

# Fourth Law to Amend the Copyright Law

of 8 May 1998

The Federal Parliament has passed the following Law:

## *Article 1 Amendment of the Copyright Law*

The Copyright Law of 9 September 1965 (Federal Law Gazette 1 page 1273), last amended by [Article 7](#) of the Law of 22 July 1997 (Federal Law Gazette 1 page 1870), shall be amended as follows:

1. [Article 20](#) shall be worded as follows:

### *“Article 20 Right of Broadcasting*

The right of broadcasting is the right to make the work accessible to the public by broadcasting, such as radio and television transmission, satellite transmission, cable retransmission or by other similar technical devices.”

2. The following [Articles 20a](#) and [20b](#) shall be inserted after [Article 20](#):

### *“Article 20a European Broadcasts Transmitted by Satellite*

(1) If a satellite broadcast is transmitted in the territory of a Member State of the European Union or of a Contracting State of the Convention Concerning the European Economic Area, it shall be deemed to have been transmitted solely in that Member State or Contracting State.

(2) If a satellite broadcast is transmitted in the territory of a state which is neither a Member State of the European Union nor a Contracting State of the Convention Concerning the European Economic Area and in which the level of protection provided for under [Chapter 11](#) of Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJEC No. L 248 page 15) is not guaranteed in the law on satellite broadcasting, it shall be deemed to have been transmitted in the Member State or Contracting State

1. in which the uplink station is situated from which the program-carrying signals are transmitted to the satellite, or
2. in which the broadcasting organization is established if the condition under [item 1](#) does not subsist.

The right of broadcasting shall be exercisable in the case under [item 1](#) against the operator of the uplink station, and in the case under [item 2](#) against the broadcasting organization.

(3) A satellite broadcast within the meaning of [paragraph \(1\)](#) and [\(2\)](#) means the introduction, under the control and responsibility of the broadcasting organization of

program-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth.

### *Article 20b Cable Retransmission*

(1) The right to retransmit a transmitted work in the framework of simultaneous, unaltered and unabridged retransmission of a programme by a cable or microwave system (cable retransmission) may be exercised by a collecting society only. This shall not apply to rights that a broadcasting organization exercises in respect of its transmissions.

(2) If the author has granted the right of cable retransmission to a broadcasting organization or to the producer of an audio recording or a film, the broadcasting organization shall nevertheless pay reasonable remuneration for the cable retransmission. The claim to remuneration may not be waived. It may only be assigned in advance to a collecting society and shall only be exercisable by a collecting society. This provision shall not run counter to collective agreements or works agreements of broadcasting organizations if the author is thereby granted reasonable remuneration for each cable retransmission.”

3. The following [paragraph \(3\)](#) shall be inserted in [Article 76](#):

“(3) [Article 20b](#) shall apply mutatis mutandis.”

4. The following [paragraph \(4\)](#) shall be inserted in [Article 87](#):

“(4) Broadcasting organizations and cable operators shall be mutually required to conclude a contract on reasonable terms regarding cable retransmission within the meaning of the first sentence of [Article 20b \(1\)](#) unless there is an objective ground justifying refusal to conclude the agreement; the requirement imposed on a broadcasting organization shall also apply to broadcasting rights granted or transferred to it in respect of its own transmission.”

5. [Article 87c \(1\)](#), first sentence, [item 3](#) shall be worded as follows:

“3. when used for illustration purposes in teaching provided such use does not serve commercial purposes.”

6. In [Article 94 \(4\)](#) the words “[Article 27 \(2\)](#) and [\(3\)](#)” shall be replaced by the words “[Article 20b](#), [27 \(2\)](#) and [\(3\)](#).”

7. The following provision shall be inserted before [Article 138](#):

### *“Article 137h Transitional Provision in Implementation of Directive 93/83/EEC*

(1) The provision in [Article 20a](#) shall apply only from 1 January 2000 to agreements that were concluded before 1 June 1998 if they expire after the former date.

