

Project on Cybercrime

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Cybercrime legislation – country profile

Ukraine

This profile has been prepared within the framework of the Council of Europe's Project on Cybercrime in view of sharing information on cybercrime legislation and assessing the current state of implementation of the Convention on Cybercrime under national legislation. It does not necessarily reflect official positions of the country covered or of the Council of Europe.

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Country:	Ukraine
Signature of Convention:	Yes (23/11/2001)
Ratification/accession:	Yes (10/3/2006)
Provisions of the Convention	Corresponding provisions/solutions in national legislation <i>(pls quote or summarise briefly; pls attach relevant extracts as an appendix)</i>
<i>Chapter I – Use of terms</i>	
Article 1 – “Computer system”, “computer data”, “service provider”, “traffic data”	
<i>Chapter II – Measures to be taken at the national level</i> <i>Section 1 – Substantive criminal law</i>	For Art. 2, 4-6 and 12 see Art. 356 of the Criminal Code of Ukraine (with amendments of September 1, 2001). See also Art. 34 of the Constitution of Ukraine.
Article 2 – Illegal access	For Art. 2 (in terms “... with the intent of obtaining computer data”)- see partially Art. 359 of the Criminal Code of Ukraine (with amendments of September 1, 2001). See also Art. 361 of the Criminal Code of Ukraine (with amendments of June 5, 2003).
Article 3 – Illegal interception	See partially Art. 31 of the Constitution of Ukraine. See also Art. 163 of the Criminal Code of Ukraine (with amendments of September 1, 2001). See also Art. 359 of the Criminal Code of Ukraine (with amendments of September 1, 2001). Art. 362(2) of the Criminal Code of Ukraine (with amendments of June 5, 2003). See also Art. 14-1 of the Code of Criminal Procedure of Ukraine (with

	amendments of June 5, 2003).
Article 4 – Data interference	Art. 362(1) of the Criminal Code of Ukraine (with amendments of June 5, 2003).
Article 5 – System interference	Art. 361(1) of the Criminal Code of Ukraine (with amendments of June 5, 2003). Partially see Art. 363 of the Criminal Code of Ukraine (with amendments of June 5, 2003).
Article 6 – Misuse of devices	For Art. 6(1/a/i)- see Art. 361-1 of the Criminal Code of Ukraine (with amendments of June 5, 2003).
Article 7 – Computer-related forgery	Art. 362(1) of the Criminal Code of Ukraine (with amendments of June 5, 2003).
Article 8 – Computer-related fraud	See Art. 190, especially paragraph 3 of the Criminal Code of Ukraine (with amendments of September 1, 2001).
Article 9 – Offences related to child pornography	Art. 52 (in terms “any violence against a child...”) of the Constitution of Ukraine. Art. 301 of the Criminal Code of Ukraine (with amendments of September 1, 2001). For Art. 9(1/a)- see At. 301(1 in terms “making”) and Art. 301(3 in terms “making of...”) of the Criminal Code of Ukraine (with amendments of September 1, 2001). For Art. 9(1/b)- see Art. 301(1 in terms “sale or distribution”) of the Criminal Code of Ukraine (with amendments of September 1, 2001). For Art. 9(1/c)- see Art. 301(1 in terms “transportation or other movement”)
Title 4 – Offences related to infringements of copyright and related rights	
Article 10 – Offences related to infringements of copyright and related rights	Art. 54 (in terms “protection of intellectual property...”) of the Constitution of Ukraine. See also Art. 176 of the Criminal Code of Ukraine (with amendments of September 1, 2001). For Art. 10(2) see also Art. 216 of the Criminal Code of Ukraine (with amendments of September 1, 2001). See Law on Copyright and Related Rights (of 2001) of Ukraine and especially Art. 1, 3, 7, 8.-1., 9, 15.-1., 16.-1., 17-1., 18, 20.-1., 35, 36.-1., 40.-1., 41.-1., 42.-1., 43.-1. and 50.
Article 11 – Attempt and aiding or abetting	For Art. 11(1) see Art. 26-27 and Art. 29 of the Criminal Code of Ukraine (with amendments of September 1, 2001). See also Art. 68(2) of the Criminal Code of Ukraine (with amendments of September 1, 2001). For Art. 11(2) see Art. 13(2) and Art. 15 of the Criminal Code of Ukraine (with amendments of September 1, 2001).
Article 12 – Corporate liability	
Article 13 – Sanctions and measures	
<i>Section 2 – Procedural law</i>	
Article 14 – Scope of procedural provisions	For Art. 14(1)- see art. 128-1 of the Code of Criminal Procedure of Ukraine (with amendments of June 5, 2003).
Article 15 – Conditions and	See Art. 30 and Art.31 of the Constitution of Ukraine.

safeguards	
Article 16 – Expedited preservation of stored computer data	
Article 17 – Expedited preservation and partial disclosure of traffic data	
Article 18 – Production order	
Article 19 – Search and seizure of stored computer data	For Art. 19(1) see Art. 30 of the Constitution of Ukraine. See also Art. 14-1 of the Code of Criminal Procedure of Ukraine (with amendments of June 5, 2003). See partially Chapter 16 of the Code of Criminal Procedure of Ukraine (with amendments of June 5, 2003).
Article 20 – Real-time collection of traffic data	For Art. 20(1)- see also Art. 66 of the Code of Criminal Procedure of Ukraine (with amendments of June 5, 2003). For Art. 20(3) see Art. 387 of the Criminal Code of Ukraine (with amendments of September 1, 2001).
Article 21 – Interception of content data	For Art. 21(1-2) see Art. 31 (in terms “in the course of the investigation of a criminal case”) of the Constitution of Ukraine. For Art. 21(1)- see also Art. 66 of the Code of Criminal Procedure of Ukraine (with amendments of June 5, 2003). For Art. 21(3) see Art. 387 of the Criminal Code of Ukraine (with amendments of September 1, 2001).
<i>Section 3 – Jurisdiction</i>	
Article 22 – Jurisdiction	
<i>Chapter III – International co-operation</i>	
Article 24 – Extradition	Art. 10 of the Criminal Code of Ukraine (with amendments of September 1, 2001).
Article 25 – General principles relating to mutual assistance	
Article 26 – Spontaneous information	
Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements	
Article 28 – Confidentiality and limitation on use	
Article 29 – Expedited preservation of stored computer data	
Article 30 – Expedited disclosure of preserved traffic data	

