

78. Zakon o ratifikaciji Pogodbe Svetovne organizacije za intelektualno lastnino o izvedbah in fonogramih (MSOILIF), stran 1083.

Na podlagi druge alineje prvega odstavka 107. člena in prvega odstavka 91. člena Ustave Republike Slovenije izdajam

**U K A Z
O RAZGLASITVI ZAKONA O RATIFIKACIJI POGODBE SVETOVNE ORGANIZACIJE ZA INTELEKTUALNO LASTNINO O IZVEDBAH IN FONOGRAMIH (MSOILIF)**

Razglašam Zakon o ratifikaciji Pogodbe Svetovne organizacije za intelektualno lastnino o izvedbah in fonogramih (MSOILIF), ki ga je sprejel Državni zbor Republike Slovenije na seji 22. septembra 1999.

Št. 001-22-141/99

Ljubljana, dne 30. septembra 1999

Predsednik
Republike Slovenije
Milan Kučan l. r.

**Z A K O N
O RATIFIKACIJI POGODBE SVETOVNE ORGANIZACIJE ZA INTELEKTUALNO LASTNINO O IZVEDBAH IN FONOGRAMIH (MSOILIF)**

1. člen

Ratificira se Pogodba Svetovne organizacije za intelektualno lastnino o izvedbah in fonogramih, sprejeta v Ženevi dne 20. decembra 1996.

2. člen

Pogodba se v izvorniku v angleškem jeziku in v prevodu v slovenskem jeziku glasi:

**W I P O
PERFORMANCES AND PHONOGRAMS TREATY**

adopted by the Diplomatic Conference on December 20, 1996

Preamble

The Contracting Parties,
Desiring to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible,
Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the production and use of performances and phonograms, Recognizing the need to maintain a balance between the rights of performers and producers of phonograms and the larger public interest, particularly education, research and access to information,
Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

Article 1

Relation to Other Conventions

(1) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the “Rome Convention”).

(2) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.

(3) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

Article 2

Definitions

For the purposes of this Treaty:

- (a) “performers” are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;
- (b) “phonogram” means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;
- (c) “fixation” means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;
- (d) “producer of a phonogram” means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;
- (e) “publication” of a fixed performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the rightholder, and provided that copies are offered to the public in reasonable quantity;
- (f) “broadcasting” means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;
- (g) “communication to the public” of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or

the sounds or the representations of sounds fixed in a phonogram. For the purposes of Article 15, “communication to the public” includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

Article 3

Beneficiaries of Protection under this Treaty

- (1) Contracting Parties shall accord the protection provided under this Treaty to the performers and producers of phonograms who are nationals of other Contracting Parties.
- (2) The nationals of other Contracting Parties shall be understood to be those performers or producers of phonograms who would meet the criteria for eligibility for protection provided under the Rome Convention, were all the Contracting Parties to this Treaty Contracting States of that Convention. In respect of these criteria of eligibility, Contracting Parties shall apply the relevant definitions in Article 2 of this Treaty.
- (3) Any Contracting Party availing itself of the possibilities provided in Article 5(3) of the Rome Convention or, for the purposes of Article 5 of the same Convention, Article 17 thereof shall make a notification as foreseen in those provisions to the Director General of the World Intellectual Property Organization (WIPO).

Article 4

National Treatment

- (1) Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(2), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty, and to the right to equitable remuneration provided for in Article 15 of this Treaty.
- (2) The obligation provided for in paragraph (1) does not apply to the extent that another Contracting Party makes use of the reservations permitted by Article 15(3) of this Treaty.

CHAPTER II

RIGHTS OF PERFORMERS

Article 5

Moral Rights of Performers

- (1) Independently of a performer’s economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.
- (2) The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the

performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed.

Article 6

Economic Rights of Performers in their Unfixed Performances

Performers shall enjoy the exclusive right of authorizing, as regards their performances:

- (i) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and
- (ii) the fixation of their unfixed performances.

