

LAW No. 05/L-047

ON AMENDING AND SUPPLEMENTING THE LAW No.04/L-065 ON COPYRIGHT AND RELATED RIGHTS

The Assembly of the Republic of Kosovo;

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves

LAW ON AMENDING AND SUPPLEMENTING THE LAW No.04/L-065 ON COPYRIGHT AND RELATED RIGHTS

Article 1
Aim of the law

1. The aim of this Law is to amend and supplement Law No. 04/L-065 for Copyright and Related Rights, with the aim of harmonizing the law with the European Union directives in the field of copyright and related rights.

2. This Law is in full compliance with the following European Union directives: Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 06/10/1993), Directive 2001/29/EC of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (OJ L 167, 22/06/2001), Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ L 272, 13/10/2001), Directive 96/9/EC of 11 March 1996 on the legal protection of databases (OJ L 077, 27/03/1996), Directive 2006/115/EC of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27/12/2006), Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights (OJ L 195, 02/06/2004), Directive 2009/24/EU of 23 April 2009 on the legal protection of computer programs (OJ L 111, 05/05/2009), Directive 2011/77/EU of 27 September 2011, harmonizing the term of protection of copyright and certain related rights (OJ L 265, 11/10/2011, pg. 1-5) amending Directive 2006/116/EC of 12 December 2006 (OJ L 372, 27/12/2006, pg.12-18), Directive 2012/28/EU of 25 October 2012 (OJ L 299, 27/10/2012) on certain permitted uses of orphan works.

Article 2

Article 4 of the basic Law after sub-paragraph 1.19, sub-paragraphs 1.20. and 1.21. shall be added with the following texts:

1.20. **“Satellite”** - any satellite operating on frequency bands which, under telecommunications law, are reserved for the broadcast of signals for reception by the public or which are reserved for closed, point-to-point communication. In the latter case, however, the circumstances in which individual reception of the signals takes

place must be comparable to those which apply in the first case.

1.21. “**Cable retransmission**” - the simultaneous, unaltered and unabridged retransmission to the public, by a cable, optical medium or microwave system for reception by the public of a broadcast originated by another broadcasting organization.

Article 3

Article 8 of the basic Law, after sub-paragraph 2.13. a new sub-paragraph 2.14. shall be added, with the following text:

2.14. Computer programs and their preparatory design material protection in accordance with this Law shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected under this Law. A computer program shall be protected if it is original in the sense that it is the author’s personal intellectual creation.

Article 4

In Article 12 of the basic law, after sub-paragraph 1.8., a new sub-paragraph 1.9. shall be added with the following text:

1.9. News of the day and different information that have the character of ordinary media reports can be reproduced only after it have passed at least twelve (12) hours from their publication.

Article 5

After Article 12 of the basic law, four new Articles, Article 12A, Article 12B, Article 12C and Article 12D shall be added, with the following text:

Article 12A

Orphan works

1. A work or a phonogram shall be considered an orphan work if none of the right holders in that work or phonogram is identified or, even if one or more of them is identified, none is located despite a diligent search for the rightholders having been carried out and recorded in accordance with Article 12B.

2. Where there is more than one right holder in a work or phonogram, and not all of them have been identified or, even if identified, but are not located after a diligent search has been carried out and recorded in accordance with Article 12B, the work or phonogram may be used in accordance with this Law provided that the right holders that have been identified and located have, in relation to the rights they hold, authorized the organisations referred to paragraph 6. to carry out the acts of reproduction and making available to the public covered respectively by Articles 23 and 33 of this Law.

3. Paragraph 2. shall be without prejudice to the rights in the work or phonogram of right holders that have been identified and located.

4. Article 12D shall apply mutatis mutandis to the right holders that have not been identified and located in the works referred to in paragraph 2.

5. The organisations that may use orphan works are publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public-service broadcasting organisations, established in the Republic of Kosovo, in order to achieve aims related to their public-interest missions.

6. Works that can be considered as orphan works are:

6.1. Works published in the form of books, journals, newspapers, magazines or other writings contained in the collections of publicly accessible libraries, educational establishments or museums as well as in the collections of archives or of film or audio heritage institutions;

6.2. Cinematographic or audiovisual works and phonograms contained in the collections of publicly accessible libraries, educational establishments or museums as well as in the collections of archives or of film or audio heritage institutions; and

6.3. Cinematographic or audiovisual works and phonograms produced by public-service broadcasting organisations up to and including 31 December 2002 and contained in their archives, which are protected by copyright or related rights and which are first published in the Republic of Kosovo or, in the absence of publication, first broadcast in the Republic of Kosovo.

