Law 23/2011, of 29 December establishing the copyright and neighbouring rights collective society of the Principality of Andorra.

The Consell General (Parliament) in its 29 December 2011 session, has adopted the following:

Law 23/2011, of 29 December establishing the copyright and neighbouring rights collective society of the Principality of Andorra.

Preamble

The copyright and neighbouring rights collecting society of the Principality of Andorra (hereinafter, SDADV) was incorporated in virtue of article 34 of the Law on copyright and neighbouring rights of 10 June 1999, which requires the establishment by law of a public-law entity for the collective management of these rights.
The collective management of author's and neighbouring rights operate in our neighbour states and in other states, which, as the Principality of Andorra, are members of the World Intellectual Property Organization. Moreover, following the come into effect of the Law on copyright and neighbouring rights of 10 June 1999, the Principality of Andorra incorporated in the legal system, legal instruments of international protection such as the Berne Convention for the protection of literary and artistic works of 9 September, 1886 in force in the Principality of Andorra since 2 June 2004, and the Rome Convention for the protection of performers, producers of phonograms and broadcasting organizations of 26 October 1961, in force in the Principality of Andorra since 25 May 2004, a copyright and neighbouring rights collective management system must be set up.

A modern national system of protection of rights will be established with the introduction of a collective management of copyright and neighbouring rights in the Principality of Andorra, as this is the most effective way to guarantee the respect for the creative effort and the economical investment made by the right holders. Moreover, the introduction of this system will help to build up a new economic sector around these rights.

On the other hand, the collective management of copyright and neighbouring rights plays a determinant role in the world wide dissemination of creations produced by the intellect and in the promotion of culture in general.

This Law lays down the basic lines and the organizational and working principles of the SDADV. It is structured in fifteen articles, three transitional provisions, one derogatory provision and two final provisions. The SDADV statutes are included in this Law as an annex.

Articles 1 to 7 of the Law regulate the constitution and nature of the SDADV, the legal form, the objectives, its exclusive nature and other general matters.

Article 8 sets out the basic principles to become a SDADV member, being natural or legal persons, of Andorran or foreign nationality, legally resident or not in the Principality of Andorra, when they present proof of being the original or derivative copyright and/or neighbouring rights holders, and have a valid, signed contract with the SDADV for the management of all or some of these rights.

Article 9 defines the SDADV body structure, the General Meeting and the Administration Board. The General Meeting is the representing body of all SDADV's members. The Administration Board is the SDADV's governing and representative body.

Article 10 refers to the rights to be managed by the SDADV. Under this article, are subject to management the exclusive usage or economic rights of authors and neighbouring rights, whose original or

derivative rights holders entrust the SDADV in virtue of a management agreement, and those being of mandatory collective management, according to the prevailing Law that the SDADV has to manage with binding force and the equitable remuneration rights or simple remuneration recognized by prevailing legislation.

Articles 11, 12 and 13 lay down the basic provisions for the SDADV operation, to protect the interests, both of the rights holders managed by the SDADV and the repertoire users. In respect of rules for distribution of amounts collected by the SDADV from users, this Law requires to ensure that the rights holders managed by the SDADV have a share of the revenue proportionate to the use of their rights made by the users. Furthermore, since this Law establishes a legal monopoly of the collective management of copyright and neighbouring rights in the Principality of Andorra, it lays down the mechanisms to guarantee the establishment of the SDADV's general tariffs corresponding to the economic value of the use made of the repertoire, it has to anticipate reductions for public administrations and non-profit cultural, educative and social institutions.
Non-profit activities carried out by libraries, multimedia, toy, audio and film libraries in the promotion of culture are exonerated of payment when possible, in accordance with the International Conventions on copyright and neighbouring rights ratified by the Principality of Andorra.

Being a public-law entity and in order to ensure proper compliance of its objectives, Article 14 of the Law submits the SDADV's budgets, accounting and public procurement to the prevailing legislation on matters of finance, accounting and public procurement.