Article 31 – Mutual assistance regarding accessing of stored computer data	
Article 32 – Trans-border access to stored computer data with consent or where publicly available	
Article 33 – Mutual assistance in the real-time collection of traffic data	
Article 34 – Mutual assistance regarding the interception of content data	
Article 35 – 24/7 Network	
Article 42 – Reservations	<p>Reservation contained in the instrument of ratification deposited on 10 March 2006 – Or. Engl.</p> <p>Ukraine reserves the right not to apply paragraph 1 of Article 6 of the Convention concerning the establishment of criminal liability for the production, procurement for use and otherwise making available for use of the objects designated in subparagraph 1.a.i., and also the production and procurement for use of the objects designated in subparagraph 1.a.ii of Article 6 of the Convention.</p> <p>Period covered: 1/7/2006 – The preceding statement concerns Article(s) : 6</p> <p>Reservation contained in the instrument of ratification deposited on 10 March 2006 – Or. Engl.</p> <p>Ukraine reserves the right not to apply to the full extent subparagraphs 1.d and 1.e of Article 9 of the Convention.</p> <p>Period covered: 1/7/2006 – The preceding statement concerns Article(s) : 9</p> <p>Declaration contained in the instrument of ratification deposited on 10 March 2006 – Or. angl.</p> <p>In accordance with Article 24, subparagraph 7.a, of the Convention, Ukraine declares that the authorities empowered to perform the functions mentioned in paragraph 7 of Article 24 of the Convention shall be the Ministry of Justice of Ukraine (concerning court's inquiries) and the General Prosecutor's Office of Ukraine (concerning inquiries of bodies of prejudicial inquiry).</p> <p>Period covered: 1/7/2006 – The preceding statement concerns Article(s) : 24</p> <p>Declaration contained in the instrument of ratification deposited on 10 March 2006 – Or. angl.</p> <p>In accordance with Article 27, subparagraph 2.c, of the Convention, Ukraine declares that the authorities responsible for sending requests for mutual assistance, answering them, their execution or their transfer to the empowered authorities shall be the Ministry of Justice of Ukraine (concerning courts' commission) and the General Prosecutor's Office of Ukraine (concerning commissions of bodies of prejudicial inquiry).</p> <p>Period covered: 1/7/2006 – The preceding statement concerns Article(s) : 27</p>

Appendix: Solutions in national legislation.

CONSTITUTION OF UKRAINE

Adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996,

as amended by the Law

No. 2222-IV On Amendments to the Constitution of Ukraine adopted on 8 December 2004

Article 30.

Everyone is guaranteed the inviolability of his or her dwelling place.

Entry into a dwelling place or other possessions of a person, and the examination or search thereof, shall not be permitted, other than pursuant to a substantiated court decision.

In urgent cases related to the preservation of human life and property or to the direct pursuit of persons suspected of committing a crime, another procedure established by law is possible for entry into a dwelling place or other possessions of a person, and for the examination and search thereof.

Article 31.

Everyone is guaranteed privacy of mail, telephone conversations, telegraph and other correspondence. Exceptions shall be established only by a court in cases envisaged by law, with the purpose of preventing crime or ascertaining the truth in the course of the investigation of a criminal case, if it is not possible to obtain information by other means.

Article 34.

Everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs.

Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.

The exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice.

Article 52.

Children are equal in their rights regardless of their origin and whether they are born in or out of wedlock.

Any violence against a child, or his or her exploitation, shall be prosecuted by law.

The maintenance and upbringing of orphans and children deprived of parental care is entrusted to the State. The State encourages and supports charitable activity in regard to children.

Article 54.

Citizens are guaranteed the freedom of literary, artistic, scientific and technical creativity, protection of intellectual property, their copyrights, moral and material interests that arise with regard to various types of intellectual activity.

Every citizen has the right to the results of his or her intellectual, creative activity; no one shall use or distribute them without his or her consent, with the exceptions established by law.

The State promotes the development of science and the establishment of scientific relations of Ukraine with the world community.

Cultural heritage is protected by law.

The State ensures the preservation of historical monuments and other objects of cultural value, and takes measures to return to Ukraine the cultural treasures of the nation, that are located beyond its borders.

CRIMINAL CODE OF UKRAINE

(This Code enters into force on September 1, 2001)

Article 10. Extradition of a person accused of a criminal offense and a person convicted of a criminal offense

1. Citizens of Ukraine and stateless persons permanently residing in Ukraine, who have committed criminal offenses outside Ukraine, shall not be extradited to a foreign state for criminal prosecution and committal for trial.
2. Foreign nationals, who have committed criminal offenses on the territory of Ukraine and were convicted of these offenses under this Code, may be transferred to serve their sentences for the committed offenses in the state, whose nationals they are, where such transfer is provided for by the international treaties of Ukraine.
3. Foreign nationals or stateless persons not residing permanently in Ukraine, who have committed crimes outside Ukraine and stay on the territory of Ukraine, may be extradited to a foreign state for criminal prosecution and committal for trial, or transferred to serve their sentence, where such extradition or transfer is provided for by the international treaties of Ukraine.

Article 12. Classification of criminal offenses

1. Depending on the gravity, criminal offenses shall be classified as minor offenses, medium grave offenses, grave offenses, or special grave offenses.
2. A minor criminal offense shall mean an offense punishable by imprisonment for a term up to two years or a more lenient penalty.
3. A medium grave offense shall mean an offense punishable by imprisonment for a term up to five years.
4. A grave criminal offense shall mean an offense punishable by imprisonment for a term up to ten years.
5. A special grave offense shall mean an offense punishable by more than ten years of imprisonment or a life sentence.

Article 13. Consummated and unconsummated criminal offenses

1. A consummated criminal offense shall mean an offense which comprises all elements of a criminal offense as prescribed by the relevant article of the Special Part of this Code.
2. An unconsummated criminal offense shall mean the preparation for crime and criminal attempt.

Article 15. Criminal attempt

1. A criminal attempt shall mean a directly intended act (action or omission) made by a person and aimed directly at the commission of a criminal offense prescribed by the relevant article of the Special Part of this Code, where this criminal offense has not been consummated for reasons beyond that person's control.
2. A criminal attempt shall be consummated where a person has completed all such actions as he/she deemed necessary for the consummation of an offense, however, the offense was not completed for the reasons beyond that person's control.

3. A criminal attempt shall be unconsummated where a person has not completed all such actions as he/she deemed necessary for the consummation of an offense for the reasons beyond that person's control.

Article 26. The notion of complicity

Criminal complicity is the willful co-participation of several criminal offenders in an intended criminal offense.

Article 27. Types of accomplices

1. Organizer, abettor and accessory, together with the principal offender, are deemed to be accomplices in a criminal offense.

2. The principal (or co-principal) is the person who, in association with other criminal offenders, has committed a criminal offense under this Code, directly or through other persons, who cannot be criminally liable, in accordance with the law, for what they have committed.

3. The organizer is a person who has organized a criminal offense (or criminal offenses) or supervised its (their) preparation or commission. The organizer is also a person who has created an organized group or criminal organization, or supervised it, or financed it, or organized the covering up of the criminal activity of an organized group or criminal organization.

4. The abettor is a person who has induced any other accomplice to a criminal offense, by way of persuasion, subornation, threat, coercion or otherwise.

5. The accessory is a person who has facilitated the commission of a criminal offense by other accomplices, by way of advice, or instructions, or by supplying the means or tools, or removing obstacles, and also a person who promised in advance to conceal a criminal offender, tools or means, traces of crime or criminally obtained things, to buy or sell such things, or otherwise facilitate the covering up of a criminal offense.

6. The concealment of a criminal offender, tools or means of a criminal offense, traces of crime or criminally obtained things, or buying or selling such things shall not constitute complicity where they have not been promised in advance. Persons who have committed such acts shall be criminally liable only in cases prescribed by Articles 198 and 396 of this Code.

7. A promised failure to report a crime which is definitely known to be in preparation or in progress, prior to the consummation of such, shall not constitute complicity. Any such person shall be criminally liable only if the act so committed comprises the elements of any other criminal offense.

Article 29. Criminal liability of accomplices

1. The principal (or co-principals) shall be criminally liable under that article of the Special Part of this Code which creates the offense he has committed.

2. The organized, abettor and accessory shall be criminally liable under the respective paragraph of Article 27 and that article (or paragraph of the article) of the Special Part of this Code which creates an offense committed by the principal.

3. The features of character of a specific accomplice shall be criminated only upon such accomplice. Other circumstances that aggravate responsibility and are provided for by articles of the Special Part of this Code as the elements of a crime that affect the treatment of the principal's actions, shall be criminated only upon the accomplice who was conscious of such circumstances.

