

Law on Copyright and Neighboring Rights (Copyright Law)

(of September 9, 1965, as last amended by the Law of July 19, 1996)*

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PART I COPYRIGHT

Section I General

Art. 1. Authors of literary, scientific and artistic works shall enjoy protection for their works in accordance with this Law.

Section II Works

Protected Works

Art. 2.—

(1) Protected literary, scientific and artistic works shall include, in particular:

1. works of language, such as writings, speeches and computer programs;
2. musical works;
3. works of pantomime, including choreographic works;
4. works of fine art, including works of architecture and of applied art and plans for such works;
5. photographic works, including works produced by processes similar to photography;
6. cinematographic works, including works produced by processes similar to cinematography;
7. illustrations of a scientific or technical nature, such as drawings, plans, maps, sketches, tables and three-dimensional representations.

(2) Personal intellectual creations alone shall constitute works within the meaning of this Law.

(Amended by the Law of June 9, 1993.)

Adaptations

Art. 3. Translations and other adaptations of a work which constitute personal intellectual creations of the adapter shall enjoy protection as independent works without prejudice to copyright in the work that has been adapted. Insignificant adaptations of a non-protected musical work shall not enjoy protection as independent works.

(Amended by the Law of June 24, 1985.)

Collections

Art. 4. Collections of works or of other contributions which, by reason of their selection or arrangement, constitute personal intellectual creations shall enjoy protection as independent works without prejudice to copyright in the works included in the collections.

Official Works

Art. 5.—

(1) Laws, ordinances, official decrees and notices as also decisions and official grounds of decisions shall not enjoy copyright protection.

(2) The same shall apply to other official works published in the official interest for public information, with the condition that the provisions of Article 62(1) to (3) and Article 63 (1) and (2) concerning prohibited alterations and acknowledgment of sources shall apply *mutatis mutandis*.

Published Works and Released Works

Art. 6.—

(1) A work shall be deemed published if, with the consent of the copyright owner, it has been made accessible to the public.

(2) A work shall be deemed released if, with the consent of the copyright owner, copies of the work have been produced in sufficient quantity and have been publicly offered for sale or put into circulation. A work of fine art shall also be deemed to have been released if, with the consent of the copyright owner, the original or a copy of the work is made permanently accessible to the public.

Section III Authors

Author

Art. 7. The person who creates the work shall be deemed the author.

Joint Authors

Art. 8.—

(1) If several persons have created a work jointly, and their respective contributions cannot be separately exploited, they shall be deemed the joint authors of the work.

(2) The right of publication and of exploitation of the work shall belong jointly to the joint authors; alterations to the work shall be permissible only with the consent of the joint authors. However, a joint author may not unreasonably refuse his consent to the publication, exploitation or alteration of the work. Each joint author shall be entitled to assert claims arising from infringements of the joint copyright; however, he may demand payment only on behalf of all joint authors.

(3) The proceeds resulting from the utilization of the work shall accrue to the joint authors in proportion to the extent of their respective contributions to the work unless otherwise agreed between them.

(4) A joint author may renounce his share of the exploitation rights (Article 15). The other joint authors shall be notified of renunciation. Notification shall imply that the share accrues to the other joint authors.

Authors of Compound Works

Art. 9. If several authors have combined their works for exploitation in common, each of them may require from the others their consent to the publication, exploitation or alteration of the compound works, if such consent may be reasonably demanded of them.

Presumption of Authorship

Art. 10.—

(1) In the absence of proof to the contrary, the person designated in the customary manner as the author on copies of a work which has been published or on the original of a work of fine art shall be deemed the author of the work; the same shall apply to a designation which is known as the author's pseudonym or the artist's mark.

(2) Where the author is not designated as provided in paragraph (1), it shall be presumed that the person designated as the editor on the copies of the work is entitled to assert the author's rights. Where no editor is designated, it shall be presumed that the publisher is entitled.

Section IV Scope of Copyright

1. GENERAL

Art. 11. Copyright shall protect the author with respect to his intellectual and personal relationship with his work, and also with respect to utilization of his work.

2. MORAL RIGHTS OF AUTHORS

Right of Publication

Art. 12.—

(1) The author shall have the right to decide whether and how his work is to be published.

(2) The author shall have the exclusive right to publicly communicate or describe the content of his work for as long as neither the work nor its essence nor a description of the work has been published with his consent.

Recognition of Authorship

Art. 13. The author shall have the right of recognition of his authorship of the work. He may decide whether the work is to bear an author's designation and what designation is to be used.

Distortion of the Work

Art. 14. The author shall have the right to prohibit any distortion or any other mutilation of his work which would jeopardize his legitimate intellectual or personal interests in the work.

3. EXPLOITATION RIGHTS

General

Art. 15.—

(1) The author shall have the exclusive right to exploit his work in material form; his right shall comprise in particular:

1. the right of reproduction (Article 16);
2. the right of distribution (Article 17);
3. the right of exhibition (Article 18).

(2) The author shall further have the exclusive right to communicate his work to the public in non-material form (right of communication to the public); his right shall comprise in particular:

1. the right of recitation, performance and presentation (Article 19);
2. the right of broadcasting (Article 20);
3. the right of communication by means of video or audio recordings (Article 21);
4. the right of communication of broadcasts (Article 22).

(3) The communication of a work shall be deemed public if it is intended for a plurality of persons, unless such persons form a clearly defined group and are connected by personal relationship with each other or with the organizer.

Right of Reproduction

Art. 16.—

(1) The right of reproduction is the right to make copies of the work by whatever method and in whatever quantity.

(2) Reproduction of a work shall also be constituted by the fixation of the work on devices which permit the repeated communication of sequences of images or sounds (video or audio recording mediums) whether by recording a communication of the work on a video or audio medium or by transferring the work from one medium to another.

Right of Distribution

Art. 17.—

(1) The right of distribution is the right to offer to the public or to put into circulation the original work or copies thereof.

(2) If the original work or copies thereof have been commercially distributed with the consent of the person entitled to distribute the work in the territory to which this Law applies, their further distribution shall be permissible.

Right of Exhibition

Art. 18. The right of exhibition is the right to place on public view the original or copies of an unpublished work of fine art or of an unpublished photographic work.

Right of Recitation, Performance and Presentation

Art. 19.—

(1) The right of recitation is the right of live delivery to the public of a work of language.

(2) The right of performance is the right of live performance to the public of a musical work or of public performance of a work on the stage.

(3) The right of recitation and performance encompasses the right to make recitations and performances perceivable to the public by screen, loudspeaker or similar technical device, in a place other than that in which the live rendering takes place.

(4) The right of presentation is the right to make a work of fine art, a photographic work, a cinematographic work, or illustrations of a scientific or technical character perceivable to the public by means of technical devices. The right of presentation does not include the right to make the broadcast of such works perceivable to the public (Article 22).

Right of Broadcasting

Art. 20. The right of broadcasting is the right to make a work accessible to the public by broadcasting, such as radio or television transmission, or by wire or by other similar technical devices.

Right of Communication by Video or Audio Recordings

Art. 21. The right of communication by audio or video recordings is the right to make recitations or performances of a work perceivable to the public by means of video or audio recordings. Article 19(3) shall apply *mutatis mutandis*.

Right of Communication of Broadcasts

Art. 22. The right of communication of broadcasts is the right to make broadcasts of a work perceivable to the public by means of screen, loudspeaker or similar technical device. Article 19(3) shall apply *mutatis mutandis*.

Adaptations and Transformations

Art. 23. Adaptations or other transformations of a work may be published or exploited only with the consent of the author of the adapted or transformed work. In the case of cinematographic adaptations of a work, of the execution of plans and sketches for a work of fine art, or of copies of an architectural work, the author's consent shall be required for the making of such adaptation or transformation.

Free Use

Art. 24.—

(1) An independent work created by free use of the work of another person may be published and exploited without the consent of the author of the used work.

(2) Paragraph (1) shall not apply to the use of a musical work where a melody has been recognizably borrowed from the work and used as a basis for a new work.

4. OTHER RIGHTS OF AUTHORS

Access to Works

Art. 25.—

(1) The author may require the owner of the original or of a copy of his work to afford him access to the original or the copy, provided it is necessary for making reproductions or adaptations of the work and is not opposed by any legitimate interest of the owner.

(2) The owner shall not be required to surrender the original or the copy to the author.

Resale Royalty Right

Art. 26.—

(1) If the original of a work of fine art is resold and if an art dealer or an auctioneer is involved as purchaser, vendor or agent, the vendor shall pay to the author a share amounting to five percent of the selling price. There shall be no such obligation if the selling price is less than 100 German marks.

(2) The author may not waive his right to his share in advance. The expectancy may not be enforced; any disposition of the expectancy shall be without legal effect.

(3) The author may require an art dealer or auctioneer to provide information on the originals of the author's works that have been resold through the intermediary of the art dealer or auctioneer during the last calendar year having elapsed prior to the request for information.

(4) Where necessary to assert his claim against the vendor, the author may require the art dealer or auctioneer to provide information on the name and address of the vendor and the amount of the selling price. The art dealer or auctioneer may refuse information on the name and address of the vendor if he pays the share due to the author.

(5) The claims under paragraphs (3) and (4) may only be asserted through a collecting society.

(6) Where there exists reasonable doubt as to the accuracy or completeness of the information provided in accordance with paragraphs (3) or (4), the collecting society may demand that access to the account books or to other documents be granted, at the choice of the party obliged to provide the information, either to the collecting society or to a chartered accountant or sworn auditor designated by that party, to the extent that this is necessary to ascertain the accuracy or completeness of the information. Where

the information is found to be inaccurate or incomplete, the party obliged to provide the information shall pay the cost of the examination.

(7) The claims of the author shall expire after 10 years.

(8) The foregoing provisions shall not apply to architectural works and works of applied art.

(Amended by the Law of November 10, 1972.)

Hiring and Lending of Copies

Art. 27.—

(1) For the hiring and lending of copies of a work in respect of which further distribution is permitted under Article 17(2), an equitable remuneration shall be paid to the author if the hiring or lending is executed for the financial gain of the hirer or the lender, or if the copies are hired or lent through an institution accessible to the public (book or record library or other collection of copies). The claim to remuneration may only be asserted through a collecting society.

(2) Paragraph (1) shall not be applicable if the work has been released exclusively for hiring or lending purposes or if the copies are lent under a contract of employment or service exclusively for the purpose of using them to fulfill commitments arising from the contract of employment or service.

(Amended by the Law of November 10, 1972.)

Section V Dealings with Rights in Copyright

1. SUCCESSION TO COPYRIGHT

Inheritance of Copyright

Art. 28.—

(1) Copyright may be transferred by inheritance.

(2) The author may transfer the exercise of copyright to an executor by testamentary disposition. Article 2210 of the Civil Code shall not apply.

Transfer of Copyright

Art. 29. Copyright may be transferred in execution of a testamentary disposition or to co-heirs as part of the partition of an estate. Copyright shall not otherwise be transferable.

Successor in Title of Author

Art. 30. In the absence of any stipulation to the contrary, the successor in title of the author shall have the rights afforded the author by this Law.

2. EXPLOITATION RIGHTS

Granting of Exploitation Rights

Art. 31.—

(1) The author may grant a right to another to use the work in a particular manner or in any manner (exploitation right). An exploitation right may be granted as a non-exclusive right or as an exclusive right.

(2) A non-exclusive exploitation right shall entitle the right holder to use the work, concurrently with the author or any other entitled persons, in the manner permitted to him.