According to the provision of the Law on copyright and neighbouring rights of 10 June 1999, Article 15 submits the SDADV under the guidance and supervision of the Government, in order to guarantee the correct functioning of the established bodies, the proper collective management of copyright and neighbouring rights in the Principality of Andorra and the protection of both, rights holders and users.

Finally, the first final provision modifies articles 7, 32 and 43 of the Law on copyright and neighbouring rights of 10 June 1999 in order to abolish the right to an equitable remuneration in the case of private reproduction for personal purposes, while respecting the Berne Convention provisions.

Article 1
Constitution and legal from

1. The copyright and neighbouring rights collecting society of the Principality of Andorra (SDADV) is incorporated in virtue of this Law.

2. The SDADV is a public-law entity, based on an association, with its own legal personality and full capacity to act.

Article 2
Legal system

1. The SDADV is governed by this Law, by the Law on the Creation of the SDADV, the Law on copyright and neighbouring rights of 10 June 1999 and by the laws which may complement and/or substitute it in the future, by the International Conventions on copyright and neighbouring rights ratified by the Principality of Andorra, by its statutes and by the internal rules.

2. Being a public-law entity, The SDADV submits to the prevailing legislation on matters of finance, accounting and public procurement and any other legislation on matters of public-law entities.

Article 3
Objectives

1. The main objective of the SDADV is to manage the copyright and neighbouring rights laid down by the Law of the Principality of Andorra on the matter, which include the rights of usage or exclusive economic rights, using the terminology of the Law on copyright and neighbouring rights of 10 June 1999 and the rights of equitable remuneration or simple remuneration. They are also objectives of the SDADV those established by its statutes.

2. To achieve its objectives, the SDADV carries out the following duties, as well as those established by its statutes:

a) Granting permission to third parties to carry out acts protected by the exclusive usage or economic rights managed by the SDADV. In carrying out this activity, the SDADV may sign general contracts with users associations representing each sector.

b) Collecting fees for the permissions mentioned in section a) above and equitable remuneration or simple remuneration in cases in which prevailing legislation on matters of copyright and neighbouring rights provides for this type of remuneration.

c) Distributing the amounts collected from the users by the SDADV among the authors and the other copyright and neighbouring rights holders concerned.

d) Undertaking any necessary legal action to defend and execute the rights it manages.

e) Setting up a register of works subject to copyright and neighbouring rights managed by the SDADV, also referring to the authors and other holders of rights relating to them, and issuing certificates of ownership for the purpose of continuity.

f) Carrying out any other act authorised, in accordance with article 36 of the Law on copyright and neighbouring rights, of 10 June 1999, by the authors and holders of copyright and neighbouring rights, or their representatives, for whom usage and economic rights or the right to equitable remuneration or simple remuneration are managed.

g) Carrying out any other task appropriate to fulfilling its objectives, which does not contravene prevailing legislation or the SDADV statutes.

Article 4
Registered office

The registered office of the SDADV is in the Principality of Andorra.

Article 5
Scope of action

6.1. The SDADV carries out its activities inside the Principality of Andorra.

6.2. The SDADV can also extend its activities abroad, whether through agreements with national or supranational organisations with similar ends to its own, or through its own agents, delegates or representatives.

Article 6
Duration

The duration of the SDADV is unlimited.

Article 7
Exclusivity

The SDADV is the only copyright and neighbouring rights collective entity of the Principality of Andorra.

Article 8
Members

Natural and legal persons, of Andorran or foreign nationality, legally resident or not in the Principality of Andorra, are members

of the SDADV, when they present proof of being the original or derivative copyright and/or neighbouring rights holders and whose rights have been entrusted to the SDADV's management. In any case, holders of rights acquired inter vivos or by inheritance may be members of the SDADV.
Members of the SDADV and their rights may be represented before the SDADV by the natural or legal third party persons they appoint, whether of Andorran or foreign nationality, legally resident or not in the Principality of Andorra.

