AMENDMENTS TO THE LAW ON THE PROMOTION AND PROTECTION OF INTELLECTUAL PROPERTY

Legislative Decree No. 912, of December 14, 2005

THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF EL SALVADOR,

WHEREAS:

I. By means of Legislative Decree No. 604, dated July 15, 1993, published in the Official Journal (*Diario Oficial*) No. 150, Volume No. 320 of August 16 of the same year, the Law on the Promotion and Protection of Intellectual Property was issued;

II. By means of Legislative Decree No. 555, dated December 17, 2004, published in the Official Journal (*Diario Oficial*) No. 17, Volume No. 366, of January 25, 2005, the Free Trade Agreement between Central America, the United States of America and the Dominican Republic was ratified;

III. The foregoing Agreement contains obligations incumbent upon the State of El Salvador that, in order to be fulfilled, require national legislation to be aligned with provisions contained in the Agreement, thereby making it necessary to amend the Law on the Promotion and Protection of Intellectual Property.

THEREFORE,

By virtue of its constitutional powers and at the initiative of the President of the Republic, through the Minister for Economic Affairs,

DECREES the following:

AMENDMENTS TO THE LAW ON THE PROMOTION AND PROTECTION OF INTELLECTUAL PROPERTY

Art. 1.- The name of the law is hereby changed to the following: “LAW ON INTELLECTUAL PROPERTY”.

Art. 2.- The second subparagraph of Art. 1 is hereby replaced as follows:

“This Law includes copyright, related rights and industrial property in relation to inventions, utility models, industrial designs and industrial or business secrets and test data.”

Art. 3.- Art. 3 is hereby amended as follows:

“Art. 3.- This Law shall not apply to marks, trade names and expressions or signs of commercial advertising, which are governed by the Law on Trademarks and Other Distinctive Signs.”

Art. 4.- The name of Title II is hereby changed to the following:

“TITLE II
ARTISTIC OR LITERARY PROPERTY”

Art. 5.- Art. 4 is hereby amended as follows:

“Art. 4.- The author of a literary or artistic work has an exclusive right of ownership over it, and this is called copyright.” Art. 6.- Art. 5 is hereby amended as follows: “Art. 5.- Copyright includes powers of an abstract, intellectual and moral nature, which constitute the moral right; and property powers, which constitute the economic right.”

Art. 7.- Art. 7 is hereby amended as follows:

“Art. 7.- The author’s economic right is the exclusive right to authorize or prohibit the use of his/her works, as well as the power to receive economic benefits from the use of works, and includes especially the following powers:

(a) To reproduce a work by fixing it in a material form according to any process that allows it to be communicated to the public in an indirect and durable manner, or to make copies of all or part of a work; this may be achieved by mechanical reproduction methods such as printing, lithography, photocopying, cinematography, phonographic recording, tape recording, photography, and any other form of

fixation; the reproduction of improvisations, speeches, readings, and in general all public recitations by means of stenography, typewriting, and other comparable processes is also included; this also includes the power to prohibit any reproduction of the work in any way in a permanent or temporary form, including temporary storage in electronic form;

To perform and represent the composed work deliberately for that purpose, by communicating it to the public directly and instantly, such as plays, musical and choreographic performance, dramatization for cinematography and television, and the organization of any other form of public show;(c) To disseminate the work by any medium that may be used to transmit sound and images, such as the telephone, radio, television, cable, teleprinter, satellite or any other medium known already or to be developed in the future;

(d) To distribute the work, namely to make available to the public copies of the work through sale or other form of property transfer, yet when the copies are marketed through sales, this power is extinguished from the first sale, save legal exceptions; with the property rights holder conserving the right to authorize or not the rental of those copies, as well as the rights to amend, publicly communicate and reproduce the work;

(e) To import, export or authorize the import or export of copies of his/her legally produced works and to avoid the import or export of unlawfully produced copies; and

(f) To communicate the work publicly."

Art. 8.- Art. 8 is hereby amended as follows:

"Art. 8.- The economic right may be freely transferred to any title, including free transfer by means of a contract, or may be transferred by cause of death. In exercising this right, the author or his/her successors may also dispose of, authorize or refuse the use of the work in total or in part, for commercial uses or to make arrangements, adaptations and translations thereof.

The holder of an economic right may prevent any form of public communication of the work carried out without his/her consent or in violation of the legal provisions; the holder may also demand compensation for damages and prejudices that may be caused to him/her when his/her right is not respected."

Art. 9.- Letters (h) and (i) are hereby replaced as follows and letter(j) added as follows to Art. 9:

"(h) Public access to computer databases by means of telecommunication, insofar as the said databases incorporate or constitute protected works;

(i) The dissemination of signs, words, sounds or images by any known or future process, and;

(j) The making available to the public by wire or wireless means in such a way that members of the public may access these works from a place and at a time individually chosen by them."

Art. 10.- Letter (d) of Art. 10 is hereby amended as follows:

"(d) In the case of works created by a natural person or legal entity in pursuance of a work contract or in the exercise of a public duty, the original owner of the moral and economic rights shall be the author; it shall nevertheless be presumed, in the absence of proof to the contrary, that the economic rights in the work have been assigned to the person who commissioned it, to the extent necessary for his/her usual activities at the time the work was created, which shall constitute authorization for disclosure."

Art. 11.- Art. 13 is hereby amended as follows:

“Art. 13.- The creations referred to in the previous Article include all literary and artistic works, such as books, pamphlets and writings of all kind and length, including computer programs; musical works with or without words; oratorical works, sculptures or works of applied art; written or recorded versions of conferences, speeches, lectures, sermons and other similar works; dramatic or dramatico-musical works and choreography; stagings of dramatic or operatic works; works of architecture or engineering, globes, atlases and maps relating to geography, geology, topography, astronomy or any other science; photographs, lithographs and engravings; audiovisual works, of silent, spoken or musical cinematography; radio broadcast or television works, models or creations with artistic value in matters of clothing, furniture, decoration, ornamentation, headgear, adornments or precious objects; plans or other graphical reproductions and translations; and any other works that may be considered to be included in the generic types of the works mentioned.”

Art. 12.- Art. 18 is hereby amended as follows:

“Art. 18.- The literary or artistic pseudonym is an exclusive and highly personal right of the natural person of the author; its use is protected by law, without the need to be recorded in advance in the Registry.”

Art. 13.- The fourth subparagraph of Art. 21 is hereby amended as follows:

“The author of the work in general may dispose of its reproduction, but singular authors may oppose such a reproduction, if this were to affect their economic or moral rights; and should they be unable to lodge the opposition in good time, they shall have the right to be compensated if prejudices of one or the other kind or both are proven. In the event of dispute over the reproduction, it shall be decided by the competent judge, who in order to settle the matter shall take into account mainly the public interest, such that if the dissemination of the work were considered necessary for the culture at large, this interest would take precedence over private interests, yet without neglecting to ensure the economic interests of each of the parties, were reproduction to be the course decided upon.”

Art. 14.- A final subparagraph is hereby added to Art. 25 as follows:

“Audiovisual work is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds, susceptible of being made audible.”

Art. 15.- A final subparagraph is hereby added to Art. 30 as follows:

“The licensees or assignees of the economic rights of the audiovisual, videographic or cinematographic works may bring civil and criminal actions to defend their respective rights in the terms authorized by the respective contract, in accordance with Article 8 of the present Law.”

Art. 16.- “SECTION "H" GENERAL EXCEPTIONS OF PROTECTION”, of “CHAPTER II PROTECTION SYSTEM” of the “TITLE II, ARTISTIC, LITERARY OR SCIENTIFIC PROPERTY” is hereby repealed; as are Arts. 39, 40, 41 and 42 of that Section.

Art. 17.- The name of “CHAPTER III” of the “TITLE II, ARTISTIC, LITERARY OR SCIENTIFIC PROPERTY” is hereby changed as follows:

“LIMITATIONS AND EXCEPTIONS”

Art. 18.- Art. 43 is hereby repealed.

Art. 19.- Letters (c), (h) and (i) of Art. 44 are hereby amended as follows:

“(c) Those verified as being exclusively for teaching purposes, in personalized teaching activities within accredited and non-profit institutions, in a lecture room or similar place dedicated to teaching;

(h) Those carried out by musical groups or soloists at family gatherings that are not for profit ; and

(i) Those carried out by musical groups or soloists at public gatherings for charity, provided that entry is free of charge.”

