

Federal Act

Establishing the General Conditions for information and Communication Services

-Information and Communication Services Act-

(Informations- und Kommunikationsdienste-Gesetz - IuKDG)

August 1 1997

The text of this act and further documents can be found under the URL:

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Article 7 Amendment of the Copyright Act (*Urheberrechtsgesetz*)

The Copyright Act dated 9 September 1965 (Federal Law Gazette [BGBl.] Part I, p. 1273), last amended by Art. 5 of the Act of 19 July 1996 (BGBl. Part I, p. 1014) shall be amended as follows:

1. § 4 shall be worded as follows:

“§ 4 Collections and database Works

(1) Collections of works, data or other independent elements which, by reason of the selection or arrangement of the elements, constitute a personal intellectual creation (collections) shall enjoy protection as independent works without prejudice to a copyright or neighbouring right existing in the elements included in the collection.

(2) Within the meaning of this Act a database work is a collection arranged in a systematic or methodical way, the elements of which are individually accessible either by electronic or by other means. A computer program (§ 69 a) used to create the database work or to render its elements accessible does not constitute a component of the data base work.”

2. § 23 second sentence shall be amended as follows:

- a) The word “or” appearing after the word “arts” shall be replaced by a comma.
- b) The words “or of the adaption or other transformation of a database work” shall be inserted after the word “architecture”.

3. § 53 shall be amended as follows:

- a) The following subsection 5 shall be inserted after subsection 4:

“Subsection 1 as well as subsection 2 (2) to (4) shall not apply to database works the elements of which are individually accessible by electronic means. Subsection 2 (1) shall apply to such database works on condition that the scientific use does not serve commercial purposes.”

b) The former subsections 5 and 6 shall become subsections 6 and 7.

4. The following § 55a shall be inserted after § 55:

“§ 55a Use of a database Work

Adaption or other transformation and the reproduction of a database work by the owner of a copy of the data base work, having been put into circulation with the consent of the creator by way of sale, by a person in other ways entitled to use the copy of the database work or by anyone to whom a database work has been made accessible on the basis of a contract with the creator or with a third party who has the former’s consent, shall be permissible if and to the extent that the adaptation or other transformation or copying is necessary for access to the elements of the database work and for its usual use. If, on the basis of a contract described in sentence 1, only a part of the data base work is made accessible, it shall only be permissible to adapt or otherwise transform and to reproduce this portion. Any contractual provisions to the contrary shall be null and void.”

5. § 63 subsection 1 (1) shall be amended as follows:

a) The following sentence 2 shall be inserted after sentence 1 in § 63 subsection 1:

“The same shall apply to the reproduction of a database work in the cases outlined in § 53 subsection 2 (1) and subsection 3 (1).”

b) The former sentences 2 and 3 shall become sentences 3 and 4.

6. The following chapter shall be inserted after § 87:

**“Chapter Six
Protection of the Maker of a Database**

§ 87a Definitions

(1) A database within the meaning of this Act is a collection of works, data or other independent elements arranged in a systematic or methodical way the elements of which are individually accessible either by electronic or by other means, and the obtaining, verification or presentation of which requires a qualitatively or quantitatively substantial investment. A database the contents of which has been changed in a way that is qualitatively or quantitatively substantial is deemed a new database provided that the change entails a qualitatively or quantitatively substantial investment.

(2) The maker of a database within the meaning of this Act is the one who has made the investment defined in subsection 1.

§ 87b Rights of the Maker of the Database

(1) The maker of the database has the exclusive right to reproduce, to distribute and to communicate to the public the whole data base or a qualitatively or quantitatively substantial part thereof. The repeated or systematical reproduction, distribution or communication to the public of qualitatively and quantitatively insubstantial parts of the database shall be deemed as equivalent to the reproduction, distribution or communication of a qualitatively or quantitatively substantial part of the database provided that these acts run counter to a normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.

(2) § 17 subsection 2 and § 27 subsections 2 and 3 shall apply accordingly.

§ 87c Limitations on the rights of the Maker of a Database

(1) The reproduction of a qualitatively or quantitatively substantial part of a database shall be permissible:

1. for private use; this shall not apply to a database the elements of which are individually accessible by electronic means;
2. for the purposes of personal scientific use, if and to the extent that the copying for this purpose is necessary and the scientific use does not serve commercial purposes;
3. for personal use in teaching, in non-commercial institutions of education and further education and in vocational training in a quantity required for one school class.