Article 9
Bodies

The SDADV has the following bodies:

1. The General Meeting representing all of the SDADV's members. Members make decisions in the General Meeting regarding issues within its competence following the procedures and majorities set out by the statutes.
Those issues related to the voting rights of SDADV members in the General Meeting not laid down in this Law or the SDADV statutes, will be developed in the internal rules. In any case, such internal rules will set out the necessary mechanisms to eliminate incompatibilities between members of the SDADV during voting and to guarantee free management of users' influences over the repertoire managed by the SDADV.

The responsibility of the General Meeting is to deliberate and decide on the following:

a) To approve the annual accounts, proposed by the Administration Board, in accordance with the provisions of prevailing legislation on matters of finance and public accounting.

b) To approve the projected budgets for each financial year, proposed by the Administration Board, in accordance with the provisions of prevailing legislation on matters of public finance.

c) To approve the internal rules proposed by the Administration Board, to develop members' rights and obligations and any other aspect of the SDADV's operation, with the exception of approving the internal rules relating to methods and rules for distributing quotas and equitable remuneration or simple remuneration, i.e. the amounts collected from users by the SDADV, and other important aspects of collective management which, according to article 36 of the Law on copyright and neighbouring rights, of 10 June 1999, are the exclusive responsibility of the Administration Board. Also excepting the approval of the internal rules relating to setting up a register of works subject to copyright and neighbouring rights managed by the SDADV, which also refers to the authors and other holders of rights relating to them, and the issuance of ownership certificates for the purpose of continuity, also the exclusive responsibility of the Administration Board.

d) To approve the SDADV's tariffs proposed by the Administration Board.

e) To approve amendments to the SDADV statutes proposed by the Administration Board, which, subsequent must be perforce submitted for approval from the General Council, in accordance with the provisions of prevailing legislation on matters of public finance.

f) To appoint and dismiss representatives of members of the SDADV on the Administration Board.

g) To confirm sanctions against members of the SDADV set out by the Administration Board.

h) Any other matter laid down by prevailing legislation and/or these articles.

2. The Administration Board is formed by SDADV's members and government representatives as established by the SDADV statutes, having full responsibility in management and representation matters.

The Administration Board members make decisions regarding issues within its competence following the procedures and majorities set out by the statutes.

The responsibility of the Administration Board is to deliberate and decide on the following matters:

a) Preparing and presenting to the General Meeting, for approval, the annual accounts of the SDADV, in accordance with the provisions of prevailing legislation on matters of finance and public accounting.

b) Preparing and presenting to the General Meeting, for its approval, the projected budgets for the SDADV for each financial year, in accordance with the provisions of prevailing legislation on matters of public finance.

c) Preparing and approving the internal rules relating to the methods and rules for the distribution of quotas and equitable remuneration or simple remuneration, i.e. of the amounts collected by the SDADV from users, and on other matters of collective management which, according to article 36 of the Law on copyright and neighbouring rights, of 10 June 1999, are the exclusive responsibility of the Administration Board.

d) Preparing and approving the internal rules relating to setting up a register of works subject to copyright and neighbouring rights managed by the SDADV, which should also refer to the authors and other holders of rights relating to them, and the issuance of certificates of ownership for the purpose of continuity.

e) Preparing and presenting to the General Meeting, for approval, the internal rules different from those mentioned in the last two sections.

f) Fixing and presenting the tariffs of the SDADV to the General Meeting, for approval.

g) Fixing and approving members' quotas and management and collecting fees or others for the SDADV.

h) Approving the models for management contracts and other types, which members of the SDADV have to sign.

i) Approving models of general contracts with users associations.

j) Approving all manner of resolutions, including those of reciprocal representation for representing repertoires in the Principality of Andorra, and logistical support on a national and/or international level, with entities and organizations with similar objectives to its own, whether national or supranational.

k) Appointing and dismissing the Administration Board director of the SDADV, if the Administration Board considers it appropriate to have this body.

l) Appointing and dismissing the chairman, vice-chairman, secretary and, if necessary, the vice-secretary of the SDADV.

m) Contracting personnel, works, supplies and provision of services relating to the SDADV, in any case, observing the provisions of prevailing legislation on matters of finance and public procurement.

n) Resolving to admit or de-register members of the SDADV.