Art. 20.- In Chapter III of the Title II, Arts. 49-A, 49-B, 49-C and 49-D are hereby added after Art. 49 as follows:

“Art. 49-A.- The laws, regulations, agreements and other provisions issued the relevant bodies of the Government of the Republic may be published separately or in collection by private individuals after they have been published by the Government, and accurately reproducing the official text, without the need for authorization from the Government. They may also be inserted without authorization in newspapers and in works that by their nature or purpose make it appropriate to quote, comment upon, criticize or copy them word for word.

Art. 49-B. – The sentences handed down by a court of any kind may be published, except where there are legal provisions to the contrary, if their content does not affect morals or decency.

Writings presented by the parties in any case shall be their property and they may publish them with no more limitations than those contained in Art. 6 of the Constitution."

Art. 49-C.- It shall be lawful to reproduce brief fragments of literary, scientific or artistic works in publications or anthologies for the purposes of teaching, science, literary criticism or research, provided that the source is unmistakably indicated; that the texts reproduced are not altered; and that the reproduction does not conflict with the normal exploitation of the work or prejudice the legitimate interests of the author.

For the same purposes and with the same restrictions, brief fragments may be published in translations.

Art.49-D.- Letters of public interest may be published if they do not damage the honor or interests of the sender or recipient, and provided that they do not contradict the limitations contained in Art. 6 of the Constitution. The economic gain from the publication shall fall to the author or his/her successors."

Art. 21.- Art. 53 is hereby replaced as follows:

"Art. 53.- The assignment awarded for a consideration grants the author the amount agreed in the contract."

Art. 22.- The first subparagraph of Art. 56 is hereby amended as follows:

“Art. 56.- Contracts assigning rights and user licenses that are awarded and put into effect in the country must be concluded by public deed and may be included in the Registry according to the provisions of Chapter XII of this Law.”

Art. 23.- Art. 57 is hereby replaced by the following:

“Art. 57.-The provisions of this Chapter shall apply to contracts that are implemented and put into effect in El Salvador.”

Art. 24.- Art. 57-A is hereby inserted between Arts. 57 and 58, as follows:

“Art. 57-A.- Publishing contract is one through which the author or his/her successors assign to another person called the publisher without exclusivity the right to publish, distribute and disclose the work on his/her own account.”

Art. 25.- Letter (i) of Art. 60 is hereby amended as follows:

“(i) Apply for the work to be recorded in the Registry, in the name of the author, when this has not been done by the latter; and”

Art. 26.- Art. 68 is hereby replaced by the following:

“Art. 68.- The provisions of this Chapter shall apply to contracts that are implemented and put into effect in El Salvador.”

Art. 27.- Art.68-A is hereby inserted between Arts. 68 and 69 as follows:

"Art. 68-A.- Through contracts for theatrical production and musical performance, the author or his/her heirs assign to a natural or legal person known as the impresario, the right to produce or stage publicly a literary, dramatic, dramatico-musical, mimed or choreographical work, in exchange for economic compensation."

Art. 28.- Art. 73 is hereby replaced by the following:

"Art. 73.- The provisions of this Chapter shall apply to contracts that are implemented and put into effect in El Salvador."

Art. 29.- Art.73-A is hereby inserted between Arts. 73 and 74, as follows:

"Art. 73-A.- Under a phonographic recording contract, the author of a musical work authorizes a producer of phonograms, in exchange for remuneration, to record or otherwise fix a work for reproduction on a phonographic disc, magnetic strip, film or any other comparable device or mechanism with a view to reproduction and the sale of copies.

The authorization granted to the phonographic producer shall not include the right of public performance of the work embodied in the phonogram. The producer shall cause the reservation to appear on the label affixed to the disc, device or mechanism on which the phonogram is reproduced.

The provisions of Art. 56 of this Law shall apply to these contracts."

Art. 30.- Letters (c), (d) and (e) of the first subparagraph of Art. 74 are hereby amended and letter (f) added as follows:

"(c) The abbreviated names of the collective administration organizations to which the authors and performers belong;

(d) The notice of reserved rights in the phonogram in the form of the circled "P" symbol followed by the year of first publication, for the purposes of the international protection referred to in letter (b) of Art. 60 of this Law;

(e) The name of the phonogram producer; and

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

Art. 31.- Art. 75 is hereby amended as follows:

"Art. 75.- The phonogram producer shall be obliged to keep a registration system that makes it possible for authors and performers to verify the number of copies sold; he/she shall moreover allow them to verify the accuracy of their remuneration payments by inspection of vouchers, offices and stores, either in person or through authorized representatives."

Art. 32.- Art. 78 is hereby replaced by the following:

"Art. 78.- The protection accorded to rights related to copyright shall in no way affect the protection of the copyright for the works. Consequently, none of the provisions in this Chapter may be interpreted in a manner that detracts from that protection.

Similarly, the protection granted to copyright shall in no way affect protection for related rights.

As a result, none of the provisions related to copyright may be interpreted to the detriment of the provisions of this Chapter."

Art. 33.- Art. 79 is hereby amended as follows:

"Art. 79.- The holders of the related rights recognized in this Chapter may invoke all the provisions relating to authors and their works, particularly those relating to moral rights and economic rights, contained in Articles 6 and 7, and for the protection period established in Chapter X of the Title II of this Law."

Art. 34.- Art. 81 is hereby replaced by the following:

"Art. 81.- Performers or their successors have the right to authorize or prohibit:

(a) The fixing of their unfixed performances;

(b) The reproduction by any means or procedure of their performances; they also have the right to prohibit any reproduction of their performances in any means or form, permanent or temporary, including temporary storage in electronic form;

(c) The distribution of their performances fixed on phonograms;

(d) The rental for commercial purposes of an original or copy of their fixed performances;

(e) The broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance. However, they may not oppose the communication when this is carried out using a performance fixed with their prior consent, published for commercial purposes; and

(f) The broadcasting and communication to the public, by wire or wireless means, of their unfixed performances, including the availability to the public of those performances in such a way that members of the public may access these works from a place and at a time individually chosen by them.

Performers shall also have the moral right to link their name or pseudonym to the performance and prevent any deformation of it that may threaten their dignity or reputation."

Art. 35.- Art. 83 is hereby replaced by the following:

"Art. 83.- Phonographic producers have the right to authorize or prohibit the reproduction of their phonograms, as well as the import, rental or distribution to the public or other use, in any form or means, of the copies of their phonograms.

They also have the right to authorize or prohibit any reproduction of their phonograms in any permanent or temporary means or form, including the temporary storage in electronic form; as well as the right to authorize or prohibit broadcasting and communication to the public, by wire or wireless means, of their phonograms, including the availability to the public of those phonograms in such a way that members of the public may access these works from a place and at a time individually chosen by them."

Art. 36.- Section D, which includes Arts. 85-A, 85-B and 85-C is hereby added after Art. 85 to "CHAPTER IX RELATED RIGHTS" of "TITLE II: ARTISTIC, LITERARY OR SCIENTIFIC PROPERTY", as follows:

"SECTION "D"

PRODUCERS OF VIDEOGRAMS OR CINEMATOGRAPHIC WORKS

Art. 85-A.- A videogram or cinematographic work shall be considered to be the fixation of associated images, with or without incorporated sound, which give a sensation of movement, or of a

digital representation of such images of an audiovisual work or of the performance of another work or an expression of folklore, as well as of other images of the same class, with or without sound.

Art. 85-B.- A producer of videograms or cinematographic works is the natural person or legal entity fixing for the first time associated images with or without incorporated sound, providing a sensation of movement or a digital representation of such images, irrespective of whether they constitute an audiovisual work.

Art. 85-C.- The producer, in relation to his/her videograms or cinematographic works, has the rights to authorize or prohibit their reproduction, distribution or public communication, and the natural person or legal entity who he/she authorizes to carry out such activities may bring actions to defend their respective licenses or assignment of rights, in accordance with the respective contract."

