

# Copyright Amendment Law, 1980

(No. 321, of July 2, 1980)\*

## Article I

### *Amendment of the Copyright Act*

The Copyright Act, published in the *Bundesgesetzblatt* (BGBl.) No. 111/1936, as amended by the Federal Laws published in BGBl. No. 206/1949, BGBl. No. 106/1953, BGBl. No. 175/1963 and BGBl. No. 492/1972 and the Notice in BGBl. No. 142/1973, is hereby amended as follows:

1. Paragraph (2) of Article 17 shall read as follows:

“(2) Where a work is publicly communicated in Austria by an entity located inside or outside the country in a manner comparable to broadcasting but with the aid of conductors, such communication shall be assimilated to broadcasting.”
2. The following paragraph (3) is added to Article 17:

“(3) The communication of broadcasts

  - (i) by a broadcasting relay system and
  - (ii) by a community antenna system,
    - (a) where all the receivers are located only on contiguous pieces of ground, where no part of the system uses or crosses a public road and where the antenna is not more than 500 meters away from the nearest receiver, or
    - (b) where not more than 500 listeners are connected to the system,

shall not be regarded as a new broadcast. In other respects the simultaneous communication, with the aid of conductors, of complete broadcasts of the Austrian Broadcasting Organization within the country, without alteration, shall be regarded as part of the original broadcasting.”
3. Paragraph (1) of Article 42 shall read as follows:

“(1) Any person may produce single copies of a work for his personal use.”
4. The second sentence of paragraph (3) of Article 42 shall read as follows:

“However, such reproduction of a work of art or of a cinematographic work may only be effected free of charge.”
5. The following paragraphs are added to Article 42:

“(5) If a work that has been broadcast by radio or fixed on a commercially-manufactured sound or visual recording medium is expected, by reason of its nature, to be copied by fixation on a sound or visual medium for personal use, the author shall have a right to equitable compensation when unrecorded sound or visual recording media that are suitable for such copying, or other sound or visual recording media intended for that purpose (recording material), are distributed within the country by way of trade for payment, except where the recording material is not used within the country or is not used for such copies for personal use; substantiated evidence of such circumstances shall be sufficient. Running time in particular shall be taken into consideration in the calculation of the compensation. The compensation shall be given by the person who first distributes the recording material within the country by way of trade for payment.

  - (6) Claims under paragraph (5) may only be made by collecting societies.

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(7) Any person who has purchased recording material for a price that incorporates equitable compensation, and nevertheless uses it for the making of copies not for personal use, may claim repayment of the equitable remuneration from the collecting society, except where the use for other than personal purposes is a free use of the work; substantiated evidence of such circumstances shall be sufficient.”

6. The following provision is inserted after Article 59:

“*Article 59a.*

(1) Foreign broadcasts of works may be used for simultaneous retransmission with the aid of conductors, complete and without alteration; the author shall be entitled to equitable compensation for such retransmission, however. Such claims may only be made by collecting societies.

(2) The following shall be taken into consideration in determining such compensation:

(a) the economic implications of retransmission for the authors;

(b) the economic benefit of retransmission accruing to the person effecting it, with due regard to the number of broadcasts that can normally be received, with the aid of conductors, simultaneously in one household; and

(c) the amount that authors receive for comparable use in the State in which the original broadcast was transmitted.”

7. 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, 32, 33(2) and 59a shall apply by analogy; the five-year period specified in Article 31(2) shall be replaced by a period of one year, however.”

8. The following is added to paragraph (3) of Article 69:

“Article 42(5) to (7) shall apply by analogy.”

9. Paragraph (7) of Article 74 shall read as follows:

“(7) Articles 5, 7, 8, 9, 11, 12, 13, 14(2), 15(1), 16, 17, 18(3), 23(2) and (4), 24, 25(2) to (6), 26, 27(1), (3), (4) and (5), 31(1), 32(1), 33(2), 36, 37, 41, 54.3 and 4, 56 and 59a, and the provisions of Article 42(1) to (3) and (5) to (7) that apply to works of figurative art shall apply by analogy to photographs.”

10. The following is added to paragraph (4) of Article 76:

“Article 42(5) to (7) shall apply by analogy.”

11. Paragraph (6) of Article 76 shall read as follows:

“(6) 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; in the case of paragraphs (2) and (4), Article 59a shall also apply by analogy.”

12. Paragraph (5) of Article 76a shall read as follows:

“(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, 59a, 72(3) and 74(2) to (5) shall apply by analogy.”

