

Amending Law, 1972

(No. 492, of December 16, 1972)*

Federal Law amending the Copyright Act

Article I

The Copyright Act, published in the *Bundesgesetzblatt (BGBl.)* No. 111/1936, as amended by the Federal Laws published in *BGBl.* No. 206/1949 and No. 106/1953, is hereby amended as follows:

1. Paragraphs (1) and (2) of Article 56 shall read as follows:

“(1) In business enterprises which produce, sell or repair visual or sound recordings or equipment for the production or use thereof, recitals, performances and exhibitions of works may be fixed on visual or sound recordings, and such visual or sound recordings may be used for public recitals, performances or exhibitions of the works so recorded, in so far as this is necessary to demonstrate the visual or sound recordings or the apparatus for their production or use to customers, or to verify their operation.

(2) The same shall apply to the use of broadcasts for the public communication of a work by means of loudspeaker or any other technical device in business enterprises which manufacture, sell or repair receiving apparatus.”
2. Article 60 shall read as follows:

“*Article 60.* – The copyright in works of literature, music and art, the author of which (Article 10(1)) has been designated in a manner which creates a presumption of authorship under Article 12, shall terminate seventy years after the death of the author (Article 10(1)); in the case of a work jointly created by several authors (Article 11), the copyright shall terminate seventy years after the death of the last surviving co-author (Article 10(1)).”
3. Paragraph (1) of Article 61 shall read as follows:

“(1) When the author (Article 10(1)) of a work of literature, music or art has not been designated in a manner which creates a presumption of authorship under Article 12, the copyright shall terminate seventy years after the work is made public, except where application of Article 60 results in earlier date.”
- 3a. Article 62 shall read as follows:

“*Article 62.* – Copyright in cinematographic works shall terminate fifty years after filming, or, if the work is made public before the expiration of such term, fifty years after it is made public.”
4. The following provisions are substituted for paragraphs (2) and (3) of Article 66:

“(2) In the case of recitals and performances effected by the collaboration of several persons under a single director – such as the performance of a play or a choral or orchestral work – the rights of exploitation (paragraph (1)) may be exercised by the persons participating merely in the chorus or orchestra or in a similar manner only through the intermediary of a common representative.

(3) Where the representation is not already regulated by law or by rules or collective or individual agreement, the common representative shall be elected by simple majority, abstentions, if any, not being counted as votes.

(4) In the absence of a common representative, the District Court of the City of Vienna shall appoint an authorized agent, who shall take the place of the common representative. Any

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person who provides evidence of an interest in the exploitation of the recital or performance shall be entitled to file a petition to this purpose.

(5) Unless an exception is permitted by this Act, and subject to paragraph (1) of this Article, recitals and performances which are arranged by a manager may be recorded on visual or sound recordings or be broadcast (Article 17) only with the permission of such manager. Visual or sound recordings produced in violation of this provision may be neither reproduced nor distributed.”

5. The former paragraphs (4) and (5) of Article 66 are designated paragraphs (6) and (7) respectively.

6. In paragraph (7) of Article 66 as revised by this Law, the phrase “in violation of paragraphs (1) and (5)” is substituted for the phrase “in violation of paragraphs (1) to (3)”.

7. Paragraph (1) of Article 67 shall read as follows:

“(1) The rights of exploitation of the persons specified in Article 66(1) shall expire when fifty years have elapsed from the end of the calendar year in which the recital or performance took place.”

8. Paragraph (2) of Article 67 shall read as follows:

“(2) Articles 11, 12, 13, 15(1), 16(1) and (3), 23, 24, 25(1), (2), (3) and (5), 26, 27, 28(1), 29, 31(1), 32 and 33(2) shall apply by analogy; however, a period of one year shall be substituted for the period of five years specified in Article 31(2).”

9. In paragraphs (1) and (2) of Article 68 the reference “Article 66(1)” is substituted for the reference “Article 66(1) or (2)”.