Article 7

Right of Reproduction

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in phonograms, in any manner or form.

Article 8

Right of Distribution

(1) Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership.

(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.

Article 9

Right of Rental

(1) Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in phonograms as determined in the national law of Contracting Parties, even after distribution of them by, or pursuant to, authorization by the performer.

(2) Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of performers for the rental of copies of their performances fixed in phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive right of reproduction of performers.

Article 10

Right of Making Available of Fixed Performances

Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

CHAPTER III

RIGHTS OF PRODUCERS OF PHONOGRAMS

Article 11

Right of Reproduction

Producers of phonograms shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their phonograms, in any manner or form.

Article 12

Right of Distribution

(1) Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their phonograms through sale or other transfer of ownership.

(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the phonogram with the authorization of the producer of the phonogram.

Article 13

Right of Rental

(1) Producers of phonograms shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their phonograms, even after distribution of them by or pursuant to authorization by the producer.

(2) Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of producers of phonograms for the rental of copies of their phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of producers of phonograms.

Article 14

Right of Making Available of Phonograms

Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

CHAPTER IV

COMMON PROVISIONS

Article 15

Right to Remuneration for Broadcasting and Communication to the Public

(1) Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.

(2) Contracting Parties may establish in their national legislation that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. Contracting Parties may enact national legislation that, in the absence of an agreement between the performer and the producer of a phonogram, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

(3) Any Contracting Party may in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph (1) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions at all.

(4) For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.

Article 16

Limitations and Exceptions

(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonably prejudice the legitimate interests of the performer or of the producer of the phonogram.

Article 17

Term of Protection

(1) The term of protection to be granted to performers under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed in a phonogram.

(2) The term of protection to be granted to producers of phonograms under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the phonogram was published, or failing such publication within 50 years from fixation of the phonogram, 50 years from the end of the year in which the fixation was made.

Article 18

Obligations concerning Technological Measures

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.

Article 19

Obligations concerning Rights Management Information

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:

(i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, "rights management information" means information which identifies the performer, the performance of the performer, the producer of the phonogram, the phonogram, the owner of any right in the performance or phonogram, or information about the terms and conditions of use of the performance or phonogram, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a fixed performance or a phonogram or appears in connection with the communication or making available of a fixed performance or a phonogram to the public.

Article 20

Formalities

The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.

Article 21

Reservations

Subject to the provisions of Article 15(3), no reservations to this Treaty shall be permitted.

Article 22

Application in Time

(1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of performers and producers of phonograms provided for in this Treaty.

(2) Notwithstanding paragraph (1), a Contracting Party may limit the application of Article 5 of this Treaty to performances which occurred after the entry into force of this Treaty for that Party.

Article 23

Provisions on Enforcement of Rights

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

CHAPTER V

ADMINISTRATIVE AND FINAL CLAUSES

Article 24

Assembly

(1)(a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

(2)(a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 26(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the

preparation of such diplomatic conference.

(3)(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

(4) The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.

(5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 25

International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

Article 26

Eligibility for Becoming Party to the Treaty

(1) Any Member State of WIPO may become party to this Treaty.

(2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 27

Rights and Obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 28

Signature of the Treaty

This Treaty shall be open for signature until December 31, 1997, by any Member State of WIPO and by the European Community.

Article 29

Entry into Force of the Treaty

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

Article 30

Effective Date of Becoming Party to the Treaty

This Treaty shall bind

- (i) the 30 States referred to in Article 29, from the date on which this Treaty has entered into force;
- (ii) each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (iii) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 29, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;
- (iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 31

Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 32

Languages of the Treaty

- (1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.
- (2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 33

Depositary

The Director General of WIPO is the depositary of this Treaty.