Art. 37.- CHAPTER IX-BIS, with Sections "A" and "B" including Arts. 85-D and 85-E, is hereby added before CHAPTER X "TERMS OF PROTECTION" to "TITLE II: ARTISTIC, LITERARY OR SCIENTIFIC PROPERTY", as follows:

"CHAPTER IX-BIS

EFFECTIVE TECHNOLOGICAL MEASURES AND RIGHTS MANAGEMENT INFORMATION

SECTION "A"
EFFECTIVE TECHNOLOGICAL MEASURE

Art. 85-D.- Effective technological measure is understood as any technology, device or component that, in the normal course of its operation, controls access to a work, performance, phonogram or other protected material, or that protects any copyright or any right related to copyright.

The following acts are prohibited:

(a) The unauthorized avoidance of any effective technological measure that controls access to a work, performance, phonogram or other protected material;

(b) The manufacture, import, distribution, offering or providing to the public, or the illegal trafficking of slides, products or components; as well as the offering or provision of services to the public that:

(1) Are promoted, advertised or marketed for the purposes of avoiding an effective technological measure;

(2) Only have a limited purpose or commercially important use different from that of avoiding an effective technical measure; or

(3) Are designed, produced or performed mainly with the aim of enabling or facilitating the avoidance of any effective technological measure.

The infringement of the prohibitions established in the previous subparagraph shall give rise to civil actions, independent from any infringed copyright or related rights. The holder of the rights protected by an effective technological measure shall have the right to bring actions established in Chapter XI of the Title II of this Law.

Payment of damages shall not be ordered against a non-profit library, archive, educational institution or a public broadcasting body that proves it did not know and had no reason to know that its acts constituted a prohibited activity.

Any natural person or legal entity that is not the owner of a library, archive, educational institution or a non-commercial public broadcasting body not for profit, that has involved itself willfully and with the aim of achieving a commercial advantage or private commercial gain, in any of the activities prohibited in the second subparagraph of this Article, shall be subject to the procedures and sanctions established in the Penal Code.

The following activities shall constitute exceptions to any measure implemented in relation to the prohibition established in the second subparagraph, letter (b), of this Article, on technology, goods, services or devices that avoid effective technological measures to control access and, in the case of letter (a) of the present subparagraph, protect any of the exclusive copyrights or related rights over a protected work, performance or phonogram as referred to in the second subparagraph of letter (b) of this Article, provided that such activities do not affect the applicability of legal protection or the effectiveness of legal recourse against the avoidance of effective technological measures:

(a) Non-infringing activities of reverse engineering in relation to the lawfully obtained copy of a computer program, made in good faith, in terms of the particular elements of the said

computer program that have not been available to the person involved in those activities, with the sole aim of achieving the interoperability of a computer program created independently with other programs;

(b) Non-infringing activities carried out in good faith by a duly qualified researcher who has lawfully obtained a copy, performance or sample of a work, non-fixed performance or phonogram and who has made an effort to obtain authorization to carry out his/her own research activities, to the extent necessary and with the sole aim of identifying and analyzing faults and weaknesses of the technologies to encrypt and decrypt information;

(c) The inclusion of a component or part, with the sole aim of preventing access by minors to inappropriate online content in a technology, product, service or device that in itself is not prohibited under the measures that implement the second subparagraph, letter (b) of this Article;

(d) Non-infringing activities carried out in good faith and authorized by the owner of a computer, system or computing network with the sole aim of testing, researching or correcting the security of that computer, system or computing network.

The activities listed in the previous subparagraph and the following activities shall constitute exceptions to any measure implemented in relation to the prohibition established in the second subparagraph, letter (a) of this Article, provided that such activities do not affect the applicability of legal protection or the effectiveness of legal recourses against the avoidance of effective technological measures:

(a) The access by a non-profit educational institution, library or archive to a work, performance or phonogram, to which it would not otherwise have access, with the sole aim of making a decision on the acquisition thereof;

(b) Non-infringing activities with the sole aim of identifying and disabling the capacity to compile or disseminate information from undisclosed personal identification data that reflect the online activities of a natural person, in such a manner that in no way affects the ability of any person to gain access to any work; and

(c) The non-infringing use of a work, performance or phonogram in a particular class of works, performances or phonograms, when it is demonstrated in an administrative procedure using substantial evidence that there is a real or potential negative impact on those non-infringing uses; on the condition that for any exception to remain in force for over four years, a review must be carried out before the expiry of that

period and subsequently every four years, so that the said procedure can be used to demonstrate with substantial evidence that there is an ongoing real or potential negative impact on those particular infringing uses.

Lawfully authorized activities carried out by government employees, agents or contractors, to enforce the law or carry out intelligence, national defense and essential security activities and other similar governmental purposes, also constitute exceptions to any of the measures applied as a result of the prohibitions established in letters (a) and (b) of the second subparagraph of this Article.

SECTION "B"
RIGHTS MANAGEMENT INFORMATION

Art. 85-E.- "Rights management information" shall mean when any of the elements listed in the letters of the present subparagraph is attached to a copy of a fixed performance or a phonogram or appears in connection with the communication or making available of a fixed performance or a phonogram to the public:

(a) Information which identifies the work, performance or phonogram, the author of the work, the artist or performer of the performance, the producer of the phonogram or the owner of any right over the work, performance or phonogram;

(b) Information about the terms and conditions of use of the work, performance or phonogram; or

(c) Any numbers or codes that represent such information.

It is forbidden for any person knowingly to perform any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of a copyright or related right:

a) To knowingly remove or alter any electronic rights management information;

(b) To distribute or import for distribution rights management information, knowing that this information has been removed or altered without authority; or

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

The infringement of the prohibitions established in the previous subparagraph shall give rise to civil actions, independent of any infringement of copyright or related rights that may occur. The rights holder may bring the actions foreseen in Chapter XI of Title II of this Law.

The payment of damages shall not be ordered against a non-profit library, archive, educational institution or public broadcasting body that proves that it did not know and had no reason to know that its acts constituted a prohibited activity.

Any natural person or legal entity that is not the owner of a library, archive, educational institution or a non-commercial public broadcasting body not for profit, that has involved itself willfully and with the aim of achieving a commercial advantage or private commercial gain, in any of the activities prohibited in the second subparagraph of this Article, shall be subject to the procedures and sanctions established in the Penal Code.

Lawfully authorized activities carried out by government employees, agents or contractors, to enforce the law or carry out intelligence, national defense and essential security activities and other similar governmental purposes, constitute exceptions to any of the measures applied as a result of the prohibitions established in the second subparagraph of this Article."

Art. 38.- Art. 86 is hereby replaced by the following:

"Art. 86.- The duration of the protection of the right governed by this Law is as follows:

(a) The life of the author and 70 years from his/her death, in favor of the heirs or successors, if the author is a natural person. If the work is a complex one, the 70 years shall be counted from the death of the final surviving co-author; if any co-author should die without heirs while other co-authors were living, his/her share would increase the share of the survivors;

(b) In the case of an anonymous or pseudonymous work whose author has not been revealed, the term of protection shall be 70 years counted from January 1 of the year following that of the first disclosure. Once the identity of the author of the anonymous or pseudonymous work or the holder of those rights has been legally established, the provisions of the letter above shall apply; or

(c) When protection is not based on the life of the author, the term of protection shall be 70 years counted from January 1 of the year following that of the first authorized disclosure. If there has been not authorized disclosure or if the disclosure has taken place more than 50 years following the year of creation of the work, performance or phonogram or the making of the broadcast, the term of protection shall run from January 1 of the year following that of the creation of the work, performance or phonogram or the making of the broadcast.

When the period of protection expires, the works shall enter the public domain and may be freely used by any person, with respect for the authorship and integrity of the works."

Art. 39.- The first subparagraph of Art. 89 is hereby amended and letter (n) added as follows:

“Art. 89.- Any act that in any way diminishes or prejudices the moral or economic interests of the author constitutes a violation of copyright, including the following:

(n) The communication, reproduction, broadcast or any other act that violates the rights covered by this Law, carried out through digital communication networks, in which case joint responsibility shall lie with the operator or any other natural person or legal entity with control over a computer system interconnected to the said network, provided that he/she knows or has been informed of the possible infringement, or could not have been aware of it without serious negligence on his/her part. This person shall be understood to have been informed of the possible infringement when he/she has been given duly reasoned notice of it. The operators or other natural persons or legal entities referred to in this letter shall be exempt of any responsibility when they have acted in good faith and when they have adopted technical measures to avoid the infringement being committed or continued.”