(3) An exclusive exploitation right shall entitle the right holder to use the work, to the exclusion of all other persons, including the author, in the manner permitted to him, and to grant non-exclusive exploitation rights. Article 35 remains unaffected.

(4) The grant of an exploitation right for as yet unknown types of use and any obligations in that respect shall have no legal effect.

(5) If the types of use to which the exploitation right extends have not been specifically designated when the right was granted, the scope of the exploitation right shall be determined in accordance with the purpose envisaged in making the grant.

Limitation of Exploitation Rights

Art. 32. An exploitation right may be limited in respect of place, time or purpose.

Continuing Effect of Non-Exclusive Exploitation Rights

Art. 33. A non-exclusive exploitation right which the author has granted prior to granting an exclusive exploitation right shall remain effective with respect to the holder of the exclusive exploitation right in the absence of any contrary agreement between the author and the holder of the non-exclusive exploitation right.

Transfer of Exploitation Rights

Art. 34.—

(1) An exploitation right may be transferred only with the author's consent. The author may not unreasonably refuse his consent.

(2) If exploitation rights in the individual works contained in a collection are transferred together with the exploitation right in the collection (Article 4), the consent of the author of the collection shall be sufficient.

(3) An exploitation right may be transferred without the author's consent if the transfer is comprised in the sale of the whole of an enterprise or the sale of parts of an enterprise.

(4) The holder of an exploitation right and the author may agree on different terms.

(5) If the transfer of an exploitation right is permissible by agreement or by law without the author's consent, the transferee shall have joint liability for the discharge of the transferor's obligations under his agreement with the author.

Grant of Non-Exclusive Exploitation Rights

Art. 35.—

(1) The holder of an exclusive exploitation right may grant non-exclusive rights only with the author's consent. No consent shall be required if the exclusive exploitation right was granted exclusively for the administration of the author's interests.

(2) The provisions of Article 34(1), second sentence, (2) and (4) shall apply *mutatis mutandis*.

Author's Participation

Art. 36.—

(1) If an author has granted an exploitation right to another party on conditions which cause the agreed consideration to be grossly disproportionate to the income from the use of the work, having regard to the whole of the relationship between the author and the other party, the latter shall be required, at the demand of the author, to assent to a change in the agreement such as will secure for the author an equitable share of the income having regard to the circumstances.

(2) Such claim shall be barred two years from the time the author obtains knowledge of the circumstances which give rise to the claim or after 10 years irrespective of such knowledge.

(3) The claim may not be waived in advance. Expectancy may not be enforced; any disposition of the expectancy shall be without legal effect.

Agreements to Grant Exploitation Rights

Art. 37.—

(1) If an author grants to another an exploitation right in his work, he shall be deemed in case of doubt to have retained his right to authorize the publication or exploitation of any adaptation of the work.

(2) If an author grants to another the right to reproduce his work, he shall be deemed, in doubt, to have retained his right to record his work on video or audio mediums.

(3) If an author grants to another the right to communicate his work to the public, the latter shall not be deemed, in doubt, to be entitled to make the communication perceivable to the public by screen, loudspeaker or other similar technical device other than at the event for which it is intended.

Contributions to Collections

Art. 38.—

(1) If an author consents to inclusion of his work in a collection which appears periodically, the publisher or editor shall be deemed in case of doubt to have acquired an exclusive right of reproduction and distribution. However, the author may otherwise reproduce and distribute the work on expiry of one year from the date of release, unless otherwise agreed.

(2) The second sentence of paragraph (1) shall also apply to a contribution to a collection which does not appear periodically, if making the contribution available does not entitle the author to remuneration.

(3) If a contribution is made available to a newspaper, the publisher or editor shall be deemed to have acquired a non-exclusive exploitation right, unless otherwise agreed. If the author grants an exclusive exploitation right, he shall be entitled, immediately after the appearance of the contribution, to otherwise reproduce and distribute his work, unless otherwise agreed.

Alteration of Work

Art. 39.—

(1) The holder of an exploitation right may not alter the work, its title or the designation of author (Article 10(1)), unless otherwise agreed.

(2) Alterations to the work and its title which the author cannot reasonably refuse shall be permissible.

Agreements as to Future Works

Art. 40.—

(1) Agreements by which an author undertakes to grant exploitation rights in future works which are in no way specified or only referred to by type shall be in writing. They may be terminated by either party after a period of five years from conclusion of the agreement. Six months notice of termination shall be given, if no shorter period has been agreed.

(2) The right of termination may not be waived in advance. Other contractual or statutory rights of termination shall remain unaffected.

(3) If exploitation rights in future works have been granted in execution of the agreement, that provision shall cease to have effect in respect of works which have not yet been supplied at such time.

Right of Revocation for Non-Exercise

Art. 41.—

(1) If the holder of an exclusive exploitation right does not exercise such right or exercises it insufficiently, and if thereby serious injury is caused to the author's legitimate interests, the latter may

revoke the exploitation right. This shall not apply if non-exercise or insufficient exercise is mainly due to circumstances which the author can reasonably be expected to remedy.

(2) The right of revocation may not be exercised before the expiration of two years from the grant or transfer of the exploitation right or, if the work is supplied at a later date, from the date of delivery. In the case of a contribution to a newspaper, the period shall be three months, for a contribution to a periodical appearing at monthly intervals or less, it shall be six months, and for contributions to other periodicals, one year.

(3) The right of revocation may be exercised only after the author has afforded the holder of the exploitation right, upon notifying him of the proposed revocation, an additional period of time adequate to sufficiently exercise the right. The author shall not be required to afford an additional period of time if it is impossible for the holder of the right to exercise it or if he refuses to exercise it or if the affording of an additional period of time would jeopardize predominant interests of the author.

(4) The right of revocation may not be waived in advance. Its exercise may not be precluded in advance for more than five years.

(5) The exploitation right shall terminate when the revocation takes effect.

(6) The author shall indemnify the person affected by the revocation if and to the extent required by equity.

(7) The rights and claims of the parties under other statutory provisions shall remain unaffected.

Right of Revocation for Changed Conviction

Art. 42.—

(1) An author may revoke an exploitation right if the work no longer reflects his conviction and he therefore can no longer be expected to agree to the exploitation of the work. The author's successor in title (Article 30) may exercise such right of revocation only if he proves that prior to his death the author would have been entitled to revoke and was prevented from so doing or that he has done so by testamentary disposition.

(2) The right of revocation may not be waived in advance. Its exercise may not be precluded.

(3) The author must equitably indemnify the holder of the exploitation right. The indemnification must cover at least the costs which he had incurred before he was notified of revocation; however, costs attributable to uses already completed shall not be taken into account. Revocation shall not become effective until the author has reimbursed such costs or provided security therefor. The holder of the right shall communicate the amount of his costs to the author within three months after notification of revocation; if he fails to do so, the revocation shall become effective already on expiration of this period.

(4) Should the author wish to resume exploitation of the work after revocation, he shall be required to offer to the previous holder of the exploitation right the same type of right on reasonable conditions.

(5) The provisions of Article 41(5) and (7) shall apply *mutatis mutandis*.

Authors in Employment or Service

Art. 43. The provisions of this subsection shall also apply if the author has created the work in execution of his duties under a contract of employment or service provided nothing to the contrary transpires from the terms or nature of the contract of employment or service.

Sale of the Original of a Work

Art. 44.—

(1) If the author sells the original of a work, he shall not be deemed in case of doubt to have thereby granted an exploitation right to the acquirer.

(2) The owner of the original of a work of fine art or of a photographic work shall be entitled to exhibit the work in public, even if it has not yet been published, unless expressly excluded by the author when selling the original.

Section VI Limitations on Copyright

Administration of Justice and Public Safety

Art. 45.—

(1) It shall be permissible to make or cause to be made copies of a work for use in proceedings before a court, an arbitration tribunal or a public authority.

(2) Courts, arbitration tribunals and public authorities may, for the purposes of administration of justice and public safety, reproduce portraits or cause portraits to be reproduced.

(3) The distribution, public exhibition and public communication of such works shall be permissible under the same conditions as for their reproduction.

Collections for Religious, School or Instructional Use

Art. 46.—

(1) Reproduction and distribution shall be permissible where limited parts of works, of works of language and of musical works, individual works of fine art or individual photographs are incorporated after their publication in a collection which assembles the works of a considerable number of authors and is intended, by its nature, exclusively for religious, school or instructional use. The purpose for which the collection is to be used shall be clearly stated on the title page or some other appropriate place.

(2) Paragraph (1) shall apply to musical works incorporated in a collection intended for musical instruction only if the collection is intended for musical instruction in schools that are not schools of music.

(3) Reproduction may begin only if the intention to exercise the rights afforded by paragraph (1) has been communicated by registered letter to the author or, if his permanent or temporary residence is unknown, to the holder of an exclusive exploitation right, and two weeks have elapsed since dispatch of the letter. If the permanent or temporary address of the holder of the exclusive right is also unknown, the communication can be made by publication in the Official Bulletin (*Bundesanzeiger*).

(4) The author shall be paid equitable remuneration for the reproduction and distribution.

(5) An author may prohibit reproduction and distribution if the work no longer reflects his conviction and he can therefore no longer be expected to agree to the exploitation of his work and he has for that reason revoked any existing exploitation right (Article 42). The provisions of Article 136(1) and (2) shall be applicable *mutatis mutandis*.

(Amended by the Law of November 10, 1972.)

School Broadcasts

Art. 47.—

(1) Schools and institutions for the training and further training of teachers may make individual copies of works which are included in a school broadcast by recording the works on a video or audio medium. The same shall apply to youth welfare homes and to the official provincial pictorial materials services or comparable publicly owned institutions.

(2) The video or audio recordings may be used only for instructional purposes. They must be destroyed not later than the end of the school year following the transmission of the school broadcast, unless equitable remuneration has been paid to the author.

(Amended by the Law of June 24, 1985.)

Public Speeches

Art. 48.—

(1) It shall be permissible

1. to reproduce and distribute in newspapers, periodicals or other information journals which mainly record current events, speeches on issues of the day made at public meetings or in broadcasting and to communicate such speeches to the public;
2. to reproduce, distribute and communicate to the public speeches made at public proceedings in State, local government or religious bodies.

(2) It shall not be permissible, however, to reproduce and distribute the speeches referred to in paragraph (1), item 2, in the form of a collection containing predominantly speeches by the same author.

Newspaper Articles and Broadcast Commentaries

Art. 49.—

(1) It shall be permissible to reproduce and distribute individual broadcast commentaries and individual articles from newspapers and other information journals devoted solely to issues of the day in other newspapers or journals of like kind and to communicate such commentaries and articles to the public, if they concern political, economic or religious issues of the day and do not contain a statement reserving rights. The author shall be paid equitable remuneration for reproduction, distribution and public communication, unless short extracts from a number of commentaries or articles are reproduced, distributed or publicly communicated in the form of an overview. Claims may be asserted by a collecting society only.

(2) It shall be permissible, without limitation, to reproduce, distribute and publicly communicate miscellaneous information relating to facts or news of the day which have been publicly disseminated by the press or by broadcasting; this provision shall not affect any protection afforded by other provisions of law.

(Amended by the Law of June 24, 1985.)

Visual and Sound Reporting

Art. 50. For the purposes of visual and sound reporting on events of the day by broadcast or film and in newspapers or periodicals mainly devoted to current events, works which become perceivable in the course of the events which are being reported on may be reproduced, distributed and publicly communicated to the extent justified by the purpose of the report.