P O G O D B A
SVETOVNE ORGANIZACIJE ZA INTELEKTUALNO LASTNINO O IZVEDBAH IN
FONOGRAMIH

sprejeta na diplomatski konferenci dne 20. decembra 1996

Uvod

Pogodbenice,
želijo čim učinkoviteje in enotneje razvijati in ohranjati varstvo pravic izvajalcev in proizvajalcev fonogramov,
priznavajo potrebo po uvedbi novih mednarodnih pravil, da bi ustrezno reševale vprašanja, ki se postavljajo v zvezi z gospodarskim, družbenim, kulturnim in tehnološkim razvojem,
priznavajo velik vpliv razvoja in zблиževanja informacijskih ter komunikacijskih tehnologij na produkcijo in uporabo izvedb ter fonogramov,
priznavajo potrebo po ohranitvi ravnotežja med pravicami izvajalcev in proizvajalcev fonogramov ter širšim javnim interesom predvsem na področju izobraževanja, raziskovanja in dostopa do informacij,
zato so sklenile, kot sledi:

I. poglavje

SPLOŠNE DOLOČBE

1. člen

Razmerje do drugih konvencij

(1) Nič v tej pogodbi ne ukinja obstoječih obveznosti, ki jih imajo pogodbenice druga do druge po Mednarodni konvenciji za varstvo izvajalcev, proizvajalcev fonogramov in radiodifuznih organizacij, sestavljeni v Rimu dne 26. oktobra 1961 (v nadaljevanju "Rimska konvencija").

(2) Varstvo, ki ga zagotavlja ta pogodba, ne posega v varstvo avtorske pravice na književnih in umetniških delih ter nanj na noben način ne vpliva. Glede na to se nobena določba te pogodbe ne sme razlagati v škodo tega varstva.

(3) Ta pogodba nima nobene povezave z drugimi pogodbami in ne vpliva na pravice in obveznosti iz katere koli druge pogodbe.

2. člen

Opredelitev pojmov

Za namene te pogodbe:

(a) "izvajalci" pomenijo igralce, pevce, glasbenike, plesalce in druge osebe, ki igrajo, pojejo, podajajo, deklamirajo, nastopajo, interpretirajo ali drugače izvajajo književna, umetniška ali folklorna dela;

(b) "fonogram" pomeni posnetek zvokov izvedbe ali drugih zvokov oziroma njihovih nadomestkov, razen če je v obliki posnetka, ki je vključen v kinematografskem ali drugem avdiovizualnem delu;

(c) "posnetek" pomeni vključitev zvokov ali njihovih zapisov na nosilec, s katerega se ti lahko

zaznajo, reproducirajo ali priobčujejo s pomočjo naprave;

(d) "proizvajalec fonograma" pomeni fizično ali pravno osebo, ki prevzame pobudo in odgovornost, da prva posname zvoke neke izvedbe ali druge zvoke oziroma nadomestke teh zvokov;

(e) "izdaja" posnete izvedbe ali fonograma pomeni ponujanje primerkov posnete izvedbe ali fonograma javnosti s soglasjem imetnika pravic pod pogojem, da so ti primerki ponujeni javnosti v razumni količini;

(f) "radiodifuzno oddajanje" pomeni brezžično prenašanje zvoka ali slike in zvoka oziroma njihovih nadomestkov, namenjeno javnosti; za "radiodifuzno oddajanje" se šteje tudi takšno prenašanje po satelitu; prenašanje kodiranih signalov je "radiodifuzno oddajanje", če radiodifuzne organizacije javnosti zagotovijo sredstva za dekodiranje ali so zagotovljena z njenim soglasjem;

(g) "javna priobčitev" izvedbe ali fonograma pomeni prenašanje zvokov izvedbe ali zvokov oziroma nadomestkov zvokov, posnetih na fonogramih, javnosti na kateri koli način, razen z radiodifuznim oddajanjem. Za namene 15. člena "javna priobčitev" vključuje tudi to, da zvoki ali nadomestki zvokov, posneti na fonogramih, postanejo slišni javnosti.

