
Act Amending the 1912 Copyright Act in Connection With the Prevention of Piracy of Works Protected by Copyright

(of July 3, 1989)

Section I. The following amendments shall be made to the 1912 Copyright Act*:

A. The letters (a), (b) and (c) in the first paragraph of Section 25, shall be amended to (b), (c) and (d) respectively.

A new part (a) shall be inserted in the first paragraph of Section 25, which shall read as follows:

(a) the right to oppose the publication of the work without stating his name or other designation as creator, unless such opposition would be unreasonable;

The second paragraph of Section 25 shall be replaced by the following:

Upon the death of the creator and until the expiry of the copyright, the rights referred to in the first paragraph shall be vested in the person designated by the creator in his last will and testament or by codicil.

The third paragraph of Section 25 shall be replaced by the following:

The right referred to under (a) in the first paragraph may be waived. The rights referred to under (b) and (c) may be waived insofar as changes to the work or its title are concerned.

B. A new Section 27a shall be inserted, which shall read as follows:

Section 27a. In addition to suing for damages, the creator or the person in whom his rights are vested may apply to the courts for a ruling ordering the person who has infringed the copyright to surrender the profit deriving from the infringement and to render accounts therefor.

The creator or the person in whom his rights are vested may also make one or both of the applications referred to in the first paragraph partly or wholly on behalf of a license holder without prejudice to the latter's right to join proceedings instituted independently or partly or wholly on his behalf by the creator or the person in whom his rights are vested in order to obtain direct compensation for losses he has suffered or to obtain a proportionate share of the profits surrendered by the defendant. Either or both of the applications referred to in the first paragraph may only be made by a license holder if he has secured the power to do so from the creator or the person in whom the creator's rights are vested.

C. The first paragraph of Section 28 shall be replaced by the following:

Copyright confers the right to seize objects which have been published in breach of copyright and unauthorized reproductions thereof in the manner prescribed by and taking into consideration the provisions governing the attachment of movable property and either institute a claim for these as one's own property or apply for their destruction or that they be rendered useless. A similar power to seize or institute proceedings for recovery shall apply to admission fees paid by persons attending a lecture, performance, showing or exhibition at which a breach of copyright has taken place, as well as to other monies which it is reasonable to assume have been obtained through or as a result of a breach of copyright. The power of seizure referred to in the first sentence of this paragraph, and the right to apply for the destruction or rendering useless of objects shall also apply to objects which have been used to effect a breach of copyright. Unless otherwise agreed, the license holder shall have the right to exercise the powers referred to in this subsection, insofar as the purpose is to protect rights which he is entitled to exercise.

D. A new Section 30b shall be inserted, which shall read as follows:

Section 30b. At the request of one or more commercial or professional bodies which, in the opinion of Our Minister of Justice and Our Minister for Economic Affairs, can be deemed adequately to represent the interests of their members, which are legal persons with full legal capacity and whose

* For the basic law, see *Copyright*, 1973, pp. 181 *et seq.*

objective is to further the interests of persons who import literary, scientific or artistic works into the Netherlands, and publish or reproduce such works on a commercial or professional basis, the aforementioned Ministers may together decide that the professional or commercial bodies designated by them shall be obliged to keep their records in a manner to be indicated by them.

Any person who fails to fulfill the obligation referred to above shall be liable to a second category fine. The offense shall be a summary offense.

E. A new Section 31a shall be inserted, which shall read as follows:

Section 31a. Any person who intentionally:

- (a) offers for public distribution,
- (b) has in his possession for the purpose of reproduction or distribution,
- (c) has in his possession for the purpose of import into the Netherlands or
- (d) keeps in order to make a profit

an object containing a work the copyright on which has been infringed, shall be liable to a term of imprisonment not exceeding six months or a fourth category fine.

F. A new Section 31b shall be inserted, which shall read as follows:

Section 31b. Any person who commits the summary offenses referred to in Sections 31 and 31a on a professional or commercial basis shall be liable to a term of imprisonment not exceeding four years or a fifth category fine.

G. Section 32 shall be replaced by the following:

Section 32. Any person who intentionally:

- (a) offers for public distribution,
- (b) has in his possession for the purpose of reproduction or distribution,
- (c) has in his possession for the purpose of import into the Netherlands, or
- (d) keeps in order to make a profit

an object which he may reasonably suspect contains a work the copyright on which has been infringed, shall be liable to a third category fine.

H. Section 33 shall be replaced by the following:

Section 33. The offenses described in Sections 31, 31a, 31b and 32 shall be indictable offenses.

I. A new Section 36a shall be inserted, which shall read as follows:

Section 36a. Officials investigating the offenses referred to in this Act shall be entitled at all times to see all documents or other data carriers in the possession of persons who on a professional or commercial basis import into the Netherlands, publish or reproduce literary, scientific or artistic works, where inspection of such documents or data carriers may reasonably be deemed to be necessary for the performance of their duties.

J. In Sections 34, 35, 35a and 35b the words “shall be deemed to be” shall be replaced by “is.”

K. Section 45e shall be replaced by the following:

Section 45e. In addition to enjoying the rights referred to in the first paragraph of Section 25 under (b), (c) and (d), the creator of film shall be entitled to:

- (a) have his name appear at the customary place on the work in question, together with his capacity or the nature of his contribution to the film;
- (b) require that the section of the film referred to under (a) is shown;
- (c) refuse to allow his name to appear in the film, unless such a refusal would be unreasonable.

L. In Section 45f the phrase “the first paragraph under (b)” shall be replaced by “the first paragraph under (c).”

Section II. This Act shall enter into force on a date to be determined by Royal Decree.

Entry into force: See Section II.

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