Quotations

Art. 51. Reproduction, distribution and communication to the public shall be permitted, to the extent justified by the purpose, where

1. individual works are included after their publication in an independent scientific work to illustrate its contents;
2. passages from a work are quoted after its publication in an independent work of language;
3. individual passages from a published musical work are quoted in an independent musical work.

Public Communication

Art. 52.—

(1) The public communication of a published work shall be permissible if the communication serves no gainful purpose on the part of the organizer, spectators are admitted free of charge and, in the case of recitation or performance of the work, none of the performers (Article 73) receive special remuneration. An equitable remuneration shall be paid for the communication. The obligation to pay remuneration shall not apply in respect of events organized by the Youth Welfare Service, the Social Welfare Service, the Old Persons Welfare Service, the Prisoners Welfare Service and for school events, on condition that in accordance with their social or educational purpose they are only accessible for a specifically limited circle of persons. This shall not apply if the event serves the gainful purpose of a third party; in such case, the third party shall be required to pay the remuneration.

(2) The public communication of a published work shall be permissible at a religious service or a celebration of the churches or religious communities. However, the organizer shall pay the author an equitable remuneration.

(3) Public stage performances and broadcasts of a work and public presentations of cinematographic works shall in all cases be permissible only with the consent of the copyright owner.

(Amended by the Law of June 24, 1985.)

Reproduction for Private and Other Personal Uses

Art. 53.—

(1) It shall be permissible to make single copies of a work for private use. A person authorized to make such copies may also cause such copies to be made by another person; however, this shall apply to the transfer of works to video or audio recording mediums and to the reproduction of works of fine art only if no payment is received therefor.

(2) It shall be permissible to make or to cause to be made single copies of a work

1. for personal scientific use, if and to the extent that such reproduction is necessary for the purpose,
2. to be included in personal files, if and to the extent that reproduction for this purpose is necessary and if a personal copy of the work is used as the model for reproduction,
3. for personal information concerning current events, in the case of a broadcast work,
4. for other personal uses,
 - (a) in the case of small parts of published works or individual contributions that have been published in newspapers or periodicals,
 - (b) in the case of a work that has been out of print for at least two years.

(3) It shall be permissible to make or to cause to be made copies of small parts of a printed work or of individual contributions published in newspapers or periodicals for personal use,

1. in teaching, in non-commercial institutions of education and further education or in institutions of vocational education in a quantity required for one school class or
2. for State examinations and examinations in schools, universities, non-commercial institutions of education and further education and in vocational education in the required quantity, if and to the extent that such reproduction is necessary for this purpose.

(4) Reproduction

- (a) of graphic recordings of musical works,
- (b) of a book or a periodical in the case of essentially complete copies, shall only be permissible, where not carried out by manual copying, with the consent of the copyright owner or in accordance with paragraph (2), item 2, or for personal use in the case of a work that has been out of print for at least two years.

(5) Copies may neither be disseminated nor used for public communication. It shall be permissible, however, to lend out lawfully made copies of newspapers and works that are out of print or such copies in which small damaged or lost parts have been replaced with reproduced copies.

(6) The recording of public lectures, representations or performances of works on video or audio recording mediums, the realization of plans and sketches for works of fine art, and the reproduction of works of architecture shall only be permissible with the consent of the copyright owner.

(Amended by the Law of June 24, 1985, and by the Law of June 9, 1993.)

Obligation to Pay Remuneration for Reproduction by Means of Video and Audio Recording

Art. 54.—

(1) Where the nature of a work makes it probable that it will be reproduced by the recording of broadcasts on video or audio recording mediums or by the transfer from one recording medium to another in accordance with Article 53(1) or (2), the author of the work shall be entitled to payment of equitable remuneration from the manufacturers

1. of appliances and
2. of video or audio recording mediums

that are obviously intended for the making of such reproductions, in respect of the possibility of making such reproductions that is created by the sale of the appliances and of the video or audio recording mediums; In addition to the manufacturer, any person who commercially imports or reimports such appliances or such video or audio recording mediums into the territory to which this Law applies shall be jointly liable.

(2) Where the nature of the work is such that it may be expected to be reproduced in accordance with Article 53(1) to (3) by the photocopying of a copy or by some other process having similar effect, the author of the work shall be entitled to payment of equitable remuneration from the manufacturer of appliances intended for the making of such reproductions, in respect of the possibility of making such reproductions created by the sale or other placing on the market of the appliances; in addition to the manufacturer, any person who commercially imports or reimports such appliances into the territory to which this Law applies shall be jointly liable. Where appliances of such type are operated in schools, universities or vocational training institutions or in other educational and further education institutions (educational institutions), research institutions, public libraries or in institutions which have available appliances for the making of photocopies on payment, the author shall also be entitled to payment of equitable remuneration from the operator of the appliance. The amount of the remuneration to be paid in total by the operator shall depend on the type and extent of utilization of the appliance that is to be expected in view of the circumstances, particularly the location and the habitual use.

(3) The entitlement afforded by paragraph (1) and the first sentence of paragraph (2) shall not apply where it is probable under the circumstances that the appliances or the video and audio recording mediums will not be used to make reproductions within the territory to which this Law applies.

(4) The amounts set out in the annex shall be deemed equitable remuneration in accordance with paragraphs (1) and (2) where not otherwise agreed. Invoices for the sale or other placing on the market of the appliances referred to in the first sentence of paragraph (2) shall contain a reference to the author's remuneration due for the appliance.

(5) The author shall be entitled to require information from those persons required to pay remuneration under paragraphs (1) and (2) as to the nature and quantity of appliances and video or audio recording mediums sold or otherwise put into circulation on the territory to which this Law applies. The author shall be entitled to require the information necessary to assess the remuneration from the operator of an appliance in an institution within the meaning of the second sentence of paragraph (2). Where the person required to give information fails to satisfy the obligation or only satisfies it incompletely or otherwise incorrectly, twice the rate of remuneration may be required.

(6) Claims under paragraphs (1), (2) and (5) may only be asserted by a collecting society. Each copyright owner shall be entitled to an equitable share in the remuneration paid under paragraphs (1) and (2).

Art. 54a.

(1) Where the nature of a work is such that it may be expected to be reproduced in accordance with Article 53(1) to (3) by the photocopying of a copy or by some other process having similar effect, the author of the work shall be entitled to payment of equitable remuneration from the manufacturer of appliances intended for the making of such reproductions, in respect of the possibility created by the sale or other placing on the market of the appliances. In addition to the manufacturer, any person who commercially imports or reimports such appliances into the territory to which this Law applies or who deals therein shall be jointly liable. A dealer shall not be liable if he procures less than 20 appliances in one half calendar year.

(2) Where appliances of such type are operated in schools, universities or vocational training institutions or other educational and further education institutions (educational institutions), research institutions, public libraries or in institutions which have available appliances for the making of photocopies on payment, the author shall also be entitled to payment of equitable remuneration from the operator of the appliance.

(3) Article 54(2) shall apply *mutatis mutandis*.

(Added by the Law of July 25, 1994.)

Inapplicability of the Dealer's Obligation to Pay Remuneration

Art. 54b. The dealer's obligation to pay remuneration (Article 54(1) and Article 54a(1)) shall not apply,

1. where a person required to pay the remuneration, from whom the dealer obtains the appliances or the video or audio recording mediums, is bound by an inclusive contract concerning the remuneration or
2. if the dealer notifies the receiving office designated in accordance with Article 54h(3) in writing of the nature and quantity of the appliances and video or audio recording mediums received and of his source of supply by January 10 and July 10 for each preceding half calendar year.

(Added by the Law of July 25, 1994.)

Inapplicability of the Obligation to Pay Remuneration on Export

Art. 54c. The claim under Article 54(1) and Article 54a(1) shall not apply where it is probably under the circumstances that the appliances or the video or audio recording mediums will not be used to make reproductions within the territory to which this Law applies.

(Added by the Law of July 25, 1994.)

Amount of Remuneration

Art. 54d.

(1) The amounts set out in the Annex shall be deemed equitable remuneration in accordance with Article 54(1) and Article 54a(1) and (2) where not otherwise agreed.

(2) The amount of the total remuneration to be paid by the operator under Article 54a(2) shall depend on the type and extent of utilization of the appliance that is to be expected in view of the circumstances, particularly the location and the habitual use.

(Added by the Law of July 25, 1994.)

Obligation to Refer in Invoices to Copyright Remuneration

Art. 54e.

(1) Invoices for the sale or other placing on the market of appliances under Article 54a(1) shall make reference to the copyright remuneration due for the appliance.

(2) Invoices for the sale or other placing on the market of appliances or video or audio recording mediums referred to in Article 54(1), in which turnover tax in accordance with the first sentence of Article 14(1) of the Law on Turnover Tax is to be shown separately shall include a note stating whether the copyright remuneration due in respect of the appliance or the video or audio recording medium has been paid.

(Added by the Law of July 25, 1994.)

Obligation to Report

Art. 54f.

(1) Any person who commercially imports or reimports appliances or video or audio recording mediums that are obviously intended for the making of reproductions by means of video and audio recording into the territory to which this Law applies shall have the obligation in respect of the author to report in writing the nature and quantity of the items imported to the receiving office designated in accordance with Article 54h(3) monthly by the tenth day after the expiry of each calendar month.

(2) Paragraph (1) shall apply *mutatis mutandis* to appliances intended for making reproductions by photocopying a copy or by any procedure having a similar effect.

(3) Where the person required to report does not satisfy the obligation to report or only does so incompletely or otherwise incorrectly, twice the rate of remuneration may be required.

(Added by the Law of July 25, 1994.)

Obligation to Provide Information

Art. 54g.

(1) The author may require information from those persons required to pay remuneration under Article 54(1) or Article 54a(1) as to the nature and quantity of appliances and video or audio recording mediums sold or otherwise put into circulation on the territory to which this Law applies. The dealer's obligation to provide information shall also extend to naming his sources of supply; it shall also subsist in the cases under the third sentence of Article 54(1), the third sentence of Article 54a(1) and of Article 54b, item 1. Article 26(6) shall apply *mutatis mutandis*.

(2) The author may require information necessary to assess the remuneration from the operator of an appliance in an institution within the meaning of the first sentence of Article 54a(2).

(3) Where the person required to give information fails to satisfy the obligation or only satisfies it incompletely or otherwise incorrectly, twice the rate of remuneration may be required.

(Added by the Law of July 25, 1994.)

Collecting Societies; Handling of Reports

Art. 54h.

(1) Claims under Articles 54, 54a, 54f(3) and 54g may only be asserted through a collecting society.

(2) Each copyright owner shall be entitled to an equitable share in the remuneration paid under Articles 54 and 54a.

(3) The collecting societies shall designate a joint receiving office to receive communications made in accordance with Articles 54b and 54f in each case for the claims to remuneration under Article 54(1) and those under Article 54a(1) to the Patent Office. The Patent Office shall publish them in the Federal Gazette.

(4) The Patent Office may publish models for the reports in accordance with Articles 54b, item 2, and 54f in the Federal Gazette. The use of such models shall be compulsory.

(5) The collecting societies and the receiving office may only use the information received in accordance with Article 54b, item 2, 54f and 54g for the purpose of asserting claims under paragraph (1).

(Added by the Law of July 25, 1994.)

Reproduction by Broadcasting Organizations

Art. 55.—

(1) A broadcasting organization entitled to broadcast a work shall have the right to record the work by means of its own facilities on video or audio recording mediums in order to use them once only for broadcasting over each of its transmitters or relay stations. Such video or audio recordings must be destroyed not later than one month after the first broadcast of the work.

(2) Video or audio recordings of an exceptional documentary nature need not be destroyed if they are placed in an official archive. The author shall be notified without delay of their deposit in such archive.