3. člen

Upravičenci do varstva po tej pogodbi

(1) Pogodbenice dajejo varstvo, zagotovljeno s to pogodbo, izvajalcem in proizvajalcem fonogramov, ki so državljani druge pogodbenice.

(2) Za državljane druge pogodbenice se štejejo tisti izvajalci ali proizvajalci fonogramov, ki bi izpolnili merila za upravičenost do varstva, zagotovljenega z Rimsko konvencijo, če bi bile vse pogodbenice te pogodbe tudi države pogodbenice navedene konvencije. Glede teh meril za upravičenost do varstva uporabljajo pogodbenice ustrezne opredelitve pojmov iz 2. člena te pogodbe.

(3) Vsaka pogodbenica, ki izkoristi možnosti, zagotovljene s tretjim odstavkom 5. člena Rimske konvencije, ali ki za namene 5. člena omenjene konvencije izkoristi njen 17. člen, uradno obvesti generalnega direktorja Svetovne organizacije za intelektualno lastnino (WIPO), kot je to predvideno v teh določbah.

4. člen

Nacionalna obravnava

(1) Glede izključnih pravic, danih posebej po tej pogodbi, in glede pravice do pravičnega nadomestila iz 15. člena te pogodbe vsaka pogodbenica obravnava državljane drugih pogodbenic, kot so opredeljeni v drugem odstavku 3. člena, enako kot svoje lastne državljane.

(2) Obveznost iz prvega odstavka ne velja, če druga pogodbenica izkoristi pridržke, dovoljene v tretjem odstavku 15. člena te pogodbe.

II. poglavje

PRAVICE IZVAJALCEV

5. člen

Moralne pravice izvajalcev

(1) Neodvisno od materialnih pravic izvajalca in celo po njihovem prenosu obdrži izvajalec glede slušnih izvedb v živo ali izvedb, posnetih na fonogramih, pravico do priznanja, da je izvajalec svoje izvedbe, razen če način uporabe izvedbe narekuje opustitev tega priznanja, in pravico, da nasprotuje vsakemu popačenju, skazitvi ali drugi spremembi svoje izvedbe, ki bi lahko škodovala njegovemu ugledu.

(2) Pravice, ki jih zagotavlja izvajalcu prvi odstavek, trajajo po njegovi smrti vsaj do poteka materialnih pravic in jih lahko uresničujejo osebe ali institucije, ki so za to pooblašene po zakonodaji pogodbenice, v kateri se zahteva varstvo. Vendar pa tiste pogodbenice, katerih zakonodaje v času ratifikacije te pogodbe ali pristopa k njej ne predvidevajo varstva vseh pravic, navedenih v prejšnjem odstavku, po smrti izvajalca lahko določijo, da nekatere od teh pravic po njegovi smrti prenehajo veljati.

(3) Pravna sredstva za varovanje pravic, zagotovljenih s tem členom, ureja zakonodaja pogodbenice, v kateri se zahteva varstvo.

6. člen

Materialne pravice izvajalcev na njihovih neposnetih izvedbah

Izvajalci uživajo glede svojih izvedb izključno pravico dovoljevati:

- (i) radiodifuzno oddajanje in javno priobčitev svojih neposnetih izvedb, razen če je izvedba sama po sebi radiodifuzna, in
- (ii) snemanje svojih neposnetih izvedb.

7. člen

Pravica do reproduciranja

Izvajalci uživajo izključno pravico dovoljevati neposredno ali posredno reproduciranje svojih izvedb, posnetih na fonogramih, na kakršen koli način ali v kateri koli obliki.

8. člen

Pravica do distribuiranja

(1) Izvajalci uživajo izključno pravico dovoljevati, da izvornik in primerki njihovih izvedb, posnetih na fonogramih, postanejo dostopni javnosti s prodajo ali drugačnim prenosom lastninske pravice.

