

**LEGISLATIVE ASSEMBLY - REPUBLIC OF EL SALVADOR**

**DECREE N.º 66**

**THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF EL SALVADOR,**

**CONSIDERING:**

**I.** That Article 103 of the Constitution of the Republic recognizes intellectual property as a right of the human person, for the period of time and in the form established by law and by international treaties ratified and in force in El Salvador regarding this matter;

**II.** That the Universal Declaration of Human Rights establishes in Articles 17, 18, 19, and 27 the right of every person to property, to freedom of thought and expression, from which is derived the right to creativity and the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits, and to be protected in the moral and material interests resulting from any scientific, literary or artistic production of which he is the author;

**III.** That the global economic context and the challenges represented by advances in the information society require the use of information and communication technologies with the object of improving the administration of the intellectual property and innovation system, for which reason a regulation must be promoted that incorporates those aspects that the new society demands. Likewise, it is necessary for the State to assume a preponderant role in improving the business climate, attracting investment, and facilitating trade, building a modern intellectual property system that values the interests of the administered and of society;

**IV.** That it is necessary to foster an intellectual property system that allows for economic growth, the development of innovation, creativity, and social access to knowledge and information, recognizing that the evolution of intellectual property law has weakened the boundaries that existed between the different categories of protection. Thus, it is indispensable to have a law that integrates all intellectual property rights into a single regulatory body;

**V.** That it is necessary to adapt the substantive and procedural provisions derived from the implementation of Digital Government in the Intellectual Property System, placing the citizen at the center and making a progressive transition towards electronic and automated processes in the creation of the architecture of Digital Services of the Government of the Republic of El Salvador;

**VI.** That the Republic of El Salvador has subscribed to International Treaties within the scope of the World Intellectual Property Organization, the World Trade Organization, and Trade Agreements, which contain commitments regarding intellectual property rights, for which reason it is important to have legislation that is uniform and consistent with said commitments.

**THEREFORE,**

in the use of its constitutional powers and at the initiative of the President of the Republic, through the Minister of Economy,

**DECREES,** the following:

**INTELLECTUAL PROPERTY LAW**

**BOOK I**

**PRELIMINARY PROVISIONS**

**CHAPTER I**

**GENERAL STANDARDS**

**Object**

**Art. 1.-** The object of this law is to establish a legal framework for the protection and observance of Intellectual Property rights and other industrial rights and privileges, as well as for the protection of innovation and creativity, facilitating the dissemination of information, knowledge, technology, culture, and arts, thereby promoting the development of the economic and sustainable growth of the country.

**Purpose**

**Art. 2.-** The purposes of this law are:

- a) To establish a legal framework to regulate and protect intellectual property rights and other industrial rights and privileges.
- b) To regulate the acquisition, maintenance, protection, modification, and licensing of intellectual property rights, and other forms of industrial property protection.
- c) To regulate unfair competition regarding industrial property rights.
- d) To favor and promote creativity, inventive activity, and the transfer of technology, both national and foreign.
- e) To promote the protection of intellectual knowledge so that it may be a source for socio-economic well-being, achieving a balance between rights and obligations that foster sustainable development at the national level.
- f) To contribute to cooperation and the transfer of technological knowledge in the country.

## Definitions

**Art. 3.-** For the purposes of this law, the following shall be understood as:

### Common Definitions

- **Institute:** Salvadoran Institute of Intellectual Property.
- **Bulletin:** Official publication of the Salvadoran Institute of Intellectual Property, which constitutes the informative organ through which the Institute publishes edicts of registration procedures and applications in accordance with the terms established in this law.

### Definitions regarding Copyright

3. **Copyright:** Set of exclusive rights of a moral and patrimonial nature over an artistic or literary work that correspond in principle to the creator thereof or to the holder, as the case may be, with the limitations and exceptions provided for in this law.
4. **Related Rights:** Set of exclusive rights corresponding to performers, producers of phonograms, and broadcasting organizations.
5. **Moral Rights:** Rights of an abstract nature, inherent to the personal condition of the author of a work as its creator, which are imprescriptible and inalienable.
6. **Patrimonial Rights:** Rights of an economic nature, through which the author or the holder of a work perceives economic remuneration for the use thereof by third parties under their authorization.
7. **Author:** Natural person who creates an artistic or literary work.
8. **Holder:** Natural or legal person to whom the property right over a work corresponds.
9. **Performer:** Person who, through their skill, creativity, and ability, participates in the diffusion or disclosure to the public of a work under the authorization of its holder, such as actors, singers, musicians, dancers, or other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works or expressions of folklore.
10. **Fixation:** The incorporation of sounds, or the representation thereof, from which they can be perceived, reproduced, or communicated through a device.
11. **Phonogram:** Any 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.
12. **Producer of phonograms:** The natural or legal person who takes the initiative and has the economic responsibility for the first fixation of the sounds of a performance or other sounds or the representations of sounds.
13. **Videogram or cinematographic works:** Is the fixation of associated images, with or without incorporated sound, that give a sensation of movement, or of a digital representation of such images of an audiovisual work or of the representation or execution of another work or of an expression of culture, as well as of other images of the same class, with or without sound.

14. **Producer of videogram or cinematographic works:** Is the natural or legal person who fixes for the first time associated images with or without associated sound, that give a sensation of movement, or of a digital representation of such images, whether or not they constitute an audiovisual work.
15. **Broadcasting Organization:** Radio or television entities that transmit programs, diffusing and communicating to the public the realization, execution, or interpretation of works, by wireless means, including satellite transmission.
16. **Collective Management Organization, hereinafter CMO:** Legal person that intervenes in the exercise and defense of the patrimonial rights recognized in this law, of its members or represented parties, or of the affiliates of foreign entities of the same nature.
17. **Work:** Intellectual product manifested in a tangible form, whatever the mode or form of its expression, its merit, or its purpose, in any artistic or literary branch, provided that such creation has a personal character, that is, originality.
18. **Audiovisual work:** Is that referring to a series of related images or representations thereof, which give the impression of movement, with or without accompanying sounds, susceptible of being made visible and, when accompanied by sounds, susceptible of being audible.
19. **Plastic arts works:** Are those whose purpose appeals to the aesthetic sense of the person contemplating them, such as paintings, drawings, engravings, and lithographs, except photographs, architectural and audiovisual works.
20. **Complex work:** Intellectual creation in which several authors concur.
21. **Computer program:** Literary work constituted by a set of instructions expressed by means of words, codes, plans, or in any other form that, when incorporated into an automated reading device, is capable of making a computer, that is, an electronic or similar device, capable of processing information, execute a specific task, or achieve a specific result, whether source program or object program.
22. **Deposit of work:** Declarative act by means of which the Institute attests, barring proof to the contrary, to the existence of the work, interpretation, phonographic or radio production, and the fact of its disclosure or publication.
23. **Publishing contract:** Contract by which the author or their successors designate without exclusivity to another person called the publisher, the right to publish, distribute, and disclose the work on their own account.
24. **Theatrical representation and musical execution contract:** Contract through which the author or their heirs assign to a natural or legal person, called the entrepreneur, the right to represent or publicly execute a literary, dramatic, musical, dramatico-musical, pantomimic, or choreographic work, through economic compensation.
25. **Phonographic inclusion contract:** Contract through which the author of a musical work authorizes without exclusivity a producer of phonograms, through remuneration, to record or fix a work to reproduce it on a phonographic disc, a magnetic tape, a film, or any other analogous device or mechanism, for purposes of reproduction and sale of copies.
26. **Effective technological measures:** Any technology, device, or component that, in the normal course of its operation, controls access to a work, performance, phonogram, or other protected subject matter, or that protects any copyright or any right related to copyright.

**27. Rights management information:** Information that identifies the work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the holder of any right in the work, performance, or phonogram; or information about the terms and conditions of use of the work, performance, or phonogram; or any numbers or codes that represent such information.

### **Definitions regarding Distinctive Signs**

**28. Distinctive sign:** Sign used in commerce, in any of its forms including electronic, digital, or technologically equivalent commerce, that fulfills the distinctive function regarding its origin, quality, provenance, aptitude, or any other characteristic, with the object of distinguishing itself from third parties.

**29. Well-known mark:** A distinctive sign known by the pertinent sector of the public, in related business circles, or by the general public, as belonging to a third party, which has acquired said quality through its use or promotion in the country. For purposes of its accreditation, the criteria established in the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks No. 833, of September 1999, of the World Intellectual Property Organization and the Assembly of the Paris Union, among others, shall be taken into account.

**30. Mark:** Any sign or combination of signs that allows distinguishing the goods or services of one person or entity from those of another, provided they are sufficiently distinctive or susceptible of identifying the goods or services to which they apply vis-à-vis those of their same species or class.

**31. Collective mark:** A mark whose holder is a legal person that groups persons dedicated to the same field, authorized by the entity of which they form part, to use the mark based on regulations that standardize their production and service provision.

**32. Certification Mark:** A mark applied to products or services whose quality and other characteristics have been controlled and certified by the holder of the mark.

**33. Expression or signal of commercial advertising:** Any word, legend, announcement, slogan, phrase, sentence, combination of words, design, engraving, or any other similar means, provided it is original and characteristic, used for the purpose of attracting the attention of consumers or users to one or several products, services, companies, or establishments.

**34. Trade name:** A denominative or mixed sign with which a company or its establishments dedicated to a specific industrial, commercial, or service activity are identified and distinguished.

**35. Emblem:** A figurative or symbolic sign that identifies and distinguishes a company or its establishments dedicated to a specific industrial, commercial, or service activity.

**36. Geographical indication:** Is that indication which identifies a product as originating from the territory of a country, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin.

**37. Appellation of origin:** A geographical indication constituted by the denomination of a country, a region, or a specific place, used to designate a product originating therein, whose

qualities or characteristics are exclusively or essentially due to the geographical environment in which it is produced, including natural factors and human factors; also considered as an appellation of origin is that constituted by a denomination that, without being that of a country, a region, or a specific place, refers to a specific geographical area when used in relation to products originating from such area.

**38. Right of precedence (Prelación):** Favorable expectation for the applicant of a mark who has submitted their registration application prior to other applications for identical or similar marks to distinguish identical or related products or services.

**39. Right of priority:** According to the Paris Convention for the Protection of Industrial Property, it is a prerogative by means of which an applicant for a mark in any country of the Paris Union has the right to be recognized as the filing date in other countries of the Union, the date of the first application claimed as priority, having the effect that any other application submitted by a third party within the term granted for the enjoyment of the right of priority shall not be an obstacle for the mark benefiting from the right of priority, without granting any right to the third party.

**40. Form examination:** Evaluation of compliance with the requirements that a registration application and the documents that must accompany it, as applicable, must contain.

**41. Substantive examination:** Evaluation of the distinctive sign to determine whether or not it has intrinsic or extrinsic distinctive capacity.

**42. Elements of common or necessary use:** Elements, whether denominative, figurative, or three-dimensional, contained in a distinctive sign that are necessarily used in commerce in general or in a specific sector of industry, commerce, and services, in relation to the products or services in question.

**43. Class of products or services:** Numerical location of the products or services intended to be distinguished or covered by a registration, in accordance with the International Classification of Goods and Services of the Nice Agreement.

### **Definitions regarding Patents**

**44. Patent:** Title by means of which an exclusive right is granted over an invention, utility model, or industrial design for the term established in this law, the expiration of which implies the entry of full right of the invention or utility model into the public domain.

**45. Invention:** Invention is understood as any idea, creation of the human intellect capable of being applied in industry that meets the patentability conditions provided for in this law and that solves a specific technical problem.

**46. Utility model:** Any form, configuration, or arrangement of elements of any artifact, tool, instrument, mechanism, or other object, or of any part thereof, that allows a better or different operation, use, or manufacture of the object incorporating it, or that provides it with some utility, advantage, or technical effect that it did not have before.

**47. Industrial design:** Any two-dimensional or three-dimensional form that, incorporated into a utilitarian product, gives it a special appearance, and is suitable to serve as a type or model for its manufacture.



48. **Novelty:** Condition implying that the invention or utility model does not exist previously in the state of the art at the filing date of the patent application.
49. **State of the art:** Everything that has been disclosed or made accessible to the public, anywhere in the world, by means of a tangible publication, an oral disclosure, sale or marketing, use, or by any other means, before the filing date of the patent application in the country or, where applicable, before the filing date of the foreign application whose priority is claimed, including the content of a patent application pending before the Institute, whose filing date or, where applicable, priority date, was earlier than that of the application being examined, but only to the extent that such content is included in the earlier dated application when it is published.
50. **Inventive step:** Result not obvious to a person skilled or expert in the corresponding technical matter, nor would it have been derived in an evident manner from the pertinent state of the art.
51. **Industrial application:** Condition by which the object or procedure can be produced or used in any type of industry or productive activity in its broadest sense, including, among others, agriculture, livestock, mining, fishing, construction, and services.
52. **Description of invention or utility model or descriptive memory:** Technical document by which the invention or utility model is described clearly and completely enough so that the technical problem and the solution provided can be understood, such that the invention or utility model can be executed or put into practice.
53. **Claims:** Clear, concise delimitation supported by the description of the invention or utility model that defines the matter for which protection is claimed, constituted by a preamble or introduction indicating the object of the invention or utility model and all known technical characteristics necessary for the definition of the elements intended to be protected, and a characterizing part exposing the novel technical characteristics desired to be protected.
54. **Independent claim:** Claim that defines in a general and autonomous way the invention or utility model and all its known and novel technical characteristics, without referring to another or other claims.
55. **Dependent claim:** Claim that defines in a more specific way the technical characteristics of the claim on which it depends and which is mentioned in the preamble of the dependent claim.
56. **Single inventive concept:** A single invention or a group of directly related inventions contained in a patent application.
57. **Biological product:** Substance or matter produced from a living organism or its products.
58. **Biological process:** Stages referring to the biochemical reactions of biological matter or living beings.
59. **Biological material:** Any material containing genetic information and capable of reproducing itself or being reproduced in a biological system.
60. **Bolar exception:** Is a limitation to the exclusive rights granted by a patent, according to which, it allows a third party to use the information of the patent, without authorization

from the holder, for experimental purposes, studies, and trials, and thus generate the information necessary to process the corresponding sanitary registration application.

**61. Divisional application:** Initial application that results in one or more applications for patents of invention, utility models, or industrial design.

### **Definitions of other industrial privileges**

**62. Trade secret:** Any information having commercial value of industrial, commercial, and service application, kept by a person with a confidential character, meaning obtaining or maintaining a competitive or economic advantage over third parties in the performance of economic activities and regarding which reasonable means or systems have been adopted to preserve its confidentiality and restricted access thereto.

**63. Test data:** Undisclosed information, documentation, and data on the safety and efficacy of pharmaceutical or agricultural chemical products, using new chemical entities, the preparation of which involves considerable effort.

**64. New pharmaceutical or agricultural chemical product:** That which does not contain a chemical entity that has been previously approved for commercialization in the country.

**65. Layout-design (topography):** Three-dimensional disposition, expressed in any form, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture.

**66. Integrated circuit:** A product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.

### **Scope of application**

**Art. 4.-** Every natural or legal person, regardless of their nationality or domicile, may acquire and enjoy the rights granted by this law.

No condition of nationality, domicile, or establishment in the Republic shall be required to enjoy the rights established by this law.

### **Supplementary application**

**Art. 5.-** In matters not provided for in this Law, the Law of Administrative Procedures and the Code of Civil and Commercial Procedure shall apply in a supplementary manner, and in order of precedence.

In case of conflict, national regulations shall apply, including those contained in International Treaties and Conventions in force in El Salvador.

## **CHAPTER II INSTITUTIONAL FRAMEWORK**



## **Of the Salvadoran Institute of Intellectual Property**

**Art. 6.-** The Salvadoran Institute of Intellectual Property is a dependency of the National Registry Center, with a legal and technical character, in charge of the administration of intellectual property, in accordance with the provisions of this law.

The Institute shall be directed by a Director, who shall have among other functions that of proposing the organizational structure of the Institute for its internal operation and ensuring efficiency in the provision of services using technological means.

To be Director of the Institute, it shall be required to be a lawyer and notary, with a minimum of five years in the exercise of the notarial function, with at least five years of experience in intellectual property matters, who shall be appointed by the Executive Director of the National Registry Center.

The Institute shall have department heads and auxiliary registrars who must be lawyers and notaries.

Personnel of the Institute are prohibited from managing procedures related to the matter on behalf of third parties.

## **Attributions of the Institute**

**Art. 7.-** The Institute shall have the following attributions:

- a) To process applications and grant the corresponding intellectual property titles.
- b) To process the registration of acts or contracts, through which licenses on the rights recognized in this law are transferred, assigned, or granted.
- c) To promote the diffusion, training, and knowledge regarding the protection of intellectual rights, and serve as an organ of information and cooperation with specialized national and international organizations, and with Intellectual Property Offices of other countries.
- d) To supervise the use of protected works, interpretations, and productions, insofar as they give rise to the enjoyment and exercise of the rights established in this law. If in the respective supervision it is noted that the rights established in this law are being infringed, the Institute shall notify the Attorney General of the Republic, so that the corresponding investigations may be initiated.
- e) To supervise, inspect, and control, ex officio or at the request of third parties, the operation of Collective Management Organizations through the Institute, which must ensure the adequate distribution of what is collected, for which it shall have the powers to request, confirm, and analyze the information it requires regarding the legal, accounting, economic, and administrative situation of the Collective Management Organizations of copyright and related rights, including the power to review the ownership of the represented repertoires.
- f) In matters of collective management, to serve as a mediator at the request of a party, in conflicts arising between rights holders, between Collective Management Organizations, between these and their members or represented parties, and between management entities or rights holders and users of the works, interpretations, or productions protected in this law, without prejudice to the initiation of any action in administrative or judicial venues.

- g) To manage the information center of national and foreign works, interpretations, and productions deposited in the Institute and of the registered acts and contracts regarding copyright and related rights.
- h) To conclude cooperation and technical assistance agreements with national or foreign institutions or with international organizations, in matters within its competence.
- i) To process and resolve administrative appeals filed against the resolutions it issues, in accordance with the competence of the laws whose application corresponds to it.
- j) To inform about the rules for the presentation and management of procedures.
- k) To formulate and execute its institutional operating program.
- l) To publish in the Bulletin the acts referred to in this law and other intellectual property services.
- m) To promote the voluntary resolution of disputes in matters of intellectual property through alternative dispute resolution means, which will be developed in the Regulations of this law.

## **BOOK II COPYRIGHT AND RELATED RIGHTS**

### **CHAPTER I COPYRIGHT**

#### **SECTION ONE GENERAL PROVISIONS ON COPYRIGHT**

##### **Copyright**

**Art. 8.-** The author of a work enjoys an immaterial, exclusive property right enforceable against third parties, by the sole fact of its creation, which is called copyright.

##### **Content of copyright**

**Art. 9.-** Copyright comprises attributes of an abstract and intellectual order that constitute moral rights, as well as rights of a patrimonial order. These rights shall be governed by the provisions of this law, other norms contained in current national legislation, including international treaties and conventions in force in El Salvador.

##### **Moral right**

**Art. 10.-** The moral right of the author is imprescriptible, inalienable, unseizable, and unwaivable. In the event of the author's death, the defense of moral rights regarding disclosure and integrity shall be exercised by their heirs, as long as the work is not in the public domain.

The following moral faculties correspond to the author:

- a) To publish their work in the form, extent, and manner they deem convenient.

- b) To conceal their name or use a pseudonym in their publications.
  - c) To destroy, redo, withhold, or keep the work unpublished.
  - d) To retract, that is, to recover the work, modify it, or correct it after it has been disclosed, but this faculty may not be exercised without indemnifying the holder of their rights for the damages and losses caused thereby. This faculty is extinguished with the death of the author.
  - e) To preserve and claim the paternity of the work.
  - f) To oppose plagiarism of the work.
  - g) To demand that their name or pseudonym be published on each copy of the work or be mentioned in each act of public communication thereof.
  - h) To oppose their name or pseudonym appearing on the work of a third party or on a work that has been disfigured.
  - i) To safeguard the integrity of the work by opposing any deformation, mutilation, modification, or abbreviation of the work or its title, even against the acquirer of the material object of the work.
  - j) To oppose any use of the work detrimental to their honor or reputation as an author.
- Violation of any of the foregoing faculties shall give rise to reparation of damage and indemnification for losses.

### **Patrimonial right**

**Art. 11.-** The patrimonial right confers upon the copyright holder the exclusive faculty to use the work directly and personally, to authorize or prohibit the use thereof, to transfer totally or partially the patrimonial rights associated therewith, as well as the faculty to receive economic benefits arising from the use of the referred work.

Patrimonial rights are as many as the possible forms of use of works in the time and form permitted by law, which comprise the following faculties:

- a) To reproduce the work by any method, form, or means, whether virtual or material.
- b) To perform and represent the work composed expressly for such purpose, communicating it to the public directly and momentarily (for example, through theatrical representation, musical execution and choreography, staging for cinematography and television, or mounting of other forms of public spectacle).
- c) To disseminate the work by any means serving to transmit any type of information, such as telecommunications, the press, radio, the internet, and any electronic or physical means, as well as any means of communication that may be developed in the future.
- d) To distribute the work, that is, to make copies of the work available to the public through sale or another form of transfer of ownership. When the commercialization of copies is carried out through sale, this faculty is extinguished upon the first sale, subject to legal exceptions. In those cases, the holder of patrimonial rights shall retain the right to authorize or not the rental of said copies, as well as to modify, communicate publicly, and reproduce the work.
- e) To import, export, or authorize the import or export of copies of their works legally manufactured and to prevent the import or export of copies manufactured illegally.

- f) To communicate the work publicly.
  - g) To adapt it to another genre, or use it in any other form that involves a variation, adaptation, or transformation of the original work, including translation.
- The author's patrimonial right may be freely transferred under any title or transmitted by cause of death.

### **Public communication in copyright matters**

**Art. 12.-** Public communication is the act by which the work is made available to the public by any means or procedure, as well as the process necessary and conducive to the work being made available to the public.

The following are acts of public communication:

- a) Stage performances, recitations, dissertations, and public executions of dramatic, dramatico-musical, literary, and musical works by any form or procedure.
- b) Public projection or exhibition of audiovisual works.
- c) The emission of any works by broadcasting or by any means serving for the wireless diffusion of signs, sounds, or images.
- d) Transmission of any works to the public by wire, cable, optical fiber, or other analogous procedure.
- e) Retransmission, by any of the means cited in the preceding literals and by a broadcasting entity distinct from the original one, of the broadcast or televised work.
- f) Reception, in a place accessible to the public by any suitable procedure, of the work broadcast by radio or television.
- g) Public presentation and exhibition of works of art or their reproductions.
- h) Public access to computer databases through telecommunications, when these incorporate or constitute protected works.
- i) Publication and dissemination, by any procedure known or to be known, of signs, words, sounds, or images.
- j) Making their works available to the public in such a way that members of the public may access these works from a place and at a time individually chosen by them.

The holder of a patrimonial right may prevent any form of public communication of the work made without their consent or in violation of legal provisions. Likewise, they may demand indemnification for damages and losses caused when their right is disrespected, in accordance with the provisions of this law and other special laws regarding this matter.

### **Ownership of copyright**

**Art. 13.-** The copyright holder is:

- a) The natural person who has created the work or participated in its creation. The author is presumed to be whoever appears as such on the work, by means of their name, signature, or sign identifying them, barring proof to the contrary.
- b) The first publisher, in the case of anonymous or pseudonymous works whose author has not been revealed.

- c) Each of the authors, in equal parts, over a work created in collaboration, barring agreement to the contrary.
- d) In works created for a natural or legal person, in compliance with an employment contract, service contract, or in the exercise of a public function, the original holder of moral and patrimonial rights is the author. However, it is presumed, barring proof to the contrary, that the patrimonial rights over the work have been assigned to the employer, contracting party, or public entity, as the case may be, to the extent necessary for their habitual activities at the time of creation of the work, which implies authorization to disclose it.

### **Extraterritorial protection of copyright**

**Art. 14.-** Foreigners who publish a work in El Salvador shall enjoy the same rights as Salvadorans. Works published abroad shall enjoy protection in the national territory, in accordance with the terms established in International Treaties and Conventions in force in El Salvador. In other cases, to enjoy the protection of Salvadoran law, the requirement of reciprocity shall be demanded, for which the author must prove that they have complied with the formalities established for their protection in the laws of the country in which it was published.

## **SECTION TWO**

### **WORKS SUBJECT TO COPYRIGHT PROTECTION**

#### **Of the works subject to protection**

**Art. 15.-** This law protects works resulting from the human intellect manifested in tangible form, whatever the mode or form of their expression, merit, or purpose, by the sole fact of their creation.

#### **Types of works subject to protection**

**Art. 16.-** The works mentioned in the preceding article include the following:

- a) All literary and artistic works, such as books, pamphlets, and writings of any nature and length.
- b) Computer programs.
- c) Video games.
- d) Musical works with or without lyrics.
- e) Oratorical works, written or recorded versions of lectures, speeches, lessons, sermons, and others of the same class.
- f) Dramatic or dramatico-musical works.
- g) Choreographic works, circus acts and tricks, pantomimes, the execution of which is fixed in writing or otherwise.
- h) Cinematographic works and other works consisting of animated sequences of images, with or without sound, collectively referred to as audiovisual works.
- i) Works of drawing, painting, architecture, sculpture, engraving, lithography.

- j) Graphic and typographic works.
  - k) Photographic works and those produced by techniques analogous to photography.
  - l) Works of applied art.
  - m) Illustrations, geographical maps.
  - n) Plans, sketches, and plastic works relating to geography, topography, architecture, and sciences.
- Likewise, all other works that could be considered included within the generic types mentioned shall have protection.

### **SECTION THREE**

#### **SPECIAL PROTECTIONS**

##### **Protection of translations, adaptations, transformations, or arrangements of works**

**Art. 17.-** Without prejudice to the rights over the original work, translations, adaptations, transformations, or arrangements of works are also objects of protection, as well as anthologies or compilations of diverse works or data or other materials including databases in legible form, which, by the selection or arrangement of the subjects, constitute original creations.

##### **Protection of published works**

**Art. 18.-** Works protected by copyright, published in newspapers and magazines, do not lose their legal protection by this fact.

The protection of this law shall not apply in any case to the informational content of current news items; but it shall apply to the text and graphic representations thereof, as long as they constitute original creations.

##### **Protection of titles of work**

**Art. 19.-** The title of a work that is protected under the terms of this law, when it has an original character, may not be used by a third party, unless due to its generic or descriptive character it constitutes a necessary designation.

No one may use the title of another's work to confuse the public and unduly profit from its literary or commercial success.

##### **Headings subject to protection**

**Art. 20.-** The name or heading of a printed, projected, or disseminated periodical publication may originate an exclusive right of use for the entire duration of the publication or dissemination and one additional year.

##### **Protection of literary or artistic pseudonym**



**Art. 21.-** The literary or artistic pseudonym is an exclusive and strictly personal right of the natural person of the author. Its use is protected by law, without the need for prior deposit at the Institute.

