obvious to a person skilled in the art or that has to be disclosed by legal provision or court order shall not be considered an industrial or trade secret. Information that is supplied to any authority by a person possessing it as an industrial or trade secret shall not be considered public property or disclosed by legal provision where the purpose in supplying it is the securing of licenses, permits, authorizations, registrations or any other official enactments.

*Art. 178.* The secrets referred to in the foregoing Article shall enjoy legal protection whether or not they are incorporated in a physical medium.

*Art. 179.* The person who keeps an industrial or trade secret may transfer it to a third party or authorize a third party to use it. The user so authorized shall be under the obligation not to disclose the secret by whatever means, unless otherwise agreed.

Agreements under which know-how, technical assistance or basic or detailed engineering are provided may embody confidentiality clauses for the protection of the industrial secrets that they cover, and they shall specify the elements that are confidential.

*Art. 180.* Any person who, by reason of his work, employment, responsibility or position, or in the conduct of his profession or in business dealings, has access to an industrial or trade secret the confidentiality of which he has been warned shall abstain from making use of it for business purposes of his own or from revealing it without just cause and without the consent of the person keeping the said secret, or the authorized user thereof, failing which he shall be liable for the damages and prejudice that he causes.

*Art. 181.* The person who is privy to industrial or trade secrets by reason of contractual relations with a worker who is working or has worked, or with a professional, advisor or consultant who is providing or has provided his services, for the benefit of another person shall be jointly liable, with the supplier of the information, for the payment of damages and prejudice caused to that person.

That person shall likewise be liable for damages and prejudice caused to another person who, by whatever unlawful means, secures information that the latter person considers an industrial or trade secret.

The foregoing shall be without prejudice to such criminal liability as may exist.

## **TITLE FIVE**

### **Sole Chapter Common and Transitional Provisions**

*Art. 182.* Applications for the registration of copyright and patents that are pending at the Commercial Registry on the date of entry into force of this Law shall continue to be processed under the earlier legislation, provided that such registrations and patents as are granted shall be subject to the provisions of this Law.

When it emerges from the examination of a patent application that in reality a utility model or industrial design is involved, the Commercial Registry shall avail itself of the powers vested in it by this Law and shall use its discretion to determine the appropriateness of the grant of a utility model patent or industrial design certificate, as the case may be, and shall grant the relevant rights subject to the agreement of the persons concerned.

*Art. 183.* Copyright registrations and patents granted under the earlier legislation shall be governed by the provisions of that legislation with the exception of the provisions on actions for infringement of the rights contained in this Law.

*Art. 184.* Until such time as the special courts having jurisdiction in intellectual property matters have been established, the competent courts referred to in this Law shall be those that have jurisdiction in mercantile matters, which shall pass judgment in summary proceedings.

*Art. 185.* The rights regulated in Title Two of this Law, which were not protected under earlier laws because they were not registered, shall automatically enjoy the protection granted by this Law, without prejudice to the rights acquired by third parties prior to the entry into force thereof, provided that they relate to uses already made or in the process of being made on the date of promulgation of this Law.

Except as provided in the following Article, uses of works that are not authorized in any form, being reserved for the author or his successors in title, shall not be lawful where they are initiated on the entry into force of this Law.

*Art. 186.* Those who are currently engaged, without authorization from the owner of the rights concerned, in the reproduction, sale, rental or any other form of marketing of audiovisual works and sound recordings provided for in Title Two of this Law shall be allowed a period of four months following the entry into force thereof within which to obtain the appropriate authorizations; on expiration of the said period without the authorizations having been obtained, the said activities shall become unlawful and liable to the relevant sanctions.

*Art. 187.* The existing bodies concerned with copyright and neighboring rights shall, in order to engage in collective administration activities, adapt their constituent documents to the provisions of this Law.

*Art. 188.* The following are repealed:

- (a) the Law on Copyright, contained in Legislative Decree No. 376 of September 6, 1963, published in *Diario Oficial*, No. 173, Volume 200 of the same month and year;
- (b) the Law on Patents, contained in the Legislative Decree of May 19, 1913, published in *Diario Oficial*, No. 59, Volume 75 of September 11 of the same year, including subsequent amendments;
- (c) **Section D of Chapter II, Title I**, Book Three and **Title XI**, Book Four, both of the Code of Commerce.

*Art. 189.* The President of the Republic shall, within a period of 120 days following the entry into force of this Law, approve the Regulations under it.

*Art. 190.* This Decree shall enter into force 60 days after its publication in the *Diario Oficial*.