

# 93<sup>rd</sup> Federal Law with which the Copyright Act is amended

*(1993 Copyright Act Amendment – UrhGNov 1993)*

The National Council decided:

## Article I

The Copyright Act, Federal Law Gazette No 111/1936, amended by the Federal Law as promulgated in Federal Law Gazette No 612/1989, shall be amended as follows:

1. § 2, Z 1 shall read:  
“Literary works of all kinds including computer programmes (§ 40a);”
2. § 16, para 3 shall read:  
“(3) Copies put on the market upon the consent of the rightholder by means of a property transfer are not subject to the right of marketing – except as otherwise provided in § 16a. Where this consent was only given for a certain area, however, the right to distribute copies put on the market of this area outside the latter shall not be affected; this exception shall only apply to copies which were put on the market upon the consent of the person entitled thereto in a Member–State of the European Economic Community or the European Free Trade Association.”
3. § 16a shall be inserted after § 16 as follows:

## “Rental and lending”

### § 16a

- (1) § 16, para 3 shall not apply to the rental of copies (para 3).
- (2) § 16, para 3 shall apply to the lending (para 3) of copies, provided that the author is entitled to equitable remuneration. Respective claims can be enforced by performing rights societies only.
- (3) Within the meaning of this provision rental shall refer to permitting the use destined for commercial purposes for a limited time period, lending to permitting the use not destined for commercial purposes for a limited time period, by an institution open to the public (library, collection of picture or sound carriers, artotheque, and the like).
- (4) Paras 1 and 2 shall not apply
  1. to rental and lending for the purpose of radio broadcasts (§ 17) and public recitation as well as public performances and presentations (§ 18),
  2. to works of applied arts (handicraft).
- (5) Where a person entitled to the utilization of a work or the film producer entitled to do so according to § 38, para 1, permit the lease or distribution by others, the author shall have an unrenounceable claim to an adequate share of the remuneration vis-à-vis the person entitled to the utilization of the work and/or the film producer. Where the claim for compensation for the loan of copies according to the law or on the basis of a contract rests with another person, the author shall have an unrenounceable claim to an adequate share of the remuneration.

4. The following passage shall be inserted after § 40 as section VIa:

**“Section VIa  
Special provisions for computer programmes  
Computer programmes**

§ 40a.

- (1) Computer programmes are works in the meaning of this Law if they are the result of the personal intellectual creation of the author.
- (2) In this Law the term “computer programme” shall comprise all forms of expression including machine codes and material for the development of computer programmes.

**Employees**

§ 40b. Where a computer programme is created by an employee in meeting his official duties, the employer shall have the unlimited right of utilization of the work unless otherwise agreed upon with the author. In such instances the employer shall furthermore be entitled to the use of the rights stipulated in § 20 and § 21, para 1; The right of the author to make use of his copyright according to § 19 shall not be affected.

**Rights of utilization of a work**

§ 40c. Rights of utilization of computer programmes shall be transferable to others unless otherwise agreed upon with the author, without permission of the latter. The provisions of § 29 shall not apply to rights of utilization of computer programmes.

**Free utilization of works**

§ 40d.

- (1) § 42 shall not apply to computer programmes.
- (2) Computer programmes may be reproduced and adapted in as far as this is required for their intended utilization by the person entitled to do so; this shall include the adaptation to the requirements of the latter.
- (3) The person entitled to use a computer programme may
  1. Produce duplicates for saving purposes (back up copies) in as far as required for the utilization of the computer programme;
  2. observe, investigate or test the functioning of the programme in order to establish the ideas and principles an element of the programme is based on, if this is done by means of loading, displaying, operating, transmitting or storing the programme, to which this person is entitled.
- (4) The rights according to paras 2 and 3 cannot be waived effectively; this shall not exclude agreements on the scope of the intended utilization in the meaning of para 2.

## Decompilation

§ 40e.