Without prejudice to the special protection established in this provision, literary or artistic pseudonyms may be subject to deposit. The deposit shall serve as an evidentiary mechanism.

#### **Disclosure of letters missive**

**Art. 22.-** The faculty to publish letters missive corresponds to the author, who, to do so, needs the consent of the addressee, unless the publication does not affect the honor or interests of the latter. The addressee may, for their part, make use of the letters in defense of their person or interests.

#### **Documents in official archives**

**Art. 23.-** Documents existing in official archives may not be published by individuals without permission from the authority on which they depend, in cases of first publication; except for documents of strictly historical character appearing in the National Archive.

### **SECTION FOUR COMPLEX WORKS**

#### **Complex Works**

**Art. 24.-** Complex works may be:

- a. **Collaborative:** When two or more authors contribute to the creation of a single work that is objectively indivisible, making it impossible to identify the contributions with which each has contributed.
- b. **Composite:** When a work is the result of the union of several identifiable parts, created by different authors.
- c. **Collective:** When the work is a simple organized combination of independent works.

To reproduce a collaborative work, the consent of the majority is needed. Dissidents are not obliged to contribute to the expenses of disclosure, except as charged against the benefits obtained therefrom, unless an agreement stipulates otherwise.

In composite and collective works, the person who organizes and directs it is considered the general author of the work. Those who are authors of parts that can be determined as own contributions within the whole are considered individual co-authors.

The author of the work in general may arrange for its reproduction, but individual authors may oppose if it affects their economic or moral rights. If they cannot make the opposition in a timely manner, they shall have the right to be indemnified upon proving damages of one kind or another or both.

In case of conflict regarding reproduction, the competent Judge shall decide, who, to resolve, shall take into account mainly the public interest. Thus, if the judge deems the diffusion of the work necessary for general culture, this interest shall prevail over private

interests, without failing to ensure the economic interests of each of the parties, if resolving to order reproduction.

Interested parties may agree on conditions regarding their rights different from those established in this section.

What is established for copyright in this section shall also apply to related rights, especially when more than one holder of related rights converges on the same work.

### **Ownership of literary-musical collaborative work**

**Art. 25.-** In literary-musical collaboration, rights belong in equal parts to the author of the literary part and the author of the musical part. However, each author may benefit separately from their work, provided the co-author expressly authorizes it.

The provisions of the preceding paragraph shall also apply to choreographic and pantomimic works.

### **Legitimation of deposit of complex work**

**Art. 26.-** When dealing with a work made by several authors, any of them may request the deposit of the complete work. When two or more authors request the deposit of the same work, they must appoint a common representative.

In the case of composite and collective works, the deposit may be requested by the general author of the work.

### **Divisibility of complex work**

**Art. 27.-** Holders of copyrights over individualized works that form part of a complex work may disclose them separately. Disclosure may be made three months after the disclosure of the work they integrate has ended.

## **SECTION FIVE AUDIOVISUAL WORKS**

### **Authorship in audiovisual works**

**Art. 28.-** The author of an audiovisual work is the physical person or persons who carry out the intellectual creation of said work.

The following are presumed co-authors of the audiovisual work produced in collaboration:

- a) The director or filmmaker.
- b) The author of the plot.
- c) The author of the adaptation.
- d) The author of the script and dialogues.
- e) The author of musical compositions with or without lyrics specially produced for the work.
- f) The author of the drawings if it involves animated designs.

When the audiovisual work has been taken from a pre-existing work still protected, the author of the original work is equated to the authors of the new work.

### **Directors of audiovisual work**

**Art. 29.-** The director or filmmaker exercises moral rights over the audiovisual work, without prejudice to those corresponding to other co-authors in relation to their respective contributions, nor to those that the producer may exercise in accordance with this law, barring agreement to the contrary.

### **Special rule of co-authorship of audiovisual work**

**Art. 30.-** If one of the co-authors refuses to finish their contribution or is prevented from doing so by force majeure, they cannot oppose the use of the part of their contribution already realized for the purpose of finishing the work. In any case, they may have the status of author and enjoy the rights derived from their contribution.

Each of the co-authors may freely dispose of the part of the work that constitutes their personal contribution, to exploit it in a different genre, barring agreement to the contrary.

### **Completion of audiovisual work**

**Art. 31.-** The audiovisual work is considered finished when the definitive version has been established, in accordance with what was agreed between the director or filmmaker and the producer.

### **Presumption of production of audiovisual work**

**Art. 32.-** The natural or legal person indicated as such in the work is presumed to be the producer of the audiovisual work, barring proof to the contrary.

### **Audiovisual work production contract**

**Art. 33.-** The contract between the authors of the audiovisual work and the producer implies the unlimited and exclusive assignment in favor of the latter of the patrimonial rights recognized in this law, as well as the authorization to decide on its disclosure, barring agreement to the contrary.

The producer may exercise in their own name the moral rights over the audiovisual work, to the extent necessary for the exploitation thereof, barring agreement to the contrary, and without prejudice to the rights of the authors.

Licensees or assignees of patrimonial rights of audiovisual works, videographic or cinematographic works may exercise administrative, civil, and penal actions in defense of their respective rights, in the terms that the respective contract authorizes them, as prescribed in Article 11 of this law.

### **Authors of radio works**

**Art. 34.-** The quality of author of a radio work corresponds to the natural person or persons who ensure the intellectual creation of that work.

The provisions contained in this section shall also apply, where pertinent, to radio works.

## SECTION SIX COMPUTER PROGRAMS

### Author of computer program

**Art. 35.-** The person appearing indicated as such in the work in the customary manner is presumed to be the author of the computer program, barring proof to the contrary.

For the purposes of this section, it is understood as:

- a) **Creator, programmer, or developer:** Any natural person who participates in the creation or programming of a computer program in whole or in part, that is, the author of the program; and,
- b) **Producer of computer program:** Is that natural or legal person who commissions or directs a creator, programmer, or developer, the creation of a computer program with the intention of commercially exploiting the same, and who, in addition, bears the economic burden of said production, barring agreement to the contrary.

### Computer program by commission

**Art. 36.-** The contract between the author and the producer of the computer program implies the unlimited and exclusive assignment in favor of the latter of the patrimonial rights recognized in this law, as well as the authorization to decide on its disclosure and to exercise moral rights over the work, to the extent necessary for the exploitation thereof, barring agreement to the contrary.

### Licensing of computer programs

**Art. 37.-** The author, programmer, or developer of a computer program has full powers to grant the licenses they deem convenient over their work, provided they have not assigned said faculty to a third party. The license contract for a computer program shall be governed under the conditions and customs of such contracts.

## SECTION SEVEN ARCHITECTURAL WORKS

### Limitations of the author of architectural works

**Art. 38.-** The author of architectural works cannot oppose modifications that become necessary during construction or subsequently, but shall have preference for the study and realization thereof, barring agreement to the contrary.

If modifications are made without the consent of the author, the author may repudiate the paternity of the modified work and the owner shall be barred from invoking the name of the author of the original project in the future. Thus, the author shall be exempt from liability for defects or failures arising from the modifications made.

Interested parties may agree on conditions different from those established in this article.

## **SECTION EIGHT PLASTIC ARTS WORKS**

### **Faculties of acquirers of plastic arts works**

**Art. 39.-** The contract by which the material object containing a work of art is alienated confers on the acquirer the right to publicly exhibit the work, whether gratuitously or onerously, barring agreement to the contrary.

### **Subsequent compensation for alienation of plastic arts works**

**Art. 40.-** In case of resale of plastic arts works effected in public auction or through a professional art dealer, the author, and upon their death their heirs or legatees, shall enjoy the right to receive from the seller 2% of the resale price.

The resale right consecrated in this article shall be collected and distributed by a collective management organization, if there is one, unless the parties agree on another way to do so.

### **Protection of identity in plastic arts works**

**Art. 41.-** The portrait or bust of a person may not be placed in commerce without the consent of the person or their heirs. However, publication of the portrait is free when related to scientific, didactic, or cultural purposes in general, or to facts or events of public interest or that have taken place in public.

## **CHAPTER II LIMITATIONS AND EXCEPTIONS TO COPYRIGHT AND RELATED RIGHTS**

### **Rules of interpretation for limitations and exceptions**

**Art. 42.-** In case of conflict in the application of the norms of this chapter, in addition to the literal reading of the provisions, what is established in International Treaties and in the following rules of interpretation shall be used:

- a) That the limitations or exceptions be previously determined in special cases.
- b) That it does not alter the normal exploitation of the limited right.
- c) That it does not imply unjustified prejudice to the legitimate interests of the holder.

### **Lawful communications and executions without author's authorization**

**Art. 43.-** The following are lawful public communications and executions of a work, without need for authorization or payment of remuneration to the author:

- a) Those performed in a family circle, provided there is no direct or indirect lucrative interest.
- b) Those effected for purposes of general utility in the course of official acts, religious and charitable ceremonies, provided the public may attend them free of charge. If, in the course

of the activity carried out, any type of income is obtained, the net income obtained therefrom shall be destined exclusively for said purposes.

c) Those verified for exclusively didactic purposes in personalized teaching activities, in a classroom or a similar place dedicated to teaching, provided the author's right to citation is respected.

d) Those performed within commercial establishments solely for demonstrative purposes for clientele, of receiving, reproducing equipment or other similar items or for the sale of sound or audiovisual supports containing the works.

e) Those performed as indispensable to carry out a judicial or administrative proof.

f) Speeches, interviews, or declarations, made by members of duly legalized political parties.

g) Those performed by soloists or musical groups in family gatherings where no profit motives are pursued.

h) Those performed by soloists or musical groups in public gatherings for charitable purposes, provided entrance is free. If in the course of the activity carried out any type of income is obtained, the net income obtained therefrom shall be destined exclusively for said purposes.

### **Special limitation and exception to copyright**

**Art. 44.-** Any act of adaptation, reproduction, communication, or distribution to the public of a lawfully published work, carried out for the benefit of persons with visual, auditory, or other class of disability preventing normal access to the work, shall be lawful. This constitutes a special exception to copyright and shall be lawful provided the use is directly related to the corresponding disability and is carried out by appropriate means allowing the disability to be overcome and without commercial purposes.

Access to works shall be carried out through accessible formats, and the exception of this article must be expressly noted, as well as the prohibition of its distribution and making available to persons without the corresponding disabilities.

For this article, the following definitions shall be considered:

a) **Authorized entity:** Public or private institution that, within its institutional powers, is capable of adapting, reproducing, communicating, or distributing a work in accessible formats, as well as obtaining from another authorized entity, a copy in accessible format and supplying those copies to a beneficiary by any means, including non-commercial lending or via electronic communication by wired or wireless means.

b) **Beneficiary person:** Any person presenting a disability or difficulty for normal access to a work.

c) **Accessible format:** Reproduction of a work in an alternative manner or form, offering maximum flexibility of use and allowing access to its content and manipulation with ease, according to the needs of beneficiary persons. Literary works already disclosed in printed text, including their notes and related illustrations, may be adapted to accessible formats.

### **Personal, academic, and cultural use of works subject to protection**



**Art. 45.-** Regarding works already lawfully disclosed, the following is permitted without authorization or remuneration to the author:

- a) The reproduction of a copy of the work for the personal and exclusive use of the user carried out by the interested party themselves with their own means, provided it does not harm the normal exploitation of the work, nor cause unjustified prejudice to the legitimate interests of the author.
- b) Photomechanical reproductions for exclusive personal use, such as photocopying and microfilm, provided they are limited to small parts of a protected work or to out-of-print works. Any use of the reproduced pieces by any means or procedure, for a use other than personal, made in competition with the author's exclusive right to exploit their work, is equated to illicit reproduction.
- c) Reproduction by reprographic means, for teaching or taking examinations in educational institutions, provided there are no profit motives and to the measure justified by the objective pursued, of articles, brief extracts, or brief works lawfully published, on condition that such use is made in accordance with fair practices.
- d) Individual reproduction of a work by libraries or archives having no profit motives, when the copy is in their permanent collection, to preserve said copy and replace it in case of need or to replace in the permanent collection of another library or archive, a copy that has been lost, destroyed, or rendered unusable, provided it is not possible to acquire such copy within reasonable time or conditions.
- e) Reproduction of a work for judicial or administrative proceedings, to the measure justified by the purpose pursued.
- f) Reproduction of a work of art permanently exhibited in streets, squares, or other public places, by means of an art different from that employed for the elaboration of the original. Regarding buildings, said faculty is limited to the exterior facade.
- g) Reproduction of a single copy of the computer program, exclusively for backup or security purposes.
- h) Introduction of the computer program into the internal memory of the equipment, solely for the purpose of a user utilizing it.

#### **Right of citation without authorization or remuneration to the author of a work**

**Art. 46.-** The inclusion in a work, without remunerating or obtaining authorization from the holder, of brief fragments of a protected work that has been lawfully disclosed, is lawful, provided its inclusion is made by way of citation or for purposes of criticism, illustration, teaching, and research, provided the source, title, and author are mentioned.

#### **Publicity without author's authorization**

**Art. 47.-** It is also lawful, without authorization or remuneration, provided the author's name and source are indicated:

- a) Reproduction and distribution by the press, or transmission by any means, of articles of current interest on economic, social, artistic, political, or religious issues, published in mass media, provided reproduction or transmission has not been expressly reserved.

b) Diffusion, on the occasion of information regarding current events by sound or audiovisual means, of images or sounds of works seen or heard in the course of such events, to the measure justified by the purpose of the information.

c) Diffusion by the press or transmission by any means, as news of the day, of speeches, dissertations, addresses, sermons, and other works of a similar nature pronounced in public, speeches pronounced in public, and speeches pronounced during judicial proceedings, to the measure justified by the purposes of information pursued, and without prejudice to the right retained by authors of the disseminated works to publish them individually or in collection form.

### **Reproductions permitted by broadcasting organizations**

**Art. 48.-** It is lawful for Broadcasting Organizations to make ephemeral recordings of a work which they have the right to broadcast with their own equipment, to use them in their own broadcasts, without authorization of the author or payment of special remuneration.

However, the broadcasting organization must destroy the recording six months after its creation, unless a longer period has been agreed with the author.

The recording may be preserved in official archives when possessing an exceptional documentary character.

### **Adaptation of computer program for private use**

**Art. 49.-** The adaptation of a computer program performed by the user themselves and for their exclusive use does not constitute modification of the work.

### **Publication of laws, regulations, and other legal provisions by individuals**

**Art. 50.-** Laws, regulations, agreements, and other provisions emanating from the corresponding organs of the Government of the Republic may be published individually or in collection by individuals, after they have been published by the Government and adhering to the official text, without need for Government authorization. Likewise, they may be inserted without authorization in newspapers and in works where, by their nature or object, it is appropriate to cite, comment, criticize, or copy them verbatim.

### **Publication of national jurisprudence by individuals**

**Art. 51.-** Sentences dictated by Tribunals of any order may be published, subject to legal provision to the contrary if their content does not affect morality or good customs.

Briefs presented by parties in any cause shall be the property thereof and they may publish them without further limitations than those comprised in Article 6 of the Constitution of the Republic of El Salvador.

### **Lawful uses for didactic and research purposes of works subject to protection**

**Art. 52.-** Reproduction of brief fragments of literary, scientific, or artistic works in publications or chrestomathies for didactic, scientific, literary criticism, or research purposes shall be lawful. For the same purposes and with equal restrictions, brief fragments in

translations may be published. For this, it shall be necessary to indicate unmistakably the source from which they proceed, that the reproduced texts are not altered, and that such reproduction does not harm the normal exploitation of the work nor cause prejudice to the legitimate interests of the author.

### **Publication of correspondence**

**Art. 53.-** Letters of public interest may be published if they do not damage the honor or interests of the sender or the addressee and provided the limitations comprised in Article 6 of the Constitution of the Republic of El Salvador are not contravened.

The economic profit of the publication shall correspond to the author or their successors.

### **Limitations and exceptions to copyright and related rights**

**Art. 54.-** When appropriate, the limitations and exceptions established in this chapter shall apply to both copyright and related rights.

## **CHAPTER III TRANSFER OF PATRIMONIAL RIGHTS**

### **General rule for alienation of patrimonial rights**

**Art. 55.-** Any transfer inter vivos of patrimonial rights is presumed to be made for valuable consideration, barring express agreement to the contrary. The transfer is limited to the right or rights assigned, to the modalities of exploitation expressly provided for in the contract, and to the time and territorial scope contractually agreed upon.

### **Conditioning of alienation of rights relative to protected works**

**Art. 56.-** The assignment of the patrimonial right carries implicitly the faculty to perform transfers inter vivos or transmission by cause of death in favor of third parties. However, a condition established in the assignment contract restricting said faculty for the transfer of rights to a third party through authorization of the author shall be valid.

### **Remuneration for alienation of rights**

**Art. 57.-** Assignment granted for valuable consideration confers upon the author the amount agreed in the respective contract.

### **Competence in copyright conflicts**

**Art. 58.-** Differences occurring between assignor and assignee shall be decided before the competent Judge, via the declarative process corresponding according to the amount claimed, in conformity with what is established in the Code of Civil and Commercial Procedure, unless the parties agree to submit them to arbitration or any alternate form of dispute resolution.

### **Licenses relative to copyright**

**Art. 59.-** The holder of patrimonial rights may grant third parties a non-exclusive license of use for a determined time. This shall be governed by the stipulations of the respective contract and those pertaining to the assignment of rights, insofar as they are applicable.

### **Formalities for copyright contracts**

**Art. 60.-** Copyright assignment contracts granted and having effect in the country must be made by public deed or private document authenticated before a notary, or by means of an electronic document signed with a certified electronic signature, as well as by any other mechanism guaranteeing the will of transfer on the part of the holder of the patrimonial rights of the work. The foregoing also applies to usage license contracts.

Contracts granted abroad shall be subject to the formalities required in the place of their celebration; and, for them to have legal effects in El Salvador, they must previously follow the procedure of authentication and translation into Spanish established by common law.

The provisions of this chapter shall apply to publishing, theatrical representation, musical execution, and phonographic inclusion contracts that are executed and become effective in El Salvador.

For the registration of contracts related to copyright, it shall be necessary to present the original documents, accompanying the proof of payment of the fee established in this law.

## **SECTION ONE PUBLISHING CONTRACT**

### **Content of publishing contracts**

**Art. 61.-** Publishing contracts must express:

- a) The identification of the author, the name, corporate name or denomination of the publisher, and name of the work.
- b) Whether the work is unpublished or not.
- c) The number of authorized editions.
- d) The deadline for putting copies of the only or first edition into circulation.
- e) The quantity of copies each edition must consist of.
- f) The copies reserved for the author, critics, and promotion of the work.
- g) The remuneration of the author, established in conformity with Article 57 of this law.
- h) The period within which the author must deliver the original of the work to the publisher;
- i) The quality of the edition.
- j) The method of fixing the price of copies.

What is established in Article 60 of this law shall apply to these contracts.

The omission of one or several requirements contained in the preceding literals shall not invalidate the contract, and in the absence of express provision in the contract, it shall be understood that:

- a) The work has already been published previously.

- b) The right is assigned to the publisher for a single edition, which must be available to the public within a period of one year, counted from the delivery of the copy to the publisher in adequate conditions for reproduction of the work.
- c) The minimum number of copies comprising the first edition is two hundred.
- d) The number of copies reserved for the author, critics, and promotion is five percent of the edition, distributed proportionally for each of those purposes.
- e) The remuneration of the author is fifteen percent of the price of each copy sold to the public.
- f) The author must deliver the original copy of the work to the publisher within ninety days, counted from the date of the contract.
- g) The edition shall be of average quality, according to uses and customs.
- h) The price of copies to the public shall be fixed by the publisher.

### **Obligations of the publisher**

**Art. 62.-** The obligations of the publisher are:

- a) To publish the work in the agreed form, without introducing any modification not agreed to by the author.
- b) To indicate on each copy the title of the work, the name or pseudonym of the author and of the translator, if any, unless they demand anonymous publication. For international protection of the work, according to treaties in force in El Salvador, the following shall also be indicated:
  - 1. The mention of reservation of copyright and the year of first publication, preceded by the symbol "C".
  - 2. The year and place of the edition and of previous ones.
  - 3. The name, corporate name or denomination and address of the publisher and the printer.
- c) To submit proofs of the print run to the author, barring agreement to the contrary.
- d) To distribute and disseminate the work within the stipulated period and conditions and according to habitual practices.
- e) To satisfy the agreed remuneration to the author, when this is proportional, and liquidate semi-annually the amounts corresponding to them, unless a shorter period is fixed in the contract. If a fixed remuneration has been agreed, this shall be payable from the moment copies are available for distribution and sale.
- f) To present to the author, in the conditions indicated in the preceding literal, a statement of accounts indicating the date and print run of the edition, number of copies sold and the deposit for their collection, as well as that of copies rendered unusable or destroyed by fortuitous event or force majeure.
- g) To allow the author verification of documents and vouchers demonstrating statements of account, as well as fiscalization of deposits where copies object of the edition are found.
- h) To comply with procedures for print run controls.

- i) To request the deposit of the work at the Institute, on behalf of the author, when the latter has not done so.
- j) To return the original of the work object of the edition to the author, once printing and print run operations thereof are finalized.

### **Obligations of the author relative to the publishing contract**

**Art. 63.-** The obligations of the author are:

- a) To deliver the original of the work object of the edition to the publisher in due form and within the agreed period.
- b) To answer to the publisher for the authorship and originality of the work, as well as for the peaceful exercise of the assigned right.
- c) To correct proofs of the print run, barring agreement to the contrary.

### **Integrity and modification of work subject to publishing contract**

**Art. 64.-** While the work is not published, the author may introduce all modifications they deem convenient, provided these do not alter its character and purpose. However, they must pay the increase in expenses caused by modifications, when exceeding the limit admitted by custom and the maximum percentage of corrections contractually stipulated.

### **Vigency of rights relative to publishing contract**

**Art. 65.-** In case of a contract with determined duration, the rights of the publisher shall expire by operation of law upon expiration of the agreed term.

However, the publisher may sell copies in deposit at normal price within three years following the expiration of the term, unless the author prefers to rescue those copies with a 40% discount on their public sale price, barring agreement to the contrary.

### **Special rule in case of low commercial performance of the work**

**Art. 66.-** If after three years of the edition being available to the public, more than 30% of the copies have not been sold, the publisher may liquidate the remaining ones at a price lower than agreed.

For this, the publisher must previously notify the author within thirty business days following the expiration of the aforementioned period, who must choose between acquiring said copies with a 50% discount on the normal public sale price or, in the case of proportional remuneration, receive 10% of the liquidation price invoiced by the publisher, barring agreement to the contrary.

### **Norms relative to publishing contract in case of non-completion of work due to death or impediment of author**

**Art. 67.-** The death of the author before the conclusion of the work shall extinguish the contract by operation of law.



However, if the author had already realized and delivered to the publisher a considerable part of the work, but the same has not been finished, whether by death or impediment of the author, and the work is susceptible of being published, the publisher may choose at their discretion to consider the contract extinguished by operation of law or consider it fulfilled, through a proportional reduction of the agreed remuneration, unless the author or their heirs manifest their will that the unfinished work not be published.

In this latter case, if subsequently the author or their heirs assign the right to publish the work to a third party, they must indemnify the publisher for damages and losses caused by the termination of the contract.

### **Norms on bankruptcy or concurrence of creditors in relation to publishing contract**

**Art. 68.-** If before the work is printed, the declaration of bankruptcy or concurrence of creditors of the publisher occurs, the contract shall be extinguished by operation of law.

For the purposes of the provisions of this article, the rules established in the corresponding law shall apply regarding the effects of the declaration of bankruptcy and the concurrence of creditors.

### **Supplementary norms for musical work publishing contracts**

**Art. 69.-** The provisions of this chapter are applicable, where pertinent, to contracts for the publication of musical works.

However, if the publisher acquires from the author a temporary or permanent share in all or some of the other patrimonial rights over the work, the contract shall be terminated by operation of law if:

- The publisher does not put on sale a sufficient number of written copies for the diffusion of the work, within six months following the date of the contract; or,
- Despite the author's request, the publisher does not put on sale new copies of the work, whose initial print run has been exhausted.
- The author may request the resolution of the contract if the musical work has not produced economic benefits in three years and the publisher does not demonstrate having performed positive acts for the diffusion thereof.

## **SECTION TWO COMPULSORY LICENSES**

### **Norms for granting compulsory licenses**

**Art. 70.-** Compulsory translation and reproduction licenses contemplated in International Conventions ratified by El Salvador shall be granted by the competent Judge following compliance with the requirements demanded in said instruments.

## **CHAPTER IV**

## RELATED RIGHTS

### Protection of related rights

**Art. 71.-** The protection recognized for rights related to copyright shall not in any way affect the protection of copyright over works. Consequently, none of the provisions comprised in this chapter may be interpreted to the detriment of that protection.

Likewise, the protection recognized for copyright shall not in any way affect the protection of related rights.

Consequently, none of the provisions related to copyright may be interpreted to the detriment of the provisions of this chapter.

### Application of norms relative to related rights

**Art. 72.-** Holders of related rights recognized in this chapter may invoke all provisions related to authors and their works, in particular, those relative to moral and patrimonial rights, contained in Articles 10 and 11 of this law, and to the term of protection established in Article 90 thereof.

## SECTION ONE PERFORMERS

### Faculties of performers

**Art. 73.-** Performers or their successors have the right to authorize or prohibit:

- a) The fixation of their unfixed performances.
- b) The reproduction by any means or procedure of their interpretations or performances. Likewise, they have the right to prohibit any reproduction of their interpretations or performances in any manner or form, permanent or temporary, including temporary storage in electronic form.
- c) The distribution of their interpretations fixed in phonograms.
- d) The rental for commercial purposes of an original or copy of their fixed interpretations.
- e) The broadcasting and public communication of their unfixed interpretations and performances, except when the interpretation or performance constitutes a broadcast performance. However, they cannot oppose communication when it is effected from a fixation made with their prior consent, published for commercial purposes. Thus, they shall have the right to remuneration for said publication.
- f) The broadcasting and public communication, by wired or wireless means, of their fixed interpretations or performances (including availability to the public of those interpretations or performances), in such a way that members of the public may access them from a place and at a time individually chosen by them.

Performers shall also have the moral right to link their name or pseudonym to the interpretation and to prevent any deformation thereof that jeopardizes their decorum or reputation.

### **Representation of orchestras or groups**

**Art. 74.-** Orchestras, vocal groups, and other groups of performers shall designate a representative for the purposes of exercising the rights recognized by this law. Failing designation, representation shall correspond to the respective directors.

## **SECTION TWO PRODUCERS OF PHONOGRAMS**

### **Faculties of phonographic producers**

**Art. 75.-** Phonographic producers have the right to authorize or prohibit the reproduction of their phonograms, as well as the import, leasing, distribution to the public, or other utilization, by any form or means, of copies of their phonograms.