(2) If a contract concerning co-production of a video or audio recording, concluded between two or more co-producers before 1 June 1998, of whom at least one is a national of a Member State of the European Union or of a Contracting State of the Convention

Concerning the European Economic Area, makes provision for division of the broadcasting right amongst producers by geographical areas, without distinguishing according to broadcast by satellite or other kinds of broadcast, and if the broadcast by satellite of the co-production by one producer would prejudice exploitation of the exclusive rights of another producer in a given territory or language, the broadcast by satellite shall be permissible only with the consent of the holder of these exclusive rights.

(3) The provision in [Article 20b \(2\)](#) shall be applied only if the contract granting the right of cable retransmission was concluded after 1 June 1998.”

### *Article 2 Amendment of the Copyright Administration Law*

The Copyright Administration Law of 9 September 1969 (Federal Law Gazette 1 page 1294), last amended by [Article 2](#) of the Law of 23 June 1995 (Federal Law Gazette 1 page 842), shall be amended as follows:

1. [Article 13b](#) shall be amended as follows:

a) The heading shall be worded as follows:

“Presumption of Entitlement; External Parties on Cable Retransmission

b) The following [paragraphs \(3\)](#) and [\(4\)](#) shall be inserted:

“(3) If the right holder has not transferred the administration of his right of cable retransmission within the meaning of the first sentence of [Article 20b \(1\)](#) of the Copyright Law to a collecting society, the collecting society which administers rights of the same category shall be deemed to be mandated to administer his rights. If more than one collecting society administers rights of that category, the collecting societies concerned shall be deemed to be mandated jointly; if the right holder chooses one of them, only the collecting society chosen shall be deemed to be mandated. The first and second sentences shall not apply to rights held by the broadcasting organization whose broadcast is retransmitted.

(4) Where the collecting society deemed to be mandated pursuant to [paragraph \(3\)](#) concludes an agreement on cable retransmission, the right holder shall have the same rights and duties in relation to such collecting society as he would have if he transferred his rights to be exercised by that collecting society. His claims shall be subject to a limitation period of three years from the date on which the collecting society is required to submit a statement of account regarding the cable retransmission in accordance with its articles of association; the collecting society shall not assert that the right holder is subject to a shorter period either by virtue of a notification period or for some similar reason.”

2. [Article 14](#) shall be amended as follows:

a) [Paragraph \(1\)](#) shall be worded as follows:

“(1) In disputes any party may apply to the Arbitration Board

1. where a collecting society is a party to the dispute if it

- a) concerns the use of works or performances protected by the Copyright Law, or
  - b) the conclusion or amendment of an inclusive contract.
2. where a broadcasting organization and a cable operator are parties to the dispute if it concerns the duty to conclude a contract on cable retransmission.
- b) In **paragraph (6)** the words “**paragraph (1), item 2**” shall be replaced by the words “**paragraph 1, item 1 b**”.
3. The following sentence shall be inserted at the end of **Article 14a (3)**: “If the dispute concerns the granting or transferral of exploitation rights in respect of cable retransmission this period shall amount to three months.”
4. In Article 14b the words “Article 14 (1), item 1” in paragraph (1) and in paragraph (2) shall be replaced by the words “Article 14 (1), item 1 a)”.
5. In **Article 14c (1)**, first sentence the words “**Article 14 (1), item 2**” shall be replaced by the words “**Article 14 (1), item 1 b**”.
6. The following **Article 14d** shall be inserted after **Article 14c**:

*“Article 14d Disputes Concerning Rights of Cable Retransmission*

In the case of disputes under **Article 14 (1), item 2, Article 14c** shall apply mutatis mutandis.”

7. **Article 16** shall be amended as follows:

- a) In **paragraph (2)** the words “**Article 14 (1), item 1**” shall be replaced by the words “**Article 14 (1), item 1 b**”.
- b) In **paragraph (4)** the words “and of a contract under **Article 14 (1), item 2**” shall be inserted after the words “of an inclusive contract (**Article 12**)”.

*Article 3 Entry into Force*

(1) This Law shall enter into force on the first day of the calendar month following its promulgation.

The constitutional rights of the Federal Council have been heeded. The above Law is hereby executed and promulgated in the Federal Law Gazette.

Berlin, 8 May 1998

The Federal President Roman Herzog

The Federal Chancellor Dr. Helmut Kohl

The Federal Minister of Justice Schmidt-Jortzig