Art. 40.- Arts. 89-A and 89-B are hereby inserted between Arts. 89 and 90 as follows:

“Art. 89-A. No authority or person, whether a natural person or a legal entity, may authorize the use of a work, performance, phonographic production or broadcast or any other work protected by this Law, barring the exceptions and limitations contained in the present Law or in Treaties and Agreements ratified by El Salvador.

The prohibition established in the previous subparagraph shall also apply to the operator or any other natural person or legal entity with control over a computer system interconnected to a digital communication network, through which the communication, reproduction, broadcast or any other act of unauthorized use of a work, performance, phonographic production or broadcast or any other work protected by this Law is allowed, encouraged or facilitated. The operator or any other natural person or legal entity with control of a computer system interconnected to a digital communication network shall be understood as not fulfilling this obligation if he/she does not quickly withdraw or disable access, provided that he/she knows or has been informed of the possible infringement, or could not have been aware of it without serious negligence on his/her part.

Art. 89-B.- The following activities are prohibited:

(a) The production, assembly, modification, import, export, sale, hire or distribution by other mans of a tangible or intangible device or system, knowing or having reason to know that the device or system is used mainly to decrypt an encrypted satellite signal containing programs, without the authorization of the authorized distributor of the said signal; and

(b) The reception and subsequent distribution of a signal containing programs that originated as an encrypted satellite signal, in the knowledge that it has been decrypted without the authorization of the legitimate distributor of the signal.

Any person who has suffered damage due to the activities described in this Article, including all those with interest in encrypted satellite signals-containing programs or their content, may bring the actions foreseen in this Chapter."

Art. 41.- Art.90 is hereby replaced and Arts. 90-A and 90-B are added as follows:

"Art. 90.- Without prejudice to the relevant penal actions, the holders of the rights granted by this Law may take action to request before the competent courts the cessation of the violation of any of their rights and the reparation of damages and losses.

The cessation of the violation of their rights includes:

(a) The immediate suspension of the unlawful activity;

(b) The prohibition to the infringer of repeating it;

(c) The seizure of unlawful copies and of documentary evidence relevant to the infringement;

(d) The destruction of the infringing goods;

(e) The seizure of moulds, sheets, dies, negatives, devices and related products, fixed or otherwise, and other objects used mainly for the unlawful reproduction;

(f) The destruction of the materials and tools that have been used to produce or create the infringing goods, without any compensation for the infringer or, in exceptional circumstances no compensation at all, to be disposed of outside of trade channels so as to minimize the risk of future infringements. When considering requests for such destruction, the competent court shall take into consideration, among other factors, the seriousness of the infringement, as well as the interests of third parties, holders of real rights, ownership or of a contractual or guaranteed interest;

(g) The donation to charity of the merchandise infringing copyright and related rights, only with the authorization of the right holder;

(h) The removal or the maintenance under lock and key of the equipment used in the unauthorized public communication; and

(i) Publication of the guilty verdict and notification of interested parties at the infringer's expense.

The competent court may ask the infringer to provide any information he/she possesses about any person involved in any aspect of the infringement and about the means of production or channels of distribution for the infringing goods or services, including the identification of third persons involved in their production and distribution, and their distribution channels, and to provide this information to the right holder.

The compensation of damages and losses shall be calculated on the basis of any of the following criteria, among others, to be chosen by the aggrieved person:

a. On the basis of damages suffered by the right holder as a result of the infringement;

b. On the basis of profits that the right holder would have predictably obtained if the infringement had not occurred. To determine the foregoing, the competent court shall consider, inter alia, the value of the good or service that is the subject of the infringement, based on the recommended retail price or other legitimate measure of value presented by the right holder; or

c. On the basis of the price or royalty the infringer would have paid for a contractual license, taking into consideration the commercial value of the subject of the infringed right and such contractual licenses as may have already been granted.

In addition, the infringer shall pay the right holder profits attributable to the infringement that were not considered when the amount of damages referred to in the previous letters was calculated.

If the competent court makes an award of costs, these costs shall include reasonable lawyers' fees."

Art. 90-A.- In civil, administrative and penal proceedings related to copyright and related rights, the person whose name is usually indicated as the author, producer, performer or publisher of the work, performance or phonogram shall be presumed, in the absence of evidence to the contrary, to be the designated holder of the rights of the said work, performance or phonogram; and, in the absence of evidence to the contrary, copyright or a related right shall be presumed to subsist in such matters.

Art. 90 B.- If the competent court appoints a technical expert or expert in civil procedures relating to the enforcement of intellectual property rights and orders the parties to bear the costs of such experts, the said costs shall be closely related to, inter alia, the quantity and nature of the work to be performed and should not unreasonably dissuade parties from having recourse to such procedures."

Art. 42.- Art. 91 is hereby replaced by the following:

"Art. 91.- In cases of violation of rights or when there are grounds to fear that a violation will begin or be repeated, the competent court, by using the available evidence to demonstrate the circumstances and the right of the party, shall immediately decree, at the request of the holder of the infringed rights, prior provision of a security sufficient to protect the defendant and to prevent abuse and not to dissuade parties from having recourse to such proceedings and without notifying the infringer, one or several of the following precautionary measures that, depending on the circumstances, may be necessary for the urgent protection of those rights:

(a) The preventive seizure of the cash obtained from unlawful use;

(b) The preventive seizure of the unlawfully reproduced copies, labels and the instruments or materials used mainly to carry out the infringement, with inventory, description or deposit thereof;

(c) The suspension of the unauthorized reproduction, communication or distribution activity, as appropriate; and

(d) The prohibition to import, export or allow the movement in transit in national territory of the unlawfully reproduced copies, delivering the relevant order to the Customs Income Department.

The competent court may ask the presumed infringer to provide any information in his/her possession about any person involved in any aspect of the infringement and about the means of production or channels of distribution for the infringing goods or services, including the identification of third persons involved in their production and distribution, and their distribution channels, and to provide this information to the right holder.

The suspension of a public show due to the unlawful use of the protected works, performance or productions may be ordered by the competent Justice of the Peace of the place of infringement, even if he/she is not competent to try the main trial. Once the suspension has been

ordered, the Justice of the Peace shall immediately inform the court responsible for intellectual property matters about the measure adopted.

The seizure referred to in letter (b) of this Article shall not be implemented against those who acquire an unlawfully reproduced copy in good faith and for their personal use.

Any person requesting the precautionary measures referred to in this Article shall submit the corresponding application within 15 days following the day on which any of the measures is decreed, otherwise he/she shall be responsible for the damages and losses caused and the measures shall remain without effect.

The right holder may request the competent court to hand down border measures suspending the import, export or movement in transit of goods with presumably counterfeit or confusingly similar marks, and shall be required to provide adequate evidence to satisfy the competent court that there is prima facie an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods that would be reasonably known by the right owner to make them readily recognizable. The requirement to provide sufficient information should not discourage parties from having recourse to these procedures.

The competent court may require the right holder initiating suspension proceedings to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures. The said deposit may take the form of an instrument issued by a provider of financial services to keep the importer or owner of the imported goods free from any loss or damage resulting from any suspension in the dispatch of goods in the event of the competent court determining that the item does not constitute an infringement.

Once the suspension is implemented, the customs authority shall promptly notify importer or exporter and the applicant.

If the competent court determines that the copies have been unlawfully reproduced, it shall inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Border measures may be ordered *ex officio* in respect of imported, exported or in transit goods suspected of infringing an intellectual property right without the need for a formal request on the part of the right holder or a private individual.

In cases where there is a charge for an application or storage of goods, in relation to border measures to enforce an intellectual property right, the charge shall not be set at a level that discourages recourse to such measures.

Precautionary measures and border measures may be requested before the infringement action is initiated, at the same time or after it has begun."

Art. 43.- Arts. 91-A, 91-B, 91- C and 91-D are hereby inserted between Arts. 91 and 92 as follows:

"Art. 91-A. A licensee whose license is registered may bring an action against any third party committing an infringement on the right that is the subject of the license. The licensee may ask for the precautionary measures established in this Chapter to be taken. The holder of the infringed right may appear in the proceedings at any time.

Any registered licensee and any beneficiary of a right or credit recorded in the Registry, in relation to the infringed right, shall have the right to appear in the proceedings at any time. For these purposes, all people whose rights are recorded in relation to the infringed right shall be informed of the request.