Reproduction and Public Communication by Commercial Enterprises

Art. 56.—

(1) Commercial enterprises which sell video or audio recordings or appliances for making or communicating such recordings, or appliances for the reception of broadcasts, or which repair them, may record works on video or audio mediums and may publicly communicate video or audio recordings or make broadcast works perceivable to the public where necessary to demonstrate such appliances and devices to customers or to repair such appliances.

(2) Video or audio recordings made pursuant to paragraph (1) must be destroyed immediately.

Incidental Works

Art. 57. It shall be permissible to reproduce, distribute and publicly communicate works if they may be regarded as insignificant and incidental with regard to the actual subject of the reproduction, distribution or public communication.

Catalog Illustrations

Art. 58.—

It shall be permissible to reproduce and distribute works of fine art which are exhibited in public or intended for public exhibition or auction in catalogs which are issued by the organizer for the purpose of the exhibition or auction.

Works in Public Places

Art. 59.—

(1) It shall be permissible to reproduce, by painting, drawing, photography or cinematography, works which are permanently located on public ways, streets or places and to distribute and publicly communicate such copies. For works of architecture, this provision shall be applicable only to the external appearance.

(2) Reproductions may not be carried out on a work of architecture.

Portraits

Art. 60.—

(1) The commissioner of a portrait or his successor in title may reproduce it or cause it to be reproduced by photography. If the portrait is a photographic work, reproduction other than by photography shall also be permissible. The copies may be distributed without payment.

(2) The same rights shall be enjoyed by the person portrayed or, after his death, by his next of kin in the case of a portrait created on commission.

(3) Next of kin in the sense of paragraph (2) shall mean the spouse and children or, if there is neither spouse nor child, the parents.

Compulsory License for the Production of Audio Recordings

Art. 61.—

(1) If a producer of audio recordings has been granted an exploitation right in a musical work entitling him to record the work on an audio medium and to reproduce and distribute that recording for commercial purposes, the author shall be required to grant an exploitation right with the same content on reasonable conditions to any other producer of audio recordings whose main establishment or whose domicile is located on the territory to which this Law applies; this provision shall not apply if the exploitation right referred to is lawfully administered by a collecting society or if the work no longer reflects the author's conviction and he therefore can no longer be expected to agree to the exploitation of his work and he has for that reason revoked any existing exploitation right. The author shall not be required to authorize the use of the work in the production of a cinematographic work.

(2) The provisions of paragraph (1) shall be applicable with respect to a producer of audio recordings who has neither his main establishment nor his domicile on the territory to which this Law applies, only if, as evidenced by a notification by the Federal Minister for Justice in the *Bundesgesetzblatt*, a corresponding right is granted by the State in which his main establishment or domicile is located to producers of audio recordings whose main establishments or whose domiciles are on the territory to which this Law applies.

(3) An exploitation right granted under the foregoing provisions shall have effect only on the territory to which this Law applies and for export to States in which the work does not enjoy protection against recording on audio mediums.

(4) If the author has granted the exclusive exploitation right to another person entitling him to record the work for commercial purposes on audio recording mediums and to reproduce and distribute those recordings, the foregoing provisions shall be applicable except that the holder of the exclusive exploitation right shall be required to grant the exploitation right referred to in paragraph (1).

(5) The foregoing provisions shall be applicable *mutatis mutandis* to a work of language employed as the text of a musical work, if the author of the work of language has granted to a producer of audio recordings a right to record the work in conjunction with the musical work and to reproduce and distribute such recordings.

(6) Actions claiming the grant of exploitation rights shall be heard in those cases where neither the author nor, in the case referred to in paragraph (4), the holder of the exclusive right has a legal domicile in the territory to which this Law applies, by the courts located in the district in which the Patent Office has its headquarters. Interim injunctions may be issued, even if the conditions set out in Articles 935 and 940 of the Code of Civil Procedure are not fulfilled.

(7) The foregoing provisions shall not apply if the exploitation right referred to in paragraph (1) has been granted solely for the purpose of producing a film.

Prohibition of Alteration

Art. 62.—

(1) Where the use of a work is permissible under the provisions of this Section, no alteration may be made to the work. Article 39 shall be applicable *mutatis mutandis*.

(2) Where the purpose of the use may demand, it shall be permissible to make translations and such alterations to the work as amount merely to extracts or to transpositions into another key or pitch.

(3) With respect to works of fine art and photographic works, conversion to a different scale and other alterations of the work shall be permissible to the extent required by the method of reproduction.

(4) In the case of collections for religious, school and instructional use (Article 46), such alterations of works of language shall be permissible as are necessary for religious, school and instructional use, in addition to the alterations permitted under paragraphs (1) to (3). However, such alterations shall require the consent of the author or, after his death, of his successor in title (Article 30) if the latter is a next of kin of the author (Article 60(3)) or has acquired copyright by testamentary disposition of the author. Consent shall be deemed to have been granted if the author or his successor in title does not object within one month of notification of the proposed alteration and if the notification of the alteration has drawn attention to this legal consequence.

(Amended by the Law of November 10, 1972.)

Acknowledgment of Source

Art. 63.—

(1) If a work or part of a work is reproduced pursuant to Article 45(1), Articles 46 to 48, 50, 51, 58, 59 and 61, the source must in all cases be clearly acknowledged. In reproducing complete works of language or complete musical works, the publishing house which published the work must be stated in addition to the author, as also any abridgments or other alterations to the work. There shall be no obligation to acknowledge sources if no source is given either on the copy of the work used or with the reproduction of the work used and if no source is otherwise known to the person entitled to reproduce.

(2) Where the provisions of this Section permit the public communication of a work, the source must be clearly acknowledged if and where trade practice so requires.

(3) If an article from a newspaper or other information journal is reproduced in another newspaper or other such information journal, or is broadcast, under Article 49(1), the newspaper or other information journal from which the article was extracted shall also be acknowledged in addition to the author designated in the source; if a further newspaper or other information journal is mentioned there as the source, such other newspaper or other information journal shall be acknowledged. If a broadcast commentary is reproduced in a newspaper or other information journal, or in a broadcast, under Article 49(1), the broadcasting organization which transmitted the commentary shall in all cases be acknowledged in addition to the author.

Section VII Duration of Copyright

General

Art. 64. (1) Copyright shall expire 70 years after the author's death.

(2) If a posthumous work is first published more than 60 but less than 70 years after the author's death, the copyright therein shall not expire until 10 years after publication.

(Amended by the Law of June 23, 1995.)

Joint Authors, Cinematographic Works

Art. 65.—

(1) If copyright is owned by several joint authors (Article 8), it shall expire 70 years after the death of the last surviving author.

(2) In the case of cinematographic works and works and works produced in a way similar to cinematographic works, copyright shall expire 70 years after the death of the last survivor of the following persons: the principal director, the author of the screenplay, the author of the dialogue, the composer of music composed for the cinematographic work concerned.

(Amended by the Law of June 23, 1995.)

Anonymous and Pseudonymous Works

Art. 66.—

(1) If the author's true name or a known pseudonym has not been designated, either as provided in Article 10(1) or in connection with a public communication of the work, copyright shall expire 70 years after publication of the work.

(2) The duration of copyright shall be calculated according to Articles 64 and 65 in the case referred to in paragraph (1) also, if

1. within the period specified in paragraph (1), the author's true name or known pseudonym is designated in conformity with Article 10(1), or the author otherwise becomes known as the creator of the work,
2. within the period specified in paragraph (1), the author's true name is submitted for entry in the Register of Authors (Article 138), or
3. the work is not published until after the author's death.

(3) Registration pursuant to paragraph (2), item 2, may be made by the author or, after his death, by his successor in title (Article 30) or by his executor (Article 28(2)).

(4) The foregoing provisions shall not apply to works of fine Art.

Serial Works

Art. 67. In the case of works published in parts which are not self-contained (instalments), the calculation of the term of protection in the cases referred to in Article 64(2) and Article 66(1) shall be governed by the date of publication of the final instalment.

Art. 68.

(Repealed)

(Repealed by the Law of June 24, 1985.)

Calculation of Time Limits

Art. 69. The time limits specified in this Section shall begin with the end of the calendar year in which the event which determines the beginning of the time limit has occurred.

Section VIII

Special Provisions on Computer Programs

Object of Protection

Art. 69a.

(1) For the purposes of this Law, computer programs shall mean programs in any form, including their design material.

(2) The protection afforded shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, shall not be protected.

(3) Computer programs shall be protected if they constitute original works in the sense that they are the result of their author's own intellectual creation. No other criteria, particularly of a qualitative or aesthetic nature, shall be applied to determine their eligibility for protection.

(4) The provisions on works of language shall apply to computer programs where not otherwise provided in this Section.

Authors in Employment or Service

Art. 69b.

(1) Where a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all the economic rights in the program, unless otherwise agreed.

(2) Paragraph (1) shall apply *mutatis mutandis* to service relationships.

Restricted Acts

Art. 69c.

The right holder shall have the exclusive right to do or to authorize:

1. the permanent or temporary reproduction of a computer program by any means and in any form, in part or in whole. Insofar as loading, displaying, running, transmission or storage of the computer program necessitate such reproduction, such acts shall be subject to authorization by the right holder;
2. the translation, adaptation, arrangement or any other alteration of a computer program and the reproduction of the results thereof. The rights of the person who alters the program shall remain unaffected;
3. any form of distribution of the original of a computer program or of copies thereof, including rental. Where a copy of a computer program is put into circulation by way of sale on the territory of the European Communities with the consent of the right holder, the distribution right in respect of that copy shall be exhausted, with the exception of the rental right.

Exceptions to the Restricted Acts

Art. 69d.

(1) In the absence of specific contractual provisions, the acts referred to in items 1 and 2 of Article 69c shall not require authorization by the right holder where they are necessary for the use of the computer program by any person entitled to use a copy of the program in accordance with its intended purpose, including for error correction.

(2) The making of a back-up copy by a person having a right to use the computer program may not be prevented by contract insofar as it is necessary to ensure future use.

(3) The person having a right to use a copy of a program shall be entitled, without the authorization of the right holder, to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

Decompilation

Art. 69e.

(1) The authorization of the right holder shall not be required where reproduction of the code and translation of its form within the meaning of items 1 and 2 of Article 69c are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

1. these acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorized to do so;
2. the information necessary to achieve interoperability has not previously been readily available to the persons referred to in item 1;
3. these acts are confined to the parts of the original program which are necessary to achieve interoperability.

(2) Information obtained by means of acts under paragraph (1) may not

1. be used for goals other than to achieve the interoperability of the independently created computer program,
2. be given to others, except when necessary for the interoperability of the independently created computer program,
3. be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

(3) Paragraphs (1) and (2) shall be interpreted in such a way that their application neither impairs the normal exploitation of the work nor unreasonably prejudices the right holder's legitimate interests.

Infringement of Rights

Art. 69f.

(1) The right holder may require from their owners or proprietors that all unlawfully manufactured or distributed copies or all copies intended for unlawful distribution be destroyed. Article 98(2) and (3) shall apply *mutatis mutandis*.

(2) Paragraph (1) shall apply *mutatis mutandis* to any means of which the sole intended purpose is to facilitate the unauthorized removal or circumvention of any technical device which may have been applied to protect a computer program.

Application of Other Legal Provisions; Law of Contract

Art. 69g.

(1) The provisions of this Section shall not prejudice the application of other statutory provisions to computer programs, particularly those concerning the protection of inventions, topographies of semiconductor products, trademarks and unfair competition, including the protection of business and works secrets as also agreements under the law of obligations.

