

# Law on Copyright and Neighboring Rights (Copyright Law)\*

(Text of September 9, 1965, as last amended by the Law of July 16, 1998)

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## **PART I COPYRIGHT**

### **Chapter I General**

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

### **Chapter II Works**

#### **Protected Works**

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 Law of June 9, 1993]

#### **Adaptations**

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 Law of June 24, 1985]

#### **Collections and Databases**

4.—(1) Collections of works, data or other independent materials which, by reason of their selection or arrangement, constitute personal intellectual creations (collections) shall enjoy protection as independent works without prejudice to any copyright or neighboring rights subsisting in individual materials.

(2) For the purposes of this Law, “database” shall mean a collection of which the materials are arranged in a systematic or methodical way and are individually accessible with the help of electronic or other means. A computer program used to create a database or to enable access to its materials ([Section 69\(a\)](#)) shall not be deemed a part of the database.

[Amended by Law of July 22, 1997]

### **Official Works**

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 [Section 62\(1\) to \(3\)](#) and [Section 63\(1\)](#) and (2) concerning prohibited alterations and acknowledgment of sources shall apply *mutatis mutandis*.

### **Published Works and Released Works**

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.

## **Chapter III Authors**

### **Author**

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

### **Joint Authors**

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 ([Section 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**

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**

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 [subsection \(1\)](#), 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.

## **Chapter IV Scope of Copyright**

### *1. General*

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**

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**

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**

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**

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 ([Section 16](#));
2. the right of distribution ([Section 17](#));
3. the right of exhibition ([Section 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 ([Section 19](#));
2. the right of broadcasting ([Section 20](#));
3. the right of communication by means of video or audio recordings ([Section 21](#));
4. the right of communication of broadcasts ([Section 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**

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.

### **Distribution Right**

17.—(1) The distribution right shall be the right to offer to the public or to put into circulation an original work or copies thereof.

(2) If an original work or copies thereof have been put into circulation by way of sale with the consent of the person entitled to distribute the work in the territory of the European Union or of another Contracting State to the Agreement on the European Economic Area, their future distribution shall be permissible, with the exception of rental.

(3) For the purposes of this Law, “rental” means making available for use for a limited period of time and for direct or indirect commercial purposes. However, the making available of original works or copies thereof,

1. of architecture and of applied art; or
2. under an employment or service relationship for the exclusive purpose of being used in execution of duties under the employment or service relationship, shall not be deemed to constitute rental.

[Amended by Law of June 23, 1995]

### **Right of Exhibition**

**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**

**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 ([Section 22](#)).

### **Right of Broadcasting**

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

[Amended by Law of May 8, 1998]

### **European Satellite Broadcasts**

**20a.**—(1) If a satellite broadcast is effected within the territory of a Member State of the European Union or a Contracting State to the Agreement on the European

Economic Area, such broadcast shall be deemed to have occurred exclusively in that Member State or Contracting State.

(2) If a satellite broadcast is effected on the territory of a State that is neither a Member State of the European Union nor a Contracting State to the Agreement on the European Economic Area and in which satellite broadcasting rights do not enjoy the level of protection provided for under [Chapter II](#) of Council Directive 93/83/EEC of September 27, 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (*Official Journal of the European Communities* (OJ) No. L 248, p. 15), such broadcast shall be deemed to have occurred in the Member State or Contracting State

1. in which is located the uplink station from which the program-carrying signals are transmitted to the satellite; or
2. in which the broadcasting organization has its establishment, if the circumstance under [item 1](#) does not apply.

The right of broadcasting shall be assertable 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) For the purposes of [subsections \(1\)](#) and [\(2\)](#), “satellite broadcast” shall mean 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.

[Added by Law of May 8, 1998]

### **Cable Retransmission**

**20b.**—(1) The right to retransmit a broadcast work as part of a simultaneous, unaltered and unabridged program retransmitted by a cable or microwave system (cable retransmission), may only be asserted by a collecting society. This shall not apply to rights asserted by a broadcasting organization in relation to its own broadcasts.

(2) Where an author has transferred his right of cable retransmission to a broadcasting organization or to a producer of sound recordings or films, the cable operator shall nevertheless pay equitable remuneration for the cable retransmission to the author. The claim to remuneration may not be waived. It may be assigned in advance only to a collecting society and asserted only by such society. This provision shall not preclude collective agreements and works agreements of the broadcasting organizations providing such agreements afford equitable remuneration to the author for each cable retransmission.