o) Preparing and proposing to the General Meeting, for its approval, amendments of these articles, which must then be submitted for approval to the General Council, in accordance with the provisions of prevailing legislation on matters of public finance.

p) Managing the SDADV, setting the directives and control of financial investments, managing its assets, and disposing of its property and rights, whenever this is not reserved for the

General Meeting by the Law on the Creation of the SDADV or these articles, and with respect to the provisions of prevailing legislation on matters of public finance and under the guidance and supervision of specific acts by the Government according to the provisions of the Law on the Creation of the SDADV.

q) Carrying out all manner of acts and signing all manner of contracts relating to the management, acquisition, transfer or encumbrance of any of the SDADV's property or rights, including asking for loans or credit, opening current accounts and providing guarantees, always in accordance with the provisions of prevailing legislation on matters of public finance and under the guidance and supervision of specific acts by the Government according to the provisions of this Law.

r) Carrying out, to the broadest extent, the legal representation of the SDADV, in or out of court, and granting powers to third parties, including court representatives and lawyers.

s) Appointing and dismissing the SDADV's legal representatives and attorneys, with the powers granted by resolution, including cases in which the SDADV acquires contracts with natural or legal persons to give logistical support to administering and managing rights.

t) In general, carrying out all manner of acts or legal transactions which, in its opinion, are necessary or appropriate for carrying out the SDADV's objectives, as long as these are not contrary to the applicable legal system.

u) Exercising any other power entrusted to it by the General Meeting.

v) Deciding on any other matter entrusted to it in prevailing legislation and/or the SDADV statutes.

3. Chairman and vice-chairman, who summon and chair the General Meeting and the Administration Board sessions and any carry out other duties entrusted to them by those bodies or the SDADV's statutes.

4. The secretary and if necessary, the vice-secretary record the progress of meetings in the minute books of the General Meeting and Administration Board, keep the SDADV's documentation and carry out all other duties entrusted to them by those bodies or the SDADV's statutes.

The director, who is appointed, if necessary, carries out the resolutions of the General Meeting and the Administration Board under the directions and supervision of the chairman of those bodies, and carries out any other duty entrusted to it by those bodies or the SDADV's statutes.

6- Any other body laid down by the SDADV statutes.

Article 10
Rights managed

1. The SDADV manages usage and economic rights of authors and holders of copyright and neighbouring rights laid down by the legislation of the Principality of Andorra on the matter, which have been freely entrusted by the original or derivative copyright holders in virtue of the corresponding management contract.

2. The SDADV manages, in any case, the cable retransmission rights and any other mandatory collective management rights laid down by legislation on copyright and neighbouring rights of the Principality of Andorra, as well as equitable remuneration or simple remuneration rights recognized by the Principality of Andorra legislation on copyright and neighbouring rights.

Article 11
Duties to right holders

1. The SDADV is obliged to accept the management of copyright and neighbouring rights requested by the rights holders, provided that, with regard to rights which are not of mandatory collective management or equitable remuneration or simple remuneration, are rights for which the SDADV provides collective management.

2. The management contract between the rights holders and the SDADV shall not set out as mandatory the management of all kinds of usage or the whole repertoire, present or future, with the exception of mandatory collective management rights.

3. The management contracts shall not exceed five years, without prejudice to express or tacit extension agreements with the rights holders.

4. Distribution of the amounts collected by the SDADV is carried out among the copyright and neighbouring rights holders as laid out in article 10 of this Law. The SDADV distributes the amounts collected in accordance with a system which avoids arbitrariness and ensures that the holders have a share of the revenue proportionate to the use of their rights made by the users of the repertoire of works subject to copyright and neighbouring rights represented by the SDADV.

Article 12
Duties to users of works

The SDADV responsibilities to users of works of the rights represented by the SDADV are the following:

a) Contracting an authorization grant of non-exclusive licenses of managed rights, with the users of the repertoire of works, subject to copyright and neighbouring rights represented by the SDADV, unless fully justified , for the economic value of the uses carried out.

b) Proposing general tariffs, corresponding to economic value of the uses carried out, for the repertoire use, and anticipating reductions for public administrations and non-profit cultural, educative and social institutions.

c) Non- profit activities carried out by libraries, multimedia, toy, audio and film libraries in the promotion of culture are exonerated of payment whenever possible, in accordance with the International Conventions on copyright and neighbouring rights ratified by the Principality of Andorra.