4. Where the principal commits an unconsummated criminal offense, other accomplices shall be criminally liable for complicity in an unconsummated crime.

5. Accessories shall not be criminally liable for the act committed by the principal, where that act was no part of their intent.

Article 68. Imposition of punishment for unconsummated criminal offense and offense committed in complicity

1. For the purposes of imposition of punishment for an unconsummated criminal offense, a court, while being guided by Articles 65-67 of this Code, shall consider the degree of gravity of a person's

act, the degree of consummation of the criminal intent, and the reasons for which the offense was not consummated.

2. For the purposes of imposition of punishment upon accomplices in a criminal offense, a court, while being guided by Articles 65-67 of this Code, shall take into account the nature and the degree of each person's participation in the criminal offense.

Article 155. Sexual intercourse with a sexually immature person

1. Sexual intercourse with a sexually immature person, -

shall be punishable by restraint of liberty for a term up to three years or imprisonment for the same term.

2. The same actions committed by a parent or surrogate parent, or where they caused sterility or other grave consequences, -

shall be punishable by imprisonment for a term of three to five years.

Article 156. Debauchery of minors

1. Debauched actions committed in regard of a person under 16 years of age, -

shall be punishable by arrest for a term up to six months, or restraint of liberty for a term up to three years.

2. The same actions committed in regard of a young child, or by a parent or surrogate parent, -

shall be punishable by restraint of liberty for a term up to five years, or imprisonment for a term up to three years.

Article 163. Violation of privacy of mail, telephone conversations, telegraph and other correspondence conveyed by means of communication or via computers

1. Violation of privacy of mail, telephone conversations, telegraph and other correspondence conveyed by means of communication or via computers,

shall be punishable by a fine of 50 to 100 tax-free minimum incomes, or correctional labor for a term up to two year, or restraint of liberty for a term up to three years.

2. The same actions committed in respect of statesmen or public figures, by an official, or by use of special devices for secret reading of information, -

shall be punishable by imprisonment for a term of three to seven years.

Article 176. Violation of copyright and allied rights

1. Illegal reproduction or distribution of scientific, literary, or art works, computer software or databases, and also illegal reproduction, distribution of performances, phonograms and broadcast programs, making their illegal copies and distribution on audio and video tapes, disks, and other media, and, also, any other use of anybody else's works, computer software and databases, or anything protected by allied rights, without a consent of copyright or allied rights holders, where such actions caused a significant pecuniary loss, -

shall be punishable by a fine of 100 to 400 tax-free minimum incomes, or correctional labor for a term up to two years, with the forfeiture of all copies of works, material media with computer software, databases, performances, phonograms, broadcast programs, and the equipment and material designated for their production and reproduction.

2. The same actions, if repeated or where they caused a specially significant pecuniary loss, -

shall be punishable by a fine of 200 to 800 tax-free minimum incomes, or correctional labor for a term up to two years, or imprisonment for the same term, with the forfeiture of all copies of works, material media with computer software, databases, performances, phonograms, broadcast programs, and the equipment and material designated for their production and reproduction.

3. Any such actions as provided for by paragraph 1 or 2 of this Article, where committed by an official through abuse of office in regard of a subordinate person, -

shall be punishable by a fine of 500 to 1000 tax-free minimum incomes, or arrest for a term up to six months, or restraint of liberty for a term up to two years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

Note: A significant pecuniary loss is caused, if the value of copies of illegally reproduced or distributed works, material media with computer software, databases, performances, phonograms, and broadcast programs, audio and video tapes, disks, and other media, or the amount of proceeds from illegal publication, performance, demonstration or public display of works, computer software, databases, performances, phonograms, or broadcast programs, or from sale of audio and video tapes, disks, and other media exceeds 100 tax-free minimum incomes; and an especially significant pecuniary loss is caused where their value or amount of proceeds exceed 1000 tax-free minimum incomes.

Article 190. Fraud

1. Taking possession of somebody else's property or obtaining the property title by deceit or breach of confidence (fraud), -

shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labor for a term up to two years, or restraint of liberty for a term up to three years.

2. Fraud, if repeated, or committed by a group of persons upon their prior conspiracy, or where it caused a significant damages to the victim, -

shall be punishable by a fine of 50 to 100 tax-free minimum incomes, or correctional labor for a term of one to two years, or restraint of liberty for a term up to five years, or imprisonment for a term up to three years.

3. Fraud committed in respect of a gross amount or by unlawful operations involving computerized equipment, -

shall be punishable by imprisonment for a term of three to eight years.

4. Fraud committed in respect of an especially gross amount, or by an organized group, -

shall be punishable by imprisonment for a term of eight to fifteen years and forfeiture of property.

Article 200. Illegal actions in respect of remittance documents, payment cards and other means providing access to bank accounts, and equipment for their production

1. Forgery of remittance documents, payment cards and other means providing access to bank accounts, and also purchase, storage, transportation or sending for selling purposes of counterfeit remittance documents or payment cards, or their use or sale, -

shall be punishable by a fine of 500 to 1,000 tax-free minimum incomes, or imprisonment for a term up to three years.

2. The same actions, if repeated or committed by a group of persons upon their prior conspiracy, -

shall be punishable by imprisonment for a term of two to five years.

Note: Remittance documents shall mean any paper or electronic documents used by banks or their clients to transfer remittance orders or information between those involved in remittance (payment documents, cash remittance documents, documents used for interbank remittance and payment notice, etc.)

Article 216. Illegal production, counterfeiting, use or sale of illegally produced, acquired or counterfeit documentary stamps or check stamps

1. Illegal production, counterfeiting, use or sale of illegally produced, acquired or counterfeit documentary stamps or check stamps for labeling of packages of copies of audiovisual works and phonograms, or holographic protection elements, -

shall be punishable by a fine of 100 to 300 tax-free minimum incomes, or restraint of liberty for a term up to four years.

2. The same actions, if repeated, -

shall be punishable by a fine of 300 to 1,000 tax-free minimum incomes, or restraint of liberty for a term of three to five years.

Article 301. Importation, making, sale or distribution of pornographic items

1. Importation into Ukraine for sale or distribution purposes, or making, transportation or other movement for the same purposes, or sale or distribution of pornographic images or other items, and also compelling others to participate in their making, -

shall be punishable by a fine of 50 to 100 tax-free minimum incomes, or arrest for a term up to six months, or restraint of liberty for a term up to three years, with the forfeiture of pornographic images or other items and means of their making and distribution.

2. The same actions committed in regard to pornographic motion pictures and video films, or computer programs, also selling pornographic images or other items to minors or disseminating such images and items among them, -

shall be punishable by a fine of 100 to 300 tax-free minimum incomes, or restraint of liberty for a term up to five years, or imprisonment for the same term, with the forfeiture of pornographic motion pictures and video films and means of their making and showing.

3. Any such acts as provided for by paragraph 1 or 2 of this Article, if repeated, or committed by a group of persons upon their prior conspiracy, and also compelling minors to participate in the making of pornographic works, images, motion pictures, video films, or computer programs, -

shall be punishable by imprisonment of three to seven years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and forfeiture of pornographic items, motion pictures, video films, computer programs, and means of their making, dissemination and showing.

- The below mentioned **article 301 of the Criminal Code of Ukraine** covers crimes against children using the Internet.