In the cases outlined in numbers 2 and 3, the source must be clearly acknowledged.

(2) The reproduction, distribution and communication to the public of a qualitatively or quantitatively substantial part of a database shall be permissible for use in proceedings before a court, an arbitration tribunal or a public authority as well as for purposes of public security.

§ 87d Term of Protection

The rights of the creator of a database shall expire fifteen years after the publication of the database, and fifteen years after the making of the database if it has not been published within that period of time. The period of time shall be calculated in accordance with § 69.

§ 87e Contracts Dealing with the Use of a Database

A contractual agreement according to which the owner of a copy of the database, having been put into circulation with the consent of the maker of the database by way of sale, or the person in other ways entitled to use the copy of the database or anyone to whom a database has been made accessible on the basis of a contract with the maker of the database or with a third party who has the former's consent, obligates himself vis-à-vis the maker of the database to refrain from reproducing, distributing or communicating to the public qualitatively and quantitatively insubstantial parts of the database, shall be invalid to the extent that these acts run counter to the normal exploitation of the database nor unreasonably prejudice the legitimate interests of the maker of the database."

7. The following number shall be inserted after § 108 subsection 1(7):

"8. uses a database in breach of § 87b subsection 1."

8. In § 119 subsection 3 after the word "photographs", the word "and" shall be replaced by a comma and the words "and the databases protected according to § 87b subsection 1" shall be inserted after the word "phonogram".

9. The following § 127 a shall be inserted after § 127:

"§ 127a Protection of the Creator of a Data Base

(1) The protection granted by § 87 b shall be available to German citizens and to legal entities with a registered office located in the territory in which this Act applies. § 120 subsection 2 shall apply.

(2) Legal entities without a registered office in the territory in which this Act applies but which have been established according to German law or according to the law of one of the states listed in § 120 subsection 2(2) shall enjoy the protection granted by § 87b if:

1. their central administration or principal place of business is geographically located in one of the states listed in § 120 subsection 2(2); or
2. their registered office, as defined by the articles of association, is located in one of these states and their activities have a de facto connection with the German economy or to the economy of one of these states.

(3) In the remaining cases, foreign citizens and legal entities shall enjoy the protection granted by the provisions of international agreements and the protection of agreements entered into between the European Community and third party states; these agreements are published by the Federal Ministry of Justice in the *Bundesgesetzblatt* [Federal Law Gazette]."

10. The following § 137g shall be inserted after § 137f:

"§ 137g Transitional regulation in implementing Directive 96/9/EC

(1) § 23 second sentence, § 53 subsection 5, § 55a and § 63 subsection 1 second sentence shall also apply to database works created prior to 1 January 1998.

(2) The provisions contained in Chapter Six of Part II shall also apply to databases created between 1 January 1983 and 31 December 1997. The term of protection in such cases shall commence on 1 January 1998.

(3) § 55a and § 87e shall not apply to contracts concluded before 1 January 1998.”

Article 8 Amendment of the Price Indication Act (*Preisangabengesetz*)

The following sentence is added to § 1 of the Price Indication Act dated 3 December 1984 (Federal Law Gazette (BGBl.) Part 1, p. 1429):

“In the case of services to be provided in the field of electronic information and communications services, also regulations regarding information on the price level of on-going services may be issued.”

Article 9 Amendment of the Price Indication Ordinance (*Preisangabenverordnung*)

The Price Indication Ordinance dated 14 March 1985 (Federal Law Gazette (BGBl.) Part 1, p. 580), last amended by (BGBl.)) is amended as follows:

1. The following sentences are added to subsection 1 of § 3:

“The screen of a monitor shall also be deemed to be a place of the offer to provide a service. If a service is provided by display on a monitor and charged per unit, separate display of the price to be paid for the on-going use of such service shall be offered free of charge.”

2. Number 2 of subsection 2 of § 8 is amended to read as follows:

“2. of the first, second or fourth sentence of subsection 1 of § 3, or subsection 2, in each case also in conjunction with subsection 5 of § 2 regarding the erection, affixing or provision of price lists or regarding the offer to display the price.”

Article 10 Return to Uniform Order of Ordinance (*Rückkehr zum einheitlichen Verordnungsrang*)

Those parts of the Price Indication Ordinance which are based on Article 8 of this Act can be amended through a legal ordinance on the basis of the empowerment contained in § 1 of the Price Indication Act.

Article 11 Entry into Force

This Act shall enter into force on 1 August 1997 with the exception of Article 7, which shall enter into force on 1 January 1998.