(2) Nič v tej pogodbi ne vpliva na svobodo pogodbenic, da določijo morebitne pogoje, pod katerimi je po prvi prodaji ali drugačnem prenosu lastninske pravice izvornika ali primerka posnete izvedbe z dovoljenjem izvajalca pravica iz prvega odstavka izčrpana.

9. člen

Pravica do dajanja v najem

(1) Izvajalci uživajo izključno pravico dovoljevati, da se izvornik in primerki njihovih izvedb, posnetih na fonogramih, kot to določa domače pravo pogodbenice, dajejo v komercialni najem javnosti tudi po tem, ko so distribuirani z dovoljenjem izvajalca oziroma v skladu z njim.

(2) Ne glede na določbe prvega odstavka lahko pogodbenica, ki je imela na dan 15. aprila 1994 v veljavi sistem pravičnega nadomestila izvajalcem za dajanje primerkov njihovih izvedb, posnetih na fonogramih, v najem in ga še vedno ima, obdrži ta sistem pod pogojem, da komercialno dajanje fonogramov v najem bistveno ne prizadene izvajalčeve izključne pravice reproduciranja.

10. člen

Pravica, da se posnete izvedbe dajo na voljo javnosti

Izvajalci uživajo izključno pravico dovoljevati, da postanejo njihove izvedbe, posnete na fonogramih, dostopne javnosti po žici ali brezžično na tak način, da imajo posamezniki lahko dostop do njih s kraja in v času, ki ju sami izberejo.

III. poglavje

PRAVICE PROIZVAJALCEV FONOGRAMOV

11. člen

Pravica do reproduciranja

Proizvajalci fonogramov uživajo izključno pravico dovoljevati neposredno ali posredno reproduciranje svojih fonogramov na kakršen koli način ali v kateri koli obliki.

12. člen

Pravica do distribuiranja

(1) Proizvajalci fonogramov uživajo izključno pravico dovoljevati, da izvornik in primerki njihovih fonogramov postanejo dostopni javnosti s prodajo ali drugačnim prenosom lastninske pravice.

(2) Nič v tej pogodbi ne vpliva na svobodo pogodbenic, da določijo morebitne pogoje, pod katerimi je po prvi prodaji ali drugačnem prenosu lastninske pravice izvornika ali primerka fonograma z dovoljenjem proizvajalca fonograma pravica iz prvega odstavka izčrpana.

13. člen

Pravica do dajanja v najem

(1) Proizvajalci fonogramov uživajo izključno pravico dovoljevati, da se izvornik in primerki njihovih fonogramov dajejo v komercialni najem javnosti tudi po tem, ko so že bili

distribuirani z dovoljenjem proizvajalca oziroma v skladu z njim.

(2) Ne glede na določbe prvega odstavka lahko pogodbenica, ki je imela na dan 15. aprila 1994 v veljavi sistem pravičnega nadomestila proizvajalcem fonogramov za dajanje primerkov njihovih fonogramov v najem in ga še vedno ima, obdrži ta sistem pod pogojem, da komercialno dajanje fonogramov v najem bistveno ne prizadene proizvajalčeve izključne pravice do reproduciranja.

14. člen

Pravica, da se fonogrami dajo na voljo javnosti

Proizvajalci fonogramov uživajo izključno pravico dovoljevati, da postanejo njihovi fonogrami dostopni javnosti po žici ali brezžično na tak način, da imajo posamezniki lahko dostop do njih s kraja in v času, ki ju sami izberejo.

IV. poglavje

SKUPNE DOLOČBE

15. člen

Pravica do nadomestila za radiodifuzno oddajanje in javno priobčitev

(1) Izvajalci in proizvajalci fonogramov uživajo pravico do enkratnega pravičnega nadomestila za neposredno ali posredno uporabo fonogramov, izdanih za komercialne namene, za radiodifuzno oddajanje ali kakšno drugo javno priobčitev.