Art. 91-B.- Without prejudice to providing protection for confidential information, the competent court that orders the precautionary measures may grant the person requesting them free access to the seized merchandise or goods, so that he/she may inspect them and obtain additional means of evidence to support his/her claim. The importer or exporter shall have the same right. This measure shall be carried out in the presence of the respective competent court, and the opposing party summoned.

Once the existence of an infringement has been verified, the defendant shall be informed of the name and address of the consignor, importer or exporter, and consignee of the goods, as well as of the quantity of the goods that are subject to suspension.

Art. 91-C.- In the case of unlawful products seized by the customs authorities, the competent court shall order the destruction of the copies that it has determined to have been unlawfully reproduced, unless the right holder agrees to their being disposed of in another way. In no case shall the export of unlawfully reproduced copies be permitted without their being subjected to a different customs procedure, except in exceptional circumstances, on the order of the competent court and with the authorization of the holder of the infringed right.

Art. 91-D.- Small quantities of goods of a non-commercial nature contained in travelers' personal luggage or sent in small consignments shall be excluded from the application of the above provisions."

Art. 44.- Art. 92 is hereby replaced as follows:

"Art. 92.- Any person bringing a civil action shall be obliged to present with the action the legal mandate under which he/she is acting or the representation he/she invokes.

Authors, performers, phonogram producers and broadcasting bodies, as well as any other person with a legitimate commercial interest in the work, performance, phonogram or broadcast signal, may bring civil actions.

To initiate one of the actions established in this Chapter, it shall suffice for a person to prove that he/she is the right holder, according to the provisions of Art. 90-A where appropriate; is a registered licensee or has a legitimate commercial interest."

Art. 45.- Art. 92-A is hereby added to Chapter XI, of Title II, following Art. 92, as follows:

"Art. 92-A. – A licensee may bring a civil or criminal action against any third party that commits an infringement of the right that is the subject of the license, in accordance with Article 8 of the present Law.

All persons whose rights have been infringed shall be informed of the application, according to the work and the evidence provided. Those persons may be summoned to appear at any time."

Art. 46.- Art. 93 is hereby amended as follows:

"Art. 93.- The Registry shall be responsible for processing:

(a) Deposit application for protected works; phonographic productions of artistic performances and radiophonic productions fixed on a material support; and

(b) The registration of records or contracts through which licenses for rights recognized in this present Law are transferred, assigned or granted."

Art. 47.- Letter (e) of the second subparagraph and the third subparagraph of Art. 94 are hereby amended as follows:

(e) As for models or works of art applied to industry, a copy or photograph thereof shall be handed over, accompanied by a written description of the characteristics or details that cannot be appreciated on copies or photographs;

In an instruction, the Registry may allow the deposit of a copy to be replaced in the case of specific creative genres by the enclosure of documents that allow the characteristics and content of the work or production submitted for deposit."

Art. 48.- The second subparagraph of Art. 95 is hereby amended as follows:

"It is assumed, unless proved otherwise, that the persons indicated in the Registry are the holders of the protected right attributed to them."

Art. 49.- The first part of Art. 98 is hereby amended, as are letters (a) and (f); and letter (g) is added to the Article, as follows:

"Art. 98.- The Registry shall also have the following powers:

(a) To oversee natural and legal persons that use the protected works, performances and productions, this present Law;

If that oversight reveals that the rights established in this Title are being infringed, the Registry shall inform the Public Prosecutor's Office so that it may launch the relevant investigations and actions."

(f) To oversee the functioning of the collective administration entities; and

(g) The other functions and powers indicated in Laws and Regulations."

Art. 50.- Art. 100 is hereby amended as follows:

"Collective administration entities may be set up to defend the economic rights recognized in this Law of their members or those they represent, or those affiliated to foreign entities of the same kind, which shall be governed by the provisions established in this Chapter.

Collective administration entities shall be empowered, in terms specified in their own statutes and in the contracts that they conclude with foreign entities, to exercise the rights entrusted to them for administration and to assert those rights in administrative and judicial proceedings of any kind.

The entities referred to in this Chapter shall be set up by public deed and shall acquire legal status once included in the Registry under the terms mentioned in the previous subparagraph. The Registry shall order the entities to publish the resolution of registration with the relevant passages of the deed of incorporation, along with the fees authorized by the Registry.

For a collective administration entity to be registered, the public deed shall contain:

(a) Names and details of the persons who constitute it;

(b) Address of the entity set up;

(c) Amount of capital;

(d) Purpose of providing of mutual assistance for their members, based on principles of collaboration, equality and equity, in addition to operating according to the guidelines laid down by this Law;

(e) Types of right holders included in the management;

(f) Conditions of gaining and losing membership;

(g) Rights and duties of members;

(h) Name of the entity, followed by the expression “Entidad de Gestión Colectiva” (collective administration entity) or its abbreviation “EGC”;

(i) Statement of what each member contributes in the form of money or goods and the value thereof;

(j) System of administration and authority of the legal representative of the entity;

(k) Fees, rules for collection and distribution; and

(l) Basis for carrying out liquidation of the entity, including the nomination of liquidators.”

Art. 51.- Arts. 100–A and 100- B are hereby inserted between Arts. 100 and 101, as follows:

“Art. 100-A.- To protect the economic rights of their members, collective administration entities shall be deemed to be the agents of those members by virtue of the mere fact of membership.

Art. 100-B.- Unless otherwise agreed, the following shall be the responsibilities of collective management entities:

(a) To represent their members in dealings with the country's legal and administrative authorities in all matters of general and particular interest for them, except where the members decide to institute on their own behalf those actions that are available to them for the infringement of their rights;

(b) To establish general fees to determine the remuneration required to use their directory;

(c) To negotiate with users the conditions governing the authorization of acts covered by the rights that they administer and the appropriate remuneration, and to grant the relevant authority;

(d) To oversee the use of authorized directories;

(e) To collect and distribute to members the remuneration from their rights;

(f) To contract with whoever requests the granting of non-exclusive use licenses for the rights managed, under reasonable conditions and in return for remuneration;

(g) To sign reciprocity agreements with foreign collective administration entities involved in the same activity or management;

(h) To represent within the country those foreign societies with which they have a representation contract in dealings with the judicial and administrative authorities in all matters of concern to them, being empowered to appear in court on their behalf; and

(i) Any others mentioned in their statutes."

Art. 52.- Art. 101 is hereby replaced by the following:

"Art. 101.- Collective administration entities shall:

(a) Provide their members and those they represent with complete and detailed periodical information on all activities of the entity that may have a bearing on the exercise of the rights of the said members. Similar information shall be sent to the foreign entities with which they have a representation contract in El Salvador;

(b) Submit to the Registry any amendment to their deed of incorporation, as well as provide it with all the information that it requires, and give it access to books and documents for the purpose of verifying compliance with legal and statutory provisions;

(c) Draft internal regulations, specifying the way in which the remuneration collected shall be equitably distributed among members; as well as the setting of fees for use of works, which shall be submitted for recording in the Registry. Once the fees have been recorded, they shall be published within a period of 30 days in the Official Journal and in a major national newspaper, at the cost of the entity; and

(d) To record the reciprocity agreements that they conclude with collective administration entitites involved in the same activity or management."

Art. 53.- Arts. 102, 103 and 104 are hereby repealed.

Art. 54.- Letter (b) of Art. 107 is hereby amended as follows:

"(b) Economic, advertising or business, plans, principles or methods; and those relating to purely mental or intellectual activities or games;"

Art. 55.- The first subparagraph of Art. 108 is hereby amended as follows:

"Art. 108.- Annual duties shall be paid to keep a pending patent or patent application in force. Payments shall be ma+

de before the beginning of the relevant annual period. The first annual duty shall be paid before the end of the second year from the date of filing of the patent application. Two or more duties may be paid in advance."

Art. 56.- The first subparagraph of Art. 109 is hereby amended as follows and the second subparagraph repealed:

"Art. 109.- Invention patents shall be granted for a non-renewable term of 20 years, starting from the filing date of the application for registration."

Art. 57.- Art-109-A is hereby inserted between Arts. 109 and 110, as follows:

"Art. 109-A. The term of 20 years shall end at a later date than that provided for in the previous Article in the following cases:

(a) When for reasons attributable to the Registry, the latter takes more than five years to grant the registration of a patent following the date when the patent registration application is filed;

(b) When for reasons attributable to the Registry, the latter takes more than three years to grant the registration of a patent following the filing date of the application for a substantive examination; or

(c) When for reasons attributable to the competent authority for granting registrations for the marketing of pharmaceutical products, the latter takes more than five years to grant the registration following the filing date of registration. The provisions of this letter shall only apply where the product patent is registered in El Salvador and its term of protection is ongoing.