7. It can be considered as orphan works, works and phonograms referred to in paragraph 6. which have never been published or broadcast but which have been made publicly accessible by the organisations referred to in paragraph 5. with the consent of the right holders, provided that it is reasonable to assume that the right holders would not oppose the uses referred to in Article 59A. This paragraph shall apply to works and phonograms which have been deposited with those organisations before 29 October 2014.

8. Works and other protected subject-matter that are embedded or incorporated in, or constitute an integral part of the works or phonograms referred to in paragraphs 6. and 7.

Article 12B

Diligent search

1. For the purposes of establishing whether a work or phonogram is an orphan work, the organisations referred to in Article 12A, paragraph 5., shall ensure that a diligent search is carried out in good faith in respect of each work or other protected subject-matter, by consulting the appropriate sources for the category of works and other protected subject-matter in question. The diligent search shall be carried out prior to the use of the work or phonogram.

2. If there is evidence to suggest that relevant information on right holders is to be found in other countries, sources of information available in those other countries shall also be consulted.

3. The organisations referred to in Article 12A, paragraph 5. shall maintain records of their diligent searches and shall submit such information to the Office of Copyright and Related Rights, respectively the following information:

3.1. the results of the diligent searches that the organisations have carried out and which have led to the conclusion that a work or a phonogram is considered an orphan work;

3.2. the use that the organisations make of orphan works in accordance with this Law;

3.3. any change, pursuant to Article 12D, of the orphan work status, of works or phonograms that the organisations use;

3.4. the relevant contact information of the organisation concerned.

Article 12C **Sources of Diligent Search**

1. The sources that shall be consulted in order to carry out the diligent search referred in Article 12B for relevant category of works include the following:

1.1. for published books:

1.1.1. legal deposit, library catalogues and authority files maintained by libraries and other institutions;

1.1.2. the publishers' and authors' associations in Republic of Kosovo;

1.1.3. existing databases and registries, WATCH (Writers, Artists and their Copyright Holders), the ISBN (International Standard Book Number) and databases listing books in print;

1.1.4. the databases of the relevant collecting societies, in particular reproduction rights organizations;

1.1.5. sources that integrate multiple databases and registries, including VIAF (Virtual International Authority Files) and ARROW (Accessible Registries of Rights Information and Orphan Works)

2. For newspapers, magazines, journals and periodicals:

2.1. the ISSN (International Standard Serial Number) for periodical publications;

2.2. indexes and catalogues from library holdings and collections;

2.3. legal deposit, in particular national and special bibliographies;

2.4. databases and documentation maintained by the publishers' associations and the authors' and journalists' associations in the Republic of Kosovo;

2.5. the databases and documentation of relevant collecting societies including reproduction rights organizations.

3. For visual works, including fine art, photography, illustration, design, architecture, sketches of the latter works and other such works that are contained in books, journals, newspapers and magazines or other works:

3.1. the sources referred to in paragraph 1. and 2.;

3.2. the databases and documentation of the relevant collecting societies, in particular for visual arts, and including reproduction rights organizations;

3.3. the databases of picture agencies, where applicable.

4. For audiovisual works and phonograms:

4.1. legal deposit;

4.2. databases and documentation maintained by the producers' associations in Republic of Kosovo;

4.3. databases and documentation of film and phonograms of audio heritage institutions and national libraries;

4.4. databases with relevant standards and identifiers such as ISAN (International Standard Audiovisual Number) for audiovisual material, ISWC (International Standard Music Work Code) for musical works and ISRC (International Standard Recording Code) for phonograms;

4.5. the databases and documentation of the relevant collecting societies, in particular for authors, performers, phonogram producers and audiovisual producers;

4.6. credits and other information appearing on the work's packaging or the subject matter's of related rights;

4.7. databases and documentation of other relevant associations representing a specific category of right holders.

Article 12D **End of orphan work status**

The status as orphan work will end in the case that a copyright holder subsequently becomes known or is located.