Article 13
Fixing general tariffs and rules for distributing

1. The SDADV's tariffs are fixed by the Administration Board and approved by the General Meeting, as set out in procedures and majorities in the SDADV'S statutes.

2. Decisions relating to the methods and rules for distribution of amounts collected by the SDADV are adopted by the Administration Board, according to article 36 of the Law on copyright and neighbouring rights, of 10 June 1999, as set out in procedures and majorities in the SDADV'S statutes.

Article 14
Accountancy and budgets

1. The SDADV book-keeping must be tidy, clear and according to prevailing legislation on matters of finance and public accountancy.

2. The SDADV shall furnish the Ministry of Finance with a next- year budget draft according to the provisions on matters of public finance in force.

3. The SDADV submits to the different budget controls set out by the provisions on matters of public finance in force.

Article 15
Guidance and supervision

1. The SDADV guidance is carried out by the Government. It also supervises and controls its activity and the compliance of the prevailing legislation and its statutes.

2. To carry out these duties, the Government can:

a) Request the SDADV all kinds of information regarding activities and operation, including copies of the documents specified in article 38 of the Law on copyright and neighbouring rights, of 10 June 1999.

b) Take on all legal and statutory responsibility of the General Meeting and/or the Administration Board for as long as needed, in case of suspension of the social bodies which impede operation or the SDADV's judicial or administrative intervention.

c) Require the SDADV inspections and audits.

3. The SDADV is subject to prior authorisation by the Government to:

a) Change the SDADV's registered office.

b) Acquire, transfer or encumbrance majority shares in corporations or companies.

c) Transfer or encumbrance movable and immovable assets belonging to the SDADV and directly related to comply with its goals, or represent a value higher than twenty per cent of the SDADV's resulting assets from the last annual balance sheet.

4. The SDADV shall inform the Government about:

a) The appointment and dismissal of its administrators and proxies.

b) General contracts signed with users associations.

c) All contracts, whether bilateral o multilateral, signed with foreign collective societies and with any other national or supranational organization related to the management and protection of copyright and neighbouring rights.

d) Contracts intended to be entered observing the provisions on matters of public procurement.

e) The contract settlements described in section d) above.

f) Activities carried out for creation and promotion of culture.

g) Activities carried out related to the preservation and dissemination of the cultural heritage of the Principality of Andorra and the works and objects of neighbouring rights in the catalogue managed by the SDADV, along with public bodies and organisations already in existence which have similar statutory objectives.

h) Its operations and the activities in general.

First transitional provision

1. The Government will summon the first General Meeting of the SDADV within six months following this Law entry into force.

2. Natural and legal persons, of Andorran or foreign nationality, legally resident or not in the Principality of Andorra are entitled to attend the first General Meeting of the SDADV provided they meet the following conditions:

a) To present proof of being the original or derivative copyright and/or neighbouring rights holders, in accordance with the established procedure and provide the information requested by the Government. In any case, holders of rights acquired inter

vivos or by inheritance will be admitted. and their rights may be represented before the SDADV and its bodies by the natural or legal third party persons they appoint, whether of Andorran or foreign nationality, legally resident or not in the Principality of Andorra. The powers of representation must be granted in writing and comply with the requirements laid down Proof of ownership of copyright and/or neighbouring rights can be made by presenting the documentation set out by the Government.

The copyright and/or neighbouring rights holders and their rights may be represented by the natural or legal third party persons they appoint, whether of Andorran or foreign nationality, legally resident or not in the Principality of Andorra. The powers of representation must be granted in writing and comply with the Government requirements.

b) Submit an appropriate application to the Government within the legal time and in accordance with the procedures established by the Government in the General Meeting summoning.

c) Sign a management contract compromise with the SDADV in accordance with the model determined by the Government.