## **Article II**

### *Application of the Law on Collecting Societies*

(1) The Law on Collecting Societies (BGBl. No. 112/1936) and the Decree having the status of Federal Law (BGBl. No. 188/1936) shall apply by analogy and according to paragraphs (2) to (6) and Article III to entities whose purpose is to assert claims

- (i) under Article 42(5) to (7) and, in conjunction therewith, under Articles 69(3), 74(7) and 76(4) of the Copyright Act as amended by this Federal Law, or
- (ii) under Article 59a and, in conjunction therewith, under Articles 67(2), 74(7), 76(6) and 76a(5) of the Copyright Act as amended by this Federal Law,

in relation to their entire area of activity, in so far as the Law on Collecting Societies did not apply to them previously. Where the Law on Collecting Societies did apply to them previously, it shall apply by analogy only to the area of activity of those entities described in the foregoing sentence, and according to paragraphs (2) to (6) and Article III; in all other respects it shall remain unaffected.

(2) Collective agreements may be concluded and rules issued concerning the realization of the claims specified in paragraph (1). The provisions of the Law on Collecting Societies applicable to organizing bodies shall apply by analogy to organizations of fee-paying persons.

(3) Should the same approval for the operation of a collecting society (paragraph (1)) be sought by two or more applicants, the approval shall be granted to the applicant who, in the light of the results of the enquiry procedure, affords the best guarantee of orderly and thorough fulfillment of his tasks; if all of them afford equally good guarantees, approval shall be granted to the applicant who provides substantiated evidence that the claims entrusted to him are of greater economic significance; if the economic significance of the claims is also equally great, the matter shall be decided by priority of application.

(4) Approval for the operation of a collecting society (paragraph (1)) to safeguard the claim of broadcasting organizations under Article 76a of the Copyright Act as amended by this Federal Law, in conjunction with Article 59a thereof, shall include also the power to assert claims under Articles 67(2), 74(7) and 76(6) of the Copyright Act as amended by this Federal Law, each of the last three provisions in conjunction with Article 59a in so far as the claimant is a broadcasting organization.

(5) Collecting societies (paragraph (1)) shall safeguard claims within their sphere of activity at the request of the claimants on reasonable conditions, when the claimants are Austrian citizens or have their usual residence in Austria, except where the receipts of the claimant concerned are not sufficient to cover the administrative costs payable by him.

(6) Collecting societies (paragraph (1)) shall introduce social welfare schemes for their members, in so far as they are natural persons, and for their families. Collecting societies that distribute equitable compensation under Article 42(5) to (7) and, in conjunction therewith, under Articles 69(3), 74(7) et 76(4) of the Copyright Act as amended by this Federal Law to specified beneficiaries shall, in doing so, pay the greater part of the remuneration towards the social welfare scheme.

## **Article III**

### *Arbitration Board*

#### **§ 1.**

- (1) An Arbitration Board is hereby created at the Federal Ministry of Justice.
- (2) The Arbitration Board shall rule on disputes concerning the claims referred to in Article II(1).
- (3) (Constitutional clause) The Arbitration Board shall, on the application of the collecting society or organization of fee-paying persons, publish rules concerning the settling of the claims specified in Article II(1). These rules shall have the same effect as a collective agreement.

§ 2. (Constitutional clause) The Arbitration Board shall rescind rules under § 1(3) where the collecting society and the organization of fee-paying persons have concluded a collective agreement concerning the subject matter governed by the rules; the said collective agreement must enter into force within the period specified in § 3(2).

§ 3.

(1) The Federal Minister for Justice shall announce awards of the Arbitration Board under §§ 1(3) and 2 without delay in the *Amtsblatt zur Wiener Zeitung*.

(2) Awards shall come into effect on the day following the announcement in the *Amtsblatt zur Wiener Zeitung*, subject to subparagraph (3).

(3) The Arbitration Board may decide that rules are to come into effect on the day of receipt by itself of the application for their issue, except where there is a collective agreement in force on the subject matter to be governed by the rules.

§ 4.

(1) The Arbitration Board shall consist of nine members. Two alternates shall be designated for each member. One of the members and two of the alternates must be members of the Bar.

(2) (Constitutional clause) All members of the Arbitration Board shall in the exercise of their duties be independent and subject to no instructions or orders.

§ 5.

(1) The members of the Arbitration Board shall be appointed for a five-year term by the President of the Republic on a proposal by the Federal Government.

(2) The preparation of the proposal of the Federal Government for the appointment of members of the Arbitration Board shall be the responsibility of the Federal Minister for Justice.

(3) The Federal Government shall obtain an agreed nomination proposal for one member and two alternates from the collecting societies.

(4) The Federal Government shall obtain an agreed nomination proposal for one member and two alternates from the organizations of fee-paying persons whose capacity to conclude collective agreements has been recognized by the Federal Minister for Education and the Arts.

(5) The Federal Government shall obtain a nomination proposal for one member and two alternates from associations representative of the arts.

(6) Should those entitled to make proposals under subparagraphs (3) to (5) make no or no agreed proposals, the right to make proposals shall pass to the Federal Minister for Justice.

(7) The Federal Government shall obtain a nomination proposal for two members and four alternates from the Federal Chamber of Trade and Industry.