Likewise, they have the right to authorize or prohibit any reproduction of their phonograms in any manner or form, permanent or temporary, including temporary storage in electronic form; as well as the right to authorize or prohibit broadcasting or public communication of their phonograms, whether by wired or wireless means (including availability to the public of those phonograms), in such a way that members of the public may access those phonograms from a place and at a time individually chosen by them.

### **Remuneration in phonogram production contracts**

**Art. 76.-** The producer of phonograms shall agree with the performers and with the orchestras or directors on the remuneration corresponding to them for sales of the phonograms.

## **SECTION THREE OF PRODUCERS OF VIDEOGRAMS OR CINEMATOGRAPHIC WORKS**

### **Of videograms or cinematographic works in general**

**Art. 77.-** Videograms or cinematographic works shall be considered as complex works, for which reason relative to Section Four, Chapter I of Book II of this law shall apply to them.

### **Of forms of exploitation of videograms or cinematographic works**

**Art. 78.-** Videograms or cinematographic works may be exploited by electronic data transmission, video sharing services through platforms, video sharing platforms, and online digital content supply platforms. For these purposes, the expression exploitation shall be understood in its broadest sense and includes other analogous mechanisms.

### **Faculties of the producer of videograms or cinematographic works**

**Art. 79.-** The producer enjoys for their videograms or cinematographic works the rights to authorize or prohibit their reproduction, distribution, or public communication, and the natural or legal person authorized for such activities may exercise actions in defense of their respective licenses or assignments of rights, according to the respective contract.

## **SECTION FOUR THEATRICAL REPRESENTATION AND MUSICAL EXECUTION CONTRACTS**

### **Content of theatrical representation and musical execution contracts**

**Art. 80.-** Theatrical representation and musical execution contracts must contain the following minimum requirements:

- a) Name, corporate name or denomination, domicile, State or country of the author, performer, and entrepreneur.
- b) The term or number of public representations or executions.
- c) Territory where authorization applies.
- d) Remuneration agreed by the parties and form of payment.

Additionally, contracting parties may establish conditions, modalities, specifications, and limitations deemed convenient; what is established in Article 60 of this law shall apply to these contracts.

### **Term of theatrical representation and musical execution contracts**

**Art. 81.-** Theatrical representation and musical execution contracts may be celebrated for a determined time or for a determined number of public representations or executions.

What is established in Article 60 of this law shall apply to these contracts.

### **Obligations of the entrepreneur in the theatrical representation and musical execution contract**

**Art. 82.-** The entrepreneur is obliged to guarantee the author or their representatives the following actions:

- a) Inspect the representation or execution and attendance thereto free of charge.
- b) Punctually satisfy the agreed remuneration, in terms indicated by Article 57 of this law.
- c) Present to the author or their representatives the exact program of the representation or execution, and note in daily sheets the works used and their respective authors.
- d) When remuneration is proportional, present a trustworthy and documented report of their income.

### **Technical obligations of the entrepreneur in theatrical representation and musical execution contracts**

**Art. 83.-** The entrepreneur is obliged to ensure the representation or execution is carried out under technical conditions guaranteeing the integrity of the work and the decorum and reputation of its author.

### **Norms applicable to other representation or execution contracts**

**Art. 84.-** Provisions relative to representation or execution contracts are also applicable to other modalities of public communication mentioned in Article 12 of this law, as applicable.

## **SECTION FIVE PHONOGRAPHIC INCLUSION CONTRACT**

### **Content of phonographic inclusion contract**

**Art. 85.-** Phonographic inclusion contracts must contain the following minimum requirements:

- a) Name, corporate name or denomination, domicile, State or country of the author and phonogram producer.
- b) The number of copies.
- c) Territory where authorization applies.
- d) Term of duration of authorization.
- e) Remuneration agreed by the parties and form of payment.

Additionally, contracting parties may establish conditions, modalities, specifications, and limitations deemed convenient.

Authorization granted to the phonographic producer does not include the right of public execution of the work contained in the phonogram. The producer must make that reservation in any mechanism in which the phonogram is reproduced.

What is established in Article 60 of this law shall apply to these contracts.

### **Obligations of the producer in the phonographic inclusion contract**

**Art. 86.-** The producer is obliged to state on all copies of the phonogram the following indications:

- a) The title of the works and the name or pseudonym of the authors, as well as that of the arrangers and versionists, if any. If the work is anonymous, it shall be so stated.
- b) The name of the performers, as well as the denomination of orchestral or choral groups and the name of their respective directors.
- c) The acronym of the collective management organization to which the authors, artists, performers belong.
- d) The mention of reservation of rights over the phonogram, with indication of the symbol "P", followed by the year of first publication, for purposes of international protection referred to in literal b), of Article 62 of this law.
- e) The name, corporate name or denomination of the phonographic producer.

f) The prohibition to reproduce or copy the phonogram without authorization and to execute it publicly.

Indications which, due to lack of adequate space, cannot be stamped directly on the copies containing the reproduction, shall mandatorily be printed on their wrappers or in an attached leaflet.

### **Registration of phonogram reproductions in phonographic inclusion contracts**

**Art. 87.-** The phonographic producer is obliged to keep a registration system allowing authors, artists, performers to check the quantity of reproductions sold and must allow them to verify the accuracy of the liquidations of their remunerations through inspection of vouchers, offices, and warehouses, either personally or through an authorized representative.

### **Norms applicable to literary works in relation to production of phonographic works**

**Art. 88.-** The provisions of this chapter are applicable where pertinent to literary works used as text of a musical work, declamation, or reading for fixation in a phonogram, for purposes of reproduction and sale.

## **SECTION SIX BROADCASTING ORGANIZATIONS**

### **Broadcasting organizations and their faculties**

**Art. 89.-** Broadcasting Organizations shall enjoy the right to authorize or prohibit:

- a) The retransmission of their broadcasts.
- b) The fixation on a material base of their broadcasts.
- c) The reproduction of fixations made without their consent, except:
  - 1. When dealing with use for private purposes.
  - 2. When brief fragments have been used for reporting on current events.
  - 3. When dealing with an ephemeral fixation made by a broadcasting organization by its own means and for its own broadcasts.
  - 4. When dealing with use for exclusively teaching or research purposes.
- d) Communication to the public of their television broadcasts, when these are effected in places accessible to the public, upon payment of an entrance fee.

## **CHAPTER V TERM OF COPYRIGHT PROTECTION**

### **Term of protection of copyright**

**Art. 90.-** The duration of copyright protection is as follows:



a) During the life of the author and seventy years starting from the day of their death, in favor of their heirs or successors, if the author is a natural person. In case of a complex work, the seventy years shall begin to count from the death of the last surviving co-author. If any of the co-authors dies without leaving heirs, their part shall accrue to that of the surviving co-authors.

b) In case of an anonymous or pseudonymous work whose author has not been revealed, the protection term shall be seventy years, counted from January first of the year following that of the first disclosure. Upon legally proving the quality of author of the anonymous or pseudonymous work, or the holder of those rights, the provisions of the preceding letter shall apply.

c) When protection is not based on the life of the author, the term shall be seventy years counted from January first of the year following that of the first authorized disclosure. If no authorized disclosure has been made or if it was made after fifty years, counted from the year of creation of the work, interpretation or performance, or phonogram, or realization of the broadcast, the protection term shall be counted from January first of the year following that of the creation of the work, interpretation or performance, or phonogram, or realization of the broadcast.

Upon expiration of the protection period, works shall pass into the public domain and may be used freely by any person, respecting their authorship and integrity.

### **Rights transmitted to the State**

**Art. 91.-** If the State is heir, legatee, or donee of copyrights and does not make use of the rights within the term of five years from the transfer being effected, the work shall pass into the public domain. Otherwise, the work shall pass into the public domain, in conformity with what is established in the preceding article.

### **Transmission and exercise of moral faculties of the author**

**Art. 92.-** The exercise of moral faculties of which the author was holder corresponds to their heirs, but the faculty to oppose any use of the work detrimental to their reputation as author or their honor may also be exercised by surviving ascendants, descendants, and spouse, if they were not the author's heirs.

## **CHAPTER VI DEPOSIT OF COPYRIGHTS**

### **Application for copyright deposit**

**Art. 93.-** The application for copyright deposit may be submitted by the interested party, legal representative, or proxy. If the proxy is a lawyer, they must be a Salvadoran lawyer. The application addressed to the Institute must detail:

a) Full name, corporate name or denomination, State or country, domicile, and other general details of the applicant, author or co-authors, publisher, artist, producer, or broadcaster and name, profession, and domicile of the proxy, if any.

- b) Synthesis of the content of the work and title allowing its identification.
- c) Date of disclosure, publication, or if the work is unpublished.
- d) Proof of payment of deposit fees.
- e) Documents proving the personality of the applicant, in case of being a legal person, and the legal capacity of their legal representative or proxy.
- f) Exact address and electronic means to receive notifications.
- g) Place, date, and signature of the applicant or their legal representative or proxy.

The application referred to in this article may also be signed using other mechanisms to verify the authenticity of the identity of the applicant or their legal representative or proxy.

Additionally, the applicant must deliver for deposit:

- a) One copy of every printed work.
- b) One copy of unprinted works.
- c) One copy of the phonogram or audiovisual work.
- d) In case of sculpture, drawings, or pictorial works, photographs. For sculptures, these must be taken from front and profile.
- e) In case of models or works of art applied to industry, a copy or photograph thereof shall be delivered, accompanied by a written account of characteristics or details not possible to appreciate in copies or photographs.
- f) Regarding photographs, plans, maps, and similar items, a copy thereof shall be deposited.
- g) Regarding architectural and engineering works and designs, a copy of the corresponding set of plans shall be deposited.

The Institute may permit substitution of the deposit of the copy in certain creative genres, by accompanying documents allowing sufficient identification of characteristics and content of the work or production object of deposit.

### **Examination of deposit application**

**Art. 94.-** The Institute shall examine if the application meets all requirements established in the preceding article. If not meeting any, the applicant shall be warned to remedy, within a period of ten business days, counted from the day following notification of the resolution. If the warning is not remedied within the indicated period, the application shall be deemed lapsed, without prejudice to the interested party being able to make a new application to the Institute.

If the application meets indicated requirements, the respective deposit certificate shall be issued to the interested party.

The Deposit Certificate shall contain:

- a) Name of the Institute and Department issuing it.
- b) Deposit number and date.
- c) Name of author or authors, publisher, artist, producer, or broadcaster as applicable.
- d) Class of work, interpretation, or production.
- e) Title.
- f) Synthesis of the work.

- g) Date of disclosure or first publication.
- h) Place, time, and date the deposit certificate is issued.
- i) Signature of the Registrar and seal of the office.

The deposit certificate shall refer only to one work, production, or interpretation.

### **Effects of copyright deposit**

**Art. 95.-** Deposit shall attest, barring proof to the contrary, to the existence of the work, interpretation, phonographic or radio production, and the fact of its disclosure or publication, as well as to the authenticity of acts by which rights recognized in this law are totally or partially transferred or representation granted for their administration or disposal.

It is presumed, barring proof to the contrary, that persons indicated in the registry are holders of the protected right attributed to them.

### **Declarative character of copyright deposit**

**Art. 96.-** Formalities established in preceding articles are not constitutive of copyright. These only have a merely declarative character for greater legal certainty of holders and as a means of proving their rights. Consequently, omission of deposit does not prejudice the enjoyment or exercise of rights recognized in this law.

## **CHAPTER VII COLLECTIVE MANAGEMENT ORGANIZATIONS**

### **Requirements for creation of Collective Management Organizations**

**Art. 97.-** Collective Management Organizations, hereinafter CMO, may be created, the nature of which shall be of private law, with financial self-sustainability, for the representation, defense, and administration of patrimonial rights recognized in this law, of their members or represented parties, or of affiliates of foreign entities of the same nature.

Their constitution shall be done by public deed and they shall acquire legal personality once registered at the Institute. Also registered therein shall be the appointment of their administrative bodies, internal regulations, as well as norms on collection and distribution.

For a Collective Management Organization to be registered, the public deed must contain:

- a) Names and general details of persons integrating it.
- b) Domicile of the entity being constituted.
- c) Initial assets.
- d) Purpose of basing itself on principles of collaboration, equality, and equity, as well as functioning with guidelines established by this law.
- e) Classes of rights holders comprised in management.
- f) Conditions for acquisition and loss of member status.
- g) Rights and duties of members.
- h) Name of entity, followed by expression Collective Management Organization or its abbreviation CMO.

- i) Expression of what each member contributes in money or goods and value thereof.
- j) Administration regime and faculties of whoever exercises legal representation of the entity.
- k) Norms of collection and distribution of collected remunerations.
- l) Basis for practicing liquidation of entity, including designation of liquidators.

Once the constitution deed of the CMO is presented for registration, the Institute shall proceed to verify compliance with previous requirements. If observations exist, the Institute shall warn the interested party or their legal representative or proxy, to remedy them within a period of ten business days, counted from the day following its notification.

Once requirements are met or warnings remedied, the Institute shall proceed to registration of the constitution deed of the Collective Management Organization and order entities to publish in the Bulletin the registration resolution with relevant passages of the constitution deed, at the applicant's expense.

If the indicated period elapses without remedying made warnings, registration shall be denied by reasoned resolution, which shall admit appeals regulated in the Law of Administrative Procedures. This, without prejudice to interested parties being able to submit a new registration application to the Institute.

### **Legitimation for defense of copyright in collective management**

**Art. 98.-** To defend rights of their represented parties, Collective Management Organizations shall be considered mandataries thereof by simple act of affiliation.

In all kinds of administrative and judicial processes, CMOs must prove their legal accreditation with respective contracts or powers of attorney accrediting their capacity with national or foreign entities they represent, as well as reciprocity and/or representation agreements celebrated with national or foreign collective management entities of same activity or management, and their repertoires or catalogs of works and phonographic productions.

Documentation may be presented through digital storage media or other means permitted by law in this class of processes.

### **Attributions and obligations of Collective Management Organizations**

**Art. 99.-** Attributions and obligations of CMOs are the following:

- a) Represent their members before judicial and administrative authorities of the country, in all matters of general and particular interest to them, unless they decide to exercise on their own part actions corresponding to infringement of their rights.
- b) Present maximum tariffs determining remuneration required for total or partial use of their repertoire, to be registered by the Institute. To calculate tariffs, criteria established in Article 101 of this law must be taken as a base.
- c) Negotiate and contract with users, conditions of authorizations, realization of acts comprised in rights they administer, corresponding remuneration and grant those authorizations.
- d) Supervise use of authorized repertoires.

- e) Collect and distribute to their associates, remunerations arising from rights corresponding to them.
- f) Contract, with whoever requests it, concession of non-exclusive use licenses of managed rights, under reasonable conditions and remuneration.
- g) Celebrate reciprocity agreements with foreign Collective Management Organizations of same activity or management.
- h) Represent in the country foreign societies with whom they have representation contract, before judicial and administrative authorities.
- i) Collaborate with the Institute when it performs supervision, inspection, and control of Collective management entities.
- j) Others indicated by their statutes.

All CMOs shall submit their annual accounts to audit, according to norms established for such purpose, in corresponding mercantile regulations.

Audits performed for purposes of this article shall be published on the Institute's website, to be consulted by any person.

### **Obligations of administrators of Collective Management Organizations**

**Art. 100.-** Obligations of administrators of CMOs are:

- a) Ensure compliance with attributions and obligations of Collective Management Organization to which they belong.
- b) Answer civilly and criminally for acts performed by them during their administration, to detriment of Collective Management Organization to which they belong or of holders of patrimonial copyright or related rights they represent, defend, or administer.
- c) Deliver annually to representatives of holders of patrimonial copyright or related rights and members of entities, financial reports with their respective liquidations, of amounts received as product of collection practiced in each fiscal year.
- d) Provide to the Institute, and other competent authorities requiring it in compliance with established in this law, information and documentation required from Collective Management Organization, as well as reports referred to in previous literal.
- e) Others referred to in this law and statutes of Collective Management Organization.

### **Registration of tariffs of Collective Management Organizations**

**Art. 101.-** Collective Management Organizations shall be obliged to present following instruments for registration and authorization to the Institute:

- a) Maximum tariffs, pursuant to Article 99 letter b) of this law.
- b) Reciprocal representation agreements and/or contracts.

Instruments of preceding literals must be exposed to public by any digital means and may be published in medium of national circulation, once every five years or when variation thereof is authorized.

Amount of maximum tariffs shall be established fairly and equitably, under reasonable conditions, attending to economic value of utilization of rights over protected work or

performance in user's activity, and seeking fair balance between both parties, for which following criteria, among others, shall be taken into account:

- a) Degree of effective use of repertoire or particular works in overall activity of user.
- b) Intensity and relevance of use of repertoire in overall activity of user.
- c) Amplitude of repertoire of Management Entity to be used by user. Use of total repertoires cannot be imposed. For these purposes, repertoire shall be understood as works and performances whose rights are managed by a Collective Management Organization.
- d) Net economic income obtained by user as direct consequence of commercial exploitation of repertoire. For purposes of present ordinal, tariffs or prices cannot be imposed having as parameters gross income or profits of any user.
- e) Value of administrative cost incurred by Collective Management Organization to make application of tariffs effective.
- f) Tariffs established by Management Entity with other users for same modality of utilization.
- g) Tariffs established by homologous Management Entities in other states of Central American region shall serve only as guidance, and economic context of each country in reference to ours must always be taken into consideration.

CMOs must include in their tariff schedule discount of not less than 50% of maximum tariff for micro and small enterprises qualified as such in special law regulating them.

Additionally, CMOs must take into account in their tariff schedule limitations and exceptions contained in Articles 42 and following of this law.

When copyright and related rights converge on same works, payment made by users shall be single and distributed among rights holders or their representatives, without prejudice to established in agreements between parties.

### **Authorization of tariffs of Collective Management Organizations**

**Art. 102.-** The CMO must present to Institute proposed maximum tariffs for authorization. Institute shall perform admissibility examination of tariffs and verify proof of payment of established fee, analyzing under criteria of Article 101 of this law. If observations exist, Institute shall warn interested party or their legal representative or proxy, to remedy within period of ten business days, counted from day following notification.

If indicated period elapses without remedying made warnings, registration shall be denied by reasoned resolution, which shall admit appeals regulated in Law of Administrative Procedures. This, without prejudice to interested parties being able to submit proposed maximum tariffs again to Institute.

Once requirements are met, Institute shall proceed to admission of tariffs and order CMO to publish resolution in Bulletin, at applicant's expense.

Once period provided in Article 103 of this law elapses, without any opposition presented to published tariffs, Institute shall proceed with their registration, and order publication in Bulletin and on National Registry Center website, within maximum period of eight business days following registration date, at applicant's expense. CMO remaining authorized for collection of copyright or related rights.



Authorized tariffs shall be considered control parameter for maximum collection related to corresponding collective management, but under no concept shall it be deemed that said tariffs are proof of price or royalty that would have been paid to right holder if contractual license had been concerted, nor can it serve as calculation parameter for any indemnification for damages and losses.

Every CMO is obliged to perform process of authorization or validation of maximum tariffs every five years, counted from authorization of respective tariffs, for which previously described procedure shall be followed.

CMO shall have right to request validation of maximum tariffs for equal periods, which may be proposed during six months before expiration and up to six months after, under penalty of disabling authorization arranged in fourth paragraph of present article.

While there is no resolution approving maximum tariffs, Institute may provisionally authorize previous maximum tariffs.

### **Oppositions to tariffs of Collective Management Organizations**

**Art. 103.-** Upon publication of tariffs, anyone having legitimate certain, positive provable and determined interest by affectation of one or more published tariffs, may formulate opposition against one or several tariffs proposed by a CMO.

Period to file opposition shall be within two months following date of tariff publication in Bulletin.

Oppositions must be presented by interested party or their legal representative or proxy, in writing, to Institute. Said writing shall contain following:

- a) Precise designation of authority addressed.
- b) Name, corporate name or denomination, State or country, domicile and other general details of opponent, or of legal representative or proxy, if applicable.
- c) Name of Collective Management Organization against which opposition is filed.
- d) Facts and legal grounds on which opposition is based.
- e) Proof of payment of opposition fee established in this law.
- f) Clear and concrete expression of what is requested, including, if applicable, alternate proposal of tariff(s) intended to be impugned.
- g) Physical address or indication of technical means to receive notifications, place and date of writing, and signature of opponent or their representative.

Once opposition writing to tariff authorization of a CMO is presented, Institute shall proceed within period of eight business days following presentation, to verify compliance with previous requirements. If observations exist, Institute shall warn interested party or their legal representative or proxy, to remedy within period of ten business days, counted from day following notification.

Once requirements in opposition writing are met or warning remedied, Institute, within following eight business days, in each case, shall admit opposition and transfer to respective CMO to answer opposition within period of two months counted from following notification.

Whether opposition is answered or not, Institute shall issue reasoned resolution approving or modifying proposed maximum tariffs or, as case may be, denying presented opposition,

which must be notified to CMO and opponent, within period of three business days following pronouncement.

Resolution resolving opposition shall admit appeal to Institute, which shall be processed according to provisions in Law of Administrative Procedures.

Resolution deciding appeal shall become final by operation of law, Institute having to order publication in Bulletin and on National Registry Center website, of authorized maximum tariffs, within eight business days following notification, at CMO's expense.

Any person who has presented opposition to Institute may desist from it, whatever state of its processing, in which case, it shall be considered as if not formulated. Desistance from opposition shall not give right to reimbursement of fee paid.

### **Exercise of individual management of copyright and related rights**

**Art. 104.-** Holders of copyright and related rights may authorize communication or reproduction of their works, without intervention of a CMO; any contractual stipulation contradicting this having no value.

Public communication of phonographic or audiovisual work shall be considered authorized when rights holder is one requesting broadcasting organizations for its communication or diffusion. Request to diffuse work by holder shall be sufficient proof of such circumstance.

Rights holders considering themselves affected by authorization alluded to in preceding paragraph, may exercise pertinent legal actions for protection and defense of their rights. However, if there was already authorization from copyright holders for diffusion of a work and no revocation mediated, suspension thereof cannot be requested before authority knowing legal actions.

### **Resolution of conflicts relative to Collective Management Organizations and their users**

**Art. 105.-** Any controversy regarding copyright and related rights arising between CMOs and users may be resolved in mediation procedure, upon payment of fee established in this law, processed before Institute according to established in Law of Mediation, Conciliation and Arbitration, without prejudice to initiating corresponding judicial actions.

### **Dissolution of Collective Management Organizations**

**Art. 106.-** Collective Management Organizations shall be dissolved for following causes:

- a) By mutual agreement of their members.
- b) By withdrawal of 75% of members.
- c) By using percentage or amount greater than authorized by their principals for administration expenses of entity.
- d) By not complying with distribution function to their members or represented parties in form established in constitution deed.
- e) By having collected without having ownership or representation of copyright or related rights over work, in conformity with established in this law.

For purposes of provisions in present article, rules established in corresponding law for dissolution and liquidation of Capital Companies shall apply, especially regarding procedure, active legitimation and competent tribunals.

### **BOOK III**

### **INDUSTRIAL PROPERTY**

### **CHAPTER I**

### **TRADEMARKS IN GENERAL**

#### **Signs that may constitute marks**

**Art. 107.-** Marks may consist, among others, of words or sets of words, including names of persons, letters, numbers, monograms, images, three-dimensional images, moving words and images, portraits, labels, shields, prints, vignettes, borders, reliefs, textures, engravings, seals, lines and stripes, sounds, scents, tastes, or combinations and arrangements of colors. Likewise, they may consist, among others, of the form, presentation, or conditioning of products, or of their packaging or wrappers, or of means or premises of sale of corresponding products or services.

Without prejudice to provisions on geographical indications contained in this law, marks may consist of national or foreign geographical names provided they are sufficiently arbitrary regarding products or services they distinguish and their use is not susceptible of creating confusion regarding origin, provenance, qualities, or characteristics of products or services for which applied.

Nature of product or service to which mark is to be applied shall in no case be obstacle for registration thereof.

#### **Acquisition of right over mark**

**Art. 108.-** Ownership of marks and right to exclusive use thereof is acquired through registration in conformity with this law.

Regarding precedence in presentation of two or more registration applications by physical or electronic means, they shall be resolved based on date and valid time of presentation of each application.

Ownership of mark and right to exclusive use thereof is only acquired in relation to products or services for which registered. This, without prejudice to right to oppose in cases regulated by this law.

Holder of a mark protected in foreign country shall enjoy rights and guarantees granted by this law, provided it has been registered in El Salvador, without prejudice to protection of well-known marks.

It shall be optional to employ a mark to commercialize a product or service, as well as to register mark employed in commerce.

### **Right of priority**

**Art. 109.-** Following shall have right of priority to present one or more registration applications for same mark and for same products or services:

- Persons who have submitted in due form a trademark registration application in a State signatory to Paris Convention or in another country granting reciprocity for these purposes.
- Persons of Salvadoran nationality or with domicile or real and effective establishment in a State signatory to Paris Convention or in another country granting reciprocity for these purposes, as well as their successors.
- Right of priority may be exercised for six months, counted from day following presentation of priority application. Trademark registration application already submitted invoking right of priority shall not be denied, revoked, nor annulled, by acts performed by applicant themselves or a third party during validity of priority right. Such acts shall not give rise to acquisition of any right by third parties regarding mark.
- Right of priority shall be invoked by express declaration. This must be done with registration application or within period of three months counted from filing date of application.
- Within three months following its presentation, copy of priority application certified by industrial property office receiving said application must be attached to application. This document must include simple translation (if necessary) and does not need to be legalized. In these cases, certified copy issued electronically shall be accepted.

### **Co-ownership**

**Art. 110.-** Co-ownership of right over application or registration relative to marks shall be governed by following norms when no agreement to contrary exists:

- a) Modification, limitation, or withdrawal of pending application must be done by mutual agreement.
- b) Each co-owner may personally use distinctive sign object of application or registration, but must equitably compensate co-owners not exploiting or using sign, nor having granted license of use thereof; in default of agreement, compensation shall be fixed by competent Tribunal.
- c) Transfer of application or registration shall be done by mutual agreement, but each co-owner may assign their share separately, others enjoying right of first refusal for period of three months counted from date co-owner notifies intention to assign share.
- d) Each co-owner may grant third parties non-exclusive license of use of distinctive sign object of application or registration, but must equitably compensate co-owners not using sign nor having granted license of use thereof; in default of agreement, compensation shall be fixed by competent Tribunal.
- e) Exclusive exploitation or use license can only be granted by mutual agreement.

f) Voluntary limitation or cancellation, total or partial, of a registration shall be done by mutual agreement.

g) Any co-owner may notify others of abandonment of their share of application or registration in their benefit, remaining released from all obligation towards others, from margin note of abandonment in corresponding registry or, in case of application, from notification of abandonment to Institute; abandoned share shall be distributed among remaining co-owners in proportion to their respective rights in application or registration.

h) Any co-owner may initiate corresponding actions in case of infringement of right.