[Added by Law of May 8, 1998]

### **Right of Communication by Video or Audio Recordings**

**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. [Section 19\(3\)](#) shall apply *mutatis mutandis*.

## **Right of Communication of Broadcasts**

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. [Section 19\(3\)](#) shall apply *mutatis mutandis*.

## **Adaptations and Transformations**

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, of copies of an architectural work or of adaptations or transformations of a database, the author's consent shall be required for the making of such adaptation or transformation.

[Amended by Law of July 22, 1997]

## **Free Use**

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) [Subsection \(1\)](#) 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**

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**

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 DEM 100.

(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 [subsections \(3\)](#) 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 [subsections \(3\)](#) 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 Law of November 10, 1972]

### **Remuneration for Rental and Lending**

**27.**—(1) Where an author has transferred his rental right ([Section 17](#)) in a video or audio recording to the producer of the audio recording or film, the renter shall nevertheless pay equitable remuneration for the rental to the author. The claim to remuneration may not be waived. It may be assigned in advance only to a collecting society.

(2) For the lending of original works or copies thereof in respect of which further distribution is permitted under [Section 17\(2\)](#), an equitable remuneration shall be paid to the author if the original work or copies thereof are lent through an institution accessible to the public (library, collection of video or audio recordings or other original works or copies) . For the purposes of the first sentence, “lending” means making available for use for a limited period of time and not for direct or indirect commercial purposes; [Section 17\(3\)](#), second sentence, shall apply *mutatis mutandis*.

(3) Claims to remuneration under [subsections \(1\)](#) and [\(2\)](#) may only be asserted through a collecting society.

[Amended by Law of June 23, 1995]

## **Chapter V Dealings with Rights in Copyright**

### *1. Succession to Copyright*

#### **Inheritance of Copyright**

**28.**—(1) Copyright may be transferred by inheritance.

(2) The author may transfer the exercise of copyright to an executor by testamentary disposition. **Section 2210** of the Civil Code [*Bürgerliches Gesetzbuch*] shall not apply.

### **Transfer of Copyright**

**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**

**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**

**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. [Section 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**

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

### **Continuing Effect of Non-exclusive Exploitation Rights**

**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**

**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 ([Section 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**

**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 [Section 34\(1\)](#), second sentence, [\(2\)](#) and [\(4\)](#) shall apply *mutatis mutandis*.

### **Author’s Participation**

**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**

**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**

**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) [Subsection \(1\)](#), second sentence, 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 nonexclusive 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**

**39.**—(1) The holder of an exploitation right may not alter the work, its title or the designation of author ([Section 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**

**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**

**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**

**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 ([Section 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 [Section 41\(5\)](#) and [\(7\)](#) shall apply *mutatis mutandis*.

### **Authors in Employment or Service**

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**

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.

## **Chapter VI Limitations on Copyright**

#### **Administration of Justice and Public Safety**

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**

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) [Subsection \(1\)](#) 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 [subsection \(1\)](#) 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 ([Section 42](#)). The provisions of [Section 136\(1\)](#) and [\(2\)](#) shall be applicable *mutatis mutandis*.

[Amended by Law of November 10, 1972]

### **School Broadcasts**

**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 Law of June 24, 1985]

### **Public Speeches**

**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 [subsection \(1\)](#), [item 2](#), in the form of a collection containing predominantly speeches by the same author.

### **Newspaper Articles and Broadcast Commentaries**

**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 Law of June 24, 1985]

### **Visual and Sound Reporting**

**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**

**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**

**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 ([Section 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 Law of June 24, 1985]



## Reproduction for Private and Other Personal Uses

**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 [subsection \(2\), item 2](#), or for personal use in the case of a work that has been out of print for at least two years.

(5) [Subsection \(1\)](#) and [subsection \(2\), items 2 to 4](#), shall not apply to databases of which the materials are individually accessible with the help of electronic means. [Subsection \(2\), item 1](#), shall apply to such databases on condition that the scientific use is not made for commercial purposes.

(6) 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.

(7) 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 Laws of June 24, 1985, June 9, 1993 and July 22, 1997]

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

**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 [Section 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 or who deals therein shall be jointly liable. A dealer shall not be liable if he procures in one half calendar year video or audio recording mediums with less than 6,000 hours of playing time and less than 100 appliances.