Article 6

Article 23 of the basic Law, paragraphs 1. and 2. shall be re-worded with the following text:

1. The author shall have the following exclusive right to authorize or prohibit the reproduction of his work.

2. "Reproduction" means the making of one or more copies of a work or object of related rights either directly or indirectly, and either temporarily or permanently, in any form whatsoever, in whole or in part, including an audio or video recording, and the temporary or permanent storage of a work or object of related rights in an electronic medium.

Article 7

To paragraph 1. of Article 25 of the basic Law, the following text shall be added:

Such right is not exhausted by sale or any other act of distribution of the original work or their copies.

Article 8

Article 36 of the basic Law, after paragraph 6. a new paragraph 7. shall be added, with the following text:

7. For a period of three (3) years after the resale, the author or the collective management organization may require from any person in paragraph 2., any information that may be necessary in order to secure payment of royalties in respect of the resale provided by this Article.

Article 9

To paragraph 1. of Article 37 of the basic Law, the following text shall be added:

Such right is not exhausted by sale or any other act of distribution of the original work or their copies.

Article 10

Article 44 of the basic Law paragraph 3., shall be re-worded with the following text:

3. It shall be permissible, without the consent of the author and without payment, for a non profit-making library, museum, archive and educational and science institutions, to reproduce one additional copy from a copy of the work already in their permanent collection, if its purpose is to replace copies that have been lost, destroyed or have become unusable or to make a copy available to other libraries or similar archive services in order to replace in their own collections works that have been lost, destroyed or have become unusable, where it is impossible to obtain copies of the work through usual commercial channels.

Article 11

Article 45 of the basic Law shall be re-worded with the following text:

Article 45 Transitional recordings

1. Broadcasting organizations, without the consent of the author or other holder of copyright and without payment of remuneration, can make ephemeral recordings of works by means of their own facilities and for their own broadcasts on the understanding that such recordings shall be erased or destroyed not later than twelve (12) months after their broadcasting.

2. Recordings referred in paragraph 1., may be submitted to the official state archives, in condition that have exceptional documentary character.

Article 12

Article 49 of the basic Law shall be re-worded with the following text:

Article 49 Use for public information purpose

1. It shall be permitted without the consent of the author or other holder of copyright and without payment of remuneration:

1.1. Use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible.

1.2. Use of political and other speeches held in public debates to the extent of information purpose.

Article 13

Article 57 of the basic Law shall be re-worded with the following text:

Article 57 Use by the press of published articles

It shall be permitted without the consent of the author or other holder of copyright and without payment of remuneration: the reproduction and distribution by the press, broadcasting, communication to the public or interactive making available to the public of published articles on current economic, political or religious topics or of broadcast works or other subject matter of the same character, in cases where this is not expressly reserved, and as long as the source, including the author's name, is indicated.

Article 14

After Article 59 of the basic Law, a new Article 59A shall be added, with the following text:

Article 59A **Permitted uses of orphan works**

1. Organisations referred to in Article 12A paragraph 5. can use orphan works contained in their collections in the following ways:

1.1. by making the orphan work available to the public;

1.2. by acts of reproduction, for the purposes of digitisation, making available to the public, indexing, cataloguing, preservation or restoration.

2. The Organisations referred to in Article 12A paragraph 5. shall use an orphan work in accordance with paragraph 1. of this Article only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection.

3. The organisations referred to in Article 12A paragraph 5. may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.

4. The Organisations referred to in Article 12A paragraph 5. shall indicate the name of identified authors and other right holders in any use of an orphan work.

5. The protection under this Law is without prejudice to the freedom of contract of such organisations in the pursuit of their public- interest missions, particularly in respect of public-private partnership agreements.

6. In case that a copyright holder subsequently becomes known or is located, the organisations referred to in Article 12A paragraph 5. will be required to immediately cease using the work and will be under a duty to pay reasonable compensation to the copyright holder for any use made of the work.

7. The circumstances under which the payment of such compensation may be organised and the level of the compensation shall be determined by the Government of the Republic of Kosovo.

Article 15

Article 61 of the basic Law after paragraph 6. a new paragraph 6a. shall be added, with the following text:

6a. The term of protection of a musical composition with words shall expire seventy (70) years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the author of the lyrics and the composer of the musical composition, provided that both contributions were specifically created for the

respective musical composition with words.