When holders of a mark are two or more persons, they must specify in registration application what percentage or fraction of right ownership corresponds to each applicant. Omission of this requirement shall not prevent initiation of registration procedure.

If provision in preceding paragraph is not specified by applicant and if from documentation presented to Institute it is impossible to establish co-ownership share, it shall be presumed that ownership of sign is divided into equal fractions.

Provisions of common law on co-ownership shall apply where not provided for in this article.

### **Inadmissible marks for intrinsic reasons**

**Art. 111.-** A sign comprised in any of following cases may not be registered or used as mark or element thereof:

a) Consisting of usual or current form of product to which applied or of its packaging, or necessary form or one imposed by nature of product or service in question.

b) Consisting of form giving functional or technical advantage to product or service to which applied.

c) Consisting exclusively of sign or indication that, in current, technical, or scientific language, or in commercial usage of country, is common or usual designation of product or service in question.

d) Consisting exclusively of sign or indication serving in commerce to qualify or describe some characteristic of product or service in question.

e) Consisting of simple color considered in isolation.

f) Consisting of letter or digit considered in isolation, unless presented in special and distinctive form.

g) Being contrary to morality or public order.

h) Comprising element offending or ridiculing persons, or a collectivity, ideas, religions, or national symbols of any country or international entity.

i) Capable of causing deception or confusion regarding geographical provenance, nature, mode of manufacture, qualities, aptitude for use or consumption, quantity, or some other characteristic of product or service in question.

j) Reproducing or imitating, totally or partially, shield, flag, or other emblem, acronym, denomination, or abbreviation of denomination of any State or international organization, without express authorization of competent authority of State or international organization in question.

- k) Reproducing or imitating, totally or partially, official control or warranty sign adopted by a State or public entity, without express authorization of competent authority of that State.
- l) Reproducing legal tender coins or bills in country, securities, or other mercantile documents, seals, stamps, tax stamps, or fiscal species in general.
- m) Including or reproducing medals, awards, diplomas, or other elements implying obtaining awards regarding corresponding product or service, unless such awards have truly been granted to registration applicant or their predecessor and this is accredited at time of applying for registration.
- n) Consisting of denomination of plant variety protected in country or abroad, if sign intended for products or services relative to that variety.
- o) Being within prohibition provided in Article 163 of this law.
- p) Being within prohibition provided in Article 115 of this law.

### **Inadmissible marks due to third-party rights**

**Art. 112.-** A sign may not be registered or used as mark or element thereof, when affecting any third-party right, in following cases:

- a) If sign identical to mark or other distinctive sign already registered or pending registration, in favor of third party from earlier date, for products or services related to products and services protected by registered or pending mark, when use gives rise to probability of confusion.
- b) If sign due to graphic, phonetic, olfactory, or ideological resemblance, or of any other nature with other marks and other distinctive signs already registered or pending registration in favor of third party from earlier date, for products or services related to products or services protected by registered or pending mark, when use gives rise to probability of confusion.
- c) If sign capable of causing confusion, by being identical or similar to trade name or emblem used in country by third party from earlier date, provided field or mercantile activity are similar.
- d) If sign constitutes reproduction, imitation, translation, or transcription, total or partial, of well-known mark belonging to third party, when connection or association exists between products and services; or regarding any product or service, even if not identical or similar to those identified by well-known mark, provided use capable of causing confusion or risk of association with that third party, or unfair advantage of notoriety of mark.
- e) Reproducing or imitating, totally or partially, domain name without express authorization or other document accrediting link of subscription or contract of domain name registration, by national entity administering top-level domain of national or foreign country code in question, or any other administrator of domain names. Such prohibition shall apply only when dealing with address using hypertext transfer protocol.
- f) If sign affects right of personality of third party, or consists partially or totally of name, signature, title, pseudonym, image, or portrait of person other than one applying for registration, unless express authorization of third party or heirs.



- g) If sign affects right to name, image, or prestige of local, regional, or national collectivity, unless express authorization of competent authority of that collectivity accredited.
- h) If sign capable of causing confusion with geographical indication or appellation of origin protected or whose protection requested prior to mark application. In case of use of identical sign, including geographical indication, for identical goods or services, probability of confusion shall be presumed.
- i) If sign capable of infringing copyright or industrial property right of third party, unless express authorization mediates.

## **CHAPTER II**

### **TRADEMARK REGISTRATION PROCEDURE**

#### **Application requirements**

**Art. 113.-** Trademark registration application must be submitted to Institute, in writing physically or electronically, containing following requirements:

- a) Name, corporate name or denomination, domicile, State or country of applicant.
- b) Name and domicile of legal representative or proxy, when application made through them, including accreditation of capacity with which acting and personality of represented party, when legal person.
- c) Graphic representation of requested distinctive sign.
- d) When sign requested as mark cannot be represented graphically, reproduction in digital support and description must be annexed, as case may be.
- e) Simple translation into Spanish of requested distinctive sign, when applicable.
- f) Name of products or services mark will distinguish with indication of class corresponding according to International Classification of Goods and Services for Registration of Marks, according to treaty administered by World Intellectual Property Organization.
- g) When applicant wishes to claim color as distinctive characteristic of mark, declaration to that effect, as well as name or names of color or colors claimed and indication, regarding each color, of main parts of mark appearing in that color.
- h) Proof of payment of presentation fee established in this law.
- i) Exact address or electronic means to receive notifications.
- j) Place, date, and signature of applicant or legal representative or proxy. These may also be signed using other electronic mechanisms to verify authenticity of identity of applicant or representative.
- k) Documents or authorizations required in cases provided in Articles 111 and 112 of this law, when pertinent.

#### **Application filing date**

**Art. 114.-** Upon submission of trademark registration application, Institute shall note date and time of presentation, assign entry number as appropriate, and issue receipt to applicant indicating attached documents.

Date of presentation of application shall be considered moment of reception by Institute, when upon receipt it met at least following requirements:

- a) Data allowing identification of applicant and address or electronic means to receive notifications.
- b) Mark whose registration is requested.
- c) Names of products or services for which mark is used or will be used with indication of class to which they belong.

If application does not meet indicated requirements, applicant shall have 10 business days to remedy. In this case, filing date shall be taken as that on which all requirements are met. If not remedied within indicated period, application shall be deemed not presented.

### **Duplicity of applications**

**Art 115.-** New registration application for identical registered or pending mark cannot be requested by same holder, when dealing with same products and services.

### **Limitation of trademark registration application**

**Art. 116.-** At any moment of processing, applicant may limit application regarding products or services intended to be protected with mark.

Services related in preceding paragraph shall accrue fee established in this law.

### **Modification of trademark registration application**

**Art. 117.-** Applicant may only modify application, to expand list of products or services initially required, until before publication of edicts of this law in Bulletin. This modification does not extend deadline for presentation of publications.

At any moment of processing and until before publication in Bulletin of legal edicts, applicant may modify requested distinctive sign, provided it does not imply essential change.

Services related in preceding paragraphs shall accrue fee established in this law.

### **Division of trademark registration application**

**Art. 118.-** Applicant may divide application at any moment of processing, to separate into two or more applications products or services contained in list of initial application. Each fractional application shall retain filing date of initial application and right of priority, when applicable.

Services related in preceding paragraph shall accrue fee established in this law.

### **Form examination**

**Art. 119.-** Institute shall examine if trademark application complies with provisions of Article 113 of this law. If not complying with any requirement established in that article, Institute shall warn applicant to remedy within ten business days of notification. If warning not remedied within indicated period, application shall be considered lapsed. Without prejudice to interested party being able to make new application to Institute.

Lack or insufficient accreditation of representation shall not prevent act in question from being considered performed, provided it is supplied or defect remedied within period of four months, counted from date of application filing.

### **Distinctiveness examination**

**Art. 120.-** Institute shall examine if mark fits definition of Article 3 and if incurring in any prohibition provided in Articles 111 and 112 of this law, based on information and elements at its disposal.

If mark requested to be registered is comprised in any prohibition contained in Article 111 or Article 112 of this law, Institute shall pronounce reasoned resolution indicating objections preventing registration concession and grant period of four months to applicant, counted from day following notification of resolution, to answer, provide documentation or authorizations pertinent, to overcome declaration of prohibition. This resolution shall not admit any appeal.

Once four months elapse, without applicant pronouncing on notified resolution, or if having answered objections, Institute estimates objections raised persist, inadmissibility of application shall be declared by reasoned resolution, which shall admit appeals regulated in Law of Administrative Procedures.

If antecedent mark or sign is still pending, application shall be declared suspended until antecedent is resolved and precedence indicated in Article 108 of this law shall be recognized. Said suspension resolution shall not admit any appeal.

Coexistence of similar marks or signs may be permitted, when written agreement exists between interested parties. Additionally, coexistence may be accredited by authorization from holder of previously registered mark or distinctive sign.

Regulation in preceding paragraph does not apply to identical marks or other distinctive signs.

To examine mark, it must be analyzed as whole without separating elements forming it and taking into account particularities of case in question.

### **Publication of application**

**Art. 121.-** Once form and distinctiveness examinations concluded, if no obstacles for application found or those found remedied, Institute shall admit trademark registration application for processing.

Once applicant notified of previous resolution, at request thereof, Institute shall publish electronic notice in Intellectual Property Bulletin containing minimum:

- a) Name, corporate name or denomination, State or country of applicant.
- b) Name of legal representative or proxy, if applicable.
- c) Date of application filing.
- d) Application number.
- e) Mark as requested, including name of products or services mark will distinguish in form expressed in registration application.
- f) Indication of corresponding class.

Institute shall publish notice within ten business days following publication request.

Publication request writing of notice referred to in this article may be submitted in physical or electronic form, within four months following notification of resolution admitting trademark registration application. Request for publication in Bulletin must be accompanied by corresponding payment.

If indicated period elapses, without notice publication requested, trademark registration application shall be deemed lapsed and archive ordered.

Additionally, Institute may periodically publish list of published notices through means deemed convenient.

### **Opposition to registration**

**Art. 122.-** During two months following date of electronic publication in Bulletin, any person alleging legitimate interest may object to application and oppose trademark registration in following cases:

- a) Considering sign intended to be registered comprises prohibitions contemplated in Articles 111 and 112 of this law.
- b) Considering sign requested to be registered may confuse public, because equal or similar to another already registered or pending registration, and because although applying to products or services different from those protected by registered or pending sign, these are of same nature.
- c) Considering themselves with better right than applicant.

### **Requirements and procedures for opposition to registration**

**Art. 123.-** Opposition must be presented in writing physically or electronically to Institute and must contain:

- a) Name, corporate name or denomination, domicile, State or country of opponent.
- b) Name and domicile of legal representative or proxy, when petition made through them, including accreditation of capacity with which acting and personality of represented party, in case of legal person.
- c) Proof of payment of opposition fee established in this law.
- d) Facts and legal grounds on which opposition based.
- e) Exact address or electronic means to receive notifications.
- f) Place, date, and signature of opponent or legal representative or proxy.

Opposition writing may also be signed using other electronic mechanisms to verify authenticity of identity or personality of applicant and/or identity and capacity of legal representative or proxy.

If opposition application does not meet any mentioned requirements, Institute shall warn applicant to remedy within period of ten business days, following notification. If warning not remedied within indicated period, opposition considered lapsed.

If opposition application presented outside period contemplated in Article 122 of this law, Institute shall issue resolution rejecting as untimely.

Opponent may only offer evidence at moment of presenting opposition writing, without prejudice to providing additional evidence at later time, not exceeding two calendar months, counted from day of presentation of opposition writing. If offered evidence presented together with opposition writing or not offered, Institute shall proceed without further processing to admit opposition prior to preliminary examination of requirements thereof. Opponent must attach copy of arguments of fact and law, as well as evidence on which opposition founded to be delivered to applicant.

Once requirements in opposition writing met or warning remedied, Institute shall admit opposition and transfer to trademark applicant to answer opposition in period of two months, counted from day following notification. Once indicated period elapses, Institute shall resolve application, even if opposition not answered.

### **Definitive resolution**

**Art. 124.-** In case of estimating opposition and no appeal presented, application shall be archived without further processing. In case resolution becomes final and dismisses opposition, registration of requested mark shall be granted.

If no opposition presented within established period, Institute shall proceed to register mark. In case registration granted, corresponding resolution shall be notified to applicant to present proof of payment of established fee. If, within three months following date resolution notified, applicant does not accredit payment of fee, resolution shall be void and application deemed lapsed, and file archived without further processing.

### **Withdrawal of application or opposition**

**Art. 125.-** Any person having presented distinctive sign registration application or opposition to inscription to Institute, may withdraw them expressly and in writing, whatever state of processing. This shall cause application or opposition to be held as if not formulated and end administrative procedure.

In resolution estimating withdrawal, Institute shall grant applicant period of thirty business days, counted from following notification, to retrieve administrative file. Once indicated period ends, without applicant retrieving file, Institute shall proceed to elimination and keep copy in electronic format.

Withdrawal of application or opposition shall not give right to reimbursement of fee paid.

### **Certificate of registration**

**Art. 126.-** If Institute proceeds to register mark, it shall issue to holder a certificate in physical or electronic format, containing following data:

- a) Full name of Institute.
- b) Name, corporate name or denomination and domicile of trademark holder. In case of several holders, percentage of co-ownership for each indicated.
- c) Indication of type of distinctive sign and number of inscription.
- d) Representation and/or description of distinctive sign.

- e) Complete enumeration of products and/or services mark distinguishes, indicating class to which they correspond; or as applicable, detail of object of protection of distinctive sign in question.
- f) Reservations made, as well as declarations on non-exclusivity.
- g) Date of inscription and expiration date.
- h) Place and date certificate extended.
- i) Seal and signature of registrar or any other means of electronic validation.

### **Rights conferred by registration**

**Art. 127.-** Registration of a mark confers on holder right to act against any third party who, without consent, performs any of following acts, including by electronic means:

- a) Reproduce, apply, adhere, or fix in any manner distinctive sign identical or similar to registered mark, on products for which same registered, or on packages, wrappers, packing, or conditioning of such products, or on products produced, modified, or treated by services for which mark registered.
- b) Suppress or modify mark for commercial purposes, after holder or authorized person applied, adhered, or fixed it on products referred to in preceding literal.
- c) Manufacture labels, packages, wrappers, packing, or other analogous materials reproducing or containing mark, as well as commercialize or appropriate such materials.
- d) Refill or reuse for commercial purposes packages, wrappers, or packing bearing mark.
- e) Use in commerce, sign identical or similar to mark for any product or service, when such use may cause confusion or risk of association with registration holder. If identical sign used for identical product or service, probability of confusion presumed.
- f) Publicly use sign identical or similar to mark, even for non-commercial purposes, when this may diminish distinctive force or commercial or advertising value of mark, or constitutes unfair advantage of prestige.
- g) In case of licensed products used by third parties, licensed products or signs of licensed marks, for purposes of commercial, advertising, or promotional association associating marks or establishments of third parties.
- h) Any act of analogous nature, including those performed in or by electronic means, affecting rights conferred on trademark holder.

Following acts, among others, shall be understood to constitute use of a sign in commerce:

- a) Introduce in commerce, sell, offer for sale, or distribute products or services with sign or referring to it.
- b) Import, export, store, or transport products with sign or referring to it.
- c) Use sign in advertising, publications, commercial documents, or written or oral communications, regardless of means in which performed.

### **Scope on trademark right**

**Art. 128.-** Trademark registration shall not confer right to prohibit third party from using following information on products in commerce:



- a) Their name or address, or those of their mercantile establishments.
- b) Indications or information on characteristics of products or services produced or distributed, among others, on quantity, quality, utilization, geographical origin, or price.
- c) Indications or information on availability, utilization, application, or compatibility of products or services produced or distributed, particularly regarding spare parts or accessories.

Limitations referred to in preceding paragraph shall operate provided use is made in good faith in exercise of lawful industrial or commercial activities and not capable of causing confusion on entrepreneurial provenance of products or services.

Trademark registration confers no right on holder to prohibit third parties from use of mark in products legitimately commercialized, in country, by holder or other person having holder's consent, provided these products and their packages have not suffered modifications, alterations, or deteriorations.

### **Rule of unprotected elements in distinctive signs**

**Art. 129.-** When requested sign composed of elements of common use, such as technical terms, generic expressions or roots, suffixes, and prefixes of common use, protection shall not extend to said elements, provided direct link exists between products, services, or object on which protection falls.

### **Indication of provenance of products**

**Art. 130.-** All products commercialized in country must clearly indicate place of production or manufacture of product, name of producer or manufacturer, and link or relationship between said producer or manufacturer and trademark holder used on product, when not same person. This is added without prejudice to labeling and consumer information norms applicable.

## **CHAPTER III**

### **PROCEDURES SUBSEQUENT TO TRADEMARK REGISTRATION**

#### **Common procedure for procedures subsequent to trademark registration**

**Art. 131.-** Procedures subsequent to trademark registration are following: correction or rectification, limitation, division, renewal, transfer, license of use, name change, domicile change, voluntary or judicial cancellation, preventive annotation, and embargo.

Application for any of said procedures must contain following:

- a) Name, corporate name or denomination, domicile, State or country of registration holder.
- b) Name and domicile of legal representative or proxy when application made through them, including accreditation of capacity with which acting and personality of represented party, in case of legal person.
- c) Proof of payment of established fee.
- d) Indication of registration number and inscription date of procedure as applicable.

e) Exact address or electronic means to receive notifications, place, date, and signature of registration holder or representative. Application for any procedures provided in present article may also be signed using other electronic mechanisms to verify authenticity of identity or personality of applicant and/or identity and capacity of legal representative or proxy.

Once requirements provided in this article met, as well as applicable to each type of procedure, as appropriate, Institute shall grant inscription and perform electronic margin notation with pertinent information.

As appropriate, Institute shall deliver to holder certificate accrediting procedure, which must contain minimum:

- a) Full name of Institute.
- b) Name, corporate name or denomination, domicile, State or country of trademark holder.
- c) Indication of distinctive sign and inscription number.
- d) Express indication of type of inscribed procedure.
- e) Date of renewal and expiration date, when dealing with trademark renewal.
- f) Name, corporate name or denomination, domicile, State or country of licensee, when dealing with license of use.
- g) List of products and/or services, with indication of class.
- h) Reservations, if any.
- i) Place and date.
- j) Seal and signature of registrar or any other means of electronic validation.

### **Correction and limitation of registration**

**Art. 132.-** Registration holder may request at any moment, modification to correct error, in which case application shall conform to procedures established for registration. Correction not admitted if implying essential change in mark or expansion of list of products or services covered by registration.

Registration holder may request at any moment, limitation of list of products or services covered by registration. If any right in favor of third party appears in trademark registration, sworn declaration granted by third party before notary necessary, giving consent for reduction or limitation. Application shall conform to procedures established for registration.

Registration correction or limitation application shall accrue fee established in this law, except in cases where correction consequence of Institute error, in conformity with Article 332 thereof.

### **Division of trademark registration**

**Art. 133.-** Registration holder may request at any moment, division of trademark registration to separate into two or more registrations products or services contained in list of initial registration. Each divided registration shall retain date of initial registration.

Division request shall accrue fee established in this law.

### **Vigency of registration and renewal**

**Art. 134.-** Trademark registration shall have validity of ten years, counted from date of inscription. Trademark holder shall have right to request renewal for equal periods. Can do so during validity or within grace period of six months, counted from day following expiration date of registration. In latter case, fee established by this law accrued, for untimely presentation of renewal.

Trademark registration renewal produces effects from day following expiration date of previous registration, even if renewal requested within grace period.

Trademark property right lapses by operation of law, when holder lets six-month period referred to in first paragraph of present article elapse, without requesting registration renewal.

### **Modification in renewal**

**Art. 135.-** Mark shall not be modified in registration during validity period nor when renewed. Neither can any change be introduced in mark nor expansion of list of products or services covered by inscription.

However, products or services comprised in registration renewed may be reduced or limited. For this, list of products or services detailing desired reduction or limitation must be included in renewal application, preceded by class number of International Classification of Goods and Services to which they belong in order of classes.

Renewal inscription shall mention any reduction or limitation effected in list of products or services mark distinguishes.

### **Transfer of mark**

**Art. 136.-** Right over registered or pending mark may be transferred by act inter vivos or transmitted by cause of death. For said transfer to have effects vis-à-vis third parties, it must be recorded in writing and inscribed in Institute. Said inscription shall accrue established fee. To inscribe transfer of right over registered or pending mark, application containing provisions of Article 131 of this law shall be presented to Institute and, additionally, following:

- a) Name, corporate name or denomination, domicile, State or country of holder and new owner.
- b) Title by which change of ownership verified.
- c) Printed or electronic document accrediting trademark transfer.

Trademark transfer application may be presented by holder or new owner simultaneously or by any of parties.

### **Free transfer of mark**

**Art. 137.-** Transfer of right over mark may be done independently of company or part of company of right holder and regarding one, some, or all products or services for which mark inscribed. When transfer limited to one or some products or services, registration shall be divided and new one opened in name of new owner.

### **Transfer of marks together with company**

**Art. 138.-** Transfer of company comprises transfer of right over any mark that is element of company, unless express agreement exists stating contrary.

### **Trademark use license**

**Art. 139.-** Holder of right over registered mark may grant license to use mark. Use license contract shall have effects vis-à-vis third parties without need for registration and shall not be subject of publication.

However, licensee may request Institute inscription of license, solely to make it public knowledge.

Except if stipulated contrary in contract, licenses shall be applicable to following provisions:

- a) Licensee shall have right to use mark during entire registration validity, including renewals in country territory and regarding products or services for which mark registered.
- b) Licensee cannot assign license nor grant sublicenses.
- c) Licensor can grant other licenses in country for same mark and same products or services, and can use mark themselves in country regarding those products or services.

If stipulated in foreign mark license contract, licensee may prevent imports of counterfeit products that, being covered by mark object of license, intended to be introduced to country for commercial purposes.

Likewise, mark owner may prevent sale of those products that, due to condition of surplus or irregular qualities of production of exports contracted exclusively towards companies outside area, are sold in Salvadoran market without authorization of mark owner.

### **Inscription of use license or franchise**

**Art. 140.-** To inscribe license of use of registered mark, application containing provisions of Article 131 of this law shall be presented to Institute and, additionally, following:

- a) Name, corporate name or denomination, domicile, State or country of licensor.
- b) Name, corporate name or denomination, domicile, State or country of licensee.
- c) Document in which license stated.

Application may be prepared by licensor and licensee jointly, or by one of parties.

In pertinent matters, franchise contracts shall be governed by provisions of use licenses.

### **Modification or cancellation of use license**

**Art. 141.-** Modification or cancellation of registered use license shall be inscribed in Institute, following corresponding procedure. This service shall accrue payment of fee established in this law.

Documents accrediting modification or cancellation of use license or, as applicable, declaration of modification or cancellation of license signed by both holder and licensee must be annexed to application.

### **Change of name and domicile of holder**

**Art. 142.-** To inscribe change of name or domicile of holder of registered mark, application containing provisions of Article 131 of this law shall be presented to Institute.

Resolution signed and sealed by registrar shall be delivered to trademark holder, stating corresponding marginal annotation made.

These services shall accrue fee established in this law.

### **Voluntary cancellation of registration at request of holder**

**Art. 143.-** Trademark registration holder may at any time request cancellation from Institute. Cancellation application shall accrue fee established in this law.

If any right in favor of third party appears in trademark registration, sworn declaration granted by third party before notary necessary, giving consent for cancellation.

## **CHAPTER IV**

### **TERMINATION OF TRADEMARK REGISTRATION**

#### **Nullity of registration for intrinsic reasons**

**Art. 144.-** If trademark registration effected in contravention of any prohibition provided in Article 111 of this law, any interested person may request nullity of inscription before competent judge. Foregoing shall be effected prior hearing of trademark registration holder, in conformity with Article 333 of this law.

When causes of nullity only existed regarding one or some products or services for which mark registered, nullity shall be declared only for those products or services, and they shall be eliminated from respective list in trademark registration.

Margin notation of nullity in terms mentioned in preceding paragraph shall be performed, after sixty business days elapsed, counted from day following notification of act exhausting administrative way.

#### **Cancellation due to generalization of mark**

**Art. 145.-** If name of mark became generic name of one or several products or services for which registered, cancellation of registration or limitation of scope may be requested. Request may be made by any interested person and Institute, through superior hierarchical of auxiliary registrar, shall perform actions, by means of reasoned written resolution.

Mark understood to have become generic name when, in commercial media and for public, said mark lost distinctive character as indication of entrepreneurial origin of product or service to which applied.

For these purposes, following assumptions regarding that mark must concur:

- a) Absence of other suitable name to designate in commerce product or service to which mark applied.
- b) Generalized use of mark as common or generic name of respective product or service by public and in commercial media.

c) Public ignorance of mark as distinctive sign of specific entrepreneurial origin.  
Procedure shall be developed in regulation.

### **Nullity of registration for extrinsic reasons**

**Art. 146.-** If trademark registration effected in contravention of any prohibition provided in Article 112 of this law, any interested person may request nullity of inscription before competent Judge, same proceeding when request also concurs any prohibition provided in Article 111 of same law. Foregoing shall be effected prior hearing of trademark registration holder, in conformity with Article 333 of this law.

Nullity application must be submitted within five years following date of registration requested to be impugned. Nullity action shall not prescribe when impugned registration effected in bad faith.

Also considered cause of nullity that distinctive sign requested to consolidate or perpetrate act of unfair competition.

Likewise, interested party may accumulate right revendication action, requesting transfer of mark registered by third party in bad faith.

### **Cancellation of registration for lack of use**

**Art. 147.-** In case mark not used in El Salvador for five consecutive years, any person with proven legitimate interest may request cancellation from competent Judge. Foregoing shall be effected prior hearing of trademark registration holder, in conformity with Article 333 of this law. Cancellation cannot be requested during five years following date of trademark registration.

If after five years provided in preceding paragraph elapse, mark cancellation not requested, and holder starts making use of it for three consecutive months, cancellation of trademark registration cannot be requested by third party, provided started to be used at least 3 months before cancellation requested.

When lack of use refers only to one or some products or services for which mark registered, registration cancellation shall apply only for such products or services.

Trademark registration shall not be cancelled for lack of use, when due to impediment for just cause, arising from force majeure or fortuitous event, placing holder in impossibility of trademark use, including restrictions on import or other official requirements imposed on products or services protected by mark.

### **Use of mark**

**Art. 148.-** Registered mark understood to be in use, when products or services it distinguishes have been placed in commerce and are available in quantity and manner normally corresponding, taking into account market dimension, nature of products or services in question and modalities under which commercialization effected. Also constitutes use of mark, employing it with products destined for export from national territory or with services provided abroad from national territory.

Registered mark must be used in commerce as appearing in registration. However, if mark used in mode differing from that appearing in registration, only in details or non-essential elements and not altering identity of mark, shall not be reason for registration cancellation nor diminish protection conferred. Use of mark by licensee or other authorized person shall be considered as effected by registration holder, for effects relative to mark use.