3. The first General Meeting of the SDADV will pass its resolutions in accordance with the procedures and the majorities laid down in the SDADV's statutes.

4. Representatives of members on the first SDADV Administration Board will be appointed in the first General Meeting in accordance with the procedures and the majorities statutory laid down.

Second transitional provision

The arbitration and mediation tasks, assigned to the Arbitration Board of the Rights Holders Office by the Law on copyright and neighbouring rights of 10 June 1999, will be carried out by the Government until the establishment of the Board.

Third transitional provision

Following the SDADV entry into force, and according to the first transitional provision, all ongoing mandate contracts for the management of copyright and neighbouring economic rights, by means of which the rights holders entrusted the management to other bodies or entities, subjected to public or private law, or private law bodies in the Principality of Andorra, shall be terminated within a year in order to formalize the management mandate contract with the SDADV, once the SDADV manages the different copyright and neighbouring economic rights. In any case, the rights holders can opt for managing their rights directly.

Until the SDADV can formalize the management mandate contracts and manage the different copyright and neighbouring economic rights, the rights holders will manage their rights directly,

In case that the termination of contracts mentioned in paragraph one of this transitional provision are not carried out, the contracts shall be considered invalid for being in breach of Article 7 of this Law which grants the SDADV the exclusivity as a copyright and neighbouring collecting management entity of the Principality of Andorra. It shall be considered that the rights are managed directly by the rights holders under these assumptions.

Derogatory provision

Any prior provision, of equal or lower level, is derogated as far as it is in opposition to the content of this Law.

First final provision

Articles 7, 32 and 43 of the Law on copyright and neighbouring rights of 10 June 1999 read as follows:

Article 7

Private reproduction for personal purposes

1) The private reproduction in a single copy of a published work legally bestowed, where the reproduction is made by a physical person exclusively for his own private and personal use, including such use within the normal circle of his family and its social acquaintances, shall be permitted without the authorization of the author or other owner of the copyright work.

2) The permission under paragraph (1) shall not extend to the reproduction:

a) Of a work of architecture in the form of building or other construction;
(b) When the reproduction is a reprographic reproduction, of an entire book, or a substantial part thereof, or of a musical work in graphic form;
(c) Of a computer program, except as provided in Articles 12 and 13;
(d) Of an electronic data base, except as provided in Article 14;
(e) Of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author of, or other owner of the copyright work.

Article 32

Neighbouring rights protection constrains

Subject to the provisions of paragraph 2) of this article, the provisions of articles 26 to 31 do not apply if the acts listed in these articles are related to one of the following:

a) Use by a physical person exclusively for his own private and personal use;
b) Use of short excerpt for reporting current events to the extent justified by the purpose of providing current information;
(c) Use solely for the purpose of face-to-face teaching or for scientific research;
(d) Cases where, under Chapter II, a work may be used without the authorization of the author or other owner of copyright,

2. Article 17 provisions shall apply, mutatis mutandis to the rights of performers, producers of phonograms, broadcasting organizations, the organizations communicating their own programs by wire and publishers of previously unpublished works, under the condition that article 17 does not apply to exercise the rights by a broadcasting organization with regards to the cable retransmission of its own broadcasting.

Article 43

Jurisdiction

1) Without prejudice to the provisions of the rest of the articles on this Chapter V, the civil or, eventually, criminal Judicial Authority shall have jurisdiction for any dispute between private parties concerning a copyright or a neighbouring right, in particular for:

a) Any request for the order of provisional measures;
b) Any action for infringement of a copyright or a neighbouring right;
c) Any action concerning the right to a copyright or a neighbouring right, the ownership or assignment of a copyright or a neighbouring right or a license contract;

2) All civil actions brought under this Law in front of the ordinary jurisdiction shall be handled in an accelerated procedure.

3) Notwithstanding the provisions of paragraph 1) above, parties may submit the case to arbitration.

Second final disposition

This Law shall come into effect on the day following its publication in the BOPA *(Official Gazette of the Principality of Andorra).*