

*Current situation in Ukraine regarding:*

*a) copyright limitations and exceptions for the visually impaired, and*

*b) protection of audiovisual performances.*

*Copyright limitations and exceptions.*

In the Articles 21-25, 42 of the Law of Ukraine On Copyright and Related Rights are copyright limitations and exceptions proprietary rights of subjects of copyright and related rights, that confirms with requirements of Berne Convention for the Protection of Literary and Artistic Works, World Intellectual Property Organization Copyright Treaty, International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, World Intellectual Property Organization Performances and Phonograms Treaty.

They include the case of the reproducing the performances for the visually impaired, however, according to the Article 21 section 6 of the Law of Ukraine on Copyright and Related Rights, without the consent of the author (or other copyright holder), but with mandatory indication of the author's name and of the source of borrowing, shall be permitted to issue works for the blind, published in Braille characters.

*Protection of audiovisual performances.*

The Protection of related rights of audiovisual performers in Ukraine is carried out according to the Civil Code of Ukraine and the Law of Ukraine on Copyright and Related Rights.

According to the Article 1 of the Law of Ukraine on Copyright and Related Rights:

performer - an actor (theatre actor, cinema actor, etc.), singer, musician, dancer or other person who acts, sings, recites, declaims, plays a musical instrument, dances or otherwise performs works of literature or art, including folklore, circus, variety and puppet shows, pantomimes, etc., as well as a conductor of musical and musical drama works;

recording (audio recording, video recording) - fixation of sounds and (or) moving images with the help of special technical means (including through digital presentation) on the appropriate material medium that allows their perception, reproduction or notification via the appropriate device.

According to the Article 35 of the Law of Ukraine on Copyright and Related Rights objects of related rights, irrespective of destination, contents, evaluation, method and form of expression, shall be:

a) performances of literary, drama, musical, musical drama, choreographic, folklore and other works;

- b) phonograms or videograms;
- c) broadcasting organizations' broadcasts (programs).

According to the Article 36 of the Law of Ukraine on Copyright and Related Rights subjects of related rights shall be:

- a) performers of works, their heirs and persons that were on legal grounds assigned related rights with respect to phonograms;
- b) producers of phonograms, their heirs (successors) and persons that were on legal grounds assigned related rights with respect to phonograms;
- c) producers of videograms, their heirs (successors) and persons that were on legal grounds assigned related rights with respect to videograms;
- d) broadcasting organizations and their assigns.

According to the Article 38 of the Law of Ukraine on Copyright and Related Rights the performer of a work shall hold the following personal non-proprietary rights:

- a) to demand recognition that he is the performer of the work;
- b) to demand that his name or pseudonym be indicated or announced in connection with each of his appearances, recordings or performances (whenever possible);
- c) to demand provision of the proper recording quality of its performance and the right to counteract any twisting or distortion thereof or other essential amendments thereto that can prejudice his honor and reputation.

According to the Article 39 of the Law of Ukraine on Copyright and Related Rights performers' proprietary rights shall be their exclusive rights to permit or prohibit other persons taking the following actions:

- a) public notification of their unfixed performances (air broadcasting);
- b) fixation in phonograms or videograms of their performances that have not been fixed before;
- c) reproduction (direct and/or indirect) of their performances, fixed without their consent in a phonogram (videogram), or with their consent, but only in case reproduction is conducted with a different purpose than that upon which they agreed.
- d) distribution of their performances fixed in a phonogram or videogram by first sale or other transfer of ownership, in the event during the first fixation they failed to give their consent to the producer of a phonogram (videogram) for their further reproduction;
- e) commercial rental, property lease of their performances, fixed in a phonogram or videogram, in the event during the first fixation their consent to commercial rental or property lease was not received, even after distribution of

performances, conducted by the producer of a phonogram (videogram), or with his consent;

f) distribution of their performances, fixed in phonograms or videograms through any means of communication so that any person could receive access to them from any place and at any time at their own discretion, in the event during the first fixation of the performance there was no consent to such type of distribution.

The performers' exclusive rights can be assigned (alienated) to other persons on the basis of a contract stipulating the method of using the performances, the remuneration amount and the procedure for paying the remuneration, the contract term and the performances usage term, the territory covered by assigned rights, etc. Remuneration rates established by the contract shall not be less than minimum rates established by the Cabinet of Ministers of Ukraine.

If a performance is used in an audiovisual work, the performer shall be deemed to assign to the organization producing the audiovisual work or to the producer all proprietary rights with respect to the performance, unless otherwise stipulated by the contract.