(2) Pogodbenice lahko v svoji domači zakonodaji določijo, da izvajalec ali proizvajalec fonograma ali oba zahtevata od uporabnika enkratno pravično nadomestilo. Pogodbenice lahko sprejmejo zakonodajo, ki določi pogoje, pod katerimi se enkratno pravično nadomestilo deli med izvajalci in proizvajalci fonogramov, če se ti o tem ne sporazumejo.

(3) Vsaka pogodbenica lahko z uradnim obvestilom, deponiranim pri generalnem direktorju WIPO, izjavi, da bo uporabljala določbe prvega odstavka samo glede nekaterih vrst uporabe, da bo omejila njihovo uporabo na drug način ali da teh določb sploh ne bo uporabljala.

(4) Za namene tega člena se fonogrami, dostopni javnosti po žici ali brezžično na tak način, da imajo posamezniki lahko dostop do njih s kraja in v času, ki ju sami izberejo, štejejo kot fonogrami, ki so bili izdani za komercialne namene.

16. člen

Omejitve in izjeme

(1) Pogodbenice lahko v domači zakonodaji predvidijo enake vrste omejitev ali izjem v zvezi z varstvom izvajalcev in proizvajalcev fonogramov, kot je to predvideno v njihovi domači zakonodaji v zvezi z varstvom avtorske pravice na književnih in umetniških delih.

(2) Pogodbenice morajo skrbno omejitve ali izjeme od pravic, predvidenih v tej pogodbi, na nekatere določene posebne primere, ki niso v nasprotju z običajnim izkoriščanjem izvedbe ali fonograma in pretirano ne posegajo v zakonite interese izvajalca ali proizvajalca fonograma.

17. člen

Trajanje varstva

(1) Varstvo, ki ga zagotavlja ta pogodba izvajalcem, traja najmanj do konca obdobja 50 let, šteto od konca leta, ko je bila izvedba posneta na fonogram.

(2) Varstvo, ki ga zagotavlja ta pogodba proizvajalcem fonogramov, traja najmanj do konca obdobja 50 let, šteto od konca leta, v katerem je bil fonogram izdan, oziroma če fonogram ni bil izdan v 50 letih po tistem, ko je bil posnet, 50 let od konca leta, v katerem je bil posnetek narejen.

18. člen

Obveznosti glede tehničnih ukrepov

Pogodbenice zagotovijo ustrezno pravno varstvo in učinkovita pravna sredstva zoper izognitev dejanskim tehničnim ukrepom, ki jih uporabljajo izvajalci ali proizvajalci fonogramov v zvezi z uresničevanjem svojih pravic po tej pogodbi in ki omejujejo dejanja v zvezi z njihovimi izvedbami ali fonogrami, ki jih izvajalci oziroma proizvajalci fonogramov niso dovolili ali ki po zakonu niso dovoljena.

19. člen

Obveznosti v zvezi s podatki za upravljanje pravic

(1) Pogodbenice zagotovijo ustrezna in učinkovita pravna sredstva zoper vse osebe, ki zavestno storijo katero koli od naslednjih dejanj in vedo oziroma bi v primeru civilnopravnih sredstev iz utemeljenih razlogov lahko vedele, da bo to povzročilo, omogočilo, olajšalo ali prikrilo kršitev katere koli pravice, urejene s to pogodbo:

(i) odstranitev ali sprememba katerega koli elektronskega podatka za upravljanje pravic brez dovoljenja;

(ii) distribuiranje, uvoz zaradi distribuiranja, radiodifuzno oddajanje ali javna priobčitev izvedb, primerkov posnetih izvedb ali fonogramov ali njihovo dajanje na voljo javnosti brez dovoljenja, vedoč, da so bili elektronski podatki za upravljanje pravic odstranjeni ali spremenjeni brez dovoljenja.