(2) Any contractual provisions contrary to Article 69d(2) and (3) and Article 69e shall be null and void.

(Section VIII added by the Law of June 9, 1993.)

PART II NEIGHBORING RIGHTS

Section I Protection of Certain Editions

Scientific Editions

Art. 70.—

(1) Editions which consist of non-copyrighted works or texts shall enjoy, *mutatis mutandis*, the protection afforded by the provisions of Part I if they represent the result of scientific analysis and differ in a significant manner from previously known editions of the works or texts.

(2) The right shall be enjoyed by the author of the edition.

(3) The right shall expire 25 years after publication of the edition; however, it shall expire 25 years after its production if the edition is not published within that time limit. The time limit shall be calculated in accordance with Article 69.

(Amended by the Law of March 7, 1990.)

Editions of Posthumous Works

Art. 71.—

(1) Any person who causes a work which has not previously been published to be published in the territory to which this Law applies after the expiry of copyright shall have the exclusive right to reproduce and distribute the work and to use copies of the work for public communication. The same shall apply to works which have not previously been published and which were never protected in the territory to which this Law applies, but whose authors have been dead for more than 70 years. Articles 5, 15 to 24, 27 and 45 to 63 shall apply *mutatis mutandis*.

(2) The right shall be transferable.

(3) The right shall expire 25 years after the publication of the work. The time limit shall be calculated in accordance with Article 69.

(Amended by the Law of March 7, 1990.)

Section II Protection of Photographs

Art. 72.—

(1) Photographs and products manufactured in a similar way to photographs shall be protected, *mutatis mutandis*, by the provisions of Part I applicable to photographic works.

(2) The right afforded by paragraph (1) shall belong to the photographer.

(3) The right afforded by paragraph (1) shall expire in respect of photographs that constitute documents of current events 50 years after the publication of the photograph, but 50 years after its manufacture where the photograph has not been published within such period; in respect of all other photographs, the period of 50 years shall be replaced by a period of 25 years. The period shall be calculated in accordance with Article 69.

(Amended by the Law of June 24, 1985.)

Section III

Protection of Performers

Performers

Art. 73. For the purposes of this Law, performer means a person who recites or performs a work or participates artistically in the recitation or performance of a work.

Transmission by Screen or Loudspeaker

Art. 74. Public communication of performance by screen, loudspeaker or similar technical device in a place other than that in which it takes place shall require the consent of the performer.

Reproduction

Art. 75.—

Fixation of performance on a video or audio recording medium shall require the consent of the performer. The video or audio recordings may be reproduced only with his consent.

Broadcasting

Art. 76.—

(1) Broadcasting of a performance shall require the consent of the performer.

(2) A performance which has been lawfully fixed on video or audio recording mediums may be broadcast without the consent of the performer if the recordings have been published; however, equitable remuneration shall be paid to the performer.

Public Communication

Art. 77. If a performance is publicly communicated by means of video or audio recordings or made perceivable to the public by means of a broadcast, the performer shall be paid equitable remuneration.

Assignment

Art. 78. A performer may assign to others the rights afforded him by Articles 74 to 77; however, he shall in all cases maintain the right to also himself give the consent provided for in Articles 74, 75 and 76(1).

Performers in Employment or Service

Art. 79. If a performer has given a performance in execution of his duties under a contract of employment or of service, the extent and conditions under which his employer may use it or authorize others to use it shall be determined, if not otherwise agreed, by reference to the nature of the contract of employment or service.

Choral, Orchestral and Stage Performances

Art. 80.—

(1) In the case of choral, orchestral and stage performances, the consent of the elected representatives of the participating groups of performers, such as choir, orchestra, ballet and stage companies, in addition to the consent of the soloists, conductor and producer, shall suffice for the purposes of Articles 74, 75 and 76(1). If a group has no such representative, the consent of the performers belonging to that group shall be replaced by the consent of the leader of the group.

(2) In the case of choral, orchestral and stage performances, the rights afforded by Articles 74 to 77, with the exception of the right of consent, shall be asserted for groups of performers exclusively by their representatives or, if no representatives have been elected, by the leader of the group. Exercise of the right may be transferred to a collecting society.

Protection of Organizers

Art. 81. If a performance is organized by an enterprise, the consent of the owner of the enterprise shall be required for the purposes of Articles 74, 75 and 76(1), in addition to the consent of the performer.

Duration of Rights

Art. 82. Where a performance has been recorded on a video or audio medium, the rights of the performer shall expire 50 years and those of the organizer 25 years after the publication of the video or audio recording ; however, the rights of the performer shall expire 50 years after the performance and those of the organizer 25 years after the performance if the video or audio recording has not been published within that period of time. The period of time shall be calculated in accordance with Article 69.

(Amended by the Law of March 7, 1990.)

Protection Against Distortion

Art. 83.—

(1) A performer shall have the right to prohibit any distortion or other alteration of his performance of such nature as to jeopardize his standing or reputation as a performer.

(2) If a work is performed by several performers together, each performer shall take the others into due account when exercising the right.

(3) The right shall expire with the death of the performer; however, it shall expire 25 years after the performance if the performer has died prior to expiry of that period; the period shall be calculated in accordance with Article 69. After the death of the performer, the right shall belong to his next of kin (Article 60(3)).

Limitation of Rights

Art. 84. The provisions of Section VI of Part I, with the exception of Article 61, shall apply *mutatis mutandis* to the rights afforded the performer and the organizer by this Section.

Section IV Protection of Producers of Audio Recordings

Right of Reproduction and Distribution

Art. 85.—

(1) The producer of an audio recording shall have the exclusive right to reproduce and distribute the recording. If the audio recording has been produced by an enterprise, the owner of the enterprise shall be deemed the producer. The right shall not subsist by reason of the reproduction of an audio recording.

(2) The right shall expire 25 years after publication of the audio recording; however, it shall expire 25 years after production if the audio recording has not been published during that period. The period shall be calculated in accordance with Article 69.

(3) The provisions of Section VI of Part I, with the exception of Article 61, shall apply *mutatis mutandis*.

Right of Participation

Art. 86. If a published audio recording on which a performance—has been fixed is used for public communication, the producer of the audio recording may claim from the performer an equitable participation in the remuneration which the performer receives pursuant to Article 76(2) and Article 77.

Section V Protection of Broadcasting Organizations

Art. 87.—

(1) A broadcasting organization shall have the exclusive right

1. to rebroadcast its broadcasts,
2. to record its broadcasts on a video or audio recording medium, to make photographs of its broadcasts and to reproduce such recordings or photographs,
3. to make its television broadcasts perceivable to the public in places only accessible to the public on payment of an entrance fee.

(2) The right shall expire 25 years after the broadcast. The period shall be calculated in accordance with Article 69.

(3) The provisions of Section VI of Part I, with the exception of Article 47(2), second sentence, Article 54(1) and Article 61, shall apply *mutatis mutandis*.

(Amended by the Law of June 24, 1985.)

PART III SPECIAL PROVISIONS ON FILMS

Section I Cinematographic Works

The Right of Cinematographic Adaptation

Art. 88.—

(1) If an author permits another person to make a cinematographic adaptation of his work, he shall be deemed, in doubt, to have granted the following exploitation rights:

1. the right to use the work in its original form or as an adaptation or transformation for the purpose of producing a cinematographic work;
2. the right to reproduce and distribute the cinematographic work;
3. the right to publicly present the cinematographic work if it is a work intended for presentation;
4. the right to broadcast the cinematographic work if it is a work intended for broadcasting;
5. the right to exploit translations and other cinematographic adaptations or transformations of the cinematographic work to the same extent as the work itself.

(2) In doubt, the rights referred to in paragraph (1) shall not be deemed to include the right to remake the cinematographic work. In doubt, the author shall be deemed to have the right, after the expiration of 10 years from the conclusion of the contract, to utilize his work otherwise for cinematographic purposes.

(3) The foregoing provisions shall apply *mutatis mutandis* to the rights referred to in Articles 70 and 71.

Rights in Cinematographic Works

Art. 89.—

(1) Any person who undertakes to participate in the production of a film shall be deemed, in doubt, to have granted, should he acquire a copyright in the cinematographic work, to the producer of the film an exclusive right to utilize the cinematographic work as also translations and other adaptations or transformations of the cinematographic work in any known manner.

(2) If the author of the cinematographic work has in advance granted to another person the exploitation right referred to in paragraph (1), he shall nevertheless remain entitled to grant that right to the film producer, with or without limitation.

(3) Authors' rights in works used to produce the cinematographic work, such as novels, screenplay and film music, shall remain unaffected.

Limitation of Rights

Art. 90. The provisions concerning the need for the author's consent to the transfer of exploitation rights (Article 34) and to the grant of non-exclusive rights (Article 35) and the provisions on the right of revocation for non-exercise (Article 41) or for changed conviction (Article 42) shall not apply to the rights referred to in Article 88(1), items 2 to 5, and Article 89(1). The author of the cinematographic work (Article 89) shall have no claims by virtue of Article 36.

Rights in Photographs

Art. 91. The producer of a cinematographic work shall be deemed to have acquired the right of cinematographic exploitation in photographs which are taken in connection with the production of such cinematographic work. The photographer shall have no rights in this respect.

Performers

Art. 92.—

Performers who participate in the production of a cinematographic work or whose performances are lawfully used in the production of a cinematographic work shall not have any rights under Article 75, second sentence, and Articles 76 and 77 with respect to the exploitation of the cinematographic work.

Protection Against Distortion

Art. 93. The authors of a cinematographic work and of works used in its production, and the holders of neighboring rights who participate in the production of the cinematographic work or whose contributions are used in its production may prohibit in accordance with Articles 14 and 83 only gross distortions or other gross mutilations of their works or of their contributions, with respect to the production and exploitation of the cinematographic work. Each author or right holder shall take the others and the film producer into due account when exercising the right.

Protection of Producers of Films

Art. 94.—

(1) The producer of a film shall have the exclusive right to reproduce, distribute and use for public presentation or broadcasting the video recording or video and audio recording on which the cinematographic work is fixed. The film producer shall further have the right to prohibit any distortion or abridgment of the video recording or video and audio recording which may jeopardize his legitimate interests.

(2) The right shall be transferable.

(3) The right shall expire 25 years after the publication of the video recording or video and audio recording ; however, it shall expire 25 years after production if the recording has not been published during such period.

(4) The provisions of Section VI of Part 1, with the exception of Article 61, shall apply *mutatis mutandis*.

Section II Moving Pictures

Art. 95. Articles 88, 90, 91, 93 and 94 shall apply *mutatis mutandis* to sequences of images and to sequences of images and sounds which are not protected as cinematographic works.

PART IV
COMMON PROVISIONS ON COPYRIGHT AND NEIGHBORING RIGHTS

Section I
Prohibition of Exploitation

Art. 96.—

- (1) Unlawfully made copies may be neither distributed nor used for public communication.
- (2) Unlawfully made broadcasts may not be fixed on video or audio recording mediums or publicly communicated.

Section II
Infringements

1. CIVIL LAW PROVISIONS; REMEDIES

Actions for Injunction and Damages

Art. 97.—

(1) As against any person who infringes a copyright or any other right protected by this Law, the injured party may bring an action for injunctive relief requiring the wrongdoer to cease and desist if there is a danger of repetition of the acts of infringement, as well as an action for damages if the infringement was intentional or the result of negligence. In place of damages, the injured party may require surrender of the profits derived by the infringer from the acts of infringement together with detailed accounting reflecting such profits.