Article 356. Unauthorized action

Unauthorized action, that is doing anything contrary to the rules established by law, where the lawfulness of such acts is challenged by an individual citizen, an enterprise, institution or organization, and where such acts caused any significant damage to the interests of a citizen, state and public interests, or interests of the owner, -

shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labor for a term up to two years, or arrest for a term up to three months.

Article 359. Illegal use of special technology for secret obtaining of information

1. Unlawful use of special technology for secret obtaining of information, -

shall be punishable by a fine of 100 to 200 tax-free minimum incomes, or restraint of liberty for a term up to four years, or imprisonment for the same term.

2. The same actions, if repeated, or committed by a group of persons upon their prior conspiracy, or by an organized group, or if they caused any substantial damage to legally protected rights, freedoms and interests of individual citizens, or state and public interests, or interests of individual legal entities, -

shall be punishable by imprisonment for a term of three to seven years.

Article 387. Disclosure of information on pretrial investigation or inquiry

1. Disclosure of information on preliminary investigation or inquiry by a person who was notified, in a manner prescribed by law, of his/her obligation not to disclose any such information, provided that this disclosure was not authorized by a prosecutor, investigator, or a person who conducted inquiry or pretrial investigation, -

shall be punishable by a fine of 50 to 100 tax-free minimum incomes, or correctional labor for a term up to two years.

2. Disclosure of information on preliminary investigation or inquiry by a judge, prosecutor, investigator, inquiry officer, detective officer, whether on not this person was directly involved in

such pretrial investigation or inquiry, where this information defames a person, derogates his/her honor and dignity, -

shall be punishable by a fine of 100 to 300 tax-free minimum incomes, or correctional labor for a term up to two years, or arrest for a term up to six months, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

CRIMINAL CODE OF UKRAINE

as amended by the Law n°908-IV (908-15) on 05.06.2003

Chapter XVI

Crimes in the field of usage electronic machines (computers), electronic systems and computer networks and networks of electrical communication

Article 361. Unauthorized interference to work of electronic machines (computers), automated systems, computer networks or Networks of electrical communication

1. Unauthorized interference to functioning of electronic machines (computers), automated systems, computer networks or networks of electrical communication that resulted in a leak, loss, fouts, blocking of information, distortion of information processing or to violation of set order of its routing, -

Shall be punishable by a fine in the amount of 600 up to 1000 untaxed minimums of income of citizens or by restraint of liberty for the term of 2 up to 5 years, or by deprivation of liberty for the term of up to 3 years with disqualification to hold certain position or carry on certain activity for the period of up to 2 years or without such and with confiscation of program means (software) and technical means (hardware) by means of which unauthorized interference was committed and are owned by guilty person

2. The same actions, accomplished repeatedly or with prior agreement of the group of persons, or if they caused serious harm, -

Shall be punishable by deprivation of liberty for the term of 3 up to 6 years or carry on certain activity for the period of up to 3 years and with confiscation of software and technical devices by means of which unauthorized interference was committed and are owned by guilty person.

Note: in the articles 361- 363-1 "serious harm" means the sustaining a material damage which in 100 and more times exceeds untaxed minimum of citizens' income.

Article 361-1. The production of harmful software or technical devices for the purpose of use, distribution or sale as well as their distribution or sale

1.The production of harmful software and technical means for use, distribution or sale as well as the distribution or sale of harmful software and technical means for interference to functioning of electronic machines (computers), automated systems, computer networks or networks of electrical communication, -

shall be punishable by fine in the amount of 500 up to 1000 untaxed minimums of income of citizens or by community service for the period of up to 2 years, or by deprivation of liberty for the same period , with confiscation of software and technical devices designed for unauthorized interference to functioning of electronic machines (computers), automated systems, computer systems or networks of electrical communication which are owned by guilty person

2. The same deeds, committed repeatedly or by prior agreement of group of persons, or if they have entailed the serious harm, -

Shall be punishable by deprivation of liberty for the term of up to 5 years with confiscation of software and technical means designed for unauthorized interference to functioning of electronic machines (computers), automated systems, computer systems or networks of electrical communication which are owned by guilty person

Article 361-2. Unauthorized sale or distribution of restricted information which is being stored in electrical machines (computers), automated systems, computer networks or in carriers of such information

1. Unauthorized sale or distribution of restricted information which are being stored in electrical machines (computers), automated systems, computer networks or in carriers of such information designed and protected in accordance with current legislation, -

shall be punishable by fine in the amount of 500 up to 1000 untaxed minimums of income of citizens or by deprivation of liberty for the term of up to 2 years with confiscation of software and technical devices by means of which unauthorized sale or distribution of restricted information were committed and are owned by guilty person.

2. The same actions, committed repeatedly or by prior agreement of group of person, or if they caused serious harm, -

Shall be punishable by deprivation of liberty for the term of 2 up to 5 years with confiscation of software or technical devices by means of which unauthorized sale or distribution of restricted information were committed and are owned by guilty person.

Article 362. Unauthorized actions with information which is processed in electronic machines (computers), automated systems or computer networks, or which is stored in carriers of such information

1. Unauthorized alteration, deletion or blocking of information which is processed in electronic machines (computers), automated systems or computer networks, or is stored in carriers of such information committed by person who has right of access to it.

Shall be punishable by fine in the amount of 600 up to 1000 untaxed minimums of income of citizens or by community service for the period of up to 2 years with confiscation of program and technical devices owned by guilty person by means of which unauthorized alteration, deletion or blocking of information was committed

2. Unauthorized interception or copying of information, which is processed in electronic machines (computers), automated systems, computer networks or stored in media capable of holding data if it entailed leak committed by person who has access to such information, -

shall be punishable by deprivation of liberty for the term of up to 3 years with disqualification to hold a certain position or carry on certain activity for the same period and with confiscation program and technical devices owned by guilty person by means of which unauthorized interception or copying of information have been committed

3. Deeds foreseen in first paragraph or second one of this article which have been committed repeatedly or by prior agreement of group of persons, or if they caused a serious harm, -

shall be punishable by deprivation of liberty for the term of 3 up to 6 years with disqualification to hold certain position or carry on certain activity for the period of up to 3 years and with confiscation of program and technical devices owned by guilty person by means of which unauthorized deeds have been committed

Article 363. Violation of rules of exploitation of electronic machines (computers), automated systems, computer networks or networks of electrical communication or order or rules of information protection which is processed therein

Violation of rules of exploitation of electronic machines (computers), automated systems, computer networks or networks of electrical communication or order or rules of information protection which is processed therein if it has caused a serious harm committed by person responsible for their exploitation, -

Shall be punishable by fine in the amount of 500 up to 1000 untaxed minimums of income of citizens or restraint of liberty for the period of up to 3 years with disqualification to hold certain position or to carry on certain activity for the same period

Article 363-1 Obstruction to functioning of electronic machines (computers), automated systems, computer networks or networks of electrical communication by mass scale distribution of electronic communication messages

1. Intentional mass- scale distribution of electronic communication messages committed without prior consent of addressees that has caused operating irregularity of electronic machines (computers), automated systems, computer networks or of networks of electronic communication, -

shall be punishable by fine in the amount of 500 up to 1000 untaxed minimums of citizen's income or by restraint of liberty for the term of up to 3 years.