### **Cancellation for lack of use as defense**

**Art. 149.-** Registration cancellation for lack of use, may also be used as defense against registration objection, third-party opposition to trademark registration, request for declaration of registration nullity or action for infringement of registered mark. In these cases, cancellation shall be resolved by competent Judge.

Person obtaining favorable resolution in cancellation case for lack of use shall have preferential right to trademark registration. This right may be invoked, starting from filing date of cancellation application and until within three months following date cancellation resolution becomes final.

### **Proof of trademark use**

**Art. 150.-** Trademark holder shall be one who must prove mark is in use. This may be accredited by means such as commercial invoices, accounting documents or audit certifications, demonstrating regularity and quantity of commercialization of merchandise identified with mark, or any other demonstrating mark used.

Also constitutes use of mark its advertising promotion by any means, physical or electronic, even if identified products or services not being commercialized in country.

## **CHAPTER V OTHER DISTINCTIVE SIGNS**

### **Applicable provisions**

**Art. 151.-** Trademark chapter provisions shall be applicable to other distinctive signs, subject to special provisions for each sign, particularly regarding procedures, validity, renewal, termination, and registration modification.

## **SECTION ONE COLLECTIVE MARKS**

### **Collective trademark registration application**

**Art. 152.-** Registration application for collective mark must indicate its object is collective mark and include copy of its use regulations.

Collective mark use regulations must specify common characteristics or qualities common to products or services for which mark will be used, conditions and modalities under which mark may be employed, and persons entitled to use it. Must also include provisions



conductive to ensuring and controlling mark used according to use regulations and sanctions in case of non-compliance with regulations.

When collective mark includes geographical indication, use regulations must provide that any person whose products or services originate from that geographical zone and meet conditions prescribed in regulations may make use of mark.

### **Examination and registration of collective mark**

**Art. 153.-** Examination of collective trademark registration application shall include verification of requirements of Articles 111, 112, and 152 of this law. Collective marks shall be inscribed in Institute. Likewise, copy of mark use regulations shall be included in inscription.

Collective trademark holder shall communicate to Institute any change introduced in use regulations. Modification of use regulations shall take effect from inscription in Institute and accrue payment of established fee.

### **License of collective mark**

**Art. 154.-** Collective mark cannot be object of use license in favor of persons other than those authorized to use mark according to its use regulations.

### **Use of collective mark**

**Art. 155.-** Collective trademark holder may use mark themselves, provided also used by persons authorized to do so, in conformity with mark use regulations.

Use of collective mark by persons authorized to use it shall be considered effected by holder.

### **Nullity of collective trademark registration**

**Art. 156.-** Collective trademark registration nullity action shall proceed in any of following cases:

- a) If mark registered in contravention of Articles 111, 112, or 152 of this law.
- b) If mark use regulations contrary to morality or public order.

Nullity may be requested before competent Judge, by any interested person and prior hearing with trademark registration holder shall be necessary.

### **Cancellation of collective mark**

**Art. 157.-** Collective trademark registration cancellation action shall proceed in any of following cases:

- a) If for more than one year collective mark used only by holder and not by persons authorized according to mark use regulations.
- b) If collective trademark holder uses or allows mark use in manner contravening provisions of use regulations, or in manner capable of deceiving commercial media or public regarding origin or any other characteristic of products or services for which mark used.

Cancellation may be requested before competent Judge, by any interested person and prior hearing with trademark registration holder shall be necessary.

## **SECTION TWO CERTIFICATION MARK**

### **Certification trademark ownership**

**Art. 158.-** State, Municipalities or private or public law institutions, national, regional or international, competent to perform quality certification activities, may be holder of certification mark.

### **Formalities for registration**

**Art. 159.-** Certification trademark registration application must be accompanied by mark use regulations, fixing characteristics guaranteed by presence of mark and manner in which quality control exercised before and after authorizing mark use.

Use regulations shall be prepared by private or public entity or institution, within scope of competences, and presented in form arranged previously, to verify adequacy to provisions of this law.

Provision in preceding paragraph shall also apply when modifications to mark use regulations exist.

Changes in mark use regulations shall be inscribed in Institute upon payment of fee established in this law and take effect from inscription.

### **Registration validity**

**Art. 160.-** If certification trademark registration holder is State or Municipalities, registration shall have indefinite validity. If certification trademark holder is private law person, registration shall have validity of ten years, counted from inscription date and may be renewed in same manner as marks.

Certification trademark registration may be cancelled at any time at holder's request.

### **Use of certification mark**

**Art. 161.-** Certification trademark holder shall authorize mark use to any person whose product or service, as case may be, meets conditions established in mark use regulations. Certification mark cannot be used for products or services produced, provided, or commercialized by mark holder themselves.

### **Encumbrance and alienation of certification mark**

**Art. 162.-** Certification mark, by nature, cannot be object of any encumbrance, embargo, or other precautionary measure or judicial execution.

Certification mark can only be transferred with registration holder entity. In case of dissolution or disappearance of holder entity, certification mark may be transferred to another suitable entity.

For said transfer to have effects vis-à-vis third parties, must be recorded in writing and inscribed in Institute. Said inscription shall accrue fee established in this law.

### **Reservation of extinguished certification mark**

**Art. 163.-** Certification mark whose registration expired, annulled, cancelled, or ceased use due to dissolution or disappearance of holder, cannot be used nor registered as distinctive sign for ten years, counted from annulment, expiration, dissolution, or disappearance.

## **SECTION THREE**

### **EXPRESSIONS OR SIGNALS OF COMMERCIAL ADVERTISING**

#### **Prohibitions to registration**

**Art. 164.-** Expression or signal of commercial advertising included in any of following cases cannot be registered:

- a) Comprised in any prohibition provided in literals c), d), g), h), i), j), k), l), and m) of Article 111 of this law.
- b) Equal or similar and capable of causing confusion with another already registered or pending registration.
- c) Including third-party distinctive sign without due authorization.
- d) Whose use in commerce susceptible of causing confusion regarding products, services, company, or establishment of third party.
- e) Comprised in any prohibition provided in literals d), e), f), g), h) and i) of Article 112 of this law.

#### **Scope of protection**

**Art. 165.-** Protection conferred by registration of expression or signal of commercial advertising, covers expression or signal as whole and does not extend to parts or elements considered separately.

Marks and trade names may form part of expression or signal of commercial advertising, provided registered or pending registration in favor of same holder.

#### **Registration term and renewal**

**Art. 166.-** Registration of expression or signal of commercial advertising shall have validity of ten years from inscription date. May be renewed indefinitely for successive ten-year periods, counted from last expiration date, provided mark or trade name referenced is valid.

Expressions or signals of commercial advertising registered before validity of this law shall remain valid for period lacking to complete ten years of registration, counted from inscription date. This special validity cannot be less than two years.

### **Registration procedure for expressions or signals of commercial advertising**

**Art. 167.-** Registration of expression or signal of commercial advertising, transfer, name change or domicile change of holder, license, and annulment shall be effected following procedures established for trademark registration and accrue fee established in this law.

Likewise, Institute shall examine if expression or signal of commercial advertising contravenes provisions of Article 164 of this law.

## **SECTION FOUR TRADE NAME AND EMBLEM**

### **Acquisition of right over trade name**

**Art. 168.-** Exclusive right over trade name acquired by first public use, continuous and in good faith in commerce and solely for mercantile turn or activity of company or establishment identified.

Exclusive right over trade name ends with extinction of company or establishment using it.

If company has more than one establishment, may identify them with trade name.

### **Inadmissible trade names**

**Art. 169.-** Trade name cannot consist, totally or partially, of designation or other sign contrary to morality or public order, or capable of causing confusion in commercial media or public, regarding identity, nature, activities, commercial turn, or any other aspect of company or establishment identified with that trade name, or regarding entrepreneurial provenance, origin, or other characteristics of products or services company produces or commercializes.

### **Trade name protection**

**Art. 170.-** Trade name holder shall have right to act against any third party who, without consent, uses in commerce distinctive sign identical to protected trade name or distinctive sign similar capable of causing confusion or association with holder's company or products or services.

### **Trade name registration**

**Art. 171.-** Trade name holder may request inscription in Institute. Registration shall have declarative character and constitute presumption of property in favor of holder.

Trade name registration shall have validity of ten years counted from registration date and be renewable for equal periods. To renew, use during validity of expired or soon-to-expire registration must be accredited.

Trade names registered before validity of this law shall remain valid for period lacking to complete ten years of registration counted from inscription date. This special validity cannot be less than two years.

Registration may be cancelled at any moment at holder's request. In case of lack of use of trade name, process established in this law for trademark cancellation for lack of use shall apply, as compatible.

Trade names are autonomous from denominations or corporate names of legal persons, and both can coexist.

### **Trade name registration procedure**

**Art. 172.-** Trade name registration, name change or domicile change of holder, modification and cancellation shall be effected following procedures established for trademark registration, as applicable, and accrue fee established in this law.

Likewise, Institute shall examine if trade name contravenes provisions of Article 169 of this law.

Classification of products and services used for marks shall not be applicable to trade name registration.

### **Transfer of trade name**

**Art. 173.-** Trade name can only be transferred together with company or establishment employing trade name, or with part of company or establishment employing it. Likewise, trade name transfer application may indicate that part of company transferring is distinctive sign itself.

Transfer of registered or pending trade name shall be inscribed in Institute, according to procedure applicable to trademark transfer, as applicable, and accrue same fee established in this law.

### **Protection of emblem**

**Art. 174.-** Protection and registration of emblems shall be governed by provisions regulated in present section.

## **SECTION FIVE GEOGRAPHICAL INDICATIONS AND APPELLATIONS OF ORIGIN**

### **Utilization of geographical indications and appellations of origin**

**Art. 175.-** Geographical indications and appellations of origin may not be used in commerce for product or service, when such indication false or misleading regarding origin or geographical environment of product or service or when use may induce public to confusion regarding origin, provenance, characteristics, or qualities of product or service.

Neither permitted to use them in commerce, even when indicating true origin of product or using geographical indication translated or accompanied by expressions such as "class", "type", "style", "imitation" or other analogues.

Use continued and similar of geographical indication for goods or services shall not be prevented, by any Salvadoran person or domiciled in country, who used that geographical indication in good faith and continuously regarding same products or services, or other related, in Republic territory, on date established by International Treaties to which El Salvador is party.

### **Utilization in publicity**

**Art. 176.-** Geographical indication or appellation of origin giving rise to error or confusion regarding geographical provenance of such products or services may not be used in publicity nor commercial documentation for sale, display, or offer of products or services.

### **Indications relative to merchant**

**Art. 177.-** Every merchant may indicate their name or domicile on products sold, even when these come from different country, provided name or domicile presented accompanied by precise indication, and in sufficiently prominent characters, of country or place of manufacture or production of products, or other sufficient indication to avoid any error regarding true origin thereof.

### **Registration of geographical indications and appellations of origin**

**Art. 178.-** Protection of geographical indications and appellations of origin in country originates from inscription in Institute.

State of El Salvador shall be holder of national geographical indications and appellations of origin. Ownership of foreign geographical indications and appellations of origin registered in country shall be determined by established in law governing in country of provenance.

Registrations of geographical indications and appellations of origin may be requested by one or several producers, manufacturers, or artisans, having production or manufacturing establishment in region or locality corresponding to indication or denomination, whether personally or through any type of association. Competent authorities shall have equal faculty.

Foreign producers, manufacturers, or artisans, as well as foreign competent authorities, may request registration of foreign appellations of origin or geographical indications, provided these protected in country of origin.

### **Prohibitions for registration of geographical indications and appellations of origin**

**Art. 179.-** A sign may not be registered as geographical indication or appellation of origin:

- a) Not conforming to definitions of geographical indication or appellation of origin corresponding, of Article 3 of this law.
- b) Contrary to good customs, morality, or public order, or capable of inducing public to error regarding geographical provenance, nature, mode of manufacture, characteristics or qualities, or aptitude for employment or consumption of respective products.



c) Being common or generic denomination of some product, considering denomination common or generic when considered such, both by experts of that type of product, and by general public.

d) Found in any cases established in Article 112 of this law.

Geographical indication or appellation of origin may be registered accompanied by generic name of respective product or expression related to that product, but protection shall not extend to generic name or expression employed.

### **Registration application**

**Art. 180.-** Registration application for geographical indication or appellation of origin shall indicate:

a) Name, corporate name or denomination, domicile, State or country of applicant or applicants, indicating place where production or manufacturing establishments located.

b) Name and domicile of legal representative or proxy, when application made through them.

c) Geographical indication or appellation of origin whose registration requested.

d) Geographical zone of production to which geographical indication or appellation of origin refers.

e) Products for which geographical indication or appellation of origin used.

f) Review of essential qualities or characteristics of products for which geographical indication or appellation of origin used.

g) Proof of payment of presentation fee established in this law.

h) Exact address or electronic means to receive notifications.

i) Place, date, and signature of applicant or representative. Can also be signed using other electronic mechanisms to verify authenticity of identity or personality of applicant or identity of legal representative or proxy.

When dealing with foreign geographical indication or appellation of origin, regardless of protection system in place of origin, application must be accompanied by certification of registration or proof accrediting protection in place of origin, issued by authority granting said registration or protection. Need not be legalized, according to established in Conventions and International Treaties to which El Salvador is party.

If documentation referred to in preceding paragraph expresses information referred to in literals d), e) and f) of present article, this information may be omitted in application. If same foreign holder possesses several geographical indications or appellations of origin, single application for all may be presented, provided requirements established in literals a), c), d), e) and f) of present article met, for each indication or denomination requested.

Registration application shall accrue fee established in this law, applied for each geographical indication or appellation of origin requested.

### **Registration procedure**

**Art. 181.-** Geographical indication or appellation of origin application shall be examined with object of verifying:

a) Elements justifying:

1. Link between determined quality, reputation, or other characteristic of product and geographical origin, in conformity with Article 3 number 36 of this law.

2. Link between quality or characteristics of product and geographical environment, in conformity with Article 3 number 37 of this law.

b) Compliance with requirements of Article 180 of this law and,

c) Indication or denomination whose registration requested not comprised in any prohibition provided in Article 179 first paragraph of this law.

Procedures relative to examination, publication, opposition, and registration of geographical indication or appellation of origin, shall be governed by provisions on trademark registration, contained in this law. When application covers more than one geographical indication or appellation of origin, single publication containing all may be performed.

### **Granting of registration**

**Art. 182.-** Resolution granting registration of geographical indication or appellation of origin and corresponding inscription, shall indicate:

a) Delimited geographical zone of production, whose producers, manufacturers, or artisans shall have right to use indication or denomination.

b) Products to which geographical indication or appellation of origin applies.

c) Essential qualities or characteristics of products to which geographical indication or appellation of origin applied.

In case of foreign geographical indications or appellations of origin, operators established in delimited geographical zone shall have right to use name, provided product meets corresponding specifications and submits to control system issued for such purpose by public or private entities of country of origin administering them. Said right of utilization shall not be contingent on prior registration of user with Institute.

Public or private entities representing beneficiaries of geographical indications or appellations of origin, or those designated for purpose, shall dispose of mechanisms allowing effective control of use of protected geographical indications or appellations of origin.

### **Duration and modification of registration**

**Art. 183.-** Registration of geographical indication or appellation of origin shall have indefinite duration and be determined by subsistence of conditions motivating it.

Registration of geographical indication or appellation of origin may be modified at any time, when changing any point referred to in Article 182 and subject to procedure provided for registration of geographical indications or appellations of origin, as applicable.

Modification of registration shall accrue fee established in this law.

### **Authorization of use**

**Art. 184.-** Natural or legal persons interested in using geographical indication or appellation of origin, must request authorization of use from administration organ, in conformity with requirements and procedures established in use and administration regulations.

Only producers, manufacturers, or artisans authorized to commercially use registered appellation of origin or geographical indication may employ expression "appellation of origin" or "geographical indication".

Authorization to use geographical indication or appellation of origin shall have validity of ten years, counted from date granted and may be renewed for equal periods.

### **Use and administration regulations**

**Art. 185.-** Registration application for geographical indication or appellation of origin must be accompanied by use and administration regulations. This must contain at least:

- a) Requirements producers, manufacturers, or artisans must meet to obtain use authorization and procedure applicable to respective applications.
- b) Rights and obligations of persons authorized to use geographical indication or appellation of origin.
- c) Delimited geographical zone of production, whose producers, manufacturers, or artisans shall have right to use indication or denomination.
- d) Products to which geographical indication or appellation of origin applies.
- e) Essential qualities or characteristics of products to which geographical indication or appellation of origin applied.
- f) Control mechanisms applied to ensure proper use of geographical indication or appellation of origin.
- g) Design to use on products designated with geographical indication or appellation of origin, if any.
- h) Sanctions applicable for improper or unauthorized use of geographical indication or appellation of origin.
- i) Conformation, functions, and other attributions of administration organ, not regulated in law.

Use regulations must provide that any person whose products or services originate from that geographical zone and meet conditions prescribed in regulations, may make use of geographical indication or appellation of origin, according to same.

Registration application for geographical indication or appellation of origin not accompanied by use and administration regulations shall not be denied. Applicant shall have period of six months, counted from presentation of registration application, to comply with this requirement.

### **Administration organ**

**Art. 186.-** Administration organ shall be collegiate and mixed entity, conformed by representatives of producers, manufacturers, or artisans and executive branch, in branches of Economy, Agriculture and Livestock and Salvadoran Institute of Intellectual Property.

Administration organ shall be responsible for administering, defending, promoting, and controlling geographical indications or appellations of origin, in conformity with established in use and administration regulations.

Director or president of administration organ, shall exercise attributions signaled by this law or any other, as well as use and administration regulations, and necessary for administration, good direction, and defense of geographical indication or appellation of origin.

### **Suspension of use authorization**

**Art. 187.-** At request of interested party or ex officio, administration organ may suspend use authorization granted, prior hearing, to any beneficiary, for using it contrary to established in use and administration regulations.

### **Cancellation of use authorization**

**Art. 188.-** Use authorization of geographical indication or appellation of origin may be cancelled, prior hearing, in following cases:

- a) Upon expiration of validity period of authorization, without renewal.
- b) When holder voluntarily renounces authorization.
- c) When producer, manufacturer, or artisan uses it in form threatening or causing disrepute to geographical indication or appellation of origin.
- d) When any other reasons established in use and administration regulations occur.

### **Impossibility of declaring generic**

**Art. 189.-** Geographical indications and appellations of origin protected according to provisions in this law, shall not be considered common or generic to distinguish product they designate, while said protection subsists in country of origin.

### **Annulment of registration**

**Art. 190.-** If geographical indication or appellation of origin comprised in any prohibition provided in Article 179 of this law, any interested person may request registration nullity before competent Judge. This shall be declared if alleged proven.

If geographical indication or appellation of origin used in commerce in manner not corresponding to indicated in respective inscription, according to Article 182, first paragraph of this law, any interested person may request registration cancellation before competent Judge. This shall be declared if alleged proven.

## **CHAPTER VI COMMON NORMS FOR MARKS AND DISTINCTIVE SIGNS**

### **Representation**

**Art. 191.-** Interested parties may appear in procedure, personally or through legal representative or proxy, according to established by Law of Administrative Procedures. If proxy is lawyer, must be Salvadoran lawyer.

Not necessary to present power of attorney, appointment, or credential previously registered, when pursuing proceedings before Institute; mention in application of registration entry of document legitimizing capacity shall suffice.

In serious and urgent cases, qualified by registrar, representation of ex officio agent, being a lawyer, may be admitted, to give sufficient guarantee, also qualified by said official, to answer for results of matter if interested party does not approve done in their name.

### **Grouping of requests**

**Art. 192.-** Inscription of transfers of ownership of two or more pending applications or two or more registrations may be requested through single request, when transferor and acquirer same in all. This provision shall apply, as pertinent, to inscription of use licenses of registered or pending distinctive signs, as applicable; as well as name, corporate name or denomination and domicile changes.

Whoever wishes to modify or correct two or more registrations or pending registration applications may request in single request, provided modification or correction same for all.

For purposes of provisions in preceding paragraphs, petitioner must identify each application or registration where modification, correction, or inscription made.

Corresponding fees shall be calculated based on number of applications or registrations involved.

### **Effects of declaration of nullity**

**Art. 193.-** Effects of declaration of nullity of registration shall be retroactive to date of respective registration, although conditions or exceptions established in resolution declaring nullity shall apply.

When nullity of registration granted use license declared, licensor exempted from returning payments made by licensee, unless licensee did not benefit from license.

### **Classification of products and services**

**Art. 194.-** To classify products and services for which marks registered, international classification of goods and services for registration of marks applied, according to treaties, conventions, or arrangements administered by World Intellectual Property Organization.

When doubt over class in which product or service located, resolved by Institute.

Products or services not considered necessarily similar solely by appearing in same class of classification referred to in first paragraph of this article.

Products or services not considered necessarily distinct solely by appearing in different classes of classification referred to in first paragraph of this article.

### **Petition for preventive annotation**

**Art. 195.-** Preventive annotation may be requested by:

a) One demanding in court nullity of inscription or ownership or use license of mark, or ownership of trade name, emblem, or expression or signal of commercial advertising. In this case, competent Judge shall issue corresponding communication, provided title with which plaintiff intends to justify right appears in records.

b) One in whose favor domain of mark or domain of trade name, emblem, or expression, or signal of commercial advertising transferred, if instrument by virtue of which transfer made lacks some remediable legal formality preventing definitive inscription of right.

In both cases, registrar shall place on margin of corresponding entry indication of volume and folio of Book of Preventive Annotations or number of file where annotation inscribed. Said inscription shall accrue fee established in this law.

## **CHAPTER VII PATENTS OF INVENTION**

### **Types of patents**

**Art. 196.-** Patents shall be granted for inventions, whether product or procedure, in all fields of technology.

Patent may only comprise one invention or group of inventions related to each other forming single inventive concept.

### **Matter excluded from protection**

**Art. 197.-** Matter not conforming to definition of Article 3, number 45 of this law considered not invention, and therefore excluded from patent protection.

In particular, following cannot be object of patent of invention:

- a) Discoveries, scientific theories, and mathematical methods.
- b) Plans, principles, or methods for doing business, for purely intellectual acts, or in gaming matters.
- c) Surgical, therapeutic, or diagnostic treatment methods, applicable to human or animal body; except products intended to put into practice any of these methods.
- d) Animal breeds or essentially biological processes for production of plants and animals, distinct from microbiological processes.
- e) Exclusively aesthetic creations.
- f) Inventions whose commercial publication or exploitation would be contrary to public order or morality. Exploitation of invention not considered contrary to public order or morality solely because prohibited or limited by legal or administrative provision.
- g) Products or procedures already patented by fact of attributing different use to comprised in original patent.

### **Right to patent of invention**



**Art. 198.-** Right to patent shall belong to inventor. If several persons make invention jointly, right to patent shall belong to all. Registration application must state percentage of right corresponding to each inventor.

Right to patent can be transferred by act inter vivos or transmitted by succession.

If several persons make same invention independently, patent granted to one first presenting patent application or claiming priority of earliest date, in conformity with Article 257 of this law.

### **Inventions effected in execution of contract**

**Art. 199.-** When invention realized in compliance or execution of work or service contract, or employment contract, right to patent for that invention belongs to person contracting work or service, or employer, as appropriate, unless otherwise disposed in contract.

When invention has economic value much greater than parties could have reasonably foreseen at time of concluding contract, inventor has right to special remuneration, fixed by competent Judge if no agreement between parties. Inventor may request competent Judge improvement in remuneration, if personal contribution to invention and importance thereof for entrepreneur, evidently exceed explicit or implicit content of contract or employment relationship.

### **Inventions effected by non-inventor employee**

**Art. 200.-** If worker not obliged by employment contract to exercise inventive activity, realizes invention in field of activities of employer or using data or means accessed by employment, right to patent belongs to worker, subject to following provisions:

a) If patent obtained by worker for said invention exploited by them directly, must pay employer compensation for utilization of data or means accessed by employment and thanks to which invention realized. If no agreement between parties, compensation fixed by competent Judge.

b) If right to patent, patent application, or patent granted for said invention object of assignment or license contract, employer shall have preference to acquire such rights. In this case, worker must notify employer, who must exercise preference right and communicate decision to worker, within thirty business days following date of notification.

Any contractual provision less favorable to inventor than provisions of present article held as not written.

### **Requirements of invention to be patentable**

**Art. 201.-** Patent of invention susceptible of registration, when referring to non-excluded matters, possessing novelty, inventive step, and industrial application.

### **Novelty**

**Art. 202.-** Invention is novel, when not existing previously in state of the art.

State of the art comprises everything disclosed or made accessible to public on subject, anywhere in world, by diverse means, such as tangible publication, oral disclosure,

commercialization, use, or any other means, before filing date of patent application in El Salvador or, where applicable, before filing date of foreign application whose priority claimed.

Also comprised within state of the art, content of application pending before Institute, whose filing date or, where applicable, priority date earlier than that of application being examined, but only to extent that content included in earlier date application, when published.

To determine loss of novelty, disclosure occurring within year preceding filing date of application in country or, where applicable, within year preceding date of application whose priority claimed, shall not be taken into consideration, provided such disclosure resulted directly or indirectly from acts performed by inventor themselves or successors, or abuse of trust, breach of contract, or illicit acts committed against any of them.

Publication performed by Industrial Property Office of patent application presented by one having no right or performed improperly does not imply loss of novelty.

### **Inventive step**

**Art. 203.-** Invention has inventive step if, for person skilled or expert in corresponding technical matter, invention not obvious nor derived in evident manner from pertinent state of the art.

Regarding state of the art, provisions of Article 202 shall apply.

### **Industrial application**

**Art. 204.-** Invention susceptible of industrial application when object can be produced or used in any type of industry. For these purposes, expression "industry" understood in broadest sense and includes, among others, agriculture, mining, fishing, construction, and service provision.

### **Term of validity**

**Art. 205.-** Patent has duration of twenty non-extendable years, counted from filing date of application in El Salvador.

Twenty-year term of patent validity may be longer only in following cases:

- a) When, due to causes attributable to Institute, delay in granting patent registration exceeds five years, counted from filing date of patent registration application.
- b) When, due to causes attributable to Institute, delay in granting patent registration exceeds three years, counted from filing date of substantive examination application.
- c) When, due to causes attributable to competent authority for granting registrations for commercialization of pharmaceutical products, delay in granting registration exceeds five years, counted from filing date. Provision in this literal applied only in case patent of product registered in El Salvador exists and protection term valid.

Whoever wishes protection term extended as described, must request to Institute, determining end date.

In these cases, Institute shall apply following rule:

a) For cases of literals a) and c) of second paragraph of present article, each day of delay counted from first day of sixth year added to patent protection term.

b) For cases of literal b) of second paragraph of present article, each day of delay counted from first day of fourth year added to patent protection term.

In no case validity of patent protection referred to in preceding literals, shall exceed five hundred fifty days.

Request must be filed before superior hierarchical of auxiliary registrar resolving patent concession.