(8) The Federal Government shall obtain a nomination proposal for two members and four alternates from the Austrian Workers' Congress.

(9) The Federal Government shall propose officials of the Federal Ministry of Justice for the post of Chairman and for two alternate posts. The Federal Government shall propose one further member and two alternates from members of the Bar.

(10) Only persons eligible for election to the National Council may be appointed members.

§ 6.

(1) The term of office of a member of the Arbitration Board shall cease prematurely as a result of the member's death or renunciation of office, or otherwise on December 31 of the year in which the member attained 65 years of age.

(2) The term of office shall further end when one of the conditions of appointment specified in § 5(9) and (10) ceases to be fulfilled.

(3) The term of office shall also end when a member of the Arbitration Board fails to comply with three successive invitations to a meeting without sufficient reason.

(4) The Arbitration Board shall declare the ending of the term of office of a member, in the cases referred to in subparagraphs (2) and (3), after the member has been heard.

(5) Where a member leaves the Arbitration Board, a new member shall be appointed in his place, due account being taken of § 5.

**§ 7.** The Federal Minister for Justice shall provide the Arbitration Board with the necessary staff.

**§ 8.**

(1) The members and secretaries of the Arbitration Board shall be entitled to remuneration for each meeting, which shall be set by the Federal Government by decree, on a proposal by the Federal Minister for Justice, due account being taken of the importance and the amount of the tasks to be accomplished by the Arbitration Board.

(2) A fee shall be paid for the services of the Arbitration Board, the amount of which shall be set by a decree to be issued by the Federal Minister for Justice. The fees shall be set in such a way as to cover the average cost of the activity of the Arbitration Board and of the staff made available to it.

(3) The Arbitration Board shall set the fee under subparagraph (2), taking due account of the volume of its activity in relation to an application and the costs incurred thereby, and impose the payment of the fee on the applicant or his opponent, or both, at its discretion.

**§ 9.**

(1) The Arbitration Board shall conduct its business and take its decisions under the guidance of its Chairman. The Chairman shall also convene the other members to meetings.

(2) The Arbitration Board shall take its decisions by a simple majority of votes cast. In the event of equally divided votes, the Chairman shall have a casting vote. Abstention is not allowed.

(3) The Chairman of the Arbitration Board shall communicate rules issued under §§ 1(3) and 2, and a declaration under § 6(4), without delay to the Federal Minister for Justice.

**§ 10.**

(1) Should the Chairman or another member of the Arbitration Board be prevented from attending, the Chairman's alternate or the alternate appointed for the member, as the case may be, or, in the event of their inability to attend, the respective second alternates shall take their place.

(2) Should a member of the Arbitration Board be prevented from attending, he shall immediately inform the Chairman or the alternate replacing him.

(3) The members of the Arbitration Board shall inform the Chairman immediately of any change of address.

**§ 11.**

(1) The decisions of the Arbitration Board shall not be subject to revocation or amendment by administrative means. Appeals from decisions of the Arbitration Board shall lie to the Administrative Tribunal.

(2) The General Law on Administrative Procedure of 1950, with the exception of Articles 74 to 79, shall apply to the procedure of the Arbitration Board.

(3) The Arbitration Board shall take its decision within three months following the time of receipt of the application.

#### **Article IV**

##### *Transitional and Final Provisions*

(1) An entity of the kind described in Article II(1) that applies for the grant of the authorization required under Article 1(1) of the Law on Collecting Societies up to and including December 1, 1980, may continue to carry out the activity that it carried out on the entry into force of this Federal Law, without authorization, until such time as a decision is taken on its application.

(2) The authorizations to conduct business granted to the *Gesellschaft der Autoren, Komponisten und Musikverleger (AKM)*, *registrierte Genossenschaft mit beschränkter Haftung* [Society for Authors, Composers and Music Publishers (AKM), registered limited liability association] and the *Staatlich genehmigte literarische Verwertungsgesellschaft (LVG)*, *registrierte Genossenschaft mit beschränkter Haftung* [State Approved Literary Management Company (LVG), registered limited liability association] cover also the assertion of claims under Article II(1)(ii) in so far as they correspond to the rights already safeguarded by them by virtue of their authorizations to conduct business.

(3) This Federal Law shall enter into force, subject to paragraph (4), at the end of the day of its promulgation.

(4) Article I.5, 8 and 10, and also 9 in so far as it refers to Article 42(5) to (7), shall enter into force for sound recordings on January 1, 1981, and for material intended for simultaneously repeatable sound and visual reproduction (sound and visual recording material) on July 1, 1982.

- (5) The following are entrusted with the implementation of this Federal Law;
1. as regards Article III, paragraphs 5 and 8, the Federal Government;
  2. as regards Article II, the Federal Minister for Education and the Arts;
  3. as for other provisions, the Federal Minister for Justice.

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