(2) Authors, including of scientific editions (Article 70), photographers (Article 72) and performers (Article 73) may, if the infringement was intentional or the result of negligence, recover, as justice may require, a monetary indemnity for the injury caused to them even if no pecuniary loss has occurred. This right may not be assigned unless it has been acknowledged by contract or legal action asserting the right has previously been commenced.

(3) Rights arising from other statutory provisions shall not be affected.

Claim to Destruction or Surrender of Copies

Art. 98.—

(1) The injured party may require destruction of all copies unlawfully manufactured, unlawfully distributed or intended for unlawful distribution that are in the possession of the infringer or are his property.

(2) In place of the measures provided for in paragraph (1), the injured party may require that the copies that are the property of the infringer be surrendered to him in return for equitable remuneration that may not exceed the cost of manufacture.

(3) Where the measures under paragraphs (1) and (2) are disproportionate, in the individual case, for the infringer or the owner and if the infringing nature of the copies can be removed in some other way, the injured party shall have a claim only to the measures necessary for such purpose.

(Amended by the Law of March 7, 1990.)

Claim to Destruction or Surrender of Devices

Art. 99. The provisions of Article 98 shall apply *mutatis mutandis* to devices that are the property of the infringer and that are used or intended exclusively or almost exclusively for the unlawful manufacture of copies.

(Amended by the Law of March 7, 1990.)

Liability of the Owner of an Enterprise

Art. 100. If a right protected under this Law has been infringed in an enterprise by an employee or agent of such enterprise, the injured party may also assert the rights provided in Articles 97 to 99, with the exception of the right to damages, against the owner of such enterprise. Further claims which may arise from other statutory provisions shall not be affected.

Exceptions

Art. 101.—

(1) If, in the event of infringement of a right protected under this Law, the claims of the injured party for injunctive relief (Article 97), for destruction or surrender of the copies (Article 98) or the devices (Article 99) are asserted against a person whose acts of infringement were neither intentional nor negligent, such person may indemnify in money the injured party if execution of the claims would produce for him a serious and disproportionate injury and if the injured party may reasonably be required to accept redress in cash. The compensation shall represent the amount that would have constituted equitable remuneration had the right been granted by contract. Payment of such compensation shall constitute the injured party's consent to a utilization within the customary limits.

(2) The measures set out in Articles 98 and 99 shall not apply to:

1. works of architecture;
2. separable parts of copies and devices whose manufacture or distribution is not unlawful.

(Amended by the Law of March 7, 1990.)

Claim to Information in Respect of Third Parties

Art. 101a.

(1) Any person who infringes copyright or any other right protected by this Law in the course of business through the manufacture or distribution of copies may be required by the injured party to give information as to the origin and distribution channels of such copies, without delay, except where disproportionate in the individual case.

(2) The person required to give information under paragraph (1) shall give particulars of the name and address of the manufacturer, the supplier and other prior owners of the copies, of the trade customer or of the principal, as also in respect of the quantity of copies that have been manufactured, dispatched, received or ordered.

(3) In those cases where infringement is obvious, the obligation to provide information may be imposed by an injunction in compliance with the Code of Civil Procedure.

(4) Such information may only be used in criminal proceedings or in proceedings under the Law on Minor Offenses against the person required to give information, or against a dependent person under Article 52(1) of the Code of Criminal Procedure, in respect of an act committed before the information was given, with the consent of the person required to give the information.

(5) Further claims to information shall remain unaffected.

(Amended by the Law of March 7, 1990.)

Prescription

Art. 102. Claims arising from infringement of copyright or of any other right protected by this Law shall become invalid by prescription three years after the time at which the entitled person gains knowledge of the infringement and of the identity of the infringer or 30 years after the infringement, irrespective of such knowledge. Article 852(2) of the Civil Code shall apply *mutatis mutandis*. Where the infringer has made gains at the cost of the entitled person by reason of the infringement, he shall remain obliged, even after the claim has expired, to surrender such gain in accordance with the provisions on the surrender of unjustified gain.

(Amended by the Law of March 7, 1990.)

Publication of Judgment

Art. 103.—

(1) If an action has been brought under this Law, the judgment may authorize the successful party to publish the judgment at the cost of the unsuccessful party, if the successful party can offer a legitimate reason to do so. Unless the court rules otherwise, the judgment may not be published until it becomes final.

(2) The nature and extent of the publication shall be determined in the judgment. The authority to publish the judgment shall expire if it is not published within six months after it becomes final.

(3) The party given authority to publish may request that the unsuccessful party be required to defray in advance the cost of publication. This request shall be ruled upon by a competent court of first instance without oral proceedings. Prior to ruling upon the matter, the unsuccessful party shall be heard.

Legal Recourse

Art. 104. For all litigation concerning the exercise of rights arising from the legal relationships regulated by this Law (copyright litigation), ordinary legal recourse shall be accorded. For copyright litigation arising out of employment or service relationships that concern solely claims to the payment of an agreed compensation, recourse to labor courts and to administrative tribunals shall remain unaffected.

Courts for Copyright Litigation

Art. 105.—

(1) The Provincial Governments shall be empowered to assign by statutory order copyright litigation for which the Provincial Courts are competent in the first instance or on appeal to one of such Provincial Courts for the jurisdictions of a number of Provincial Courts where it is in the interests of the administration of justice.

(2) The Provincial Governments shall further be empowered to assign by statutory order copyright litigation that is of the competence of the Local Courts to one of such Local Courts for the jurisdictions of a number of Local Courts where it is in the interests of the administration of justice.

(3) The Provincial Governments may transfer the powers under paragraphs (1) and (2) to the Provincial Judicial Administrations.

(4) Parties may also be represented before a Provincial Court to which copyright litigation for the jurisdictions of a number of Provincial Courts has been assigned in accordance with paragraph (1) by lawyers admitted to the Provincial Court which would otherwise be competent. The same shall apply to representatives before the Provincial High Court acting as appeal court.

(5) The additional expense incurred by a party in being represented under paragraph (4) by a lawyer not admitted to the court hearing the case shall not be refunded.

2. CRIMINAL LAW PROVISIONS

Unauthorized Exploitation of Copyrighted Works

Art. 106.—

(1) Any person who, other than in a manner allowed by law and without the right holder's consent, reproduces, distributes or publicly communicates a work or an adaptation or transformation of a work shall be liable to imprisonment for up to three years or a fine.

(2) The attempt to commit such an offense shall be punishable.

(Amended by the Law of March 2, 1974, and by the Law of March 7, 1990.)

Unlawful Affixing of Designation of Author

Art. 107.—

(1) Any person who:

1. without the author's consent, affixes a designation of author (Article 10(1)) to the original of a work of fine art or distributes an original bearing such designation,
2. affixes a designation of author (Article 10(1)) on a copy, adaptation or transformation of a work of fine art in such manner as to give to the copy, adaptation or transformation the appearance of an original or distributes a copy, adaptation or transformation bearing such designation, shall be liable to imprisonment for up to three years or a fine if the offense does not carry a more severe penalty under other provisions.

(2) The attempt to commit such an offense shall be punishable.

(Amended by the Law of March 2, 1974, and by the Law of March 7, 1990.)

Infringement of Neighboring Rights

Art. 108.—

(1) Any person who, other than in a manner allowed by law and without the right holder's consent:

1. reproduces, distributes or publicly communicates a scientific edition (Article 70) or an adaptation or transformation of such edition;
2. exploits a posthumous work or an adaptation or transformation of such work contrary to Article 71;
3. reproduces, distributes or publicly communicates a photograph (Article 72) or an adaptation or transformation of a photograph;
4. exploits a performance contrary to Articles 74, 75 or 76(1);
5. exploits an audio recording contrary to Article 85;
6. exploits a broadcast contrary to Article 87;
7. exploits a video or video and audio recording contrary to Article 94 or Article 95 in conjunction with Article 94,

shall be liable to imprisonment for up to three years or a fine.

(2) The attempt to commit such an offense shall be punishable.

(Amended by the Law of March 2, 1974, and by the Law of March 7, 1990.)

Unlawful Exploitation on a Commercial Basis

Art. 108a.

(1) Where the person committing the acts referred to in Articles 106 to 108 does so on a commercial basis, the penalty shall be imprisonment for up to five years or a fine.

(2) The attempt to commit such an offense shall be punishable.

(Added by the Law of June 24, 1985, and amended by the Law of March 7, 1990.)

Criminal Prosecution

Art. 109. Offenses under Articles 106 to 108 shall only be prosecuted on complaint unless the prosecuting authorities deem that *ex officio* prosecution is justified in view of the particular public interest.

(Amended by the Law of June 24, 1985.)

Confiscation

Art. 110. Objects implicated in an offense under Articles 106, 107(1), item 2, 108 and 108a may be confiscated. Article 74a of the Penal Code shall apply. Where the claims referred to in Articles 98 and 99 are upheld in proceedings under the provisions of the Code of Criminal Procedure with regard to the compensation of the injured party (Articles 403 to 406c), the provisions on confiscation shall not be applied.

(Amended by the Law of June 24, 1985, and by the Law of March 7, 1990.)

Publication of the Judgment

Art. 111. If in cases covered by Articles 106 to 108a a penalty has been pronounced, the court shall, at the request of the injured party and if the latter can show a justified interest, order publication of the judgment. The nature of the publication shall be laid down in the judgment.

(Amended by the Law of June 24, 1985.)

3. MEASURES BY THE CUSTOMS AUTHORITIES

Art. 111a.

(1) Where the manufacture or distribution of copies infringes copyright or any other right protected by this Law those copies shall be subject, at the request of the holder of the rights and against his security, to seizure by the customs authorities, on import or export, in those cases where the infringement is obvious. This provision shall apply in trade with other Member States of the European Economic Community only insofar as controls are carried out by the customs authorities.

(2) where the customs authorities order a seizure, they shall advise the person entitled to dispose and also the petitioner thereof without delay. The origin, quantity and place of storage of the copies, together with the name and address of the person entitled to dispose, shall be communicated to the petitioner, the secrecy of correspondence and of mail (Article 10 of the Basic Law) shall be restricted to that extent. The petitioner shall be given the opportunity to inspect the copies where such inspection does not constitute a breach of commercial or trade secrecy.

(3) Where no opposition to the seizure is made, at the latest within two weeks of service of the notification under the first sentence of paragraph (2), the customs authorities shall order confiscation of the seized copies.

(4) If the person entitled to dispose opposes seizure, the customs authorities shall inform the petitioner thereof without delay. The petitioner shall be required to declare to the customs authorities without delay, whether he maintains the request under paragraph (1) in respect of the seized copies.

1. If the petitioner withdraws his request, the customs authorities shall lift the seizure without delay.
2. If the petitioner maintains his request and submits an executable court decision ordering the impounding of the seized copies or limitation of the right to dispose, the customs authorities shall take the necessary measures.

Where neither of the cases referred to in items 1 and 2 are applicable, the customs authorities shall lift the seizure on the expiry of two weeks after service of the notification to the petitioner under the first sentence; where the petitioner can show that a court decision according to item 2 has been requested, but has not yet been received, the seizure shall be maintained for a further two weeks at the most.

(5) Where the seizure proves to have been unjustified from the beginning and if the petitioner has maintained the request under paragraph (1) in respect of the seized copies or has not made a declaration

without delay (second sentence of paragraph (4)), he shall be required to compensate the damages that seizure has occasioned to the person entitled to dispose.

(6) The petition under paragraph (1) is to be submitted to the Regional Finance Office and shall be effective for two years unless a shorter period of validity has been requested; it may be repeated. The cost of official acts related to the request shall be charged to the petitioner in accordance with Article 178 of the Fiscal Code.