10. The following paragraph (3) is added to Article 68:

“(3) Paragraphs (1) and (2) shall not apply to persons participating merely in the chorus or orchestra or in a similar manner.”

11. In paragraphs (1) and (2) of Article 69 the reference “Article 66(1) and (5) is substituted for the reference “Article 66(1) to (3)”, and the reference “Article 66(1)” for each of the references “Article 66(1) or (2)” and “Article 66(1) and (2)”.

12. The following provisions are substituted for paragraph (3) of Article 69:

“(3) Any person may, for his personal use, make, and make single copies of, visual or sound recordings of recitals or performances broadcast or of recitals or performances communicated by means of visual or sound recordings. Such visual or sound recordings may not be distributed or be used for a broadcast or public communication of the recital or performance.

(4) Article 56(1) and (3) shall apply by analogy.”

13. In Article 70 the reference “Article 66(1) and (5)” is substituted for the reference “Article 66(1) to (3)”, the reference “Article 66(6)” for the reference “Article 66(4)” and the reference “Article 66(7)” for the reference “Article 66(5)”.

14. In Article 71 the reference “Article 66(1) and (5)” is substituted for the reference “Article 66(1) to (3)”, and the reference “Article 66(6)” for the reference “Article 66(4)”.

15. The following provisions are inserted after paragraph (2) of Article 72:

“(3) The use of single recitals or performances or works of literature or music for scientific or educational purposes shall be permissible to the extent justified by the purpose.

(4) Recitals or performances of works of literature or music may be recorded on visual or sound recordings by the manager and may be reproduced within the building in which the event takes place, by means of such visual or sound recording or by other technical means, for the purpose of making the event perceptible in another room.”

16. The former paragraph (3) of Article 72 is designated paragraph (5).

17. The title of Chapter II of Part II shall read as follows:

“Protection of Photographs, Sound Recordings and Broadcasts”.

17a. Paragraph (6) of Article 74 shall read as follows:

“(6) The right of protection in photographs shall terminate thirty years after they were taken or, where the photograph is made public before the expiration of that term, thirty years from the date on which it is first made public. The terms shall be computed in accordance with Article 64.”

18. Paragraph (3) of Article 76 shall read as follows:

“(3) Where a sound recording produced for commercial purposes is used for a broadcast (Article 17) or for public communication, the user shall pay equitable remuneration to the producer (paragraph (1)), subject to Article 66(7) and paragraph (2) of this Article. The persons specified in Article 66(1) shall have a claim on the producer to a share in such remuneration. In the absence of agreement between the parties entitled thereto, such share shall be one-half of the remuneration remaining to the producer after deduction of collecting costs.”

19. Paragraph (4) of Article 76 shall read as follows:

“(4) Any person may, for his personal use, make, and make single copies of, a sound recording of communications made by means of a sound recording. Such sound recordings may be neither distributed nor used for a broadcast or public communication.”

20. The former paragraph (4) of Article 76 is designated paragraph (5).

20a. The new paragraph (5) of Article 76 shall read as follows:

“(5) The right of protection in sound recordings shall terminate fifty years from their fixation or, if the sound recording is made public before the expiration of such term, fifty years from the date on which it is made public. The terms shall be computed in accordance with Article 64.”

21. The following paragraph (6) is added to Article 76:

“(6) The provisions of Articles 5, 7, 8, 9, 11, 12, 13, 14(2), 15(1), 16(1) and (3), 23(2) and (4), 24, 25(2), (3) and (5), 26, 27(1), (3), (4) and (5), 31(1), 32(1), 33(2), 41, 56, 72(3) and 74(2) to (5) shall apply by analogy.”

22. The following provisions are inserted after Article 76:

3. Broadcasts

“Article 76a. –

(1) Any person who broadcasts sounds or images or transmits them by any other similar method (Article 17, broadcasting organization) shall, subject to certain limitations provided for in the Law, have the exclusive right to broadcast simultaneously such broadcasts by means of another transmitter, to fix the broadcast on a visual or sound recording (including in the form of a photograph), and to reproduce and distribute such recording. Reproduction shall mean also the use of a

communication made by means of a visual or sound recording for the making of another such recording.