Article 16

Article 132 of the basic Law, paragraph 1., before the first sentence a new sentence shall be added with the following text:

1. When a phonogram published for commercial purposes, or a reproduction of such phonogram, are used for a radio or television broadcast by any means, such as wireless waves, satellite or cable, or for communication to the public, the user shall pay a single and equitable remuneration to the performers whose performances are carried on the recordings and to the producers of the recordings.

Article 17

After Article 132 of the basic Law a new Article 132A shall be added, with the following text:

Article 132A

Assignment of performer's property rights in a sound recording

1. If, fifty (50) years after the phonogram was lawfully published or, failing such publication, fifty (50) years after it was lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them, the performer may terminate the contract by which the performer has transferred or assigned his rights in the fixation of his performance to a phonogram producer.

2. The right to terminate the contract on transfer or assignment may be exercised if the producer, within a year from the notification by the performer of his intention to terminate the contract on transfer or assignment, fails to carry out both of the acts of exploitation referred to in the paragraph above. If at the end of the period of twelve (12) months beginning with the date of notice, the producer has not met the above mentioned conditions, the agreement is terminated and the rights in the sound recording expire with immediate effect. This right to terminate the contract may not be waived by the performer.

3. For the purpose of this article "producer" includes the person for the time being entitled to the right of sound recording.

4. For the purpose of this Article "Sufficient quantities" means such quantity as to satisfy the reasonable requirements of the public for copies of the sound recording.

5. Where a contract on transfer or assignment gives the performer a right to claim a non-recurring remuneration, the performer shall have the right to obtain an annual supplementary remuneration from the phonogram producer for each full year immediately following the 50th year after the phonogram was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public. The right to obtain such annual supplementary remuneration may not be waived by the performer.

6. The overall amount to be set aside by a phonogram producer for payment of the annual supplementary remuneration referred to in paragraph 3. shall correspond to twenty percent (20%) of the revenue which the phonogram producer has derived, during the year preceding that for which the said remuneration is paid, from the reproduction, distribution and making available to the public of the phonogram in question, following the 50th year after it was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public.

7. Phonogram producers are required on request to provide to performers who are entitled to the annual supplementary remuneration referred to paragraph 6. any information which may be necessary in order to secure payment of that remuneration.

8. Where a performer is entitled to recurring payments, neither advance payments nor any contractually defined deductions shall be deducted from the payments made to the performer following the 50th year after the phonogram was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public.

Article 18

Article 137, paragraph 1. of the basic Law shall be re-worded with the following text:

1. Property rights of the performer shall run for fifty (50) years from the performance. If a fixation of the performance is not a phonogram, but within this period was published in a legal form or was communicated to the public, performer's rights shall run for fifty (50) years from the day of first publication or first such communication to the public, depending on which action was conducted first. If a fixation of the performance in a phonogram is lawfully published or lawfully communicated to the public within this period, the rights shall expire seventy (70) years from the date of the first such publication or the first such communication to the public, whichever action is the earliest.

Article 19

Article 141 of the basic Law shall be re-worded with the following text:

Article 141

Term of rights of producers of phonogram

1. The rights of producers of phonograms shall expire fifty (50) years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire seventy (70) years from the date of the first lawful publication.

2. If the phonogram was not lawfully published within the period mentioned in paragraph 1. of this Article, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire seventy (70) years from the date of the first lawful communication to the public.

3. Paragraph 1. and 2., shall not have the effect of protecting the rights of producers of phonograms, if the term of protection had expired on 22 December 2002 according to the Law No. 04/L-065 on Copyright and Related Rights.

Article 20

Article 146 of the basic Law, after last sentence the following text shall be added:

,whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

Article 21

1. Article 160 of the basic Law, paragraph 1.14 and new paragraph 2. shall be added, whereas paragraph 2. of the basic Law shall be reformulated and is now paragraph 2.7., and to this Article paragraph 3. shall be added, with the following text:

1.14. The right to obtain an annual supplementary remuneration as referred to 132A, paragraph 3.

2. In accordance with the corresponding provisions of this law, the following rights may only be exercised through a collective management organization accredited for this purpose by the Office of Copyright and Related Rights:

2.1. the right to equitable remuneration for private copying of works and objects of related rights as provided for in Article 44, paragraph 2.1.;

2.2. the right to equitable remuneration for reprographic reproduction as provided for in Article 44, paragraph 2.2.;