The date when the term of protection referred to in this Article will end shall be decreed by the Registry, at the request of the interested party. In this case, the Registry shall apply the following rule: each day of delay reckoned from the first day of the sixth year in the case of letters (a) and (c), or from the first day of the fourth year in the case of letter (b), shall be added to the term of protection of the patent, but in no case shall this exceed 550 days.

The interested party may appeal to the competent courts if the provisions of this Article do not apply."

Art. 58.- Art. 113 is hereby amended as follows:

"Any invention which is not included in the prior art shall be considered novel.

Prior art shall mean all the technical knowledge which has been made public anywhere in the world, by means of an oral or written description, sale, marketing, use, or any other means of dissemination or information, prior to the patent application filing date in the country or, where appropriate, before the filing date of the foreign application for which priority will be claimed. The contents of a patent application pending before the Registry and having a filing date or priority application date earlier than the date of the patent or patent priority application under examination, shall likewise be considered part of the state of the art, provided that said contents are included in the earlier application when published.

For the purposes of determining loss of novelty, any disclosure that may have happened during the year prior to the date of filing of the application in the country or, where appropriate, during the year prior to the date of application for which priority will be claimed, shall not be taken

into consideration, provided that such a disclosure was the direct or indirect result of acts carried out by the inventor him/herself or his/her successors or from a breach of trust, breach of contract or unlawful acts committed against any of them."

Art. 59.- A second subparagraph is hereby added to Art. 114, as follows:

"For the purposes of the previous subparagraph, the provisions of the third and fourth subparagraphs of Art. 113 of this Law shall apply."

Art. 60.- Number 2. of letter a) of the first subparagraph of Art. 115 and the second subparagraph of Art. 115 are hereby amended as follows:

"2. To offer for sale, sell or use the product; or import it or store it for any of these purposes; as well as to prevent the transit of the product on the national territory.

The scope of the protection granted by the patent shall be determined by the claims, which shall be interpreted by taking into account the description and drawings, where appropriate."

Art. 61.- Letters (a), (b) and (c) of the first subparagraph of Art. 116 are hereby amended and letter (e) added, as follows:

"(a) To acts referred to in Article 5bis of the Paris Convention for the Protection of Industrial Property;

(b) To acts done privately and for non-commercial purposes, as long as they do not unjustifiably infringe upon the normal exploitation of the invention that the holder may or does carry out;

(c) To a third party that, without commercial purposes, carries out acts of manufacture or use of the invention for experimental purposes relating to the subject of the patented invention or for the purposes of scientific, academic or teaching research, provided that this does not unjustifiably infringe upon the normal exploitation of the invention that the holder may or does carry out;

(e) To the use by a third party of protected materials that are the subject of a valid patent, in order to generate the necessary information to support an application for a health certificate for a pharmaceutical or chemical-agricultural product submitted to the Supreme Council on Public Health or the Ministry of Agriculture and Livestock, an application that may be submitted once the patent protection term has expired; and if

the product is exported outside the national territory, this export shall be permitted only to satisfy the requirements for marketing approval in El Salvador."

Art. 62.- The first subparagraph of Art. 118 is hereby amended as follows:

"Art. 118.- When an invention has been made through the fulfilment or execution of an employment contract or professional services contract, the right to the invention patent shall belong to the employer or the person who contracted the service as appropriate, unless there exist any contractual provisions to the contrary."

Art. 63.- The following two subparagaphs (third and fourth) are hereby added to Art. 120:

"A utility model shall not be considered novel when it provides no discernible utilitarian characteristic in relation to the prior art.

Procedures; chemical, biological, metallurgical or any other substances or compositions; and materials excluded from invention patent protection according to law, may not be protected by a utility model."

Art. 64.- Art. 121 is hereby amended as follows:

"Art. 121.- The Registry shall extend a utility model patent, which shall remain in force for a non-renewable period of 10 years, from the filing date of the application."

Art. 65.- The following three subparagraphs (second, third and fourth) are hereby added to Art. 124:

"The right of protection of an industrial design belongs to the designer, without prejudice to the provisions of this Article. This right may be transferred by inter vivos gift or on cause of death.

If the design was created by two or more persons together, the right to obtain protection shall belong to them jointly.

When the industrial design has been created through the fulfilment or execution of an employment contract or professional services contract, the right to the invention patent shall belong to the employer or the person who contracted the service as appropriate, unless otherwise stipulated."

Art. 66.- Art. 129 is hereby amended as follows:

"Art. 129.- The creator of the industrial design shall have the right to be mentioned as such in the relevant registration and in the official documents relating thereto, unless, by means of a

written declaration addressed to the Registry, he/she indicates a wish not to be mentioned. Any pact or agreement through which the creator of the industrial design is obliged to make such a declaration in advance shall be considered null and void."

Art. 67.- Art. 130 is hereby amended as follows:

"Art. 130.- The registration of an industrial design shall be granted for 10 years from the filing date of the application in the country"

Art. 68.- Art. 131 is hereby repealed.

Art. 69.- Art. 132 is hereby amended as follows:

"Art. 132.- The rights awarded by patents or certificates where appropriate may be transferred by inter vivos gift and be transferred by cause of death. The documents attesting to transference or transmission shall not be enforceable against third parties until they have been recorded in the Registry."

Art. 70.- Art. 134 is hereby replaced by the following:

"Art. 134.- Compulsory licenses must be awarded by the competent court, observing the following as a minimum:

(a) The scope of the license, its term and the acts for which it is awarded, which must be limited to the purposes for which it was originally issued;

(b) The amount and form of payment of the remuneration due to the patent holder;

(c) The necessary conditions for the license to serve its purpose; and

(d) The compulsory license shall be granted to supply the domestic market.

When the patent protects semiconductor technology, compulsory licenses shall only be granted for a non-commercial public use or to rectify a practice declared as unfair competition in the applicable proceedings."

Art. 71.- Art. 134-A is hereby inserted between Arts. 134 and 135, as follows:

"Art. 134-A.- At the request of the patent holder, the competent court may revoke the compulsory license if the circumstances that gave rise to its award have disappeared, in which case the necessary arrangements shall be made to protect the legitimate interests of the licensees. For this

purpose, besides the evidence provided by the patent holder, the information deemed necessary to verify those facts shall also be collected."

Art. 72.- Art. 135 is hereby amended as follows:

"Art. 135.- The holder of a patent or certificate may grant, by means of an agreement, licenses for its exploitation, and these shall be recorded in the Registry, so that they may have effect against third parties."

Art. 73.- The first subparagrah of Art. 136 is hereby amended and two subparagraphs (fifth and sixth) added to the same Article, as follows:

"The patent application for an invention or utility model shall be submitted to the Registry accompanied by a description, one or more claims, the relevant drawings, a description and the receipt for payment of the set application fee.

If the mandate to represent a particular applicant, holder or other petitioner is already accredited by a duly registered proxy, making reference to that registration shall be sufficient.

There may be permitted the involvement of an unofficial manager who satisfies the personal requirements laid down in the third subparagraph of this Article, who shall provide a security of a total amount sufficient to respond for the results of the matter, if the interested party does not approve what has been done on his/her behalf. The security shall be presented with the documents accompanying the application."

Art. 74.- Letter (e) is hereby added to the first subparagraph of Art. 137 and the third and fourth subparagraphs of the same article are hereby replaced, as follows:

"(e) An explicit or implicit indication that the granting of patent is being applied for;

If the application has been submitted without any of the above-mentioned elements, except (c), the Registry shall notify the applicant so that he/she may rectify the omission within 60 days from the date of notification. If the omission is rectified within the period indicated, the filing date of the application shall be taken as the date on which the omitted elements are received.

If the description makes reference to drawings that have not been submitted, the Registry shall notify the applicant so that he/she may submit them. If the omission is rectified within the period indicated, the filing date of the application shall be taken as the date when the drawings are received; otherwise, the drawings shall be considered not to have been mentioned, and the filing date shall be taken as the date when the description was received."