(2) Visual or sound recordings reproduced or distributed in violation of paragraph (1) of this Article may not be used for broadcasting (Article 17) or for public communication.

(3) Any person may, for his personal use, make, and make single copies of, visual or sound recordings of a broadcast. Such visual or sound recordings may be neither distributed nor used for broadcasting or for public communication.

(4) The right of protection in broadcasts shall terminate thirty years after the broadcast took place. The term shall be computed in accordance with Article 64.

(5) Articles 5, 7, 8, 9, 11, 12, 13, 14(2), 15(1), 16(1) and (3), 18(2), 23(2) and (4), 24, 25(2), (3) and (5), 26, 27(1), (3), (4) and (5), 31(1), 32(1), 33(2), 41, 56, 72(3) and 74(2) to (5) shall apply by analogy.”

23. Paragraphs (1) and (2) of Article 86 shall read as follows:

“(1) Any person who without authorization

(i) uses a work of literature or art for a type of exploitation reserved to the author under Articles 14 to 18,

(ii) makes a visual or sound recording of the recital or performance of a work of literature or music or makes copies of such recording, in violation of Article 66(1) and (5), or distributes such recording in violation of Article 66(1) and (5) or Article 69(3),

(iii) broadcasts or publicly communicates, in violation of Article 66(7), Article 69(3), Article 70 or Article 71, the recital or performance of a work of literature or music,

(iv) uses a photograph or a sound recording for a type of exploitation reserved to the producer under Article 74 or Article 76, or

(v) uses broadcast for a type of exploitation reserved to the broadcasting organization under Article 76a

shall, even if he is without fault, pay equitable compensation to the injured party whose authorization should have been obtained.

(2) There shall be no right to such compensation, however, where a broadcast or public communication was unlawful for the sole reason that it was effected by means of visual or sound recordings or broadcasts which, under Article 50(2), Article 53(2), Article 56(3), Article 66(7), Article 69(3), Article 70, Article 71, Article 74, Article 76 or Article 76a(2) and (3), might not be used for that purpose, and where the user, without fault on his part, did not know that the visual or sound recordings or broadcasts were of such character.”

24. Paragraphs (3) and (4) of Article 87 shall read as follows:

“(3) Where a work of literature or art is publicly recited, performed, exhibited or broadcast without authorization, or where the recital or performance of a work of literature or music is broadcast or publicly communicated in violation of Article 66(7), Article 69(3), Article 70 or Article 71, or where a photograph is publicly exhibited or broadcast in violation of Article 74, or where a sound recording is used for broadcasting or public communication in violation of Article 76(2) or (4), or where a broadcast is transmitted or publicly communicated in violation of Article 76a, the injured party whose authorization should have been obtained may demand double the amount due to him under Article 86 as indemnity for the pecuniary damages (paragraph (1)) culpably inflicted on him, or such higher damages as he may prove.

(4) Where a work of literature or art is reproduced or distributed without authorization, the injured party whose authorization should have been obtained may further demand surrender of the profits derived by the offender from the infringement. The same shall apply where the recital or performance of a work of literature or music is used in violation of Article 66(1), or a broadcast is used on a visual or sound recording in violation of Article 76a, or where a photograph, in violation of Article 74, or a sound recording, in violation of Article 76, is reproduced or distributed.”