2. The same actions which have been committed repeatedly or by prior agreement of the group of persons,

Shall be punishable by restraint of liberty for the term of up to 5 years or by deprivation of liberty for the same term with disqualification to hold certain position or to carry on certain activity for the term of up to 3 years and with confiscation of program and technical devices owned by guilty person by means of which mass scale distribution of technical communication messages have been committed

UKRAINE **Law on Copyright and Related Rights¹** **(of 2001)**

Section I **General Provisions**

Definitions

1. For the purposes of this Law, the terms used shall have the following meaning:

"author"-an individual who created a work by his creative effort;

"audiovisual work"-a work fixed on a certain material carrier (cinema film, magnetic tape or magnetic disk, CD, etc.) in the form of a series of consecutive frames (images) or analog or discrete signals reproducing (encoding) moving images (with and without a sound track), the

¹ Entry into force: August 23, 2001.

perception of which is possible exclusively by means of any sort of display (cinema screen, TV screen, etc.), on which the moving images are reproduced visually by certain technical means. The varieties of an audiovisual work are cinema films, TV films, video films, diapositive filmstrips, slide films, etc., that can be fiction, animation (cartoons), nonfiction or other;

"database (data compilation)"-a series of works, data or any other independent information in unrestricted form, including in electronic form, in which the selection and placement of components and its organization are the result of creative work, and the components of which are accessible individually and can be found via a special retrieval system based on electronic (computer) or other means;

"exclusive right"-a proprietary right of a person holding copyright and/or related rights in a work, performance, staging, a broadcasting organization's transmission, phonogram or videogram, entitling this person alone to use these objects of copyright and/or related rights, and entitling this person alone to permit or prohibit the use thereof by other persons within the term stipulated by this Law;

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

"videogram producer"-an individual or a legal entity that initiated and is responsible for the first video recording of a performance or any moving images (both with and without a sound track);

"phonogram producer"-an individual or a legal entity that initiated and is responsible for the first sound recording of a performance or any sounds;

"videogram"-video recording on the appropriate material carrier (magnetic tape, magnetic disk, CD, etc.) of a performance or any moving images (with or without a sound track), except for the images in the form of a recording that is part of an audiovisual work. A videogram is the original material for the making of its copies;

"reproduction"-making of one or more copies of a work, videogram, phonogram in any material form, and the recording thereof for temporary or permanent storage in electronic (including digital), optical or other computer-readable form;

"rights management information"-information, including in electronic (digital) form, that identifies an object of copyright and/or related rights and the author or another person holding the copyright and/or related rights to this object, or the information concerning the conditions of use for an object of copyright and/or related rights, or any figures or codes in which such information is represented, when any of these elements of the information is attached to or incorporated into a copy of an object of copyright and/or related rights, or appears in connection with its being communicated to the public;

"author's name"-a series of words or marks identifying an author: author's last and first names, author's last name, first name and patronymic, author's initials, author's pseudonym, a sign (series of signs) adopted by the author, etc.;

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

"transfer for property lease"-assignment of the right to use and/or possess an original or a copy of a work, phonogram or videogram for a certain period with the aim of deriving direct or indirect commercial benefit;

"computer software"-a set of instructions in the form of words, figures, codes, diagrams, symbols or any other form, expressed in a computer-readable form, that enable it to achieve a particular aim or result (this concept covers both an operating system and an application expressed in output or object codes);

"counterfeit copy of a work, phonogram or videogram"-a copy of a work, phonogram or videogram reproduced, published and/or distributed in violation of copyright and/or related rights, including copies of the works, phonograms and videograms that are protected in Ukraine and are imported into the customs territory of Ukraine, without the consent of the author or other copyright and/or

related rights holder, in particular from the countries in which these works, phonograms and videograms have never been or have ceased to be protected;

"disclosure (making available to the public) of a work"-an action accomplished with the consent of the author or other copyright and/or related rights holder that makes a work available to the public for the first time through publication, public performance, public display, public demonstration, broadcast, etc.);

"publication of a work, phonogram or videogram"-placement in circulation, with the consent of the author or other copyright and/or related rights holder, of copies of a work, phonogram, videogram produced by printing, electronic or other means, in a quantity that can satisfy, given the nature of the work, phonogram or videogram, the reasonable needs of the public, through their sale, transfer for property lease, home or commercial rental, granting access to them through electronic information systems such that any person can obtain it from any place and at any time of their own choosing, or by assigning the title thereto or the right to possess them by other methods.

"Publication of a work, phonogram or videogram" also means depositing a manuscript of a work, phonogram, or videogram in an open-access storage area (depository), with the possibility of obtaining a copy of the work, phonogram or videogram therefrom;

"collective management organization (organization for collective management of proprietary rights)"-a non-profitmaking organization that manages the proprietary rights of copyright and/or related rights holders on a collective basis;

"broadcasting organization"-a wireless broadcasting organization or cable broadcasting organization;

"wireless broadcasting organization"-a TV and radio organization broadcasting radio or television transmissions and programs (produced by this organization or by other organizations) by transmitting on the air by means of radio waves (and laser beams, gamma rays, etc.) in any frequency band (including via satellite);

"cable broadcasting organization"-a TV and radio organization broadcasting radio or television transmissions and programs (produced by this organization or by other organizations) through remote transmission of a signal with the help of a surface, underground or underwater (conductor, optical fiber or other) cable;

"person"-an individual or legal entity;

"derivative work"- a work that is a creative remaking of another existing work without prejudicing the existing work's protection (annotation, adaptation, arrangement, version of a folklore item, other remaking of a work) or a creative translation thereof into another language (derivative works shall not include audiovisual works obtained by dubbing or sound-tracking of other audiovisual works, or by adding subtitles thereto in Ukrainian or other languages);

"copy of a work"-a copy of a work produced in any material form;

"copy of a phonogram"-a copy of a phonogram on the appropriate material carrier produced directly or indirectly from this phonogram and containing all the sounds or a portion of the sounds fixed on the phonogram;

"copy of a videogram"-a copy of a videogram on the appropriate material carrier produced directly or indirectly from this videogram and containing all the moving images or a portion of the moving images (with or without a sound track) fixed on the videogram;

"producer of an audiovisual work"-a person that organizes or organizes and finances the creation of an audiovisual work;

"pseudonym"-a fictitious name selected by an author or a performer to identify his authorship;

"public performance"-presentation, with the consent of copyright and/or related rights holders, of works, performances, phonograms, broadcasting organization transmissions by declamation, playing, singing, dancing and other methods both directly (live performance) and via any devices and processes (except for wireless or cable transmission) in places that are or can be frequented by persons not belonging to a regular family circle or close acquaintances of this family, regardless of whether they are present in one place at the same time or in different places at different times;

"public demonstration of an audiovisual work or videogram"-single or multiple public presentation, with the consent of copyright and/or related rights holders, on premises that can be frequented by persons not belonging to a regular family circle or close acquaintances of this family, of an audiovisual work or a performance fixed on a videogram or any moving images;

"public display"-any demonstration of the original or copy of a work, performance, phonogram, videogram, or broadcasting organization transmission, with the consent of copyright and/or related rights holders, either directly or on a screen by means of a film, slide, television frame, etc. (except for wireless or cable transmission) or via other devices or processes in places that are or can be frequented by the persons not belonging to a regular family circle or close acquaintances of this family of the person making the display, regardless of whether they are present in one place at the same time or in different places at different times (public display of an audiovisual work or a videogram also means demonstration of individual frames of an audiovisual work or a videogram without their sequence being observed);