Interested party may recur before competent Judge in case provision in this article not applied.

### **Annual fees**

**Art. 206.-** To maintain patent or pending patent application valid, annual fees must be paid. Payments made before commencing corresponding annual period. First annual fee paid before commencing second year counted from filing date of patent application. Two or more annual fees may be paid in advance.

Grace period of six months granted for payment of annual fee, upon payment of established surcharge. During grace period, patent or patent application maintains validity.

Failure to pay any annual fee in conformity with provisions in present article produces by operation of law lapse of patent or patent application.

### **Rights granted to invention patent holder**

**Art. 207.-** Patent confers on holder right to prevent third persons from exploitation of patented invention. Therefore, and without prejudice to limitations provided in this law, patent holder shall have right to act against person performing any of following acts without consent:

a) When patent granted for product:

1. Manufacture product.

2. Offer for sale, sell, or use product; import or store for any of these purposes; as well as prevent transit of product through national territory.

b) When patent granted for procedure:

1. Employ procedure.

2. Execute any acts indicated in literal a) on product obtained directly from procedure.

### **Scope on patent right**

**Art. 208.-** Patent gives no right to prevent:

a) Acts performed in private sphere and for non-commercial purposes not unjustifiably attacking normal exploitation of invention holder can perform or performs.

b) Acts performed exclusively for experimental purposes on patented invention not unjustifiably attacking normal exploitation of invention holder can perform or performs.

- c) Acts performed exclusively for teaching or scientific or academic research purposes not unjustifiably attacking normal exploitation of invention holder can perform or performs.
- d) Commercialization or use of product after legally placed for first time in commerce in country.
- e) Acts referred to in Article 5 of Paris Convention for Protection of Industrial Property.
- f) Good faith use during time comprised between grace period and final act granting rehabilitation of patent or pending patent application lapsed.

### **Bolar exception**

**Art. 209.-** Rights conferred by patent currently valid, cannot be enforced against utilization by third party of matter object of protection to generate necessary information, to support sanitary registration application of pharmaceutical product before Superintendence of Sanitary Regulation, or equivalent, or in case of agricultural chemical product before Ministry of Agriculture and Livestock, application authorized once patent protection term expires; and in case product exported outside national territory, said export permitted solely to satisfy commercialization approval requirements in El Salvador.

### **Right of prior use of invention**

**Art. 210.-** Rights conferred by patent cannot be enforced against person who, in good faith and before filing date or, where applicable, priority of corresponding patent application, was already in country producing product or using procedure constituting invention.

That person shall have right to continue producing product or using procedure as doing. This right can only be assigned or transferred with company or establishment where performed.

This exception not applicable if person wishing to avail of invention gained knowledge thereof by illicit act.

## **CHAPTER VIII PROCEDURE FOR GRANTING PATENT OF INVENTION**

### **General rules**

**Art. 211.-** To obtain patent of invention, application must be submitted to Institute, complying with requirements provided in this law and other applicable provisions in matter.

File of patent application confidential until moment of publication, according to Article 223 of this law.

### **Invention patent application**

**Art. 212.-** Patent may be requested directly by inventor or successor, or through legal representative or proxy, in writing and drafted in Spanish language. If proxy is lawyer, must be Salvadoran lawyer.

Patent applicant can be natural or legal person. If applicant not inventor, must annex documentation justifying right to obtain patent to application, to be added within period of two months counted from day following notification of requirement. If documentation not presented within mentioned period, application deemed lapsed.

When several persons patent holders, common representative must be designated in application. If not done, understood common representative is first person named.

### **Documents in other language**

**Art. 213.-** Documents presented in different language must be accompanied by respective simple translation. If translation to Spanish not presented, must be added within period of two months counted from filing date of application. In case of not presenting translation, patent application lapses.

### **Inventive unity**

**Art. 214.-** Patent application must refer to single invention or group of inventions conforming single inventive concept.

If application refers to group of inventions, unity of invention requirement satisfied, when relation exists between them in function of essential technical characteristics constituting contribution to state of the art.

Applicant may divide application into two or more fractional applications, but no fractional application may expand disclosure contained in initial application.

Each fractional application shall have filing date of initial application, but accrue rights established in this law for presentation of patent application and payment for initial application computed as credit.

### **Invention on biological material**

**Art. 215.-** If invention refers to biological material not accessible to public or use thereof, and cannot be described in patent application, description considered sufficiently clear and complete when meeting following requirements:

- a) Biological material deposited no later than filing date of patent application in recognized institution, according to International Treaties. International deposit authorities acquiring such character, in terms of International Treaties, considered recognized.
- b) Application, as presented, contains relevant information available to applicant on characteristics of deposited biological material;
- c) Name of deposit institution and number thereof included in application.

If Institute notices omission or deficiency of any elements signaled in present article, warn applicant to specify or clarify necessary or remedy omissions, within period of two months, counted from day following notification of resolution. If warning not remedied in signaled period, application considered lapsed.

### **Requirements and documentation of patent application**

**Art. 216.-** Patent application must contain:

- a) Name, corporate name or denomination, country or State and domicile of applicant.
- b) Name, country or State and domicile of inventor, when not applicant.
- c) Exact address or email for receiving notifications.
- d) Denomination or title of invention, brief, precise and denoting by itself nature of invention. In denomination or title of invention recognized terminology in corresponding technical field employed, without including any distinctive sign, fantasy expression or name, proper name or commercial indication.
- e) Proof of payment of corresponding presentation fee.
- f) Document containing description of invention or utility model.
- g) Document containing one or more claims.
- h) Document containing summary of invention or utility model serving solely for publication and technical information element.
- i) Document containing one or more drawings, when necessary to understand invention.
- j) Nucleotide or amino acid sequence listing, when necessary to disclose invention. Also considered integral part of description.
- k) Application must indicate date, number and office of presentation of any patent application or other protection title submitted, or title obtained before another industrial property office referring totally or partially to same invention claimed in application submitted in El Salvador.

If Institute notices omission of any requirements signaled in present article, warn applicant to remedy omissions within period of ten business days, counted from following notification of resolution. Period may be extended for ten business days at request of interested party, when justified reasons exist. If warning not remedied in signaled period, application considered lapsed.

## **Description**

**Art. 217.-** Description must disclose invention in manner sufficiently clear and complete to evaluate and for person versed in corresponding technical matter to execute without undue experimentation and in congruence with presented claims.

Description must:

- a) Start with denomination or title of invention.
- b) Specify technical field invention refers to.
- c) Indicate state of the art known to applicant, at filing date of application or claimed priority, useful for understanding invention.
- d) Disclose invention as claimed, in terms allowing understanding technical problem and solution thereto, and expose advantageous effects of invention, if any, regarding prior art. Must also note differences of invention disclosed with similar known inventions.
- e) Describe figures contained in drawings, if any, referring to them and their parts.
- f) Indicate best mode foreseen by applicant for realizing claimed invention. Indication done by examples when adequate and referring to drawings, if any.



g) Indication of industrial application of invention, when not evident from description or nature of invention.

If invention refers to biological product or procedure involving use of biological material not available to public and cannot be described so invention executable by person versed in matter, description supplemented by deposit of said material.

Deposit made in deposit institution meeting requirements specified in International Treaties, no later than filing date of application in country or, if priority claimed, no later than priority date.

If biological material deposit made to supplement description, indicated in description with name and address of deposit institution, deposit date and deposit number attributed by institution. Nature and characteristics of deposited material also described, when necessary for disclosure of invention.

Presentation of drawings indispensable when necessary to understand, evaluate or execute invention or utility model.

If Institute notices omission or deficiency of any elements signaled in present article, require applicant to specify or clarify necessary or remedy omissions, within period of two months. If requirement not met within granted period, application considered lapsed.

### **Claims**

**Art. 218.-** Claims define matter for which protection requested in function of essential technical characteristics. Must be clear, concise and supported in description, not exceeding content thereof. Claims may be independent or dependent.

If Institute notices omission or deficiency of any requirements signaled in present article, warn applicant to specify or clarify necessary or remedy omissions, within period of two months, counted from day following notification of resolution. If requirement not met within granted period, application considered lapsed.

### **Summary**

**Art. 219.-** Summary must be clear, concise and comprise synthesis of disclosure contained in description, claims and most illustrative drawing of invention. Additionally, indicate technical field invention belongs to and allow understanding technical problem, solution and industrial application of invention.

Summary serves exclusively for technical information purposes and not used to interpret scope of protection.

If Institute notices omission of any elements signaled in present article, warn applicant to specify or clarify necessary or remedy omissions within period of two months, counted from day following notification of resolution. If requirement not met within signaled period, application considered lapsed.

### **Patent application filing date**

**Art. 220.-** Upon receiving patent application, Institute record date and time of reception, corresponding presentation number, file number, accompanying documents and, where applicable, reception means.

Institute recognizes as patent application filing date, date and time of reception, provided application contains at least following elements:

- a) Name, corporate name or denomination, country or State and domicile of applicant.
- b) Exact address or email for receiving notifications.
- c) Document containing description of invention.
- d) One or more claims.
- e) Proof of payment of presentation fee.

Filing date determines precedence between applications.

If application does not meet previously signaled requirements, Institute warn applicant to remedy within period of ten business days, counted from day following notification of resolution. In this case, filing date taken as that when all referred requirements met. If not remedied in indicated period, application deemed not presented.

### **Patent application examination**

**Art. 221.-** In application examination, Institute must verify:

- a) Application contains denomination or title of invention.
- b) Document accrediting ownership accompanied, when inventor not applicant.
- c) Requirements relative to representation met.
- d) If claiming priority right, effected within corresponding period, by someone with right to claim and meeting requirements of Article 258 of this law.

Additionally, Institute must verify application contains section that, according to provided material requirements, considered as:

- a) Description of invention.
- b) One or several claims.
- c) Summary of invention.
- d) Drawings referred to in description, if applicable.
- e) Documents applicant indicates accompanying.

If form examination result favorable, not presumed application meets requirements necessary for granting patent or recognizing claimed rights. Must still pass substantive examination provided in this law.

### **Provisional protection**

**Art. 222.-** From date applicant notifies person by notarial act, of filing patent application or from publication date thereof, no person can exploit claimed patent. If person infringes provision, liable for damages and losses caused, in case requested patent or certificate granted.

Pending application and annexes confidential until moment of publication.

## **Publication**

**Art. 223.-** Once form examination approved and eighteen months passed from patent application filing date or claimed priority, publication of application in Bulletin occurs.

Applicant can request in writing publication of application before previously mentioned period elapses.

Published notice contains minimum:

- a) Name, corporate name or denomination, country or State and domicile of applicant.
- b) Name of legal representative or proxy, when applicable.
- c) Date of application filing.
- d) Title of invention.
- e) Application number or international application number if applicable.
- f) International patent classification.
- g) Priorities claimed, indicating filing date.
- h) Summary of patent.

If applicant requests, Institute performs electronic publication in Bulletin.

For this, period of ten business days counted from business day following publication request. Additionally, grants non-extendable period of two months, counted from electronic publication date, for any third party to present observations to patent application concession.

Petition presented physically or electronically, from business day following notification admitting patent registration application processing. Bulletin publication request accompanied by payment of fee established in this law.

If publication request not presented within four months counted from day following application admission resolution, deemed lapsed and archive ordered.

From notice publication, any person can consult in Institute offices file relative to published patent application. Any person can obtain copies of documents contained in published application file, provided interest demonstrated and payment of established rights made.

Pending application file cannot be consulted by third parties before application publication, if applicant not given written consent.

File only consulted, if person requesting demonstrates applicant notified to cease industrial or commercial activity, invoking pending application. In this case, before deciding access to document, hearing given to patent applicant and, if decided to authorize access, done under confidentiality reservation and ensuring accessed information not object of unfair commercial use.

Applications withdrawn or lapsed before publication cannot be consulted without applicant's written consent.

## **Observations to patent application**

**Art. 224.-** Once publications effected, Institute can receive observations from any person, on concession or not of patent application. Observations presented within period of two months, counted from day following publication date established in Article 223.

When deemed convenient, Institute considers observation as technical support document for substantive examination performed on application, not obliged to resolve on scope thereof. Institute gives view to applicant of data and documents provided, so, where applicable, present what suits their right.

Presentation of observations does not suspend processing nor attribute character of interested party, third party or party to person presenting; exercise of actions provided in nullity and lapse actions of this law remaining safe.

### **Substantive examination**

**Art. 225.-** Substantive examination object verifies compliance with patentability conditions provided in this Law, as well as requirements for description, claims, drawings, summary and unity of invention, or if matter object of application in any assumptions provided in Article 197 of this law.

Once patent application published, applicant must request in physical or electronic writing substantive examination of invention, for Institute to order. For previous effects, Institute only considers content in description, claims and, where applicable, drawings, sequence listing and biological material deposit proof.

Substantive examination request presented after filing date assigned. Time limit six months after date patent application publication announced in Bulletin. Request accompanied by proof of payment of corresponding rights established in this law.

If request not presented in indicated period, application deemed lapsed and archive ordered, patent passing immediately to public domain.

### **Substantive observations**

**Art. 226.-** If in substantive examination impediment to granting requested patent noticed, Institute warn applicant to make modifications or present pertinent information or documentation, within period of six months, counted from day following notification of resolution. Within signaled period, Institute can make additional observations.

Once signaled period elapses, Institute resolve definitely on granting or refusal of requested patent, provided application not lapsed or applicant not desisted.

If applicable, resolution denying patent application admits interposition of appeals regulated in Law of Administrative Procedures.

### **Technical cooperation request**

**Art. 227.-** To perform substantive examination, Institute can request technical support of research institutes, university teaching centers, international organizations and external expert opinion.

Institute can accept or require state of the art reports and patentability reports prepared by national or regional industrial property offices abroad, as well as recur to existing cooperation mechanisms in bilateral or multilateral agreements to realize them.

Likewise, Institute can recognize results of such examinations as sufficient to accredit compliance with patentability conditions of invention.

If Registrar requests technical support of research institutes, university teaching centers, international organizations or external expert opinion, communicate designation and period to issue opinion. If charge accepted, and in case of cited institutions, ask collaboration by note.

### **Additional documentation for foreign applications**

**Art. 228.-** For substantive examination purposes and to better resolve on patent concession or validity of granted patent, Institute warn applicant or patent holder, within period of three months, counted from day following notification of resolution, provide, duly translated into Spanish, one or more following documents relative to foreign applications mentioned in application:

- a) Copy of foreign application and accompanying documents.
- b) Copy of any communication or report referring to search results of prior art or examinations affected regarding foreign application.
- c) Copy of patent or other protection title granted based on foreign application.
- d) Copy of any resolution or ruling rejecting foreign application or denying concession requested in foreign application.
- e) Copy of any resolution or ruling annulling or invalidating patent or other protection title granted based on foreign application.

If applicant does not remedy warning within signaled period, patent denied.

### **Granting of patent**

**Art. 229.-** When Institute verifies requirements and conditions provided by law met, grant patent and deliver corresponding certificate to applicant.

Patent registration certificate contains:

- a) Name of Institution and Department issuing.
- b) Registration number.
- c) Application number.
- d) Application filing date, for counting patent term purposes.
- e) Title of Invention.
- f) International classification.
- g) Name, corporate name or denomination of holder, country or State and domicile.
- h) Name, country or State of inventor.
- i) Synthesis of invention.
- j) Place and date of expedition.
- k) Registrar signature and office seal.

Certificate accompanied by duplicate of description and drawings where applicable. Likewise, each folio bears office seal.

Patents and certificates inscribed in special registry.

### **Limitation to patent right**

**Art. 230.-** Limitation of right conferred by patent or utility model registration proper, if consisting of:

- a) Elimination of one or more claims.
- b) Inclusion of one or several dependent claims in independent claim, on which they depend.

Modification not admitted when proposed changes expand protection conferred by patent or registration.

Limitation performed independently of enforceable resolutions dictated previously on infringements to patent or utility model registration, as granted.

### **Transfer of patent**

**Art. 231.-** Patent or patent application can be transferred by act inter vivos or transmitted by succession.

Any transfer or transmission relative to patent must be recorded in writing, or by any other means guaranteeing will of parties, and inscribed in Institute. Transfer only has legal effects vis-à-vis third parties after inscribed in Institute.

Transfer or transmission accrues fee established in this law.

### **Contractual licenses**

**Art. 232.-** Holder or applicant of patent can grant third parties one or more exploitation licenses of invention object of patent or application.

Every exploitation license contract of invention must be recorded in writing, or by any other means guaranteeing will of parties, and inscribed in Institute. License only has legal effects vis-à-vis third parties after inscribed.

Inscription accrues fee established in this law.

Except if other norms stipulated in exploitation license contract, following norms applicable:

- a) License extends to all acts indicated in Article 207 of this law during entire patent validity, in entire country territory and regarding any application of invention.
- b) Licensee cannot assign license nor grant sublicenses.
- c) License not exclusive. Licensor can grant other licenses for patent exploitation in country, as well as exploit patent themselves in country. When license granted as exclusive, licensor cannot grant other licenses for patent exploitation in country, nor exploit patent themselves in country.

### **Compulsory licenses**

**Art. 233.-** When declared emergency or national security causes exist and while persisting, compulsory license of patent exploitation can be granted, provided concession necessary to achieve satisfaction of basic population needs.

Licenses granted according to preceding paragraph not transferable, nor exclusive.



### **Minimum parameters in granting compulsory licenses**

**Art. 234.-** Compulsory licenses must be granted by competent Tribunal, observing minimum:

- a) Scope of license, validity and acts for which granted, limited to purposes originating it.
- b) Amount and form of payment of remuneration due to patent holder.
- c) Conditions necessary for license to fulfill purpose.
- d) Granted to supply internal market.

When patent protects semiconductor technology, compulsory licenses only granted for non-commercial public use or to rectify practice declared contrary to competition in applicable procedure.

### **Revocation of compulsory license**

**Art. 235.-** If patent holder requests, competent Tribunal can revoke compulsory license if circumstances giving rise to granting disappeared, taking necessary provisions to protect legitimate interests of licensees. For this, besides evidence provided by patent holder, information deemed necessary to verify facts collected.

## **CHAPTER IX UTILITY MODEL PATENT**

### **Rights over utility models**

**Art. 236.-** Right to utility model patent belongs to inventor or successor. Right can be transferred by act inter vivos or transmitted by succession.

### **Requirements of invention to be protected by utility model**

**Art. 237.-** Invention protectable by utility model when novel and susceptible of industrial application.

Utility model not considered novel when bringing no discernible utilitarian characteristic regarding state of the art.

### **Application of provisions on invention patents**

**Art. 238.-** Provisions of Chapter II on invention patents applicable, as appropriate, to utility model patents, subject to special provisions contained in present chapter.

### **Term of utility model patent**

**Art. 239.-** Utility model patent expires at ten years, counted from filing date of patent application in El Salvador.

### **Annual fees**

**Art. 240.-** To maintain patent or pending patent application valid, annual fees must be paid. Payments made before commencing corresponding annual period. First annual fee paid before commencing second year counted from patent application filing date. Two or more annual fees paid in advance.

Grace period of six months granted for payment of annual fee, upon payment of established surcharge. During grace period, patent or patent application maintains full validity.

Failure to pay any annual fee according to present article produces by operation of law lapse of patent or patent application.

### **Matter excluded from protection**

**Art. 241.-** Cannot be object of protection under utility model:

- a) Procedures.
- b) Substances or chemical, biological, metallurgical compositions or of any other nature.
- c) Matter excluded from invention patent protection according to law.

### **Unity of utility model patent**

**Art. 242.-** Utility model patent can only refer to an object, without prejudice to object comprising two or more parts functioning as unitary set.

Several elements or aspects of said object can be claimed in same patent.

## **CHAPTER X INDUSTRIAL DESIGN PATENT**

### **Industrial design**

**Art. 243.-** Industrial designs comprise:

- a) Industrial drawings, that is, any combination of figures, lines or colors incorporated into industrial product, including technological or artisanal for ornamentation purposes and giving peculiar and own aspect.
- b) Industrial models constituted by any three-dimensional form serving as type or pattern for manufacture of industrial or artisanal product, giving special appearance insofar not implying technical effects.
- c) Graphical user interfaces allowing users to interact with electronic devices through digital devices.

### **Scope of protection**

**Art. 244.-** Protection conferred to industrial design in application of this law, does not exclude nor affect protection corresponding to same design by virtue of other legal provisions, particularly relative to copyright.

Right to protection of industrial design belongs to designer, without prejudice to provisions in this article. This right can be transferred by act inter vivos or transmitted by cause of death.

If design created by two or more persons, jointly, right to obtain protection belongs in common.

### **Ways to access protection**

**Art. 245.-** Protection of industrial design meeting conditions of Article 243 acquired indistinctly:

- a) By first disclosure of industrial design in country.
- b) By registration of industrial design according to this law.

### **Conditions to access registration**

**Art. 246.-** Industrial design object of registration if new. Industrial design considered new if not disclosed or made accessible to public, in country, by tangible publication or by sale, commercialization, use, or any other means, before any of following dates, applying earliest:

- a) Date person entitled to obtain protection disclosed industrial design by any means in country; or,
- b) Date person presents in Republic industrial design registration application or, where applicable, recognized priority date.

When disclosure resulting directly or indirectly from acts performed by person to whom right or protection corresponds, or when abuse of trust, breach of contract or illicit act against them, continued considered novel provided facts occur within two years prior to date referred to in preceding paragraph and literals.

Industrial design not considered new when alone presenting minor or secondary differences with previous ones, or only refers or applies to another type of product genre.

Industrial designs whose disclosure contrary to public order or morality not protected.

### **Exclusive rights**

**Art. 247.-** Industrial design patent protection confers holder right to exclude third persons from exploitation of industrial design.

By virtue thereof and with limitations provided in this law, holder has right to act against any person who, without agreement, manufactures, sells, offers for sale, uses, imports or stores for any of these purposes, product reproducing or incorporating protected industrial design, or whose appearance offers general impression equal to protected industrial design.

Realization of mentioned acts not considered lawful by sole fact reproduced or incorporated design applies to type or genre of products distinct from indicated in protected design registration.

### **Moral right on industrial design**

**Art. 248.-** Creator of industrial design has right to be mentioned as such in corresponding registration and official documents relative thereto, unless, by written declaration to Institute, indicates does not wish to be mentioned. Any pact or agreement by which creator of industrial design obliges in advance to make such declaration null.

### **Term of industrial design protection**

**Art. 249.-** Industrial design patent expires at fifteen years, counted from filing date of application in El Salvador.

### **Maintenance and rehabilitation fees of industrial design patent**

**Art. 250.-** To maintain industrial design patent or pending application valid, quinquennial fees paid. Payments made before commencing corresponding quinquennial period. First quinquennial fee paid before commencing sixth year, counted from design application filing date. Two quinquennial fees paid in advance.

Grace period of six months granted for payment of quinquennial fee, upon payment of surcharge established in this law. During grace period, design or application maintains full validity.

Failure to pay any quinquennial fee according to present article produces by operation of law lapse of design patent or application.

Holder or licensee, can request rehabilitation of lapsed industrial design for non-payment of maintenance quinquennial fee, provided corresponding request presented within six months following expiration of grace period referred to in this provision.

Industrial design rehabilitation request attached proof of payment of unpaid fees, proof of payment of generated surcharges and proof of payment of rehabilitation fee.

Institute publishes rehabilitation declaration resolution in Bulletin.

### **Application requirements**

**Art. 251.-** Industrial design patent application presented to Institute. Must:

- a) Identify applicant and creator of design.
- b) Indicate type or genre of products to which design applied and class or classes to which said products belong according to classification.
- c) Comply with other requirements established in this law.

Application accompanied by graphic representations of design, according to provision in this law, and proof of payment of rights established therein.

If not complying with any requirement established in present article, Institute warn applicant to remedy within period of ten business days, counted from day following notification of resolution. If warning not remedied, application considered lapsed.

### **Application filing date**

**Art. 252.-** Industrial design patent application not admitted to processing and filing date not assigned if, at moment of presentation, does not contain at least following requirements:

- a) Identification of applicant and address in El Salvador for sending notifications.
- b) Graphic representation of industrial design.
- c) Proof of payment of established rights.

If application does not meet signaled requirements, Institute warn applicant to remedy within period of ten business days, counted from following notification of resolution. In this case, filing date taken as that when all requirements met. If warning not remedied in indicated period, application deemed not presented.

### **Requirements of presentation of description of industrial designs**

**Art. 253.-** Industrial design description contained in registration application done complying following aspects:

a) Must allow clear and complete understanding of design: enumerate distinct graphic or photographic reproductions, indicate perspective from which each reproduction illustrated and, where applicable, if perspectives or views of section or cut, partial, enlarged or assembly.

When industrial design consists of animated sequence or animated graphical interface, contain enumeration of perspectives allowing clear and complete understanding of movement or progression.

b) Must indicate expressly, clearly and concisely elements not forming part of claimed design but allowing understanding and refer to means employed to differentiate from characteristics conforming, when not evident from graphic or photographic reproductions or design nature.

Graphic or photographic reproductions of industrial design registration application formulated subject to following requirements:

1. Present number of perspectives necessary to illustrate clearly and completely industrial design and, when adequate, perspectives of section or cut, partial, enlarged or assembly, as well as perspectives for exemplification purposes and representing design in use; characteristics conforming industrial design must be clearly illustrated by continuous lines.

2. When illustrating elements not forming part of claimed industrial design identified preferentially with discontinuous lines. Other means like blurring, shading or contours may also be employed, provided clear distinction between claimed design and elements not forming part thereof results.

c) Must specify in description when, due to design nature, characteristics must be illustrated with discontinuous lines.

d) When industrial design consists of animated sequence or animated graphical interface, reproductions presented visually related, showing common characteristics and enumerated such that movement or progression perception clear, and,

e) Can consist of graphic, photographic representations or combination of both.

If application does not meet any requirement established in this article, Institute warn applicant to remedy within period of ten business days, counted from day following notification, under warning of considering application lapsed.

### **Publication**

**Art. 254.-** Once requirements and conditions for industrial design patent registration application met, announced by notice published in Bulletin. If applicant requests, publication deferred for maximum period of twelve months, counted from filing date of application.

Deferment request made in application or within fifteen business days following presentation. Once deferment period passes, application published.

If applicant requests, Institute proceeds to electronic publication in Bulletin. For this, period of ten business days, counted from day following publication request. Application presented physically or electronically from day following notification admitting patent registration application processing, accompanied by payment of fee established in this law.

Published notice contains minimum:

- a) Name, corporate name or denomination, country or State and domicile of applicant.
- b) Name of mandatary or legal representative, if any.
- c) Application filing date.
- d) Title of design.
- e) International classification of design.

If publication request not presented within four months counted from day following application admission resolution, deemed lapsed and archive ordered.

### **Observations to registration concession**

**Art. 255.-** From application publication, any interested person can present observations to Institute according to Article 224 of this law.

From date applicant notifies person by notarial act filing registration application or from publication thereof, no person can exploit claimed design. If person infringes provision, liable for damages and losses caused, in case requested patent or certificate granted.