Art. 75.- The first subparagraph of Art. 138 is hereby amended as follows:

"Art. 138.- The description shall disclose the invention in a sufficiently clear and complete way for it to be assessed and for the invention to be carried out by a person skilled in the art without excessive experimentation."

Art. 76.- The first subparagraph of Art. 142 is hereby amended as follows:

"Art. 142.- Applications to register an industrial design shall be filed with the Registry. They shall identify the applicant and the creator of the design and shall indicate the kind or type of product to which the design shall be applied and the class or classes to which those products belong according to the classification, as well as the other information indicated in the relevant regulatory provisions."

Art. 77.- Letters (a) and (b) of the second subparagraph of Art. 144 are hereby amended as follows:

"(a) The priority claim may be made when the application is filed or within six months of the filing, with an indication of the country or office in which the priority application was filed, the filing date and the number assigned to the priority application;

(b) Within the 12 months following the filing of the patent application in El Salvador, a copy of the priority application shall be submitted with the description, drawings and claims, and its compliance certified by the industrial property office that received the priority application, accompanied by a certificate of the filing date of the priority application issued by that office; those documents shall be submitted duly authenticated and accompanied by the relevant translation;"

Art. 78.- Art. 146 is hereby replaced by the following:

"Art. 146.- The registry shall publish *ex officio* the application for an invention patent or utility model, at the cost of the applicant, 18 months after the filing date or applicable priority date, where appropriate. In any event, before that period has ended, the applicant may request in writing that his/her application be published. Under no circumstances shall an application be published that has been the subject of a disclaimer or abandoned.

The publication of the application shall be announced by means of a notice in the Official Journal. The Regulations shall determine the content of the notice, which shall be submitted to the Registry within 120 days after the relevant notices have been submitted.

From the publication of the notice in the Official Journal, any person may consult the file relating to the published patent application in the offices of the Registry. Any person may obtain copies of the documents contained in the file of a published application, provided that they demonstrate an interest therein and pay the set duties.

The file of a pending application may not be consulted by third parties before the publication of the application if the applicant has not given his/her written consent, except where the person asking to consult the file shows that the applicant has notified him/her so that he/she ceases an industrial or commercial activity, invoking the pending application. In this case, prior to deciding on access to the document, the patent applicant shall be given a hearing and if it is decided to authorize access to the document, this shall be done under reserve of confidentiality and an assurance that the information accessed shall not be the subject of unfair commercial use. Also, applications that were withdrawn or abandoned before publication may not be consulted without the written consent of the applicant."

Art. 79.- Art. 149 is hereby replaced by the following:

"Art. 149.- From the publication of the application, any interested person may submit to the Registry comments, including information or documents, on the patentability of the invention, utility model and industrial design registration. Comments shall be presented within 60 days of the above-mentioned date of publication.

The Registry shall notify the applicant of the comments as soon as they are received. The applicant may submit the comments or documents that suit his/her interests, in relation to the comments of which he/she was informed.

The submission of comments shall not suspend the processing of the application, and any person who submits comments shall not by so doing become part of this procedure. The comments shall be analysed in the substantive examination."

Art. 80.- The second subparagraph of Art. 150 is hereby amended as follows:

"The applicant may make such a conversion of the application only within 90 days of the filing date or within 30 days of the notification of objections by the Registry."

Art. 81.- The first subparagraph of Art. 151 is hereby amended as follows:

"Art. 151.-In the case of patent applications, the Registry shall order a substantive examination of the invention or utility model, through a written request to the applicant. The application may be submitted at any time after the filing date has been assigned, but may not be

submitted six months after the date that the publication of the patent application was announced in the Official Journal. The examination request shall be accompanied by the receipt for payment of the relevant examination duties."

Art. 82.- The second and third subparagraphs of Art. 152 are hereby amended and a final subparagraph added to the same Article, as follows:

"To carry out the substantive examination, the Registry may request the technical support of research institutes, university teaching centres, international agencies and the opinion of external experts, in accordance with the provisions of the Regulations of this Law.

The Registry may accept or request reports on the prior art and patentability reports drafted by national or regional industrial property offices abroad, as well as using cooperation mechanisms that exist as part of bilateral or multilateral agreements to carry them out, in accordance with the provisions of the Regulations of this Law.

The Registry may recognize the results of such examinations as sufficient to certify that the conditions for the invention's patentability have been fulfilled."

Art. 83.- Art. 153 is hereby replaced by the following:

"Art. 153.- For the purposes of the substantive examination, the Registry may require the applicant to provide, duly translated into Spanish, one or more of the following documents relating to foreign applications mentioned in the application:

(a) Copy of the foreign application and its accompanying documents;

(b) Copy of any communication or report referring to the results of searches for anticipation or examinations carried out in relation to the foreign request;

(c) Copy of the patent or other title of protection granted on the basis of the foreign application.

When the application filed in El Salvador includes inventions claimed in two or more foreign applications, in such a way that none of these totally includes what is claimed in the application filed, the Registry may ask the applicant to submit the documents mentioned in the above letters that relate to other foreign applications that correspond partially or totally to the application filed in El Salvador."

Art. 84.- The first part of Art. 154 is hereby amended as follows:

"Art. 154.- When it is necessary to rule on the granting of a patent or the validity of a granted patent, the Registry may ask the applicant or patent holder to submit the following documents:

Art. 85.- Art. 155 is hereby amended as follows:

"Art. 155.- If the applicant fails to provide the documents requested in accordance with Art. 154 of this Law within 90 days of the request date, the patent shall be refused."

Art. 86.- The first subparagraph of Art. 156 is hereby amended as follows:

"Art. 156.- When the Registry certifies that the requirements and conditions provided for in this Law have been satisfied, it shall grant the patent and register the industrial design, before delivering the corresponding certificate to the applicant."

Art. 87.- The first subparagraph of Art. 157 is hereby amended as follows:

"Art. 157.- A copy of all the final sentences handed down by the competent legal authorities in relation to patents or registration certificates shall be sent to the Registry for enforcement."

Art. 88.- Art. 159 is hereby amended as follows:

"Art.159.- The descriptions, drawings, models and samples of patents or certificates granted shall be in the Registry and made available to any person wishing to consult them; communication shall be established with the person requesting this and a copy given of the written documents, in exchange for payment of the set duties."

Art. 89.- Art. 160 is hereby amended as follows:

"Art.160.- The Registry shall publish by any means known in its volumes an account of patents and certificates awarded, with the description and drawings necessary to make known the inventions, utility models and industrial designs granted. A copy of this publication shall remain in the Registry, so that it may be consulted by anyone who so wishes."

Art. 90.- Art. 161 is hereby amended as follows:

"Art.161.- The Registry shall apply the international classification in force for patents, utility models or industrial designs and models, for the purposes of the systematic classification of the relevant documents according to technical subject."

Art. 91.- Letter (a) of Art. 162 is hereby amended as follows:

"(a) By the legal statement of invalidity;"

Art. 92.- The second subparagraph of Art. 165 is hereby repealed and the third subparagraph of the same Article amended, as follows:

"Statements of lapse shall be made by the Intellectual Property Registrar."

Art. 93.- Art. 171 is hereby replaced by the following:

"Art.171.- When an invention patent protects a procedure for obtaining a product and this product has been produced by a third party without the consent of the patent holder, it shall be assumed unless proved otherwise that the product has been obtained by means of the patented procedure:

(a) If the product obtained through the patented procedure is new; or

(b) If there is a substantial probability that the product was made using the patented procedure and the patent holder is unable, through reasonable efforts, to establish which procedure was actually used."

Art. 94.- A second subparagraph is hereby added to Art. 172 as follows:

"The competent court may ask the infringer to provide any information in his/her possession about any person involved in any aspect of the infringement and about the means of production or channels of distribution for the infringing goods, including the identification of third persons involved in their production and distribution, and their distribution channels, and to provide this information to the right holder."

Art. 95.- Art. 173 is hereby replaced by the following:

"Art.- 173.- The compensation of damages and losses shall be calculated on the basis of any of the following criteria:

(a) On the basis of damages suffered by the right holder as a result of the infringement;

(b) On the basis of profits that the right holder would have predictably obtained if the infringement had not occurred;

(c) On the basis of the profits obtained by the infringer as a result of the infringing acts;

(d) On the basis of the price or royalty the infringer would have paid for a contractual license, taking account of the commercial value of the subject of the infringed right and such contractual licenses as may have already been granted; or

(e) Any other criterion deemed appropriate by the court.