2.3. the right to equitable remuneration of authors and performers preserved after the transfer of their exclusive right of rental to producers of phonograms or audiovisual works as provided for in Articles 113, paragraph 4.3. and 132 paragraph 2.;

2.4. the right to remuneration for lending as provided in Article 37 paragraph 1.;

2.5. the right of communication to the public of non-theatrical musical works and literary works, small rights;

2.6. the right of performers and producers of phonograms to a single equitable remuneration for broadcasting and communication to the public of phonograms published for commercial purposes as provided for in Article 132 paragraph 1.;

2.7. the right of cable retransmission of works and objects of related rights as provided for in Article 30 paragraph 1., except in respect of Audiovisual media service own transmission, irrespective of whether the rights concerned are their own or have been assigned to them by other right holders.

3. Collective management organization shall be entitled to dispose of the amounts of remuneration collected from users that have not been claimed within three (3) years from the end of the year in which they have been collected, either by adding them to the amounts to be distributed or by allocating them to other purposes for the benefit of the owners of copyright and related rights.

Article 22

Article 161 of the basic Law, paragraph 3. shall be reworded, and after paragraph 5. a new paragraph 6. shall be added, with the text as following:

3. The rights referred in paragraph 2. of Article 20 of this Law, shall be administered by the association for collective administration of rights without an authorization from the author or right holder.

6. During the period when the management of rights is transferred to a collecting society, either by law or by authorization, the author cannot individually manage those rights.

Article 23

Article 163 of the basic Law, paragraph 2. shall be re-worded with the following text:

2. The association for collective administration of rights has the status of a non-profit making organization.

Article 24

Article 167 of the Basic Law, paragraph 2. after the last word a new sentence shall be added and to the same paragraph the following sub-paragraphs shall be added 2.1., 2.2., 2.3., 2.4., 2.5., 2.6., with the following text:

in particular the following criteria shall be taken into account:

2.1. the income that may be obtained as a result of the use of a work or object of related rights;

2.2. where the income does not reflect the nature of the use of the works or objects of related rights, the costs emerging with their use or the impact on their normal exploitation by the owners of rights;

2.3. the capacity of the place where works or objects of related rights are used;

2.4. the size of the public to which the works or objects of related rights are made available;

2.5. importance of the use of works or objects of related rights for the relevant activities of the users;

2.6. the proportion between protected and non-protected works or objects of related rights used;

Article 25

Article 176, paragraph 4. of the basic Law shall be re-worded with following text:

4. The mediator may submit proposal to parties concerning the settlement of the dispute. It shall be assumed that the parties accept the proposal for the settlement of the dispute if none of them expresses its opposition, within a period of three (3) months from the delivery of the proposal. Notice of the proposal and of any opposition thereto shall be served on the parties concerned in accordance with the applicable rules concerning the service of legal documents.

Article 26

Article 177 of the basic Law shall be re-worded with the text as following:

Article 177

Persons entitled to apply for the application of the measures, procedures and remedies

1. Legal holders of the rights recognized and guaranteed under this law shall enjoy the right to ask from the courts to uphold their respective rights, to recognize the committed infringement and the respective remedy.

2. The rights referred to in paragraph 1. of this Article shall also be enjoyed by:

2.1. individuals who have been authorized or licensed by the right holder to use the rights protected under this law, in accordance with the authorization granted to them for this purpose.

2.2. collective rights-management organizations, regardless of whether its authorization rests on a transfer of rights or on power of attorney. A collecting management organisation shall in all circumstances be entitled to initiate judicial or extrajudicial action in its own name and to exercise in full legitimacy all the rights transferred to it, or for which it holds power of attorney.

2.3. professional protection bodies and representative associations which have been authorized to represent the right holders.

Article 27

Article 181 of the basic Law paragraph 1. sub-paragraph 1.3 shall be reworded, and to this paragraph after sub-paragraph 1.6. a new sub-paragraph 1.7. shall be added, with the text as following:

1.3. the goods created as a result of infringement, materials and implements principally used in the creation or manufacture of infringing goods, will be asked to be definitely removed from the market and destroyed at the expenses of the infringer, unless particular reasons are invoked for not doing so;

1.7. issuing of an injunction against intermediaries whose services are used by a third party to infringe a copyright or related rights.