(2) Pojem "podatki za upravljanje pravic", kot je uporabljen v tem členu, pomeni podatke, ki identificirajo izvajalca, izvajalčevo izvedbo, proizvajalca fonograma, fonogram, imetnika katere koli pravice na izvedbi ali fonogramu, ali podatke o pogojih uporabe izvedbe ali fonograma oziroma katere koli številke ali kode, ki pomenijo takšne podatke, če je kateri izmed njih dodan primerku posnete izvedbe ali fonograma ali se pojavlja v zvezi z javno priobčitvijo posnete izvedbe ali fonograma ali z njunim dajanjem na voljo javnosti.

20. člen

Formalnosti

Za uživanje in uresničevanje pravic, predvidenih s to pogodbo, ne veljajo nobene formalnosti.

21. člen

Pridržki

Ob upoštevanju določb tretjega odstavka 15. člena k tej pogodbi niso dopustni pridržki.

22. člen

Časovna uporaba

- (1) Za pravice izvajalcev in proizvajalcev fonogramov, predvidene s to pogodbo, pogodbenice smiselno uporabljajo določbe 18. člena Bernske konvencije.
- (2) Ne glede na prvi odstavek lahko pogodbenica omeji uporabo 5. člena te pogodbe na izvedbe, do katerih je prišlo po tem, ko je pogodba začela veljati za to pogodbenico.

23. člen

Določbe o uveljavljanju pravic

- (1) Pogodbenice se zavežejo, da bodo v skladu s svojimi pravnimi sistemi sprejele potrebne ukrepe za zagotovitev uporabe te pogodbe.
- (2) Pogodbenice zagotovijo, da so po njihovem pravu na razpolago postopki za uveljavitev pravic, ki omogočajo učinkovito ukrepanje zoper vsako dejanje kršitve pravic, zajetih v tej pogodbi, vključno s hitrimi sredstvi za preprečitev kršitev in sredstvi, ki odvrtačajo od nadaljnjih kršitev.

V. poglavje

UPRAVNE IN KONČNE DOLOČBE

24. člen

Skupščina

- (1) (a) Pogodbenice imajo skupščino.
- (b) Vsako pogodbenico predstavlja en delegat, ki mu lahko pomagajo namestniki, svetovalci in strokovnjaki.
- (c) Stroške vsake delegacije krije pogodbenica, ki jo je imenovala. Skupščina lahko zaprosi WIPO za finančno pomoč, da bi olajšala sodelovanje delegacij tistih pogodbenic, ki glede na ustaljeno prakso Generalne skupščine Združenih narodov veljajo za države v razvoju ali so države v prehodu k tržnemu gospodarstvu.
- (2) (a) Skupščina obravnava zadeve v zvezi z ohranjanjem in razvojem te pogodbe ter z njeno uporabo in delovanjem.
- (b) Skupščina opravlja nalogo, ki ji je dodeljena po drugem odstavku 26. člena v zvezi z dopustitvijo pristopa določenih medvladnih organizacij k tej pogodbi.
- (c) Skupščina določa sklic diplomatske konference za revizijo te pogodbe in daje generalnemu direktorju WIPO potrebna navodila za njeno pripravo.
- (3)(a) Vsaka pogodbenica, ki je država, ima en glas in lahko glasuje le v svojem imenu.
- (b) Pogodbenica, ki je medvladna organizacija, lahko sodeluje pri glasovanju namesto svojih

držav članic z enakim številom glasov, kot je število držav članic, ki so stranke te pogodbe. Nobena medvladna organizacija ne more sodelovati pri glasovanju, če katera koli od njenih držav članic uresniči svojo pravico do glasovanja, in obratno.

(4) Skupščina se sestaja na rednem zasedanju vsaki dve leti, sklicuje pa jo generalni direktor WIPO.

(5) Skupščina določi svoj poslovnik, vključno s sklicevanjem izrednih zasedanj, pogoji za sklepčnost in ob upoštevanju določb te pogodbe zahtevano večino za sprejem različnih vrst odločitev.

25. člen

Mednarodni urad

Mednarodni urad WIPO opravlja upravne naloge v zvezi s to pogodbo.