"broadcast (communication to the public)"-wireless transmission, with the consent of copyright and/or related rights holders, via radio waves (as well as laser beams, gamma rays, etc.) including via satellite, or remote transmission by wires or any type of surface or underground (underwater) (conductor, fiber optic or other) cable of works, performances, any sounds and/or images, their recordings in phonograms and videograms, broadcasting organization programs, etc., where said transmission can be received by an unlimited number of persons in different places located at a distance from the place of transmission in which the images or sounds cannot be received without said transmission;

"reprographic reproduction"-facsimile reproduction of any size (including enlarged or reduced) of the original of a written or other graphic work, or a copy thereof, by photocopying or other similar methods, except for recording in electronic (including digital), optical or other computer-readable form;

"distribution of objects of copyright and/or related rights"-any action whereby objects of copyright and/or related rights are offered to the public directly or indirectly, including notification for the public of these objects such that its representatives can access these objects from any place and at any time of their own choosing;

"work created in the course of employment"-a work created by an author in the course of his duty in accordance with his job or under an employment agreement (contract) between the author and employer;

"public domain"-works and objects of related rights, the copyright and/or related rights in which have expired;

"work of architecture"-a work of construction and landscape design (drawings, sketches, models, erected buildings and facilities, parks, populated area layouts, etc.);

"work of fine art"-a sculpture, painting, drawing, engraving, lithograph, a work of artistic (including stage) design, etc.;

"work of applied art"-a work of art, including art crafts, hand-made or created by industrial means for daily use, or one applied to objects so used;

"technical means of protection"-technical devices and/or technological means designed to create a technological obstacle to the infringement of copyright and/or related rights during reception and/or duplication of protected (encoded) recordings in phonograms (videograms) and broadcasting organization transmissions, or to control access to the use of objects of copyright and related rights;

"Agency"-the central executive body in the sphere of intellectual property;

"phonogram"-sound recording on the appropriate material carrier (magnetic tape or magnetic disk, gramophone record, CD, etc.) of a performance or any sounds, except for the sounds in the form of a recording that is part of an audiovisual work. A phonogram is the original material for producing copies thereof;

"quotation"-a relatively brief excerpt from a literary, scientific or any other published work that is used, with a compulsory reference to its author and quotation sources, by another person in his

work in order to make his statements more understandable or to refer to opinions of another author in the authentic wording.

3.-1. This Law shall apply to:

(a) works specified in part 1 of Article 8 of this Law, and objects of related rights specified in Article 35 of this Law, regardless of the place of their first disclosure (or non-disclosed items that are located in Ukraine in an objective form), the authors or holders of copyright and/or related rights in which are individuals (citizens of Ukraine), or those who are not citizens of Ukraine but have permanent residence on the territory of Ukraine, or legal entities with their principal place of business on the territory of Ukraine;

(b) works specified in part 1 of Article 8 of this Law and objects of related rights specified in Article 35 of this Law that were first disclosed on the territory of Ukraine, or those that were first disclosed outside Ukraine, but were thereafter disclosed on the territory of Ukraine within 30 days;

(c) transmissions of broadcasting organizations that are located on the territory of Ukraine and broadcast via transmitters located on the territory of Ukraine;

(d) works of architecture and sculpture objectively located on the territory of Ukraine;

(e) works and objects of related rights protected pursuant to the international agreements to which Ukraine is a party.

2. The provisions of this Law are aimed at protecting the personal non-proprietary rights and proprietary rights of:

(a) copyright holders specified in Article 7 of this Law and related rights holders specified in part 1 of Article 36 of this Law, who are Ukrainian citizens or those who are not Ukrainian citizens but have permanent residence on the territory of Ukraine (for legal entities-locations on the territory of Ukraine), regardless of the territory on which their works or objects of related rights were first disclosed;

(b) copyright holders specified in Article 7 of this Law and related rights holders specified in part 1 of Article 36 of this Law, regardless of their citizenship and permanent residence (for legal entities-their locations), whose works or objects of related rights were first disclosed on the territory of Ukraine, or those that were not disclosed but are located on the territory of Ukraine in an objective form;

(c) copyright holders specified in Article 7 of this Law and related rights holders specified in part 1 of Article 36 of this Law, regardless of their citizenship and permanent residence, whose works or objects of related rights were first disclosed in another country and were disclosed thereafter on the territory of Ukraine within 30 days;

(d) other holders of copyright and/or related rights.

3. Copyright and/or related rights holders, whose works or objects of related rights were first disclosed on the territory of another State, or those that were not disclosed but are located in an objective form on the territory of another State, shall, irrespective of their citizenship, be granted legal protection in accordance with the international agreements to which Ukraine is a party.

**Section II
Copyright**

Copyright Holders

7. Copyright holders are the authors of the works specified in part 1 of Article 8 of this Law, their heirs, and persons to whom the authors or their heirs have assigned their proprietary rights.

Objects of Copyright

8.-1. Objects of copyright shall be works in the fields of science, literature and art, i.e.:

- (1) written works of a literary, journalistic, scientific, technical or other nature (books, brochures, articles, etc.);
- (2) speeches, lectures, addresses, sermons and other oral works;
- (3) computer software;
- (4) databases;

- (5) musical works with or without lyrics;
- (6) dramatic, musical drama works, pantomimes, choreographic and other works created for stage presentation, and staging versions thereof;
- (7) audiovisual works;
- (8) works of fine art;
- (9) works of architecture, urban engineering and garden and park landscaping;
- (10) photographic works, including works made by methods similar to photography;
- (11) works of applied art, including works of decorative weaving, ceramics, carving, casting, art glass, jewelry, etc., if these are not protected by the laws of Ukraine on the legal protection of objects of industrial property;
- (12) illustrations, maps, plans, drawings, sketches and plastic works relating to geography, geology, topography, engineering, architecture and other spheres of activity;
- (13) stage interpretations of works specified in point (1) of this part, and folklore versions that can be presented on stage;
- (14) derivative works;
- (15) collections of works, collections of folklore versions, encyclopedias and anthologies, collections of regular data, and other composite works, provided that they are the result of creative work involving the selection, co-ordination or arrangement of the content without prejudice to the copyright covering the integrated works;
- (16) texts of translations for dubbing, sound-tracking of and adding Ukrainian and other language subtitles to foreign audiovisual works;
- (17) other works.

2. Protection under this Law shall be granted to all works specified in part 1 of this Article, both disclosed and undisclosed, finished and unfinished, irrespective of their purpose, genre, volume, or aim (education, information, advertising, propaganda, entertainment, etc.).

3. The legal protection stipulated in this Law shall be extended only to the form of expression of a work, and shall not apply to any ideas, theories, principles, methods, procedures, processes, systems, means, concepts or discoveries, even if they are expressed, described, explained or illustrated in a work.

Protection of Copyright in a Portion of a Work

9. A portion of a work that can be used independently, including the original title of a work, shall be regarded as a work and shall be protected pursuant to this Law.

Proprietary Rights of an Author

15.-1. The proprietary rights of an author (or other copyright holder) shall include:

- (a) the exclusive right to use a work;
- (b) the exclusive right to allow or prohibit the use of a work by other persons.

The proprietary rights of an author (or other copyright holder) may be assigned (alienated) to another person in compliance with the provisions of Article 31 of this Law, whereupon this person shall become a copyright holder.

2. An author's (or other copyright holder's) exclusive right to use a work shall allow him to use the work in any form and in any manner.