Pending application and annexes confidential until moment of publication.

### **Granting of registration**

**Art. 256.-** When Institute verifies requirements and conditions provided by law met, grant patent and deliver corresponding certificate to applicant.

Industrial design patent registration certificate contains:

- a) Name of Institution and Department issuing.
- b) Registration number.
- c) Application number.
- d) Application filing date, for counting patent term purposes.
- e) Title of design.
- f) International Classification.
- g) Name, corporate name or denomination of holder, country or State and domicile.
- h) Name, country or State and domicile of creator of design.
- i) Synthesis of design.
- j) Place and date of expedition.
- k) Registrar signature and office seal.



## **CHAPTER XI**

### **COMMON NORMS RELATIVE TO REGIME OF PATENTS OF INVENTION, UTILITY MODELS AND INDUSTRIAL DESIGNS**

#### **Right of priority**

**Art. 257.-** Whoever presented first patent application in El Salvador or abroad, enjoys priority right for presentation of one or more applications in country, for same invention or utility model. For this, presented within period of twelve months, counted from presentation date of first application.

Whoever presented first industrial design patent application in El Salvador or abroad, enjoys priority right for presentation of one or more applications in country, for same design. For this, presented within period of six months, counted from presentation date of first application.

Application benefiting from priority right cannot be affected regarding state of the art, by any circumstance subsequent to claimed priority presentation date.

This right only covers matter contained in application claimed as priority. If additional rights claimed, recognition only partial and referred to that application.

Whoever presented first patent application in El Salvador and complied with Article 220 and 252 of this law, can request Institute issuance of certified copy of application, to claim priority right; stating in certification, country of origin, presentation date and number of application in El Salvador.

Priority request mentioned accrues fee established in this law.

#### **Requirements for priority right application**

**Art. 258.-** To claim priority right, applicant must:

- a) State in application in El Salvador, country of origin of priority, presentation date and application number in that country.
- b) Present copy of priority application certified by Industrial Property office receiving said priority application and, where applicable, Spanish translation, no later than within period of three months counted from application presentation in El Salvador.

Failure to meet requirements provided by this article, priority right deemed not claimed.

#### **Multiple priority**

**Art. 259.-** Multiple priorities can be claimed in same application. Priority right only covers elements contained in application(s) whose priority claimed.

Claim of each priority and respective study subject to payment of corresponding tariffs.

#### **Divisional application**

**Art. 260.-** When divisional application presented, voluntarily or by Institute requirement, applicant must meet following requirements:

a) Present descriptions, claims and drawings necessary for each application, except documentation relative to claimed priority and translation already in initial application and, where applicable, rights assignment and power of attorney. Drawings and descriptions exhibited not suffer alterations modifying invention contemplated in initial application.

b) Claim invention different from claimed in initial application and, where applicable, in other divisionals, without containing additional matter or giving greater scope to initially presented.

Divisional application cannot consist of division of other divisional applications.

If divisional application not meeting requirements in this article, not benefit from filing date of initial application pretending to derive, and deemed presented on date received, provided complying with Article 220 of this law.

### **Transformation of application**

**Art. 261.-** Applicant can transform invention patent application into utility model or industrial design patent application and vice versa when from content of application inferred not agreeing with requested.

Applicant only effect transformation of application within two months following reception date or within two months following date Institute requires transformation, provided application not lapsed.

If applicant does not transform application within period granted by Institute, deemed lapsed.

### **Withdrawal of application**

**Art. 262.-** Applicant of patents or registration certificates can withdraw application while pending, in which case application passes to public domain. If application withdrawn before publication ordered, application not published and archived, and kept reserved. In this case, new application can be presented, but, if withdrawn again, passes to public domain even if not published.

### **Rectification of form errors**

**Art. 263.-** Necessary to rectify form errors of patent or registration. If rectification concerns claims or elements serving to interpret them, errors must be evident to technician in matter. Title cannot be rectified such that protection conferred expanded.

### **Publication of sentences**

**Art. 264.-** Competent judicial authorities send to Institute copy of all executed sentences on patents or registration certificates to be duly complied.

### **Granting requirements**

**Art. 265.-** Patent or certificate issued in name of Nation, invoking Government authorization, signed by registrar, and bearing office seal. Likewise, consists of Decree granting and duplicate of description and drawings.

### **Public communication right**

**Art. 266.-** Descriptions, drawings, models and samples of granted patents or certificates available in Institute to anyone wishing to impose. Communicated to requester and copy of written pieces given, upon payment of established rights.

### **Technological information publication**

**Art. 267.-** Institute can publish granted patents or certificates, with description and drawings necessary to make known agreed inventions, utility models and industrial designs. Publication consulted by anyone desiring.

### **Classification**

**Art. 268.-** Institute applies valid international classification for patents, utility models or industrial drawings and models, to systematically classify documents according to technical matter.

### **Forms of patent extinction**

**Art. 269.-** Patents and certificates extinguished in following cases:

- a) By judicial declaration of nullity.
- b) By expiration of terms fixed in this law.
- c) By partial or total written resignation.

### **Nullity of invention, utility model and industrial design patents**

**Art. 270.-** Patent or certificate registration null in following cases:

- a) If granted for invention, utility model or industrial design not meeting requirements established by this law.
- b) If invention disclosure in patent not sufficiently clear for person versed in corresponding technical matter to execute, or if claims not supported in disclosure.
- c) If, due to modification or division of application, granted patent contains claims supported in matter not disclosed in initially presented application.
- d) If patent or certificate granted to person having no right to obtain.

If causes of nullity only affect claim or part thereof, nullity declared only regarding that claim or part. Where applicable, nullity declared in form of limitation of corresponding claim.

### **Nullity of patent**

**Art. 271.-** Patent or certificate nullity declared by competent Judge at request of interested party, those exploiting or exercising same industry, and Attorney General of Republic.

When action founded on patent or certificate granted to one having no right to obtain, nullity only requested by person to whom right belongs.

### **Lapse of invention, utility model and industrial design patent**

**Art. 272.-** Patents and certificates lapse in following cases:

- a) Upon expiration of maximum validity term provided by law. In this case, lapse occurs by operation of law, without need for declaration.
- b) By not covering payment of rights and, where applicable established surcharge, in form stipulated in this law.

Lapse declarations made by Institute.

### **Rehabilitation of invention or utility model patent**

**Art. 273.-** Holder or licensee can request before Institute, rehabilitation of invention or utility model patent, lapsed for non-payment of maintenance annual fee, provided corresponding request presented within six months following expiration of grace period mentioned in Articles 206 and 240 of this law.

To rehabilitation request of invention or utility model patent attached proof of payment of unpaid fees, proof of payment of generated surcharges and proof of payment of rehabilitation fee.

Institute publishes rehabilitation declaration resolution in Bulletin.

### **Publication of nullity and lapse resolutions**

**Art. 274.-** Nullity, lapse declarations and resignations published in Bulletin and noted in corresponding registration.

### **Effects of nullity and lapse declaration**

**Art. 275.-** If invention, utility model or industrial design declared null, passes to public domain.

Institute periodically publishes in Bulletin applications, patents or utility model registrations, industrial designs for which requested exclusive right not constituted or lapsed, as well as technological information in state of the art or incorporated into public domain.

## **CHAPTER XII**

### **INDUSTRIAL OR COMMERCIAL SECRET**

#### **Industrial or commercial secret**

**Art. 276.-** Industrial or commercial secret considered any information having commercial value of industrial or commercial application, including agriculture, livestock, fishing and extraction, transformation and construction industries, as well as all class of services, kept by person with confidential character, and regarding which reasonable means or systems

adopted to preserve confidentiality and restricted access, representing competitive or economic advantage over third parties when performing economic activities.

Industrial or commercial secret information necessarily referred to:

- a) Nature, characteristics or purposes of products.
- b) Production methods or processes.
- c) Distribution or commercialization means or forms of products or service provision.

Not considered industrial or commercial secret information that:

- a) Is public domain.
- b) Results evident to technician in matter.
- c) Must be disclosed by legal provision or judicial order.

Not considered entering public domain or disclosed by legal provision, information provided to any authority by person possessing as industrial or commercial secret, when provided to obtain licenses, permits, authorizations, registrations or any other authority acts.

### **Protection of fixed or unfixed industrial or commercial secrets**

**Art. 277.-** Secrets referred to in preceding article enjoy legal protection, whether fixed in material support or not.

### **Confidentiality obligation of authorized third party**

**Art. 278.-** Person keeping industrial or commercial secret can supply or authorize use to third party. This third party obliged not to disclose secret by any means, barring agreement to contrary.

In agreements supplying technical knowledge, technical assistance, provision of basic or detailed engineering, confidentiality clauses can be established to protect industrial secrets contained. These must specify aspects comprised as confidential.

### **Prohibition of own or third-party commercial use by persons linked to holder**

**Art. 279.-** Any person who, due to work, employment, position, post, profession performance or business relationship, has access to industrial or commercial secret warned about confidentiality must abstain from using for own or third-party commercial purposes, or revealing without justified cause and without consent of person keeping secret, or authorized user. Otherwise, liable for damages and losses caused.

### **Liability for illicit obtainment of industrial or commercial secrets**

**Art. 280.-** If person obtains industrial or commercial secrets by hiring worker working or having worked, or professional, advisor or consultant serving or having served another person, liable solidarily with provider of information, for payment of damages and losses caused to said person.

Also liable for damages and losses caused to another person, whoever, by any illicit means, obtains information contemplating industrial or commercial secret.

All foregoing, without prejudice to penal liability arising.

## CHAPTER XIII TEST DATA

### **Authorization for commercialization of new pharmaceutical or agricultural chemical products**

**Art. 281.-** To approve commercialization of new pharmaceutical or agricultural chemical products utilizing new chemical entities, test data or other undisclosed data on safety and efficacy required, preparation involving considerable effort. These data protected against unfair commercial use for period of five years for pharmaceutical products and ten years for agricultural chemical products, counted from approval date for commercialization in El Salvador.

Once provided data analyzed, to authorize commercialization of products to third parties, authority requires consent of person providing information.

Likewise, authority before whom data presented cannot use in other approval procedures of similar products without consent of person initially presenting information or obtaining commercialization approval.

Whoever requests approval for commercialization of pharmaceutical product, must provide authority list of all patents covering product or approved use.

### **Protection term of test data**

**Art. 282.-** If as condition to approve commercialization of new pharmaceutical and agricultural chemical products, third parties permitted to submit evidence relative to safety or efficacy of product previously approved in El Salvador or other country, such as evidence of prior commercialization approval, authority before whom evidence presented not permit third parties not counting on consent of person obtaining such approval in El Salvador or other country previously, obtain authorization or commercialize product based on:

- a) Evidence of prior commercialization approval in other country; or,
- b) Information relative to safety or efficacy previously submitted to obtain commercialization approval in El Salvador or other country; for period of five years for pharmaceutical products and ten years for agricultural chemical products, from date approval granted in El Salvador to person receiving approval in that other country.

To receive protection according to this article, required person providing information in other country request approval in El Salvador within five years following commercialization approval date in that other country.

### **Exception to protection of undisclosed information**

**Art. 283.-** Undisclosed information referred to in Articles 281 and 282 of this law protected against disclosure, except when necessary to protect public and measures adopted to guarantee data protection against unfair commercial use.



However, if any undisclosed information on safety and efficacy presented to authority to obtain commercialization approval disclosed by said authority, continue protecting said information against unfair commercial use.

### **Authorization of commercialization of pharmaceutical product already covered by patent**

**Art. 284.-** To approve commercialization of pharmaceutical product in El Salvador, permitted other persons not originally presenting information on safety or efficacy rely on evidence or information on safety and efficacy of product previously approved, for example, evidence of prior commercialization approval in El Salvador or other country.

Authority not approve commercialization of product unless one following requirement presented with application:

- a) Sworn declaration before notary stating no patent valid in El Salvador, covering product previously approved for commercialization in country or approved use.
- b) Written authorization from patent holder, in case patent valid registered in El Salvador exists.
- c) Sworn declaration before notary patent exists at date expiring and indication applicant not enter market before expiration date. Under such circumstances authority can approve commercialization at moment of patent expiration.

## **BOOK IV**

### **ACTIONS AND SANCTIONS FOR INFRINGEMENT OF RIGHTS**

#### **CHAPTER I**

### **ACTIONS AND SANCTIONS FOR VIOLATION OF INDUSTRIAL PROPERTY RIGHTS**

#### **Civil action for infringement**

**Art. 285.-** Without prejudice to corresponding penal actions, holder of right protected by virtue of this law can file civil action before competent Judge, against any person infringing right. Can also act against person executing acts manifesting evidently imminence of infringement.

In case of co-ownership of right, any co-owner can file action against infringement without needing consent of others, barring agreement to contrary.

Prescription of civil action governed according to Article 294 of this law.

#### **Active legitimization of licensees**

**Art. 286.-** Licensee of industrial property right, can file action against any third party committing infringement of right object of license. For these purposes, licensee having no

mandate from right holder to act must accredit upon initiating action, having requested holder to file action and more than one month elapsed without holder acting.

Even before this period elapses, licensee can request precautionary measures established in this chapter be taken.

Holder of right object of infringement can appear in cause at any stage of process.

Transfer of lawsuit given to all persons whose rights appear inscribed in relation to infringed right. Those persons can appear in cause at any stage of process.

### **Measures in infringement action**

**Art. 287.-** In infringement action of rights protected according to this law, one or more following measures can be ordered among others:

- a) Cessation of acts constituting infringement.
- b) Indemnification of damages and losses suffered.
- c) Embargo of objects resulting from infringement and means serving predominantly to commit infringement.
- d) Transfer in ownership of objects or means referred to in preceding literal, in which case value of goods imputed to amount of damages and losses indemnification.
- e) Measures necessary to avoid continuation or repetition of infringement, including destruction of means embargoed by virtue of literal c) of this article, when indispensable.
- f) Sequestration of infringing products, including packages, packing, labels, printed or advertising material and other materials resulting from infringement, and means, instruments and materials serving to realize infringement; as well as documentary evidence relevant to infringement.
- g) Prohibition of import, export or transit of products, materials or means referred to in preceding literal.
- h) Destruction of products object of infringement.
- i) Destruction of materials and implements utilized in manufacture or creation of infringing goods, without compensation to infringer or, in exceptional circumstances, without compensation disposed outside commercial channels, minimizing risk of future infringements. Considering requests for destruction, competent tribunal consider gravity of infringement, as well as interest of third persons, holders of real rights, possession, or contractual or secured interest.
- j) Publication of conviction sentence and notification to interested persons, at infringer's expense.

Competent Judge can request infringer, provide any information possessed regarding any person involved in any aspect of infringement and regarding means of production or distribution channels for infringing products or services, including identification of third persons involved in production and distribution, and distribution channels, and provide this information to right holder.

### **Donation of counterfeit trademark merchandise**

**Art. 288.-** Competent Judge can order in definitive sentence, donation for charity purposes of counterfeit trademark merchandise, with authorization of right holder. In cases competent Judge considers appropriate, counterfeit trademark merchandise can be donated for charity purposes for use outside channels of commerce, when removal of mark eliminates infringing characteristics of merchandise and no longer identifiable with removed mark. In no case, simple removal of illegally adhered mark sufficient to authorize entry of merchandise into commercial channels.

### **Technical or expert costs**

**Art. 289.-** If competent Judge appoints technician or expert in civil proceedings, relative to observance of intellectual property rights and requires parties assume costs of experts, such costs closely related, among others, to quantity and nature of work performed and not unreasonably dissuade recourse to proceedings.

### **Calculation of damages and losses indemnification**

**Art. 290.-** Damages and losses indemnification calculated based on any following criteria, among others, at injured party's choice:

- a) Based on damages caused to right holder as result of infringement.
- b) Based on benefits right holder would have foreseeably obtained, had infringement not occurred. To determine, competent Tribunal consider value of good or service object of violation, based on suggested retail price or other legitimate measure of value presented by right holder.
- c) Based on price or royalty infringer would have paid to right holder, if contractual license concerted, considering commercial value of object of infringed right and contractual licenses already granted.
- d) Any other criterion Judge deems convenient.

Additionally infringer must pay right holder profits attributable to infringement and not considered when calculating damages amount referred to in preceding literals.

If Judge condemns in costs, include attorney fees proceeding.

### **Precautionary measures**

**Art. 291.-** Whoever initiates or intends to initiate action for infringement of industrial property right, can ask competent Judge to order immediate precautionary measures with object of preventing commission of infringement, avoiding consequences, obtaining or preserving evidence, ensuring effectiveness of action and compensation of damages and losses.

Precautionary measures can be requested before initiating infringement action, together with it or subsequent to start. Measures executed before initiating action, rendered ineffective by operation of law if action not initiated within period of fifteen business days, counted from execution of measure.

Judge can require requester of precautionary measures, yield sufficient caution to protect defendant and avoid abuses and not dissuade recourse to procedure.

Judge must order and execute requested measures, within non-extendable period of forty-eight hours from presentation of request, provided proof of ownership of infringed right accompanied and commission of infringement or imminence demonstrated, through available evidence competent authority considers sufficient. Assuming guarantee required, period established at beginning of paragraph counted from presentation of bond or required guarantee.

Following precautionary measures can be ordered among others:

- a) Immediate cessation of acts constituting infringement.
- b) Sequestration with inventory, description or deposit of products, packages, labels and other materials bearing mark or sign object of infringement and instruments or materials intended to realize infringement; as well as documentary evidence relevant to infringement; and,
- c) Suspension of import, export or transit movement of products, instruments or materials referred to in literal b) of present article, issuing corresponding order to General Directorate of Customs.

Judge can request presumed infringer, provide information possessed on persons participating in production or commercialization of products of presumed infringement and on means of production and distribution circuits of products or services; as well as identification of third parties involved in production and distribution and distribution channels, to provide information to right holder.

When action exercised based on patent, presumed valid, barring proof to contrary.

### **Confiscation of products and instruments of infringement**

**Art. 292.-** Precautionary measures to be applied at border executed by customs authorities at moment of import, export or transit movement of products, instruments or materials object of infringement.

Illicit products, advertising material referencing products and instruments or materials serving to commit infringement, retained or confiscated by competent customs or police authorities, awaiting results of corresponding process.

Customs authority or police exempted from liability in exercise of power established in present article, unless bad faith proved.

### **Actions against improper use of geographical indications**

**Art. 293.-** Any competent authority or interested person and in particular producers, manufacturers and artisans and consumers can act, individually or jointly, for all effects relative to compliance with Article 175 and 176 of this law.

### **Prescription of action**

**Art. 294.-** Every civil action against infringement of rights conferred by present law, prescribes at two years, counted from holder knowledge of infringement, or five years, counted from last infringing act committed, applying period expiring first.

### **Border measures**

**Art. 295.-** Right holder can request competent Judge suspend import, export or transit movement of merchandise of presumably counterfeit or confusingly similar marks or illicit products, presenting sufficient evidence demonstrating to satisfaction of competent Tribunal, existence of presumption of infringement of intellectual property right and offering sufficient information of merchandise reasonably known to right holder, so easily recognizable. Requirement to provide sufficient information not dissuade recourse to procedures.

Judge can require right holder, initiating suspension procedures, yield reasonable caution sufficient to protect defendant and competent authorities and prevent abuses. Caution amount not dissuade recourse to procedures. Caution can take form of instrument issued by financial services provider to keep importer or owner of imported merchandise free of loss or injury resulting from suspension of merchandise dispatch assuming competent tribunal determines article constitutes no infringing merchandise.

Suspension executed, customs authority notify immediately importer or exporter of merchandise and measure applicant.

Border measures can be ordered ex officio regarding merchandise imported, exported or in transit, suspected infringing intellectual property right, without requiring formal request by right holder or private individual.

In cases charge fixed for request or storage of merchandise, relative to border measures for intellectual property right observance, charge not fixed in amount dissuading recourse to measures.

### **Duration of suspension of merchandise at borders**

**Art. 296.-** If action not filed within ten business days following imposition of measure related in preceding article, rendered ineffective by operation of law, actor remaining subject to established in last paragraph of present article. In duly justified cases period extended for ten additional business days. When suspension ordered as provisional measure applicable period provided in such measures.

Judicial action on merits initiated, party affected by suspension can recur to judge to consider ordered suspension and given hearing. Judge can modify, revoke or confirm suspension.

Requester of border measures liable for damages and losses resulting from execution if measures lifted or revoked by action or omission of requester, or if subsequently determined no infringement or imminence of infringement to industrial property right.

### **Inspection and information right in border measure cases**

**Art. 297.-** Without prejudice to providing protection to confidential information, Competent Judge ordering border measure, can authorize promoter, free access to retained merchandise or products, to inspect and obtain additional means of proof supporting claim. Equal right for importer or exporter. Measure performed in presence of respective Judge, with citation of opposing party.

Infringement existence proven, communicate to plaintiff name and address of consignor, importer or exporter and consignee of merchandise and quantity of merchandise object of suspension.

### **Right revendication**

**Art. 298.-** When patent or industrial design registration requested or obtained by one having no right, or to prejudice of another person having right to obtain patent or registration, affected person can reclaim right before competent tribunal, to transfer pending application or granted patent or registration, or recognize as applicant or right holder.

Right revendication action prescribes five years counted from concession date of patent or registration, or if no patent two years counted from exploitation.

### **Process patent infringement**

**Art. 299.-** When invention patent protects procedure to obtain product and produced by third party without consent of patent holder, presumed while contrary not proven, product obtained by patented procedure:

- a) If product obtained by patented procedure new; or,
- b) If substantial probability exists product manufactured by patented procedure and patent holder cannot establish through reasonable efforts, effectively utilized procedure.

### **Measures against false or illicit products**

**Art. 300.-** Competent Judge order destruction of merchandise determined counterfeit or illicit products, unless right holder consents to dispose otherwise.

In no case export of counterfeit merchandise or illicit products confiscated by customs authorities permitted, nor submission to different customs procedure, except in exceptional circumstances, by order of competent tribunal and with authorization of right holder.

## **CHAPTER II**

### **UNFAIR COMPETITION RELATED TO DISTINCTIVE SIGNS**

#### **General clause**

**Art. 301.-** Unfair considered any act performed in exercise of mercantile activity or with motive thereof, contrary to honest uses and practices in commercial matter.

For purposes of this law considered act having effects in market whatever means employed to perform, including electronic communication and commerce means.

Application of provisions of this law, cannot depend on existence of competition relationship between person performing act reputed unfair and person affected by act.

#### **Unfair competition acts linked to distinctive signs**

**Art. 302.-** Acts or behaviors typified in present law stipulated with enunciative and not exhaustive character, prohibiting any act or behavior not included in this law, considered unfair according to preceding article.

Constitute, among others, unfair competition acts:

- a) Acts capable of creating confusion or association risk regarding products, services, company or establishments of others.
- b) Use or propagation of false indications or allegations capable of denigrating or discrediting products, services, company or establishments of others.
- c) Use or propagation of indications or allegations, or omission of true information, when susceptible of inducing error regarding provenance, nature, mode of manufacture, aptitude for use or consumption, quantity or other characteristics of own or others' products or services.
- d) Utilization of product commercialized by third party to mold, trace, copy or otherwise reproduce servilely product to exploit with commercial purposes results of effort or prestige of others.
- e) Use as mark of sign whose registration prohibited according to Art. 111 literals g), h), i), j), k), l), m), n) and o), of this law.
- f) Use in commerce of sign whose registration prohibited according to Art. 112 of present law; and,
- g) Utilization of packages, wrappers, containers, packing, product decoration and establishments when characteristic and susceptible of creating confusion with another holder.

#### **Action against unfair competition act**

**Art. 303.-** Without prejudice to provision in following paragraph, any interested person can ask competent Judge constataion and declaration of illicit character of presumed unfair competition act.

Any interested person can initiate judicial action against unfair competition act. Besides person directly prejudiced by act, action can be exercised by any association or organization representative of professional, business or consumer sector when interests of members affected.

Provisions of Articles 285, 286, 290, 291 and 293 applicable, as pertinent, to mercantile or penal actions initiated against unfair competition acts. Also applicable pertinent provisions of common law relative to illicit act.

#### **Prescription of unfair competition action**

**Art. 304.-** Unfair competition action prescribes two years, counted from holder knowledge of unfair competition act, or five years, counted from last act committed, applying period expiring first.



### **CHAPTER III**

## **ACTIONS AND SANCTIONS FOR VIOLATION OF COPYRIGHT AND RELATED RIGHTS**

### **Acts constituting rights violation**

**Art. 305.-** Constitutes copyright violation, any act in any form diminishing or prejudicing moral or economic interests of author, such as:

- a) Employment without author consent, of title of work effectively identifying, to identify another of same genre, when confusion danger exists between both.
- b) Publication by any means, of writing without author consent, whether done in name or not.
- c) Printing by publisher of greater number of copies than agreed, except excess of five percent to fulfill obligations with authorities and propaganda effects.
- d) Translation, adaptation, arrangement or transformation of work, without authorization of author or successors.
- e) Publication of work with suppressions, modifications or alterations not authorized by author or successors, or with errors constituting grave adulteration.
- f) Publication of anthologies or compilations, without consent of respective authors or successors.
- g) Representation, execution, diffusion, leasing, communication or reproduction of works in any form and by any means, with profit motives, without authorization of author or successors.
- h) Representation, execution, exhibition and display of work in places distinct from agreed.
- i) Adaptation transformation or version in any form of alien work or part thereof, without consent of respective author or successors.
- j) Representation or execution of work with suppressions, modifications or alterations, not authorized by author or successors.
- k) Adaptations, arrangements or limitations implying dissimulated reproduction of original.
- l) Retransmission by any wired or wireless means, of broadcasting emission, without consent of broadcasting organization.
- m) Reproduction, import, export with conventional purposes, sale and rental of reproductions or copies of protected works, in whole or part, without authorization of rights holder, including performances of performers, phonograms and broadcasting emissions.
- n) Communication, reproduction, transmission or any other act violating rights provided in this law, performed through digital communication networks. In these cases operator or any other natural or legal person having control of computer system interconnected to said network has solidary liability, provided having knowledge or warned of possible infringement, or could not ignore without grave negligence. Understood warned of possibility of infringement, when given duly founded notice. Operators or other natural or legal persons referred to in this literal exempt from liability when acted in good faith and adopted technical measures so infringement not produced or continued.

In no case dependents, commission agents or any other person performing labor activity of any class, under remuneration, for person performing acts of copyright violation, liable for such acts, not even subsidiarily.

### **Prohibition of utilization of work or related rights without holder authorization**

**Art. 306.-** No authority nor natural or legal person can authorize utilization of work, interpretation or execution, phonographic production or broadcasting emission or any other work protected by this law; except exceptions and limitations contained in present law, or in treaties and conventions ratified by El Salvador.

