

Federal Law to Amend the Copyright Law and the Copyright Amending Law 1980

(No. 612 of November 29, 1989)*

Article I

The Copyright Law BGB1. No. 111/1936, as last amended by Federal Law BGB1. No. 601/1988, is amended as follows:

1. The following sentences shall be added to Article 42(5):

“Any person who by way of trade and for consideration places on the market or offers such material within the country, but who is not the first person to do so, shall be liable as guarantor and payer. Such liability shall not apply to persons acquiring, in one quarter, audio mediums of not more than 5,000 hours of playing time and video mediums of not more than 10,000 hours of playing time.”

2. The following subdivision 4 shall be inserted after Article 59a:

“4. Retransmission of Satellite Programs

Article 59b. Where a program that is not emitted from the national territory is retransmitted by satellite simultaneously, as a whole and unchanged, works may be broadcast in the manner referred to in Article 17(2), with the consent of the organizer of the program; however, the author shall be entitled to equitable remuneration therefor. Such claims may only be asserted by collecting societies. Article 59a(2) shall apply for calculating the remuneration.”

3. Article 67(2) 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), 59a and 59b shall apply *mutatis mutandis*; however, the period of five years referred to in Article 31(2) shall be replaced by a period of one year.”

4. Article 74(7) 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, 42a, 54, items 3 and 4, 56, 59a and 59b, as also the provisions of Article 42(1) to (3) and (5) to (7), applicable to works of fine art, shall apply to photographs *mutatis mutandis*.”

5. Article 76(6) 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, 42a, 56, 72(4) and 74(2) to (5) shall apply *mutatis mutandis*; in the case of paragraphs (2) and (4), Articles 59a and 59b shall also apply *mutatis mutandis*.”

6. Article 87a shall be renumbered Article 87a(1); the following paragraphs (2) and (3) shall be added thereto:

“(2) Any person liable as guarantor and payer under Article 42(5) shall also be required to inform the entitled person of the name of the person from whom he has obtained the material except where he does not pay remuneration for that material.

(3) Paragraphs (1) and (2) shall also apply *mutatis mutandis* to persons exempted from liability under the last sentence of Article 42(5).”

7. The following new Article shall be inserted after Article 90:

“*Article 90a.*

(1) Material within the meaning of Article 42(5), that has been imported for free circulation or for prenotified circulation for unspecific sale or for prenotified storage in an open warehouse within the meaning of the customs regulations, shall be notified by the person who makes the declaration under Article 52 of the Customs Law 1988, subject to the ordinances under paragraphs (3) and (4), on a separate notification form. The quantity, nature, playing time and trademark of the material shall be stated on the notification form together with the name and address of the notifier and of the recipient of the material. The notification form shall constitute a document required for clearance within the meaning of Article 52(4) of the Customs Law 1988. The notification forms shall be communicated by the Customs Offices to the collecting societies that assert claims under Article 42(5) and, in relation therewith, under Articles 69(3), 74(7) and 76(4).

(2) Consignments that remain duty-free under the customs regulations or that do not contain more than 100 items shall be exempt from the obligation of notification under paragraph (1).

(3) The Federal Minister for Justice, in agreement with the Federal Minister for Finance, shall determine by ordinance which goods, designated by customs tariff number (Customs Tariff Law 1988, BGB1.No. 155/1987, in the appropriate applicable version), are to be subject to the obligation to notify under paragraph (1) and to which collecting societies the notification forms are to be communicated; the ordinance shall also determine the form and content of the notification form. The ordinance shall take into account as appropriate the necessary administrative outlay and the needs of the collecting societies.

(4) The Federal Minister for Justice may, in agreement with the Federal Minister for Finance, decide by ordinance further exceptions to the obligation to notify where the interest of facilitating the circulation of goods or simplifying the administration is stronger than the interest that notification represents for the collecting societies.

(5) The notifier and the recipient of the material stated on the notification form shall be required to provide to the collecting societies referred to in paragraph (1), at their request, correct and full information on the circumstances that have generated the obligation to pay.”

8. Article 114(2) shall read as follows:

“(2) Its implementation shall be entrusted to the Federal Minister for Justice, but in agreement with the Federal Minister for Finance with respect to Article 90a(1) to (4).”

Article II

The Federal Law of July 2, 1980, BGB1 No. 321, to Amend the Copyright Law (Copyright Amending Law 1980), as last amended by Federal Law BGB1. No. 375/1986,³ is amended as follows:

1. Article III.1(2) shall read:

“(2) The Arbitration Board shall determine the remuneration rates on the basis of which the amount of the claims referred to in Article II(1) is to be calculated.”

2. The following Article 1a is to be inserted after Article III.1:

“*Article 1a.* Where the remuneration rates are disputed in legal proceedings concerning the claims referred to in Article II(1), on the basis of which the amount of the claims referred to in Article II(1) are to be calculated, the Court shall suspend the proceedings at the request of one of the parties. If neither of the parties proves within one month of notification of the suspension decision that it has lodged with the Arbitration Board a request for a decision under Article I(2) or once the proceedings before the Arbitration Board have been terminated, the Court shall resume the proceedings on request or *ex officio*.”

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Article III

(1) This Federal Law shall enter into force on January 1, 1990.

(2) Article II, item 1, shall not apply to proceedings before the Arbitration Board at the time of entry into force of this Federal Law.

(3) The implementation of this Federal Law shall be entrusted to the Federal Minister for Justice.