25. In Article 95, paragraph (2) and the designation (1) of the remaining paragraph are deleted.
26. Article 96 shall read as follows:
“*Article 96.* –
Works of foreign authors (Article 10(1)) which are neither published in Austria nor a part of or a fixture on realty in Austria, but which are published abroad, shall enjoy copyright protection according to international treaties or subject to the condition of reciprocity; the Federal Minister of Justice shall be empowered to make known in the *Bundesgesetzblatt* that, and where appropriate to what extent, reciprocity is guaranteed under the national laws of the respective foreign country.”
27. In paragraph (1) of Article 97 the reference “Article 66(1) and (5)” is substituted for the reference “Article 66(1) to (3)”.
28. Paragraph (2) of Article 97 is deleted.
29. Paragraph (3) of Article 97, which is designated paragraph (2), shall read as follows:
“(2) In the case of recitals and performances which take place abroad, Articles 66 to 72 shall apply in favor of Austrian citizens. Foreigners shall be protected in respect of such recitals or performances in accordance with international agreements or subject to the condition of reciprocity; the Federal Minister of Justice shall be empowered to make known in the *Bundesgesetzblatt* that, and where appropriate to what extent, reciprocity is guaranteed under the national laws of the respective foreign country.”
30. The heading above Article 99 shall read as follows: “4. Protection of Sound Recordings and Broadcasts”.
31. Article 99 shall read as follows:
“*Article 99.* –
(1) Sound recordings shall be protected under Article 76, regardless of whether or where they have been published, if the producer is an Austrian citizen.
(2) Other sound recordings shall be protected under Article 76 if they have been published in Austria.
(3) Sound recordings by foreign producers which have not been published in Austria shall be protected under Article 76 in accordance with international agreements or subject to the condition of reciprocity; the Federal Minister of Justice is empowered to make known in the *Bundesgesetzblatt* that, and where appropriate to what extent, reciprocity is guaranteed under the national laws of the respective foreign country.
(4) In all cases foreigners may claim the protection granted under Article 76(3) only in accordance with international agreements.”
32. The following provision is inserted after Article 99:
“*Article 99a.* – Broadcasts which are not emitted in Austria shall be protected only in accordance with international agreements.”
33. Paragraph (1) of Article 100 shall read as follows:
“(1) Foreigners who have no principal place of business in Austria shall be entitled to protection under Articles 79 and 80 only in accordance with international agreements or subject to the condition of reciprocity; the Federal Minister of Justice is empowered to make known in the *Bundesgesetzblatt* that, and where appropriate to what extent, reciprocity is guaranteed under the national laws of the respective foreign country.”
34. Paragraph (2) of Article 100 is deleted.

35. Paragraph (3) of Article 100 is designated paragraph (2).

36. In paragraphs (1) and (2) of Article 110 the reference “Article 66(1)” is substituted in both instances for the reference “Article 66(1) and (2)”.

Article II

(1) This Law shall enter into force, with respect to the prolongation of the terms of protection, on December 31, 1972, and in all other respects on June 1, 1973.

(2) Article I, items 2 to 3a, 7, 17a and 20a, shall apply also to works created, recitals and performances effected, photographs taken and sound recordings made before the entry into force of this Law, the term of protection of which has not expired by that date under the earlier provisions.

(3) Where the author (Copyright Act, Article 10(2)) has granted a license or consented to the use of his work prior to the entry into force of this Law, this disposal shall in case of doubt not extend for the duration of the terms of protection as prolonged under this Law; however, any person who has acquired a license or consent to use a work for a consideration shall, against payment of equitable remuneration, remain entitled to use the work also during the period of prolongation. This shall apply by analogy to the disposal of protected rights in recitals and performances of works of literature and music, and in photographs and sound recordings.

(4) Where the recital or performance of a work of literature or music has taken place prior to the entry into force of this Law, the rights of exploitation shall belong to the persons specified in Article 66(1) and (2) of the Copyright Act in its former version.

(5) Article I, item 18, shall not apply to a broadcast or public communication which took place prior to the entry into force of this Law.

(6) Article I, item 22, shall not apply to broadcasts which were emitted prior to the entry into force of this Law.

(7) Paragraphs 1 and 2 of Article III of the Law of 1953 Amending the Copyright Act, *Bundesgesetzblatt* No. 106, are repealed.

Article III

The execution of this Law is entrusted to the Federal Minister of Justice.