(2) The importer shall be the person who introduces the appliances or the video or audio recording mediums, or causes them to be introduced, into the territory to which this Law applies. Where the importing is based on a contract with a person foreign to that territory, the importer shall be that contractual party alone who is domiciled in the territory to which this Law applies, insofar as he is commercially active. Any person who acts simply as forwarding agent, carrier or the like in the introduction of the goods shall not be considered the importer. A person who introduces goods from third countries, or causes them to be introduced, into a free zone or a free warehouse in accordance with Article 166 of Council Regulation (EEC) No. 2913/92 of October 12, 1992 establishing the Community Customs Code (OJ No. L 302, p. 1) shall only be deemed the importer if the items are used in that territory or if they are released for free circulation for customs purposes.

[Amended by Law of July 25, 1994]

### **Obligation to Pay Remuneration for Reproduction by Means of Photocopying**

**54a.**—(1) Where the nature of a work is such that it may be expected to be reproduced in accordance with [Section 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) [Section 54\(2\)](#) shall apply *mutatis mutandis*.

[Added by Law of July 25, 1994]

### **Inapplicability of the Dealer's Obligation to Pay Remuneration**

**54b.** The dealer's obligation to pay remuneration ([Section 54\(1\)](#) and [Section 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 [Section 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 Law of July 25, 1994]

### **Inapplicability of the Obligation to Pay Remuneration on Export**

**54c.** The claim under [Section 54\(1\)](#) and [Section 54a\(1\)](#) shall not apply where it is probable 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 Law of July 25, 1994]

### **Amount of Remuneration**

**54d.**—(1) The amounts set out in the Annex<sup>2</sup> shall be deemed equitable remuneration in accordance with [Section 54\(1\)](#) and [Section 54a\(1\)](#) and (2) where not otherwise agreed.

(2) The amount of the total remuneration to be paid by the operator under [Section 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 Law of July 25, 1994]

### **Obligation to Refer in Invoices to Copyright Remuneration**

**54e.**—(1) Invoices for the sale or other placing on the market of appliances under [Section 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 [Section 54\(1\)](#), in which turnover tax in accordance with [Section 14\(1\)](#), first sentence, of the Law on Turnover Tax [*Umsatzsteuergesetz*] 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 Law of July 25, 1994]

### **Obligation to Report**

**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 [Section 54h\(3\)](#) monthly by the tenth day after the expiry of each calendar month.

(2) [Subsection \(1\)](#) 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 Law of July 25, 1994]

### **Obligation to Provide Information**

**54g.**—(1) The author may require information from those persons required to pay remuneration under [Section 54\(1\)](#) or [Section 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

[Section 54\(1\)](#), third sentence, [Section 54a\(1\)](#), third sentence and [Section 54b, item 1](#). [Section 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 [Section 54a\(2\)](#), first sentence.

(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 Law of July 25, 1994]

### **Collecting Societies; Handling of Reports**

**54h.**—(1) Claims under [Sections 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 [Sections 54](#) and [54a](#).

(3) The collecting societies shall designate a joint receiving office to receive communications made in accordance with [Sections 54b](#) and [54f](#) in each case for the claims to remuneration under [Section 54\(1\)](#) and those under [Section 54a\(1\)](#) to the Patent Office. The Patent Office shall publish them in the Official Bulletin.

(4) The Patent Office may publish models for the reports in accordance with [Sections 54b](#), [item 2](#), and [54f](#) in the Official Bulletin. 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 [Sections 54b](#), [item 2](#), [54f](#) and [54g](#) for the purpose of asserting claims under [subsection \(1\)](#).

[Added by Law of July 25, 1994]

### **Reproduction by Broadcasting Organizations**

**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.

### **Use of a Database**

**55a.** The adaptation or reproduction of a database by the owner of a copy of the database that has been put into circulation by way of sale with the consent of the author, by a person entitled in some other way to make use thereof or by a person to whom the

database has been made accessible on the basis of a contract concluded with the author or with another person having the author's consent, shall be permissible if and to the extent that the adaptation or reproduction is necessary to obtain access to the material in the database and for its normal use. If a part only of the database has been made accessible under a contract in accordance with the first sentence, it shall be permissible only to adapt or reproduce such part. Contractual agreements to the contrary shall be invalid.