26. člen

Sposobnost postati stranka te pogodbe

(1) Vsaka država članica WIPO lahko postane stranka te pogodbe.

(2) Skupščina lahko odloči, da dovoli pristop kateri koli medvladni organizaciji, ki izjavi, da ima glede zadev, ki jih ureja ta pogodba, pristojnosti ter svojo lastno zakonodajo, obvezujočo za vse njene države članice, in da je upravičena po svojih notranjih postopkih, da postane stranka te pogodbe.

(3) Evropska skupnost, ki je na diplomatski konferenci, na kateri je bila sprejeta ta pogodba, dala izjavo iz prejšnjega odstavka, lahko postane stranka te pogodbe.

27. člen

Pravice in obveznosti po pogodbi

Razen če ni v tej pogodbi izrecno določeno drugače, vsaka pogodbenica uživa vse pravice in prevzame vse obveznosti po tej pogodbi.

28. člen

Podpis pogodbe

Ta pogodba je do 31. decembra 1997 na voljo za podpis vsaki državi članici WIPO in Evropski skupnosti.

29. člen

Začetek veljavnosti pogodbe

Ta pogodba začne veljati tri mesece po tem, ko je pri generalnem direktorju WIPO 30 držav deponiralo svoje listine o ratifikaciji ali pristopu.

30. člen

Začetek učinkovanja pogodbe za stranke pogodbe

Ta pogodba obvezuje

- (i) 30 držav, omenjenih v 29. členu, od dneva, ko je ta pogodba začela veljati;
- (ii) vsako drugo državo po poteku treh mesecev od dneva, ko je država deponirala svojo listino pri generalnem direktorju WIPO;
- (iii) Evropsko skupnost po poteku treh mesecev od deponiranja njene listine o ratifikaciji ali pristopu, če je bila takšna listina deponirana po začetku veljavnosti te pogodbe v skladu z 29. členom, oziroma po poteku treh mesecev od začetka veljavnosti te pogodbe, če je bila takšna listina deponirana pred začetkom veljavnosti te pogodbe;
- (iv) vsako drugo medvladno organizacijo, ki postane stranka te pogodbe, po poteku treh mesecev od deponiranja njene listine o pristopu.

31. člen

Odpoved pogodbe

Vsaka pogodbenica lahko odpove to pogodbo z uradnim obvestilom, naslovljenim na generalnega direktorja WIPO. Odpoved začne učinkovati eno leto po dnevu, ko generalni direktor WIPO prejme uradno obvestilo.

32. člen

Pogodbeni jeziki

(1) Ta pogodba je podpisana v enem izvorniku v angleškem, arabskem, francoskem, kitajskem, ruskem in španskem jeziku, pri čemer so besedila v vseh teh jezikih enako verodostojna.

(2) Uradno besedilo v jeziku, ki ni eden od navedenih v prvem odstavku, določi generalni direktor WIPO na zahtevo zainteresirane stranke in po posvetovanju z vsemi zainteresiranimi strankami. Za namene tega odstavka pomeni "zainteresirana stranka" vsako državo članico WIPO, za katere uradni jezik ali enega od uradnih jezikov gre, inr Evropsko skupnost ter katero koli drugo medvladno organizacijo, ki lahko postane stranka te pogodbe, če gre za enega od njenih uradnih jezikov.

33. člen

Depozitar

Depozitar te pogodbe je generalni direktor WIPO.

3. člen

Za izvajanje pogodbe skrbi Ministrstvo za znanost in tehnologijo, Urad Republike Slovenije za intelektualno lastnino.

4. člen

Ta zakon začne veljati naslednji dan po objavi v Uradnem listu Republike Slovenije – Mednarodne pogodbe.

Št. 120-01/99-4/1

Ljubljana, dne 22. spetembra 1999

Predsednik
Državnega zbora
Republike Slovenije
Janez Podobnik, dr. med. l. r.