Prohibition established in preceding paragraph applies also to operator or any other natural or legal person having control of computer system interconnected to digital communication network, through which permitted, induced or facilitated communication, reproduction, transmission or any other act of unauthorized utilization of work, interpretation, phonographic production or broadcasting emission or any other work protected by this law. Understood operator or any other natural or legal person having control of computer system interconnected to digital communication network not complying obligation, if not withdrawing or disabling access expeditiously, provided having knowledge or warned through duly founded notice of possible infringement, or could not ignore without grave negligence.

### **Measures on encrypted satellite signals carrying programs**

**Art. 307.-** Following activities prohibited:

- a) Manufacture, assembly, modification, import, export, sale, lease or distribution by other means, of tangible or intangible device or system, knowing or having reason to know device or system serves primarily to decode encrypted satellite signal carrying programs, without authorization of authorized distributor of said signal; and,
- b) Reception and subsequent distribution of signal carrying programs originated as encrypted satellite signal, knowing decoded without authorization of legitimate signal distributor.

Any person prejudiced by activities described in this article, including all having interest in encrypted satellite signals carrying programs or content, can exercise actions established in present chapter.

### **Scope of effective technological measures**

**Art. 308.-** Following acts prohibited:

- a) Evasion without authorization, of any effective technological measure controlling access to work, interpretation, execution or phonogram and other protected matter.
- b) Manufacture, import, distribution, offering or providing to public, or trafficking of devices, products or components; as well as offering or providing services to public, which:
  - 1. Are promoted, advertised or commercialized with purpose of evading effective technological measure.

2. Only have limited purpose or commercial importance use different from evading effective technological measure.

3. Are designed, produced or executed mainly with aim of permitting or facilitating evasion of any effective technological measure.

Infringement of prohibitions established in preceding paragraph gives rise to civil action, independent of any infringed copyright or related rights occurring. Rights holder protected by effective technological measure entitled to exercise actions established in this law.

Payment of damages not ordered against non-profit library, archives, educational institutions or public transmission entity, proving ignorance and lacking motives to know acts constituted prohibited activity.

Any natural or legal person, not holder of libraries, archives, educational institution or non-commercial public broadcasting organization without profit motives, involved maliciously and to achieve private financial commercial advantage or gain in any activities prohibited in second paragraph of this article, subject to procedures and sanctions established in Penal Code.

Constitute exceptions to any measure implementing prohibition established in second paragraph, literal b) of this article, on technology, products, services or devices evading effective technological measures controlling access, and in case of literal a) of present paragraph, protecting any exclusive copyright or related rights in work, interpretation or execution, or protected phonogram referred to in second paragraph literal b) of this article, following activities, provided not affecting adequacy of legal protection or effectiveness of legal resources against evasion of effective technological measures:

a) Non-infringing reverse engineering activities regarding legally obtained copy of computer program, performed in good faith, regarding particular elements of software not available to person involved in activities, with sole purpose of achieving interoperability of software created independently with other programs.

b) Good faith non-infringing activities, performed by duly qualified researcher legally obtained copy, execution or sample of work, interpretation or unfixed execution, or phonogram and made effort to obtain authorization to perform activities proper to research, to necessary extent and with sole purpose of identifying and analyzing flaws and vulnerabilities of technologies to encode and decode information.

c) Inclusion of component or part, with sole aim of preventing access of minors to inappropriate online content in technology, product, service or device not prohibited itself under measures implementing second paragraph literal b) of this article.

d) Good faith non-infringing activities authorized by computer, system or computer network owner performed with sole purpose of testing, investigating or correcting security of computer, system or computer network.

Likewise, constitute exceptions to any measure implementing prohibition referred to in literal a) of second paragraph of this article, activities listed in preceding paragraph and following activities, provided not affecting adequacy of legal protection or effectiveness of legal resources against evasion of effective technological measures:

a) Access by non-profit library, archive or educational institution, to work, interpretation or execution, or phonogram, not accessible otherwise, with sole purpose of making decisions on acquisition.

b) Non-infringing activities, with sole aim of identifying and disabling capacity to compile or disseminate undisclosed personal identification data information, reflecting online activities of natural person, so not affecting in any other way capacity of any person to obtain access to any work.

c) Non-infringing utilization of work, interpretation or execution, or phonogram in particular class of works, interpretations or executions, or phonograms when demonstrated in administrative procedure by substantial evidence, existence of real or potential negative impact on non-infringing uses; provided for any exception to remain valid for more than four years review carried out before expiration of period and subsequently every four years, after which demonstrated by procedure with substantial evidence, persistent real or potential negative impact on particular infringing uses.

Likewise, constitute exceptions to any measures implementing prohibitions established in literals a) and b) of second paragraph of this article, legally authorized activities performed by government employees, agents or contractors to implement law, intelligence activities, national defense, essential security and other similar governmental purposes.

### **Rights management information**

**Art. 309.-** Rights management information understood, when any elements enunciated in literals of present paragraph, attached to copy of work, interpretation or execution, or phonogram, or appear in relation to communication or making available to public of work, interpretation or execution, or phonogram:

a) Information identifying work, interpretation or execution, or phonogram, author of work, artist, interpreter or executor of interpretation or execution, or phonogram producer, or holder of any right over work, interpretation or execution, or phonogram.

b) Information on terms and conditions of utilization of work, interpretation or execution, or phonogram.

c) Any number or code representing said information.

Prohibited to any person without authorization and knowingly, or, regarding civil resources, having reasonable grounds to know, inducing, permitting, facilitating or concealing infringement of copyright or related right, perform any following acts:

a) Knowingly, suppress or alter any rights management information.

b) Distribute or import for distribution, rights management information, knowing rights management information suppressed or altered without authority.

c) Distribute, import for distribution, transmit, communicate or make available to public copies of works, interpretations or executions, or phonograms, knowing rights management information suppressed or altered without authority.

Infringement of prohibitions established in preceding paragraph gives civil action, independent of any infringed copyright or related rights occurring. Rights holder can exercise actions established in this law.

Payment of damages not ordered against non-profit library, archives, educational institutions or public transmission entity, proving ignorance and lacking motives to know acts constituted prohibited activity.

Any natural or legal person not holder of library, archive, educational institution or non-commercial public broadcasting organization without profit motives, involved maliciously and to achieve private financial commercial advantage or gain in any activities prohibited in second paragraph of this article, subject to procedures and sanctions established in penal code.

Constitute exceptions to any measures implementing prohibitions established in second paragraph of this article, legally authorized activities performed by government employees, agents or contractors to implement law, intelligence activities, national defense, essential security and other similar governmental purposes.

### **Measures in infringement action**

**Art. 310.-** Without prejudice to corresponding penal actions, holders of rights conferred by this law have action to claim before competent Judge, cessation of violation of any rights and reparation of damages and losses.

Cessation of rights violation comprises:

- a) Immediate suspension of illicit activity.
- b) Prohibition to infringer to resume.
- c) Confiscation of illicit copies and documentary evidence relevant to infringement.
- d) Destruction of goods object of infringement.
- e) Confiscation of molds, plates, matrices, negatives, devices and related products, whether fixed or not, and other objects utilized for illegal reproduction.
- f) Destruction of materials and implements utilized in manufacture or creation of infringing goods, without compensation to infringer or, in exceptional circumstances without compensation, disposed outside commercial channels minimizing risk of future infringements. Considering requests for destruction, competent tribunal consider gravity of infringement, as well as interest of third persons, holders of real rights, possession, or contractual or secured interest.
- g) Donation for charity purposes of merchandise infringing copyright and related rights, only with authorization of right holder.
- h) Removal or guarding under lock and seal of apparatus utilized in unauthorized public communication.
- i) Publication of conviction sentence and notification to interested persons, at infringer's expense.

Competent Judge can request infringer provide any information possessed regarding person involved in any aspect of infringement, and regarding means of production or distribution channels for infringing products or services, including identification of third persons involved in production and distribution and distribution channels, and provide information to right holder.

### **Calculation of damages and losses indemnification**

**Art. 311.-** Calculation of damages and losses indemnification estimated based on one following criteria, at injured party's choice:

- a) Based on damages caused to right holder as result of infringement.
- b) Based on benefits right holder would have foreseeably obtained, had infringement not occurred. To determine, competent tribunal consider, among others, value of good or service object of violation, based on suggested retail price or other legitimate measure of value presented by right holder.
- c) Based on price or royalty infringer would have paid to right holder, if contractual license concerted, considering commercial value of object of infringed right and contractual licenses already granted.

Additionally, infringer must pay right holder, profits attributable to infringement and not considered calculating damages amount referred to in preceding literals.

If Judge condemns in costs, include attorney fees proceeding.

For calculation of damages and losses indemnification, besides previously exposed criteria, must prove before Judge, use of works, phonograms and linking in income generation, also applying for this criteria of present law in collective management matter.

### **Legitimation for exercise of procedural rights relative to copyright**

**Art. 312.-** In civil, administrative and penal processes relative to copyright and related rights, person whose name indicated as author, producer, interpreter or executor or editor of work, interpretation or execution, or phonogram in usual manner, presumed, in absence of contrary proof, designated holder of rights of said work, interpretation or phonogram; and presumed, in absence of contrary proof, copyright or related right subsists in said matter.

Licensee can file judicial action against any third party committing infringement of right object license. Licensee can ask precautionary measures established in this chapter taken. Holder of right object infringement can appear in proceedings any time.

Every licensee and every beneficiary of right or credit inscribed in registry, regarding infringed right, entitled to appear in proceedings any time. For these purposes, lawsuit notified to all persons whose rights appear inscribed regarding infringed right.

### **Precautionary measures relative to copyright**

**Art. 313.-** In case of rights violation or founded fear violation initiate or repeat realized, competent tribunal, demonstrating with available evidence, circumstances and right assisting actor, decree immediately, at request of injured rights holder, prior bond yielding sufficient to protect defendant and avoid abuses and not dissuade recourse to procedures and without notice to infringer, one or several following precautionary measures, as circumstances necessary for urgent protection of rights:

- a) Preventive sequestration of liquid product obtained with illicit utilization.
- b) Preventive sequestration of illicitly reproduced copies, packages, labels and instruments or materials intended to realize infringement with inventory, description or deposit.



c) Suspension of unauthorized reproduction, communication or distribution activity, as appropriate.

d) Prohibition to import, export or permit transit movement in national territory of illicitly reproduced copies, issuing order to general directorate of customs revenue.

Competent Judge can request presumed infringer, provide information possessed on persons participating in production or commercialization of products of presumed infringement and on means of production and distribution circuits of products or services; as well as identification of third parties involved in production and distribution and distribution channels, to provide information to right holder.

Suspension of public spectacle for illicit utilization of protected works, interpretations or productions decreed by competent Justice of Peace of infringement place, even if not competent to know principal trial. Suspension decreed, Justice of Peace inform immediately Judge knowing intellectual property matter, about adopted measure.

Sequestration referred to in literal "b" of present article, no effect against one acquiring in good faith and for personal use illicitly reproduced copy.

Whoever requests precautionary measures referred to in this article, must file respective lawsuit within fifteen business days following decree of measures, otherwise, liable for damages and losses caused and measures ineffective.

### **Border measures**

**Art. 314.-** Right holder can request border measures to competent Judge, to order suspension of import, export or transit movement of illicitly reproduced copies, presenting sufficient evidence demonstrating to Judge satisfaction, existence of presumption of intellectual property right infringement and offering sufficient information of merchandise reasonably known to right holder, so easily recognizable. Requirement to provide sufficient information not dissuade recourse to procedures.

Judge require right holder requesting border measures, yield reasonable caution, sufficient to protect defendant and competent authorities and prevent abuses. Caution amount not dissuade unduly power to recur to procedures. Caution can take form of instrument issued by financial services provider, to keep importer or owner of imported merchandise free of loss or injury resulting from suspension of merchandise dispatch, assuming Judge determines article constitutes no infringing merchandise.

Suspension executed, customs authority notify immediately importer or exporter of merchandise and measure applicant.

When Judge determines copies illicitly reproduced, communicate to right holder name and address of consignor, importer and consignee, and quantity of merchandise.

Border measures ordered ex officio regarding merchandise imported, exported or in transit, suspected infringing intellectual property right, without requiring formal request by right holder or private individual.

In cases charge fixed for request or storage of merchandise, relative to border measures for intellectual property right observance, charge not fixed in amount dissuading power to recur to measures.



Precautionary measures and border measures requested before initiating infringement action, together with it or subsequent to start.

### **Common provisions**

**Art. 315.-** Regarding expert costs, judicial inspections and measures against false or illicit products established in Articles 289, 297 and 300 of present law.

## **CHAPTER IV LEGAL PROTECTION OF INTELLECTUAL PROPERTY IN DIGITAL ENVIRONMENTS**

### **Inclusion of country domain name in distinctive sign**

**Art. 316.-** When including as element of distinctive sign, generic top-level domain name and country code, created and administered by international organism in charge of Internet names and numbers assignment, applicant must present, with distinctive sign registration or renewal application, documentation justifying use of top-level domain names. Presentation of mentioned documentation implies no immediate admissibility of distinctive sign, being subject to substantive examination regarding intrinsic prohibitions or affection of third-party rights.

### **Cybersquatting of distinctive sign**

**Art. 317.-** In case of evident intention to occupy or register distinctive sign as domain name, capable of causing association error regarding entrepreneurial origin, or with intention of taking advantage of distinctive sign notoriety or fame or reputation of company, national domain name administering entity proceed according to regulations, to deny illicit domain name registration. If domain name registered with mentioned purposes, national domain name administering entity proceed according to regulations, to cancel domain name. Provision in preceding paragraph applied to trademark renewal applications.

### **Resolution of controversies between domain names regarding distinctive signs**

**Art. 318.-** If conflict between distinctive signs and domain names, interested parties can recur to national entity administering country code top-level domain, which must resolve according to controversy resolution procedures, based on principles established in Uniform Domain Name Dispute Resolution Policy.

### **Additional means to resolution of controversies between distinctive signs and domain names**

**Art. 319.-** Institute, as intellectual property rights administering entity, can make available to distinctive sign holders and domain name users, additional means and resources to established in preceding article, contributing to solution of conflicts between distinctive signs and domain names. Means and resources developed in regulation of present law.

### **Public access to domain names**

**Art. 320.-** National Entity Administering country code top-level domain, must provide online public access to reliable and accurate database, with contact information for domain name registrants. Entity administering country code top-level domain must observe legal provisions on registrant privacy protection when publishing country code top-level domain information.

### **Domain name prior to distinctive sign registration**

**Art. 321.-** Whoever has duly inscribed domain name linked to products, services or real and specific commercial turn, can demand before competent Judge, whoever inscribed such domain name as distinctive sign, in bad faith or with purpose of performing unfair competition acts.

Previous action prescribes in five years, counted from distinctive sign inscription date, action does not prescribe if performed in bad faith.

### **Cybersquatting of protected work title**

**Art. 322.-** Title of work protected in terms of present law, cannot be occupied or registered as domain name by third party, if confusion risk in public or undue advantage of artistic, literary or commercial success of work evidenced. Except titles of works, which, due to generic or descriptive character relative to work content, constitute necessary designation.

If domain name registered under mentioned assumption, national domain name administering entity applies corresponding regulations.

### **Cybersquatting of pseudonym of author, performer**

**Art. 323.-** Literary or artistic pseudonym, as exclusive and personal right of author or performer, cannot be occupied or registered as domain name by third party aimed at taking advantage of fame and reputation thereof.

If domain name registered under mentioned assumption, national domain name administering entity applies corresponding regulations.

## **BOOK V**

### **COMMON AND TRANSITORY PROVISIONS**

## **CHAPTER I**

### **FEES**

### **Special exemptions**

**Art. 324.-** State and Municipalities enjoy total exemption from fees established in present law.

Institutions of all formal education levels regulated by General Education Law enjoy exemption from fees relative to application presentation, publication and registration rights

of distinctive signs, patents and copyright. In case of invention patents and utility models, exemption applies to substantive examination request. Likewise, duly accredited members from Higher Education Institutions enjoy 50% exemption from fees relative to presentation, publication and registration rights of distinctive signs, patents and copyright.

Persons inscribed in National Registry of Culture and Art Workers, according to specialty of artist, creator or professional, enjoy 50% exemption from fees relative to presentation, publication and registration rights of distinctive signs, patents and copyright.

Natural or legal persons classified as micro and small enterprise according to special laws, enjoy 50% exemption from fees relative to presentation and registration rights of distinctive signs, patents and copyright.

Fees established in present law resulting solely from special promotion, encouragement and diffusion activities performed by Institute may be exempted from payment.

### **Registration rights**

**Art. 325.-** Amounts of fees for services provided by Institute are following:

#### **Distinctive signs**

- a) Presentation of trademark application for each class ... \$20.00
- b) Presentation of trade name, emblem, expression or signal of commercial advertising, geographical indication or appellation of origin application ... \$20.00
- c) Limitation, modification or division of application ... \$25.00
- d) Publication of application ... \$50.00
- e) Each additional class ... \$5.00
- f) Opposition application ... \$50.00
- g) Trademark registration rights for each class ... \$80.00
- h) Registration rights for trade name, emblem, expression or signal of commercial advertising, geographical indication or appellation of origin ... \$55.00
- i) For renewal of trademark registration, in each class ... \$100.00
- j) For renewal of expression or signal of commercial advertising, trade name and emblem ... \$75.00
- k) Surcharge for renewal in grace period of distinctive signs ... \$100.00
- l) Inscription application of limitation, division, transfer, use license, name change, domicile change, voluntary cancellation, preventive annotation and embargo of registered sign ... \$30.00
- m) Modification or cancellation of use license ... \$30.00
- n) Registration nullity application for intrinsic reasons ... \$500.00
- o) Cancellation for mark generalization ... \$500.00
- p) Changes in regulations of collective mark, certification mark, geographical indication or appellation of origin ... \$30.00
- q) Modification to geographical indication or appellation of origin registration ... \$30.00

## Patents

- a) Registration application of invention patent, utility model and industrial design ... \$50.00
- b) Publication of application ... \$50.00
- c) Substantive examination request of invention patent, up to maximum 10 claims ... \$300.00
- d) Additional claims in invention patent substantive examination ... \$20.00
- e) Substantive examination request of utility model, up to maximum 10 claims ... \$100.00
- f) Additional claims in utility model substantive examination ... \$10.00
- g) Annual fees for invention patent maintenance:
  - 1° annuity \$50.00
  - 2° annuity \$70.00
  - 3° annuity \$90.00
  - 4° annuity \$110.00
  - 5° annuity \$130.00
  - 6° annuity \$150.00
  - 7° annuity \$170.00
  - 8° annuity \$190.00
  - 9° annuity \$210.00
  - 10° annuity \$230.00
  - 11° annuity \$250.00
  - 12° annuity \$270.00
  - 13° annuity \$290.00
  - 14° annuity \$310.00
  - 15° annuity \$330.00
  - 16° annuity \$350.00
  - 17° annuity \$370.00
  - 18° annuity \$390.00
- h) Annual fees for utility model maintenance:
  - 1° annuity \$10.00
  - 2° annuity \$20.00
  - 3° annuity \$30.00
  - 4° annuity \$40.00
  - 5° annuity \$50.00
  - 6° annuity \$60.00
  - 7° annuity \$70.00
  - 8° annuity \$80.00
- i) Surcharge for payment within grace period of invention patent and utility model maintenance fees ... 50% of corresponding annual fee
- j) Quinquennial fees for industrial design maintenance:

- 1° quinquennium \$50.00
- 2° quinquennium \$50.00
- k) Surcharge for payment within grace period of industrial design maintenance fees ... 50% of quinquennial fee
- l) Inscription application of limitation, division, transfer, use license, name change, domicile change, voluntary cancellation, preventive annotation and embargo of patent, utility model and industrial design ... \$50.00
- m) Rehabilitation of invention patent, utility model ... \$500.00
- n) Rehabilitation of industrial design ... \$200.00

### **Copyright**

- a) Deposit of work ... \$10.00
- b) Modification of work ... \$10.00
- c) Inscription of contracts ... \$30.00
- d) Inscription of collective management organizations ... \$100.00
- e) Publication of inscription, agreements or tariffs ... \$50.00
- f) Inscription of tariffs of collective management organizations ... \$100.00
- g) Modification of constitution deed of collective management organization ... \$100.00
- h) Modification of tariffs of collective management organization ... \$100.00
- i) Credential of Board of Directors of collective management organization ... \$100.00
- j) Credential of general director of collective management organization ... \$50.00
- k) Inscription of dissolution of collective management organization ... \$100.00
- l) Oppositions to tariffs of collective management organizations ... \$75.00

### **Common service fees**

- a) Search of copyright by work name ... \$10.00
- b) Search of patents by keyword ... \$20.00
- c) Phonetic search of distinctive sign, per class ... \$20.00
- d) Search application by holder in copyright, patents and distinctive signs ... \$50.00
- e) Other type of publication ... \$50.00
- f) Mediation request ... \$200.00
- g) Certificates of copyright, patent and distinctive signs ... \$10.00
- h) Literal certifications of copyright, patent and distinctive signs ... \$15.00
- i) Simple copy of any copyright, patent and distinctive signs document ... \$5.00
- j) Duplicate copyright deposit certificate, patent registration certificate or distinctive sign registration certificate ... \$15.00
- k) Rectification of patent certificate, patent transfer, copyright, copyright contract or distinctive signs ... \$30.00
- l) Replacement of patent or distinctive sign posters ... \$15.00

## **CHAPTER II**

### **COMMON NORMS**

#### **Files, books or registries**

**Art. 326.-** Registration of distinctive signs, patents and copyright carried through administrative files, books or registries, which can be physical or electronic.

Any person can consult files, books or registries referenced in present article. Likewise, Institute can make available electronic consultation systems.

Registries referred to in present law public and any person can request certifications, certificates and copies of documents and instruments contained therein, upon payment of fee established in present law.

Physical or electronic support files formed by orderly aggregation of proceedings and documents presented by interested party, as well as resolutions, reports, notifications and other diligences must integrate file.

Institute can eliminate physical support file, after documentary conservation period of one year elapsed, counted from date diligences lapsed, abandoned, cancelled or denied, or when electronic support allows consultation. Foregoing also applies to files formed prior to entry into force of present law.

#### **Access to registration documents**

**Art. 327.-** Files or any other means in which inscriptions made, cannot leave Institute offices for any reason and any judicial or administrative diligence executed therein and in presence of official designated by registrar. Foregoing without prejudice to established in Articles 29 and 37 of Contentious Administrative Jurisdiction Law.

At request of interested person, registrar can return any document presented to Institute in any procedure and not necessary to preserve. Return done leaving duly confronted photocopy of respective document in respective file. Foregoing at interested party's expense.

#### **Intervention of interested third parties**

**Art. 328.-** In all proceedings relative to waiver, nullity or cancellation of registered right, any licensee and any beneficiary of right inscribed in relation to industrial property right object of action can appear.

#### **Lapse of management**

**Art. 329.-** Except when other periods specially provided in this law applicable, registration applications and actions exercised under empire thereof, deemed lapsed by operation of law if course not urged within six months, counted from day following last notification made to interested party or parties, unless force majeure or fortuitous event proved.

#### **Appealable acts**

**Art. 330.-** Against any resolution dictated by Institute appeals determined by Law of Administrative Procedures can be interposed, without prejudice to exceptions established in this law.

### **Notifications**

**Art. 331.-** All resolutions and rulings dictated by Institute, notified to interested parties, by any means allowing record of reception by interested party or representative, as well as date and content of notified act. Periods counted from business day following date interested party notified.

### **Rectifications**

**Art. 332.-** Registrar can rectify by self and responsibility, omissions and material errors committed in entries of books or registration files, when documents based on which respective inscription made still exist in office.

Understood material error committed when writing words for others, or mistaking proper names, corporate names or denominations or quantities.

If registrar notices material error or omission after documents or titles returned to interested party, only can make rectification with citation thereof, preventing presentation of documents or titles in Institute, prior verification not suffered any alteration. This type of rectification done without cost to interested party.

Likewise, rectification can also be requested by interested party, paying fee established in present law.

### **Competent tribunals**

**Art. 333.-** While special judicial tribunals with jurisdiction in intellectual property matter not created, competent Judges referred to in this law, are those having jurisdiction in civil and commercial matter, who proceed in declarative trial, according to claim amount, in conformity with established in Code of Civil and Commercial Procedure.

Precautionary measures can also be dictated by competent Judges in judicial processes for penal infringements.

## **CHAPTER III TRANSITORY PROVISIONS**

### **Pending applications and actions**

**Art. 334.-** Any application or procedure pending in Institute and actions deducted at date of entry into force of present law, continue processing according to legal regime valid prior to this regulation until finalization.

### **Valid registrations**



**Art. 335.-** Distinctive signs, patents, copyright acts and contracts registered according to previous laws, preserve validity said laws granted, but any procedure or action initiated on said registrations subsequent to validity of present law, processed according to provisions contained herein.

Expressions or signals of publicity and trade names registered before validity of this law, having more than ten years inscribed, have special validity period of two years, to process renewal, cancelling fee established in present law.

### **Repeals**

**Art. 336.-** Hereby repealed:

- a) Law of Trademarks and Other Distinctive Signs, contained in Legislative Decree No. 868 dated June 6, 2002, published in Official Gazette No. 125 Volume No. 356, dated July 8, 2002.
- b) Intellectual Property Law, contained in Legislative Decree No. 604 dated July 15, 1993, published in Official Gazette No. 150, Volume No. 320, dated August 16, 1993.

### **Change of denomination**

**Art. 337.-** When in Decrees, Laws and Regulations reference made to attributions granted to Intellectual Property Registry, understood Salvadoran Institute of Intellectual Property of National Registry Center.

### **Special transitory norm on fee exemption**

**Art. 338.-** After fifteen days counted from publication date of present law, National Registry Center, applies special exemption in current fees for application presentation and registration rights to Institutions of all formal education levels regulated by General Education Law.

### **Regulation**

**Art. 339.-** President of Republic shall issue regulation of this law within period of ninety days, counted from validity.

### **Validity**

**Art. 340.-** Present Law enters into force six months after date of publication in Official Gazette.

GIVEN IN THE BLUE ROOM OF THE LEGISLATIVE PALACE: San Salvador, on the eighth day of the month of August of the year two thousand twenty-four.

**ERNESTO ALFREDO CASTRO ALDANA,**  
PRESIDENT.

**SUECY BEVERLEY CALLEJAS ESTRADA,**  
FIRST VICE PRESIDENT.

**ELISA MARCELA ROSALES RAMIREZ,**  
FIRST SECRETARY.

**KATHERYN ALEXIA RIVAS GONZÁLEZ,**  
SECOND VICE PRESIDENT.

**REYNALDO ANTONIO LÓPEZ CARDOZA,**  
SECOND SECRETARY.

**REINALDO ALCIDES CARBALLO CARBALLO,**  
THIRD SECRETARY.

PRESIDENTIAL HOUSE: San Salvador, on the fifteenth day of the month of August of two thousand twenty-four.

PUBLISH,

**Nayib Armando Bukele Ortiz,**  
President of the Republic.

**MARÍA LUISA HAYEM BREVÉ,**  
Minister of Economy.

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