(7) Seizure and confiscation may be opposed by the legal remedies allowed by the fixed penalty procedure under the Law on Minor Offenses in respect of seizure and confiscation. The petitioner shall be heard in the review proceedings. An immediate appeal shall lie from the decision of the Local Court; it shall be heard by the Provincial High Court.

(Added by the Law of March 7, 1990.)

Section III Enforcement

1. GENERAL

Art. 112.—

Enforcement affecting a right protected by this Law shall be subject to the general rules of law in the absence of anything to the contrary in Articles 113 to 119.

2. ENFORCEMENT OF CLAIMS FOR MONEY AGAINST AUTHORS

Copyright

Art. 113. A claim for money against an author may only be enforced on a copyright with his consent and only insofar as he is able to grant exploitation rights (Article 31). The consent may not be given through a legal representative.

Originals of Works

Art. 114.—

(1) A claim for money against an author may only be enforced on originals of his works owned by him with his consent. The consent may not be given through a legal representative.

(2) Consent shall not be required:

1. where enforcement on the original of a work is necessary for enforcement on an exploitation right in the work;
2. for enforcement on the original of a work of architecture;
3. for enforcement on the original of another work of fine art, if the work has been published.

In the cases referred to in items 2 and 3, the original of the work may be distributed without the author's consent.

3. ENFORCEMENT OF CLAIMS FOR MONEY AGAINST SUCCESSORS IN TITLE OF AUTHORS

Copyright

Art. 115. A claim for money against the successor in title of an author (Article 30) may only be enforced on a copyright with his consent, and only insofar as he is able to grant exploitation rights (Article 31). Consent shall not be required if the work has been published.

Originals of Works

Art. 116.—

(1) A claim for money against the successor in title of an author (Article 30) may only be enforced on originals of works of the author owned by the successor in title with his consent.

(2) Consent shall not be required:

1. in the cases referred to in Article 114(2), first sentence;
2. for enforcement on the original of a work if the work has been published.

Article 114(2), second sentence, shall apply *mutatis mutandis*.

Executor

Art. 117. If copyright is to be exercised in accordance with Article 28(2) by an executor, it shall be for the executor to give the consent required in Articles 115 and 116.

4. ENFORCEMENT OF CLAIMS FOR MONEY AGAINST AUTHORS OF SCIENTIFIC EDITIONS AND AGAINST PHOTOGRAPHERS

Art. 118. Articles 113 to 117 shall apply *mutatis mutandis*:

1. to enforcement of claims for money against an author of a scientific edition (Article 70) and against his successor in title;
2. to enforcement of claims for money against a photographer (Article 72) and against his successor in title.

5. ENFORCEMENT OF CLAIMS FOR MONEY ON CERTAIN DEVICES

Art. 119.—

(1) Devices intended exclusively for reproduction or broadcasting, such as moulds, plates, engraving stones, blocks, stencils and negatives, shall be subject to enforcement of claims for money only if the creditor is entitled to exploit the work using such devices.

(2) The same shall apply to devices intended exclusively for presenting a cinematographic work, such as reels of film and the like.

(3) Paragraphs (1) and (2) shall apply *mutatis mutandis* to editions protected under Articles 70 and 71, to photographs protected under Article 72 and to video and audio recordings protected under Article 75, second sentence, and Articles 85, 87, 94 and 95.

PART V
SCOPE OF APPLICATION.
TRANSITIONAL AND FINAL PROVISIONS

Section I
Scope of the Law

1. COPYRIGHT

German Nationals

Art. 120.

(1) German nationals shall enjoy copyright protection—with respect to all of their works, whether or not they have been published and regardless of the place of publication. In the case of a work created by joint authors (Article 8), it shall be sufficient if one of the joint authors is a German national.

(2) Germans within the meaning of Article 116(1) of the Basic Law, who do not possess German nationality, shall have equal status with German nationals.

Foreign Nationals

Art. 121.—

(1) Foreign nationals shall enjoy copyright protection with respect to their works published in the territory to which this Law applies, unless the work or a translation of the work has been published outside that territory more than 30 days prior to its publication within that territory. Subject to the same limitation, foreign nationals shall enjoy protection with respect to their works published in the territory to which this Law applies in translation only.

(2) Works of fine art which are an integral part of real property located in the territory to which this Law applies shall be assimilated to works published in that territory for the purposes of paragraph (1).

(3) The protection afforded under paragraph (1) may be limited by a statutory order of the Federal Minister for Justice for a foreign national who does not belong to a member State of the Berne Convention for the Protection of Literary and Artistic Works and, at the time of publication of the work, had his domicile neither in the territory to which this Law applies nor in one of the member States of the Berne Union, and if the State of which he is a national does not afford adequate protection to the works of German nationals.

(4) Foreign nationals shall further enjoy copyright protection as provided by international treaty. In the absence of such treaty, such works shall be protected by copyright if, according to an announcement by the Federal Minister for Justice in the Bundesgesetzblatt, German nationals enjoy in the State of which the author is a national equivalent protection for their works.

(5) Resale royalty right (Article 26) shall be available to foreign nationals only if the State of which they are nationals grants, according to an announcement by the Federal Minister for Justice in the Bundesgesetzblatt, German nationals an equivalent right.

(6) Foreign nationals shall enjoy protection under Articles 12 to 14 with respect to all of their works, even if the conditions contained in paragraphs (1) to (5) are not fulfilled.

Stateless Persons

Art. 122.—

(1) Stateless persons who are habitually resident in the territory to which this Law applies shall enjoy with respect to their works the same copyright protection as German nationals.

(2) Stateless persons who are not habitually resident in the territory to which this Law applies shall enjoy with respect to their works the same copyright protection as the nationals of the foreign State in which they are habitually resident.

Foreign Refugees

Art. 123. The provisions of Article 122 shall apply *mutatis mutandis* to foreigners who are refugees within the meaning of treaties or other statutory provisions. This shall not preclude protection under Article 121.

2. NEIGHBORING RIGHTS

Scientific Editions and Photographs

Art. 124. Articles 120 to 123 shall apply *mutatis mutandis* for the protection of scientific editions (Article 70) and the protection of photographs (Article 72).

Protection of Performers

Art. 125.—

(1) The protection afforded by Articles 73 to 84 shall be enjoyed by German nationals with respect to all their performances, irrespective of where they take place. Article 120(2) shall apply.

(2) Foreign nationals shall enjoy protection with respect to all of their performances that take place in the territory to which this Law applies unless otherwise stipulated in paragraphs (3) and (4).

(3) If performances by foreign nationals are lawfully fixed on video or audio recordings, and if such recordings have been published, foreign nationals shall enjoy, with respect to such video or audio recordings, protection under Article 75, second sentence, Article 76(2) and Article 77 if they have been published in the territory to which this Law applies unless such recordings have been published outside the territory to which this Law applies more than 30 days before their publication within that territory.

(4) If performances of foreign nationals have been lawfully broadcast, the foreign nationals shall enjoy protection against the recording of the broadcast on a video or audio medium (Article 75, first sentence), protection against the rebroadcasting of the broadcast (Article 76(1) and the protection under Article 77 if the broadcast was transmitted from the territory to which this Law applies.

(5) Foreign nationals shall further enjoy protection as provided by international treaty. Article 121(4), second sentence, and Articles 122 and 123 shall apply *mutatis mutandis*.

(6) Protection under Articles 74, 75, first sentence, and 83 shall be enjoyed by foreign nationals with respect to all of their performances, even if the conditions contained in paragraphs (2) to (5) are not fulfilled. The same shall apply to the protection under Article 76(1) where a direct broadcast of the performance is concerned.

Protection of Producers of Audio Recordings

Art. 126.—

(1) The protection afforded by Articles 85 and 86 shall be enjoyed by German nationals or German enterprises which have their headquarters in the territory to which this Law applies with respect to all of their audio recordings, irrespective of whether and where they have been published. Article 120(2) shall apply.

(2) Foreign nationals or foreign enterprises which do not have their headquarters in the territory to which this Law applies shall enjoy protection for their audio recordings published in that territory unless the recording was published outside the territory to which this Law applies more than 30 days before it was published in that territory.

(3) Foreign nationals or foreign enterprises which do not have their headquarters in the territory to which this Law applies shall further enjoy protection as provided by international treaty. Article 121(4), second sentence, and Articles 122 and 123 shall apply *mutatis mutandis*.

Protection of Broadcasting Organizations

Art. 127.—

(1) Broadcasting organizations which have their headquarters in the territory to which this Law applies shall enjoy the protection afforded by Article 87 with respect to all of their broadcasts, irrespective of where they are broadcast.

(2) Broadcasting organizations which do not have their headquarters in the territory to which this Law applies shall enjoy protection for all of their broadcasts which are broadcast from that territory.

(3) Broadcasting organizations which do not have their headquarters in the territory to which this Law applies shall further enjoy protection as provided by international treaty. Article 121(4), second sentence, shall apply *mutatis mutandis*.

Protection of Film Producers

Art. 128.—

(1) German nationals or German enterprises which have their headquarters in the territory to which this Law applies shall enjoy the protection afforded by Articles 94 and 95 with respect to their video or video and audio recordings, irrespective of whether and where they have been published. Article 120(2) shall apply.

(2) The provisions of Article 126(2) and (3) shall apply *mutatis mutandis* to foreign nationals or foreign enterprises which do not have their headquarters in the territory to which this Law applies.

Section II Transitional Provisions

Works

Art. 129.—

(1) The provisions of this Law shall also apply to works created prior to its entry into force, unless such works were not at that time protected by copyright or unless some provision to the contrary is contained in this Law. This shall also apply *mutatis mutandis* to neighboring rights.

(2) The duration of copyright for works which have been published after the expiration of 50 years from the author's death, but prior to the entry into force of this Law shall be determined in accordance with previously existing legal provisions.

Translations

Art. 130. The rights of an author of a translation which was lawfully published prior to January 1, 1902, without the consent of the author of the work translated shall remain unaffected.

Works of Language Set to Music

Art. 131. Works of language set to music which could be reproduced, distributed and publicly communicated without the consent of the author under Article 20 of the Law on Copyright in Works of Literature and Music of June 19, 1901 (*Reichsgesetzblatt*, p. 227) in the version of the Law of May 22, 1910, giving effect to the revised Berne Convention for the Protection of Literary and Artistic Works (*Reichsgesetzblatt*, p. 793), may continue in the future to be reproduced, distributed and publicly communicated to the same extent, if the musical version of the work was published prior to the entry into force of this Law.

Contracts

Art. 132.—

(1) The provisions of this Law, with the exception of Articles 42, 43 and 79, shall not apply to contracts concluded prior to the entry into force of this Law. Articles 40 and 41 shall apply to such contracts, except that the periods mentioned in Article 40(1), second sentence, and Article 41(2) shall begin not earlier than the entry into force of this Law.

(2) Dispositions taken prior to the entry into force of this Law shall remain effective.

Repealed

Art. 133. (Repealed by the Law of August 17, 1973.)

Authors

Art. 134. Any person who, at the time of entry into force of this Law, is considered an author under the earlier provisions, but not under the provisions of this Law, shall continue to be deemed an author except for the purposes of Article 135. Where a legal person is considered the author of a work under the earlier provisions, those previous provisions shall be applicable in calculating the duration of copyright.

Owners of Neighboring Rights

Art. 135. Any person who, at the time of entry into force of this Law is considered the author of a photograph or of the recording of a work on devices for audible mechanical reproduction, under the earlier provisions, shall be the owner of the corresponding neighboring rights afforded by this Law.