[Added by Law of July 22, 1997]

### **Reproduction and Public Communication by Commercial Enterprises**

**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 [subsection \(1\)](#) must be destroyed immediately.

### **Incidental Works**

**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**

**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**

**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**

**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 [subsection \(2\)](#) shall mean the spouse and children or, if there is neither spouse nor child, the parents.

### **Compulsory License for the Production of Audio Recordings**

**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 [subsection \(1\)](#) 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 Federal Law Gazette [*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 [subsection \(1\)](#).

(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 [subsection \(4\)](#), 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 [Sections 935 and 940](#) of the Code of Civil Procedure [*Zivilprozessordnung*] are not fulfilled.

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

### **Prohibition of Alteration**

**62.**—(1) Where the use of a work is permissible under the provisions of this Chapter, no alteration may be made to the work. [Section 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 ([Section 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 [subsections \(1\) to \(3\)](#). However, such alterations shall require the consent of the author or, after his death, of his successor in title ([Section 30](#)) if the latter is a next of kin of the author ([Section 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 Law of November 10, 1972]

### **Acknowledgment of Source**

**63.**—(1) If a work or part of a work is reproduced pursuant to [Section 45\(1\)](#), [Sections 46 to 48](#), [50](#), [51](#), [58](#), [59](#) and [61](#), the source must in all cases be clearly acknowledged. The same shall apply in the cases referred to in [Section 53\(2\)](#), [item 1](#), [\(3\)](#), [item 1](#), with regard to the reproduction of a database. 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 Chapter 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 [Section 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 [Section 49\(1\)](#), the broadcasting organization which transmitted the commentary shall in all cases be acknowledged in addition to the author.

[Amended by Law of July 22, 1997]



## **Chapter VII Duration of Copyright**

### **General**

**64.** Copyright shall expire 70 years after the author's death.

[Amended by Law of June 23, 1995]

### **Joint Authors, Cinematographic Works**

**65.**—(1) If copyright is owned by several joint authors ([Section 8](#)), it shall expire 70 years after the death of the last surviving author.

(2) In the case of cinematographic 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 Law of June 23, 1995]

### **Anonymous and Pseudonymous Works**

**66.**—(1) In the case of anonymous and pseudonymous works, copyright shall expire 70 years after publication. However, it shall expire 70 years already after the creation of the work if the work has not been published within that period.

(2) If the author reveals his identity within the period referred to in [subsection \(1\)](#), first sentence, or if the pseudonym adopted by the author leaves no doubt as to his identity, the term of copyright shall be calculated in accordance with [Sections 64](#) and [65](#). The same shall apply if the true name of the author is registered for entry in the Register of Authors ([Section 138](#)) within the period referred to in [subsection \(1\)](#), first sentence.

(3) The acts under [subsection \(2\)](#) may be carried out by the author or, after his death, his successor in title ([Section 30](#)) or the executor ([Section 28 \(2\)](#)).

[Amended by Law of June 23, 1995]

### **Serial Works**

**67.** In the case of works published in parts which are not self-contained (installments), the calculation of the term of protection in the case referred to in [Section 66\(1\)](#), first sentence, shall be calculated for each separate installment as of the time of its publication.

[Amended by Law of June 23, 1995]

**68.** [Repealed by Law of June 24, 1985]

### **Calculation of Time Limits**

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

## **Chapter VIII**

### **Special Provisions on Computer Programs**

[Chapter VIII added by Law of June 9, 1993]

#### **Object of Protection**

**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 Chapter.

[Added by Law of June 9, 1993]

#### **Authors in Employment or Service**

**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) [Subsection \(1\)](#) shall apply *mutatis mutandis* to service relationships.

[Added by Law of June 9, 1993]

#### **Restricted Acts**

**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 Union or of another Contracting State to the Agreement on the European Economic Area 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.

[Added by Law of June 9, 1993 and amended by Laws of September 27, 1993 and July 16, 1998]

### **Exceptions to the Restricted Acts**

**69d.**—(1) In the absence of specific contractual provisions, the acts referred to in [items 1](#) and [2](#) of [Section 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.

[Added by Law of June 9, 1993]

### **Decompilation**

**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 [Section 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 [subsection \(1\)](#) 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) [Subsections \(1\)](#) 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.