Article 28

Articles 184, 185 and 186 of the basic Law shall be deleted. The Law shall be supplemented with new Articles 184, 185 and 186 with the following texts:

Article 184

Evidence

1. On application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the Court may order that such evidence be presented by the opposing party, subject to the protection of confidential information. A reasonable sample of a substantial number of copies of a work or any other protected object is considered by the competent judicial authorities to constitute reasonable evidence.

2. Under the same conditions, in the case of an infringement committed on a commercial scale the Court may order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article 185

Preservation of evidence

1. The right holders or their representatives referred to in Article 177 who have presented reasonably available evidence sufficient to support their claims, may ask the court, even to prior taking actions on the case, to take measures for securing evidence or finding of the factual situation, where there is a risk of infringement of the rights provided by this law, as well as when there is risk of destruction of the elements of proof. Those measures shall be taken, if necessary without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

2. Where measures to preserve evidence are adopted without the other party having been heard, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the notification of the measures, whether the measures shall be modified, revoked or confirmed.

3. Measures referred to in paragraph 1. may include a detailed description, with or without the taking of examples or the physical seizure of the infringing goods, and, where appropriate, of the materials and instruments used to produce and/or distribute such goods, as well as the relevant documents. Such measures shall be taken in accordance with the provisions of the Code of Civil Procedures.

4. The measures ordered by the Court to secure evidence or the factual state of the offence shall be applied by the judicial officer. The right holders or representatives thereof, whose rights have presumably been infringed or are at risk of infringement, shall be entitled to participate in the application of the measures to secure the proof or the in factual observation.

5. The measures to preserve evidence may be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant.

6. The measures to preserve evidence are revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority, the period to be determined by the judicial authority ordering the measures or, in the absence of such determination, within a period not exceeding fifteen (15) days starting from the date when the measure begins.

7. Where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of rights, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

8. A separate appeal may be made against the decision of the court, by which the request to secure the evidence is accepted or rejected.

9. Proceedings for the preservation of evidence are implemented within seven (7) days after the claim was filed.

Article 186

Provisional and precautionary measures

1. The Court may, at the request of the applicant:

1.1. issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of a right protected with law, or to forbid, on a provisional basis, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder; an interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe rights protected with this law;

1.2. order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce;

1.3. order where appropriate, in case of non-compliance with an injunction a recurring penalty payment, with a view to ensuring compliance.

2. In the case of an infringement committed on a commercial scale, if the injured party demonstrates circumstances likely to endanger the recovery of damages, the Court may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent court may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

3. The Court shall, in respect of the measures referred to in paragraphs 1. and 2, have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed, or that such infringement is imminent.

4. The provisional measures referred to in paragraphs 1. and 2. may, in appropriate cases, be taken without the defendant having been heard, in particular where any delay would cause irreparable harm to the right holder. In that event, the parties shall be so informed without delay after the execution of the measures at the latest.

5. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.

6. The provisional measures referred to in paragraphs 1. and 2. are revoked or otherwise cease to have effect, upon request of the defendant, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority, the period to be determined by the judicial authority ordering the measures or, in the absence of such determination, within a period not exceeding fifteen (15) working days starting from the date when the temporary measure begins.

7. The Court may make the provisional measures referred to in paragraphs 1. and 2. subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of rights, the competent court shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

8. Against the decision of the court which issued the provisional and precautionary measures may be made a separate appeal for the change or removal of the measures. The appeal does not suspend the execution of the decision.

9. The guarantee given in conformity with paragraph 6. of this Article is returned to the plaintiff, in case the other party does not bring a lawsuit for the compensation of the damage suffered due to such a cause within fifteen (15) days from the date where has become irrevocable the decision of the Court, that declared that has not been any infringement.

10. Proceedings for provisional and precautionary measures are implemented within seven (7) days after the claim was filed.

Article 29

Article 189 of the basic Law shall be re-worded with the text as follows:

Article 189
Duty to provide information

1. In the context of proceedings concerning an infringement of copyright or of a related right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe rights be provided by the infringer and/ or any other person who:

1.1. was found in possession of the infringing goods on a commercial scale;

1.2. was found to be using the infringing services on a commercial scale;

1.3. was found to be providing on a commercial scale services used in infringing activities; or

1.4. was indicated by the person referred to in point 1.1., 1.2. or 1.3. as being involved in the production, manufacture or distribution of the goods or the providing of the services.