3. The exclusive right of an author (or other copyright holder) to allow or prohibit the use of a work by other persons shall entitle him to allow or prohibit:

- (1) reproduction of works;
- (2) public performance and broadcast of works;
- (3) public demonstration and public display;
- (4) any repeated disclosure of works, if carried out by an organization other than that which carried out the first disclosure;
- (5) translations of works;
- (6) versions, adaptations, arrangements and other similar alterations to works;
- (7) inclusion of works as components in collections, anthologies, encyclopedias, etc.;
- (8) distribution of works by first sale or alienation by another method or by transferring for property lease or rental, and by other transfer prior to the first sale of copies of a work;
- (9) communication to the public of his works such that its representatives may access the works in any place and at any time of their own choosing;
- (10) transfer for property lease and/or commercial rental after the first sale, alienation by another method of the original or copies of audiovisual works, computer software, databases, musical works as sheet music, as well as of works fixed on a phonogram or videogram or in a computer-readable form;

(11) import of copies of works.

This list is not exhaustive.

4. Authors' exclusive rights to use works of architecture, urban engineering and garden and park landscaping shall also envisage their right to participate in the implementation of the relevant work projects.

5. Except for the cases stipulated in Articles 21 to 25 of this Law, an author (or other copyright holder) shall have the right to require payment of remuneration for any use of a work. The remuneration may be effected as a one-off (lump sum) payment, or as deductions for each copy sold or for each use of a work (royalty) or combined payments. The amount of and procedure for paying the author's remuneration for the creation and use of a work shall be stipulated in an author's contract or contracts concluded on requests made by copyright holders, between collective management organizations and the users of works.

The Cabinet of Ministers of Ukraine may establish minimum rates for the author's remuneration and the procedure for their indexation.

6. The proprietary rights restrictions stipulated in Articles 21 to 25 of this Law shall be effected, provided that they do not prejudice the use of a work or unjustifiably limit the author's legitimate interests.

7. If copies of a lawfully published work are legally placed in public circulation through their first sale in Ukraine, it shall be permissible to bring them repeatedly into circulation through sale, bestowal, etc., without the consent of the author (or other copyright holder) and without payment of the author's remuneration, and with respect to works of fine arts subject to the provisions of Article 27 of this Law. However, in this case the right to transfer for property lease or commercial rental shall be reserved exclusively to the copyright holder.

Copyright in Works Created in the Course of Employment

16.-1. Personal non-proprietary copyright in a work created in the course of employment shall be vested in the author thereof.

2. The exclusive proprietary right in a work created in the course of employment shall be vested in the employer, unless otherwise stipulated by an employment agreement (contract) and/or civil law contract between the author and employer.

3. The amount of the author's remuneration for the creation and use of a work created in the course of employment, as well as the relevant payment procedure, shall be stipulated in the employment agreement (contract) and/or civil law contract between the author and employer.

Copyright in an Audiovisual Work

17.-1. The authors of an audiovisual work shall be:

- (a) the director-producer;
- (b) the author of the script and/or texts or dialogs;
- (c) the author of a musical work with or without lyrics, specially created for the audiovisual work;
- (d) art director;
- (e) cameraman.

One and the same individual may carry out two or more of the author's functions indicated in this part.

2. Unless otherwise stipulated in a contract for the creation of an audiovisual work, the authors who contributed or undertook to contribute to the creation of the audiovisual work and assigned the proprietary rights to an organization that ensures the production of the audiovisual work, or to the producer of the audiovisual work, shall not have the right to object to the performance of the work, reproduction, distribution, public display, public demonstration or broadcast thereof, or to the subtitling and dubbing of its text, apart from the right to carry out separate public performance of the musical works incorporated into the audiovisual work. All the authors of the audiovisual work shall retain the right to receive fair remuneration for the disclosure and each public performance, display, demonstration or broadcast of an audiovisual work, transfer thereof for property lease and/or commercial rental of its copies; the remuneration shall be distributed and paid out by collective management organizations or by another method.

3. Authors whose works have been incorporated into an audiovisual work (both those that existed before and those created in the process of working on the audiovisual work) shall each retain the copyright in their works, and can use it independently of the entire audiovisual work, unless

otherwise stipulated in a contract with the organization that ensures the production of the audiovisual work, or with the producer of the audiovisual work.

Copyright in Computer Software

18. Computer software shall be protected as literary works. Such protection shall cover computer software irrespective of the method or form of its expression.

Copyright of Translators and Authors of Other Derivative Works

20.-1. Translators and authors of other derivative works shall hold a copyright in their translations, adaptations, arrangements or other reformulations. The translators and/or authors of other derivative works shall hold the copyright in their work, provided that they observe the rights of the author whose work has been translated, adapted, arranged or otherwise reformulated.

2. The copyright of translators and/or authors of other derivative works shall not hinder other persons' translation and reformulation of the same works.

Section III

Related Rights

Objects of Related Rights

35. Objects of related rights, irrespective of destination, content, value, or method and form of expression, shall be:

- (a) performances of literary, dramatic, musical, musical drama, choreographic, folklore and other works;
- (b) phonograms, videograms;
- (c) broadcasting organization transmissions (programs).

Related Rights Holders

36.-1. Related rights holders shall be:

- (a) performers of works, their heirs, and persons to whom related proprietary rights to performances have been assigned on legal grounds;
- (b) producers of phonograms, their heirs (successors), and persons to whom related proprietary rights to phonograms have been assigned on legal grounds;
- (c) producers of videograms, their heirs (successors), and persons to whom related proprietary rights to videograms have been assigned on legal grounds;
- (d) broadcasting organizations and their successors.

2. Performers shall exercise their rights subject to their observance of the rights of the authors of the works performed and of other copyright holders. Producers of phonograms and of videograms shall observe the rights of copyright holders and performers. Broadcasting organizations shall observe the rights of copyright holders, performers and producers of phonograms (videograms).

Proprietary Rights of Phonogram and Videogram Producers

40.-1. The proprietary rights of producers of phonograms and of videograms shall include their exclusive right to use their phonograms, videograms and the exclusive right to permit or prohibit other persons from:

- (a) reproducing (directly and/or indirectly) their phonograms and videograms in any form and by any method;
- (b) distributing to the public phonograms, videograms and copies thereof through first sale or other title transfer;
- (c) commercially renting phonograms, videograms and copies thereof, even after they have been distributed by a producer of a phonogram or videogram, or with their permission;
- (d) broadcasting phonograms, videograms and copies thereof by any means of communication such that any person can access them from any place and at any time of their own choosing;
- (e) remaking their phonograms or videograms in any way;
- (f) importing into the customs territory of Ukraine phonograms, videograms and copies thereof for the purposes of public distribution.

2. The proprietary rights of producers of phonograms and of videograms may be assigned (alienated) to other persons on the basis of a contract stipulating the method of using a phonogram (videogram), the amount of and procedure for paying the remuneration, contract term, the term for using a phonogram (videogram), the territory within which the assigned rights are effective, etc. The remuneration rates stipulated in the contract shall not be lower than the minimum rates prescribed by the Cabinet of Ministers of Ukraine. The proprietary rights of the producer of a phonogram or videogram, which is a legal entity, may also be assigned (alienated) to

another person in compliance with the procedure prescribed by law, following the liquidation of a legal entity which was the related rights holder.

3. If phonograms, videograms or copies thereof are placed in public circulation by the producer of a phonogram (videogram) or with his consent through first sale thereof in Ukraine, further distribution thereof by sale, bestowal, etc., shall be permitted without the consent of the producer of the phonogram (videogram) or his successor and without payment of remuneration to him. In this case, however, the right to transfer such copies of phonograms (videograms) for property lease or commercial rental shall be retained exclusively by the producer of the phonogram (videogram).