In addition, the infringer shall pay the right holder profits attributable to the infringement that were not considered when the amount of damages referred to in the previous letters was calculated."

Art. 96.- Art. 174 is hereby replaced as follows:

"Art. 174.- Any party initiating an action for infringement of an industrial property right protected by this Law may request precautionary measures for the purpose of ensuring the effectiveness of the action or compensation for damages, provided that reasonably available evidence is submitted about the commission of the infringement or extreme likelihood of commission. Precautionary measures may be made conditional upon the provision of a security sufficient to protect the defendant and to prevent abuse. Such security shall not unreasonably deter recourse to these procedures.

When the action is brought on the basis of a patent, this shall be assumed to be valid unless proved otherwise.

Any of the following may be ordered as precautionary measures:

(a) The immediate cessation of the infringing acts;

(b) The preventive seizure, retention or deposit of the infringing objects and the means used mainly to commit the infringement;

(c) The prohibition to import, export or allow the movement in transit in national territory of the Revenue Income Department.

If the action for infringement is not brought within 15 working days of a precautionary measure being imposed, the action shall be rendered null and void, and the party shall be made to compensate for any damages and losses caused."

Art. 97.- Art. 175 is hereby repealed.

Art. 98.- Art. 176 is hereby amended as follows:

"Art.176.- The provisions of Articles 91- B, 91-C, 91-D and 92 of this Law are applicable to the provisions of this Chapter."

Art. 99.- The name of the Sole Chapter of Title IV is hereby changed to the following:

"TITLE IV
SOLE CHAPTER

INDUSTRIAL OR TRADE SECRETS AND TEST DATA

Art. 100.- The first subparagraph of Art. 177 is hereby amended as follows:

"Art. 177.- Any information that has commercial value as a industrial or commercial application, including agriculture, livestock, extractive and transformation industries and construction, as well as all types of services, that a person keeps is confidential in nature and is associated with securing or retaining a competitive or economic advantage over third parties in the conduct of economic activities, and regarding which said person has adopted sufficient means or systems sufficient for preserving confidentiality and restricting access thereto, shall be considered an industrial or trade secret. The information constituting an industrial or trade secret shall necessarily relate to the nature, characteristics or purposes of products, to production methods or processes, or to ways or means of distributing or marketing products or delivering services."

Art. 101.- The first subparagraph of Art. 179 is hereby amended as follows:

"Art. 179.- The person who keeps an industrial or trade secret may transfer it to or authorize its use by a third party. The authorized user shall be under the obligation not to disclose the secret by any means, unless otherwise agreed."

Art. 102.- Art.180 is hereby amended as follows:

"Art. 180.- Any person who, by reason of his/her work, employment, function or post, the practice of his/her profession or the conduct of business relations, has access to an industrial or trade secret, the confidentiality of which he/she has been warned of, shall abstain from using it for commercial purposes for himself/herself or for others and from revealing it without just cause and without the consent of the person keeping said secret or of the authorized user thereof; otherwise he/she shall be responsible for damages and losses caused."

Art. 103.- Arts. 181-A, 181-B, 181-C, 181-D and 181-E are hereby added to the Sole Chapter of Title IV, after Art. 181, as follows:

"Art. 181-A.- As a condition of approval to market new pharmaceutical or chemical agricultural products that use a new chemical entity, test data and other undisclosed data on the safety and effectiveness of the products, requiring considerable effort to be produced, shall be submitted; the data referred to shall be protected against any unfair business use for a period of five years for pharmaceutical products and ten years for chemical agricultural products, reckoned from the date of approval of marketing in El Salvador.

The authority to which the test data or other undisclosed data are submitted shall not authorize the marketing of products to third parties on the basis of the information or approval granted to the person that submitted such information if he/she does not have the consent of the person who provided the information.

The authority to which the test data or other undisclosed data are submitted may not use them in other approval proceedings for similar products without the consent of the person who initially submitted the information and obtained marketing approval.

Any person who applies for marketing approval for a pharmaceutical product shall provide the authority with a list of all the patents that cover the product or its approved use.

Art. 181-B.- As a condition for approving the marketing of new pharmaceutical and chemical agricultural products, third parties shall be allowed to provide evidence of the safety or effectiveness of a product previously approved in El Salvador or another country, such as evidence of prior marketing approval; the authority to which the evidence is submitted shall not allow third parties who do not have the consent of the person who previously obtained the approval in El Salvador or another country to obtain authorization or market a product on the basis of:

(1) Evidence of prior marketing approval in the other country; or

(2) Information relating to safety or effectiveness previously submitted to obtain marketing approval in El Salvador or another country; for a period of five years for pharmaceutical products and ten years for chemical agricultural products from the date when approval was granted in the other country to the person who received the approval there.

In order to be protected by this Article, the person who provides information in the other country shall be required to apply for approval in El Salvador within five years of the date of marketing approval in the other country.

Art. 181-C. For the purposes of application of Articles 181-A and 181-B, a new product shall be understood as one that does not contain a chemical entity that has been previously approved for marketing in the country.

Art. 181-D. The undisclosed information referred to in Articles 181-A and 181-B shall be protected from any disclosure, except when it is necessary to protect the public and measures are adopted to guarantee the protection of the data against any unfair commercial use.

Notwithstanding the provisions of the previous subparagraph, if any undisclosed information on safety and effectiveness submitted to an authority for the purposes of obtaining marketing approval is disclosed by the said authority, that information shall continue to be protected against any unfair commercial use, as established in Articles 181-A and 181-B.

Art. 181-E.- As a condition for approving the marketing of a new pharmaceutical product in El Salvador, persons other than the one who originally submitted the information on safety or effectiveness shall be allowed to use as a basis evidence or information on the safety and effectiveness of a previously approved product such as evidence of prior marketing approval in El Salvador or another country; the authority shall not approve the marketing of the product unless one of the following requirements is met along with the request:

(a) A sworn declaration in the presence of a notary stating that there is no patent in force in El Salvador that covers the product previously approved to be marketed in the country or its use approved;

(b) A written authorization from the patent holder if there is a patent in force registered in El Salvador; or

(c) A sworn declaration in the presence of a notary that there is a patent, the date on which it expires and an indication that the applicant shall not enter the market before its date of expiry; under these circumstances the authority may approve the marketing upon expiry of the patent."

Art. 104.- Art. 182 is hereby amended as follows:

"Art. 182.- Applications to register copyright and invention patents pending with the Registry when this Decree enters into force shall continue to be processed according to the previous legislation, but the registrations and patents granted will be subject to the provisions of this Law.

When the examination of an invention patent application reveals that it is a utility model or industrial design, the Registry shall use the powers granted by the Law to carefully qualify the justification for granting a utility model patent or industrial design certificate, as appropriate, granting the relevant privilege following the acceptance of the interested party."

Art. 105.- Art. 183-A is hereby inserted between Arts. 183 and 184, as follows:

"Art. 183-A.- Any actions for infringement of the rights awarded under this Law shall expire two years after the holder learns of the infringement, or five years after the infringing act was last committed, whichever comes first."

Art. 106.- Art. 184-A is hereby inserted between Arts. 184 and 185, as follows:

"Art. 184-A.- For the purposes of this Law, "Registry" shall be understood as the Intellectual Property Registry."

Art. 107.- Art. 186 is hereby repealed.

Art. 108.- Legislative Decree No. 799, dated February 2, 1994, published in Official Journal No. 56, Volume No. 322, of March 21 of the same year, is hereby repealed.

Art. 109.- This Decree shall enter into force eight days after its publication in the Official Journal.

DONE IN THE BLUE CHAMBER OF THE LEGISLATIVE PALACE: San Salvador, on December 14, 2005.

CIRO CRUZ ZEPEDA PEÑA
PRESIDENT

JOSÉ MANUEL MELGAR HENRÍQUEZ
FIRST VICE-PRESIDENT

JOSÉ FRANCISCO MERINO LÓPEZ
TERCER VICEPRESIDENTE

MARTA LILIAN COTO VDA. DE CUÈLLAR

FIRST SECRETARY

JOSÉ ANTONIO ALMENDÀRIZ RIVAS
THIRD SECRETARY

ELVIA VIOLETA MENJÌVAR ESCALANTE
FOURTH SECRETARY