2. The information referred to in paragraph 1. shall, as appropriate, comprise:

2.1. the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;

2.2. information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1. and 2. shall not apply if:

3.1. different provisions grant the right holder the right to receive fuller information;

3.2. different rules govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

3.3. the court on the basis of available information has reason to assume that the right of information is misused:

3.3.1. providing the request information would force the person referred to in paragraph 1. to admit to his/her own participation or that of his/ her close relatives in an infringement of copyright or of a related right;

3.3.2. disclosure of the information is not allowed pursuant to rules governing the protection of confidentiality of information sources or the processing of personal data.

4. Any person failing to fulfill the duty to provide information according to the provisions

of this Article shall be liable for damages that may be caused by such failure to comply.

Article 30

Article 190 paragraph 1., Article 191 paragraph 1. and Article 192 paragraph 1. of the basic law, after the phrase “legal person” shall be added the following text: “or individual business”.

Article 31

Article 199 of the basic Law, paragraph 5. shall be re-worded, and after this paragraph new paragraphs 6. and 7. shall be added, with the text reading as follows:

5. The right provided for in Article 149 shall apply to databases whose producers or owners of rights are nationals of the Republic of Kosovo or who have their habitual residence in the territory of the Republic of Kosovo.

6. The right provided for in Article 149 shall also apply to companies and firms formed in accordance with the law of the Kosovo and having their registered office, central administration or principal place of business within the territory of the Republic of Kosovo. However, where such a company or firm has only its registered office in the territory of the Republic of Kosovo, its operations also must be genuinely linked on an ongoing basis with the economy of the Republic of Kosovo.

7. Agreements extending the right provided for in Article 149 to databases made in third countries and falling outside the provisions of paragraphs 5. and 6. shall be protected on the basis of an international treaty to which the Republic of Kosovo is party. The term of any protection extended to databases made in other countries shall not exceed that provided for in Article 149.

Article 32

Article 200 of the basic Law, paragraph 2. shall be deleted and supplemented with new paragraph 2., as following:

2. Where an act of communication to the public by satellite occurs in another State which does not provide the level of protection provided for under this law:

2.1. if the programme-carrying signals are transmitted to the satellite from an uplink station situated in another state, that act of communication to the public by satellite shall be deemed to have occurred in that state and the rights shall be exercisable against the person operating the uplink station.

2.2. if there is no use of an uplink station situated in another state but a broadcasting organization established in Kosovo has commissioned the act of communication to the public by satellite that act shall be deemed to have occurred in Kosovo and the rights shall be exercisable against the broadcasting organization.

Article 33

Article 201 of the Basic law, to paragraph 1. after the word “foreign”, the following text is added:

of copyright and

Article 34

Article 204 of the Basic Law, paragraph 7. shall be deleted and re-worded, paragraph 8. shall be deleted and re-worded and it becomes paragraph 11., to the same Article the following paragraphs shall be added 8., 9., and 10., with the text reading as follows:

7. The provisions of this law concerning the computer programs are implemented on computer programs that have been created after entry into force of this law, if by doing so the signed contracts and the gained rights before this day remain intacted.

8. Protection under this law as regards copyright shall also be available in respect of databases created prior to 1 January 1998 which on that date fulfill the requirements laid down in this law as regards copyright protection of databases. The protection provided for in this paragraph shall be without prejudice to any acts concluded and rights acquired before 1 January 1998.

9. Protection pursuant to the provisions of this Law as regards the right provided for in Article 149 shall also be available in respect of databases the making of which was completed not more than fifteen (15) years prior to 1 January 1998 and which on that date fulfil the requirements laid down in Article 149. The protection provided for in this paragraph shall be without prejudice to any acts concluded and rights acquired before 1 January 1998.

10. In the case of a database the making of which was completed not more than fifteen years prior to 1 January 1998, the term of protection by the right provided for in Article 149 shall expire fifteen (15) years from 1 January following that date.

11. With the accession of the Republic of Kosovo to the European Union the exhaustion of right of distribution, referred to in the Article 24.2. of this Law, shall apply to any first sale or other transfer of ownership in an original or a copy of a work, made anywhere in the European Union or in the European Economic Area.

Article 35

Entry into force

This Law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

Law No. 05/L-047

11 October 2016

Promulgated by Decree No.DL-037-2016, dated 25.10.2016, President of the Republic of Kosovo Hashim Thaçi.