Proprietary Rights of Broadcasting Organizations

41.-1. Proprietary rights of broadcasting organizations shall include their exclusive right to use their programs in any manner and the exclusive right to permit or prohibit other persons from:

- (a) publicly disclosing their programs by broadcast and rebroadcast means;
- (b) fixing their programs on a material carrier and reproducing them;
- (c) publicly performing and demonstrating their programs in places where admission is paid.

Broadcasting organizations shall also be entitled to prohibit the dissemination, on or from the territory of Ukraine, of a satellite signal carrying their programs, by a distribution body not authorized to handle this satellite signal.

2. A broadcasting organization's proprietary rights may be assigned (alienated) to other persons on the basis of a contract which shall stipulate the method and term of the use of a broadcast program, the amount of and procedure for paying remuneration, the territory within which the assigned rights are effective, etc.

A broadcasting organization's proprietary rights may also be assigned (alienated) to other persons in compliance with the procedure prescribed by the law, as a result of liquidation of a legal entity which was the holder of related rights. Restriction of the Proprietary Rights of Performers, Phonogram and Videogram Producers, and Broadcasting Organizations.

42.-1. It shall be permissible to use performances, phonograms, videograms or broadcast programs, and to fix, reproduce and present them for general notice, without the consent of the performers, phonogram or videogram producers, and broadcasting organizations, in the cases stipulated in Articles 21 to 25 of this Law concerning restriction of the proprietary rights of the authors of literary, artistic and scientific works, if the following conditions are met:

- (a) said objects are reproduced solely for training or scientific research purposes;
- (b) the right to carry out reproduction, stipulated in point (a) of this part, shall not apply to the export of reproduced copies of phonograms, videograms or broadcast programs outside the customs territory of Ukraine;
- (c) related rights holders shall retain the right to receive fair remuneration based on the quantity of reproduced copies. The use of objects of related rights without the consent of the related rights holders, as stipulated in this part, shall be possible only if the personal non-proprietary rights of copyright and related rights holders, stipulated in Articles 14 and 38 of this Law, are observed.

2. It shall be permissible to reproduce the works and performances fixed on phonograms and videograms, and their copies in the domestic environment, and exclusively for personal purposes, without the consent of the author(s), performers and producers of phonograms (videograms), but remuneration shall be paid to them in the manner defined in part 4 of this Article.

3. The use of objects of related rights stipulated in parts 1 and 2 of this Article, without the consent of the related rights holders, shall not prejudice the normal use of performances, phonograms, videograms and broadcast programs, nor shall it affect the legitimate interests of the performers, producers of phonograms, videograms and broadcast programs, or other copyright and/or related rights holders.

4. The remuneration of producers of phonograms and videograms and other persons holding copyright and/or related rights with respect to the reproductions stipulated in part 2 of this Article, shall be paid as deductions (interest) on the value of equipment and/or material carriers by the producers and/or importers of the equipment and material carriers, through the use of which it is possible to reproduce works fixed on phonograms and videograms exclusively for personal purposes in the domestic environment, except for:

- (a) professional equipment and/or material carriers not designed for use in the domestic environment;
- (b) equipment and material carriers that are exported outside the customs territory of Ukraine;

(c) equipment and material carriers that are imported by an individual onto the customs territory of Ukraine exclusively for personal purposes and without a commercial purpose.

5. The amount of deductions (interest), indicated in parts 2 and 4 of this Article, to be paid by the producers and/or importers of the equipment and material carriers, shall be determined by the Cabinet of Ministers of Ukraine. This money shall be remitted by the producers and importers of the equipment and/or material carriers to the collective management organizations specified by the Agency (hereinafter-"authorized organizations"). The collected money shall be distributed among the collective management organizations registered with the Agency on the basis of contracts which authorized organizations shall enter into with all collective management organizations. The importers shall remit this money to an authorized organization when they import goods onto the customs territory of Ukraine, and the producers at the end of each month after the sale of equipment and material carriers.

6. The Agency and the authorized organizations specified by the Agency for the collection of money shall be entitled to require from producers and importers information concerning the production, import and realization (sale) of the equipment and material carriers indicated in part 4 of this Article.

7. The collected money specified in parts 2 and 4 of this Article shall be distributed among the authors, performers, and producers of phonograms and videograms. This money shall be distributed in the following proportions, unless otherwise stipulated in the contracts between the collective management organizations: authors-50%, performers- 25% and producers of phonograms (videograms)-25%. The Use of Phonograms and Videograms Published for Commercial Purposes.

43.-1. The following direct or indirect commercial use of phonograms and videograms and copies thereof shall be allowed without the consent of the producers of phonograms (videograms), the phonograms (videograms) of which have been published for commercial use, or of the performers whose performances are fixed on these phonograms (videograms), but with payment of remuneration:

- (a) public performance of a phonogram or a copy thereof, or public demonstration of a videogram or a copy thereof;
- (b) live broadcast of a performance fixed on a phonogram or videogram and copies thereof;
- (c) wire (cable) broadcast of a performance fixed on a phonogram or videogram and copies thereof.

2. The collection of remuneration for the use of phonograms (videograms) indicated in part 1 of this Article and the supervision of their lawful use shall be effected by the authorized collective management organizations specified by the Agency. The collected money shall be distributed among the collective management organizations that are registered with the Agency on the basis of contracts that shall be made by and between authorized organizations and all collective management organizations. The remuneration received from the authorized organization shall be distributed by the appropriate collective management organization in the following proportions: performers-50%, producers of phonograms (videograms)-50%.

3. The amount of the remuneration for the use of phonograms (videograms) indicated in part 1 of this Article, and the procedure and conditions for paying the remuneration shall be prescribed by the Cabinet of Ministers of Ukraine.

4. Persons using phonograms, videograms or copies thereof shall provide the organizations specified in part 2 of this Article with the exact information concerning the use thereof that is necessary for the collection and distribution of the remuneration.

Section V

Protection of Copyright and Related Rights

Infringement of Copyright and Related Rights

50. Copyright and/or related rights infringements that give grounds for judicial protection shall be:

- (a) actions by any person that infringe the personal non-proprietary rights of copyright and/or related rights holders, stipulated in Articles 14 and 38 of this Law, and their proprietary rights stipulated in Articles 15, 39, 40 and 41 of this Law, subject to the proprietary rights restrictions stipulated in Articles 21 to 25, 42 and 43 of this Law;
- (b) piracy in the sphere of copyright and/or related rights-publication, reproduction, import into the customs territory of Ukraine, export from the customs territory of Ukraine, and distribution of

counterfeit copies of works (including computer software and databases), phonograms, videograms and broadcasting organization programs;

(c) plagiarism-disclosure (publication), in full or in part, of another person's work under the name of a person who is not the author of the work;

(d) import into the customs territory of Ukraine, without the permission of the persons holding the copyright and/or related rights, of copies of works (including computer software and databases), phonograms, videograms and broadcast programs;

(e) actions that pose a threat of infringement of copyright and/or related rights;

(f) any actions for the intentional circumvention of technical means of protection of copyright and/or related rights, in particular the production, distribution, import for distribution and use of means of circumvention;

(g) forging, altering or eliminating rights-management information, in particular rightsmanagement information in electronic form, without the permission of the copyright and/or related rights holders or the person carrying out such management;

(h) the distribution, import into the customs territory of Ukraine for distribution purposes, and broadcast of objects of copyright and/or related rights from which rightsmanagement information, in particular that in electronic form, has been eliminated or altered without the permission of the copyright and/or related rights holders.