Calculation of the Term of Protection

Art. 135a. Where the term of protection is shortened by the application of this Law to a right which came into being prior to the entry into force of this Law, and where the event which under this Law determines the beginning of the term of protection occurred prior to the entry into force of this Law, such term shall be calculated as from the entry into force of this Law. However, protection shall lapse not later than on expiration of the duration of protection under the earlier provisions.

(Added by the Law of November 10, 1972.)

Reproduction and Distribution

Art. 136.—

(1) Where reproduction is permissible under the earlier provisions, but prohibited under this Law, any making of copies of such reproduction commenced prior to the entry into force of this Law may be completed.

(2) Any copies made pursuant to paragraph (1) or prior to the entry into force of this Law may be distributed.

(3) If equitable remuneration is to be paid under this Law to the right holder for a reproduction which would have been free under the earlier provisions, the copies referred to in paragraph (2) may be distributed without payment of remuneration.

Transfer of Rights

Art. 137.—

(1) If copyright has been transferred prior to the entry into force of this Law, the transferee shall enjoy the corresponding exploitation rights (Article 31). However, transfer shall not be deemed in doubt to extend to rights first established by this Law.

(2) If copyright has been transferred in whole or in part to another person prior to the entry into force of this Law, the transfer shall also extend in doubt to the period of time by which the duration of copyright was extended under Articles 64 to 66. The same shall apply if, prior to the entry into force of this Law, another person has been authorized to exercise one of the rights afforded to the author.

(3) In the cases referred to in paragraph (2), the transferee or the person receiving authorization shall pay to the transferor or the person giving authorization an equitable remuneration if it is to be assumed that the latter would have obtained higher remuneration for the transfer or authorization if the extended term of protection had already been stipulated at that time.

(4) The claim to remuneration shall fall away if, as soon as it is asserted the transferee places the right at the disposal of the alien or for the time following expiry of the hitherto stipulated duration of protection or the person receiving authorization waives such authorization for that period of time. If the acquirer has further alienated the copyright prior to the entry into force of this Law, the remuneration shall not be payable if it would constitute an undue burden on the acquirer in view of the circumstances of the further alienation.

(5) Paragraph (1) shall apply to neighboring rights, *mutatis mutandis*.

Photographic Works

Art. 137a.

(1) The provisions of this Law as regards the term of copyright shall also apply to those photographic works whose term of protection under prior law has not yet expired on July 1, 1985.

(2) Where a right of exploitation in a photographic work has been assigned or transferred to another person, such assignment or transfer shall not extend, in case of doubt, to the period of time by which the term of copyright in photographic works has been extended.

(Added by the Law of June 24, 1985.)

Certain Editions

Art. 137b.

(1) The provisions of this Law concerning the term of protection under Articles 70 and 71 shall also be applied to scientific editions and posthumous editions where their term of protection under prior law has not yet expired on July 1, 1990.

(2) Where any right of exploitation in a scientific edition or a posthumous edition has been assigned or transferred to another person prior to July 1, 1990, the assignment or transfer shall also extend, in case of doubt, for the period of time by which the term of the neighboring right has been extended.

(3) The provisions of Article 137(3) and (4) shall apply *mutatis mutandis*.

(Added by the Law of March 7, 1990.)

Performers

Art. 137c.

(1) The provisions of this Law concerning the term of protection under Article 82 shall also be applied to performances recorded on video or audio mediums prior to July 1, 1990, if on January 1, 1991, 50 years have not yet elapsed since publication of the recording. If the video or audio recording has not been published within that period of time, the period is to be calculated as from the performance. Protection under this Law shall in no event exceed 50 years after publication of the video or audio recording or, if the recording has not been published, 50 years after the performance.

(2) Where a right of exploitation in the performance has been assigned or transferred to another person prior to July 1, 1990, the assignment or transfer shall also extend, in case of doubt, to the period of time by which the term of protection has been extended.

(3) The provisions of Article 137(3) and (4) shall apply *mutatis mutandis*.

(Added by the Law of March 7, 1990.)

Computer Programs

Art. 137d.

(1) The provisions of Section VIII of Part I shall also apply to computer programs created prior to June 24, 1993. However, the exclusive rental right (Article 69c, item 3) shall not extend to copies of a program acquired by others prior to January 1, 1993, for the purpose of rental.

(2) Article 69g(2) shall also apply to contracts concluded prior to June 24, 1993.

(Added by the Law of June 9, 1993.)

Transitional Provision for the Implementation of Directive 92/100/EEC

Art. 137e.

(1) The provisions of this Law that enter into force on June 30, 1995, shall also apply to works, performances, audio recordings, broadcasts and films created before that date unless they no longer enjoy protection at that date.

(2) Where an original work or a copy thereof or a video or audio recording has been acquired prior to June 30, 1995, or has been transferred to another person for the purpose of rental, the consent of the holder of the rental right (Articles 17, 75(2), 85 and 94) shall be deemed to have been given with respect to rental after such time. The renter shall pay to such rightholders an equitable remuneration; the second and third sentences of Article 27(1) with respect to the claims of authors and performers and Article 27(3) shall apply *mutatis mutandis*. Article 137d shall remain unaffected.

(3) Where a video or audio recording that has been acquired prior to June 30, 1995, or has been given to another person for the purpose of rental has been rented between July 1, 1994, and June 30, 1995, a claim to remuneration with respect to such renting shall subsist *mutatis mutandis* in accordance with the second sentence of paragraph (2).

(4) Where an author has afforded an exclusive right of distribution prior to June 30, 1995, such right shall be deemed to include the rental right. Where a performer has contributed to the production of a cinematographic work before such time or has agreed to the use of his performance in the production of a cinematographic work, his exclusive rights shall be deemed to have been transferred to the film producer. If he has agreed before such time to the recording of his performance on an audio medium and to its reproduction, his consent shall also constitute transfer of the distribution right, including the rental right.

(Added by the Law of June 23, 1995.)

(Transitional Provision for the Implementation of Directive 93/98/EEC)

Art. 137f.

(1) Where application of this Law in the version applicable as of July 1, 1995, reduces the term of an already existing right, protection shall lapse on expiry of the term of protection in accordance with the provisions applicable up to June 30, 1995. In all other cases, the provisions of this Law concerning the term of protection are also of application in the version applicable as of July 1, 1995, to works and neighboring rights whose protection has not yet expired on July 1, 1995.

(2) The provisions of this Law in the version applicable as of July 1, 1995, shall also be of application to works whose protection under this Law has expired prior to July 1, 1995, but which still subsists at such date under the law of another Member State of the European Union or of a Contracting Party to the Agreement on the European Economic Area. The first sentence shall apply *mutatis mutandis* to the neighboring rights of the publisher of posthumous works (Article 71), of performers (Article 73), of the producers of audio recordings (Article 85), of broadcasting organizations (Article 87) and of film producers (Articles 94 and 95).

(3) Where the protection for a work within the territory to which this Law applies resumes in accordance with paragraph (2), the resumed rights shall belong to the author. Any act of exploitation begun prior to July 1, 1995, may be continued, however, in the agreed form. Equitable remuneration shall be paid for exploitation after July 1, 1995. The first to third sentences shall apply *mutatis mutandis* to neighboring rights.

(4) Where a right of exploitation is granted or transferred to another person prior to July 1, 1995, in a performance still protected by this Law, the grant or transfer shall extend where there is a doubt to the period also by which the term of protection has been extended. In the case under the first sentence, equitable remuneration shall be paid.

(Added by the Law of June 23, 1995.)

Section III Final Provisions

Register of Authors

Art. 138.—

(1) The Register of Authors for the entries set out in Article 66(2), item 2, shall be kept at the Patent Office. The Patent Office shall effect the entries without verifying the applicant's entitlement or the accuracy of the information submitted for entry.

(2) If entry is refused, the applicant may petition for a decision by the courts. The petition shall be heard by the Provincial High Court having jurisdiction for the district in which the Patent Office has its headquarters and which shall give a reasoned decision. The petition shall be made in writing to the Provincial High Court. The decision of the Provincial High Court shall be final. In other respects, judicial procedure shall be governed by the provisions of the Law on Matters of Voluntary Jurisdiction. The court costs shall be governed by the Regulations on Costs; the fees shall be determined by Article 131 of the Regulations on Costs.

(3) The entries shall be published in the *Bundesanzeiger*. The cost of publication shall be paid in advance by the applicant.

(4) Any person may inspect the Register of Authors. Extracts from the Register shall be issued on request; when required, they shall be certified.

(5) The Federal Minister for Justice shall be empowered to issue statutory orders

1. regulating the form of the application and the maintenance of the Register of Authors;
2. ordering the imposition of charges (fees and expenses) to cover administrative costs relating to the entry, the issuing of a certificate of entry and the issuing of other extracts or their certification, and regulating matters concerning the party liable for costs, the time at which charges are due, the obligation of payment in advance, exemption from charges, limitation, the procedure for the fixing of charges, and legal remedies against the fixing of charges. The fee for an entry shall not exceed 30 German marks.

(6) Entries made with the Leipzig City Council under Article 56 of the Law on Copyright in Works of Literature and Music of June 19, 1901, shall remain effective.

(Amended by the Law of June 23, 1970.)

Art. 139–141. Amending and Repealing Provisions.

Application in *Land* Berlin

Art. 142. This Law shall also apply in the Land Berlin in accordance with Article 13(1), of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt* I, p. 1). Statutory orders issued pursuant to this Law shall also apply in the Land Berlin in accordance with Article 14 of the Third Transitional Law.

Entry Into Force

Art. 143.—

(1) Articles 64 to 67, 69, 105(1) to (3) and 138(5) shall enter into force on the day following promulgation of this Law.

(2) All other provisions of this Law shall enter into force on January 1, 1966.

ANNEX (to Article 54(4) of the Copyright Law)

Rates of Remuneration

I. Remuneration under Article 54(1):

The remuneration due to all owners of rights shall be

- | | | |
|----|--|----------|
| 1. | for each audio recording appliance | 2.50 DM |
| 2. | for each video recording appliance with or without audio recording | 18.00 DM |
| 3. | in respect of audio recording mediums, for each hour of playing time in normal utilization | 0.12 DM |
| 4. | in respect of video recording mediums, for each hour of playing time in normal utilization | 0.17 DM |
| 5. | for each audio and video recording appliance for whose operation separate mediums are not required (items 3 and 4), twice the remuneration rates under items 1 and 2 | |

II Remuneration under [Article 54\(2\)](#) :

- | | | |
|----|---|---------|
| 1. | Remuneration due to all owners of rights under Article 54(2), first sentence, shall be, for each reproduction appliance with a capacity of | |
| | from 2 to 12 copies a minute | 75 DM |
| | from 13 to 35 copies a minute | 100 DM |
| | from 36 to 70 copies a minute | 150 DM |
| | more than 70 copies a minute | 600 DM |
| 2. | Remuneration due to all owners of rights under Article 54(2), second sentence, shall be, for each DIN A4 page of photocopying | |
| | (a) for photocopies made exclusively from books approved by a provincial authority as school books and intended for school use | 0.05 DM |
| | (b) for all other photocopies | 0.02 DM |
| 3. | For reproduction appliances with which polychrome photocopies can be made and for polychrome photocopies, the rate of remuneration shall be double. | |
| 4. | These rates of remuneration shall be applied <i>mutatis mutandis</i> to other reproduction processes having a comparable effect. | |

(Amended by the Law of July 25, 1994.)