- (1) The code of a computer programme may be duplicated and its code form translated on condition that the following conditions are met:
  1. The activities are indispensable in order to obtain the necessary information for the interoperability of an independently created computer programme with other programmes;
  2. the activities are performed by a person entitled to use a copy of a computer programme or on behalf of the latter by a person authorized to do so;
  3. the information required for bringing about the interoperability have not yet been made easily accessible to the persons listed under Z 1;
  4. the activities are limited to the parts of the programme required for bringing about the interoperability.
- (2) The information obtained according to para 1 may not be
  1. used for other purposes than the bringing about of the interoperability of the independently created programme;
  2. passed on to third parties unless this is required for the interoperability of the independently created programme;
  3. used for the development, reproduction or distribution of a programme with an essentially similar form of expression or other activities infringing the copyright.
- (3) The right of decompiling (para 1) cannot be waived effectively.”
5. The following para 3 shall be added to § 45:

“(3) The author shall be entitled to equitable remuneration for the duplication and distribution according to para 1 and for radio broadcasting according to para 2. Such claims can only be made by performing rights societies.”
6. The previous § 51 shall be restructured to be “§ 51 (1)”. A new para 2 shall be added:

“(2) The author shall be entitled to equitable remuneration for the reproduction and distribution according to para 1. Such claims can only be made by performing rights societies.”
7. The previous § 54 shall be restructured to be “§ 54 (1)”. A new para 2 shall be added:

“(2) The author shall be entitled to adequate remuneration for the duplication and distribution according to para 1, Z 3. Such claims can only be made by performing rights societies.”
8. In 21 67, para 2 the quotation “§§ 23” shall be replaced by “§§ 16a, 23”.
9. In § 74, para 7 the quotation “§§ 16” shall be replaced by “§§ 16, 16a” and the quotation “54 Z 3 and 4” by “54, para 1, Z 3 and 4 and para 2”.
10. In § 76, para 6 the quotation “§ 23, paras 2 and 4” shall be replaced by “§§ 16a, 23, paras 2 and 4”.
11. In § 76a, para 5 the quotation “§ 18, para 2” shall be replaced by “§§ 16a, 18, para 2”.
12. § 87b shall read:

### “Claim to information

§ 87b. A person marketing copies within the country for which the right of distribution by putting them on the market in a Member State of the European Economic Community or the

European Free Trade Association expired (§ 16, para 3) shall be obliged to inform the rightholder upon request correctly and completely on the producer, the content, the country of origin, and the quantity of the copies marketed. A claim to information shall rest with the person entitled to distribute the copies within the country at the time of the exhaustion”

13. In § 91 the following para 1a shall be inserted after para 1:

“(1a) Likewise punished shall be anyone putting on the market material exclusively intended to facilitate the illegal removal or circumvention of technical mechanisms for the protection of computer programmes or possessing the latter for commercial purposes.”

14. § 91, para 2 shall read:

“(2) Likewise punished shall be anyone who as owner or manager of an enterprise does not prevent an action of this kind (paras 1 and 1a) during operations in the enterprise by an employee or a commissioned person.”

15. § 92, para 1, first sentence shall read:

“In the sentence in which the accused is found guilty of an offense according to § 91, the destruction of the material intended for illegal marketing and the rendering unusable of material exclusively intended for illegal reproduction as well as material listed in § 91, para 1a shall be ordered upon the request of the plaintiff.

## Article II

(1) This Federal Law shall enter into force on March 1<sup>st</sup>, 1993, with the exception of para 2.

(2) § 16a UrhG in the version of this Federal Law shall enter into force on January 1<sup>st</sup>, 1994.

(3) § 16a UrhG in the version of this Federal Law shall also apply to copies, in respect of which according to § 16, para 3 UrhG the right of marketing was exhausted before January 1<sup>st</sup>, 1994. Such copies may be leased until December 31<sup>st</sup>, 1994; the author shall be entitled to adequate remuneration. § 16a, paras 2, 4 and 5 UrhG in the version of this Federal Law shall apply to this remuneration claim *mutatis mutandis*.

(4) Para 3 shall also apply to the corresponding application of § 16a according to Art. I, Z 8 to 11.

(5) § 40b and 40c UrhG in the version of this Federal Law shall not apply to computer programmes created before March 1<sup>st</sup>, 1993.

(6) Art. I, Z 5 to 7 shall not apply to workpieces marketed for the first time before March 1<sup>st</sup>, 1993 (§ 16 UrhG). This shall also apply to Art. I, Z 9, as far as the respective application of § 54, para 2 is concerned.

(7) The Federal Minister of Justice shall be entrusted with the implementation of this Federal Law.

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