[Added by Law of June 9, 1993]

### **Infringement of Rights**

**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. [Section 98\(2\)](#) and [\(3\)](#) shall apply *mutatis mutandis*.

(2) [Subsection \(1\)](#) 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.

[Added by Law of June 9, 1993]

### **Application of Other Legal Provisions; Law of Contract**

**69g.**—(1) The provisions of this Chapter 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 [Section 69d\(2\)](#) and [\(3\)](#) and [Section 69e](#) shall be null and void.

[Added by Law of June 9, 1993 and amended by Law of October 25, 1994]

## **PART II NEIGHBORING RIGHTS**

### **Chapter I Protection of Certain Editions**

#### **Scientific Editions**

**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 [Section 69](#).

[Amended by Law of March 7, 1990]

### **Posthumous Works**

**71.**—(1) Any person who, after the expiry of copyright, for the first time lawfully publishes or lawfully communicates a previously unpublished work shall have the exclusive right to exploit that work. The same shall apply to unpublished works that have never enjoyed protection within the territory to which this Law applies and whose authors have already been dead for more than 70 years. [Sections 5](#), [15 to 24](#), [26](#), [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 or after its first communication to the public where such event took place at an earlier date.

[Amended by Law of June 23, 1995]

## **Chapter II Protection of Photographs**

**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 [subsection \(1\)](#) shall belong to the photographer.

(3) The right under [subsection \(1\)](#) shall expire 50 years after publication of the photograph or after its first lawful communication to the public where such communication took place at an earlier date, but in any event 50 years after its manufacture if the photograph has not been published or has not been lawfully communicated to the public within that period. The period shall be calculated in accordance with [Section 69](#).

[Amended by Laws of June 24, 1985 and June 23, 1995]

## **Chapter III Protection of Performers**

### **Performers**

**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**

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.

### **Recording, Reproduction and Distribution**

75.—(1) The Recording of a performance on a video or audio medium shall require the consent of the performer.

(2) The performer shall have the exclusive right to reproduce and distribute the video or audio medium.

(3) [Section 27](#) shall apply *mutatis mutandis* to performers' claims to remuneration for the rental and lending of video or audio mediums.

[Amended by Law of June 23, 1995]

### **Broadcasting**

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.

(3) [Section 20b](#) shall apply *mutatis mutandis*.

[Amended by Law of May 8, 1998]

### **Public Communication**

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**

78. A performer may assign to others the rights and claims afforded him by [Sections 74 to 77](#). [Section 75\(3\)](#) in conjunction with [Section 27\(1\)](#), second and third sentences, shall remain unaffected.

[Amended by Law of June 23, 1995]

### **Performers in Employment or Service**

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**

**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 [Sections 74, 75\(1\) and \(2\)](#) and [Section 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 [Sections 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.

[Amended by Law of June 23, 1995]

### **Protection of Organizers**

**81.** If a performance is organized by an enterprise, the consent of the owner of the enterprise shall be required for the purposes of [Sections 74, 75\(1\) and \(2\)](#) and [Section 76\(1\)](#), in addition to the consent of the performer.

[Amended by Law of June 23, 1995]

### **Duration of Rights**

**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 or, if its first authorized use for public communication has taken place at an earlier date, after such date; however, the rights of the performer shall expire 50 years already after the performance and those of the organizer 25 years after the performance if the video or audio recording has not been published or has not been lawfully communicated to the public within that period. The period of time shall be calculated in accordance with [Section 69](#).

[Amended by Laws of March 7, 1990 and June 23, 1995]

### **Protection Against Distortion**

**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 50 years after the performance if the performer has died prior to expiry of that period; the period shall be calculated in accordance with [Section 69](#). After the death of the performer, the right shall belong to his next of kin ([Section 60\(3\)](#)).

[Amended by Law of June 23, 1995]

## **Limitation of Rights**

84. The provisions of [Chapter VI](#) of [Part I](#), with the exception of [Section 61](#), shall apply *mutatis mutandis* to the rights afforded the performer and the organizer by this Chapter.

## **Chapter IV Protection of Producers of Audio Recordings**

### **Right of Reproduction and Distribution**

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 50 years after publication of the audio recording, or if its first legal use for public communication took place earlier, after the latter; however, it shall expire 50 years after production if the audio recording has not been published or legally used for public communication during that period. The period shall be calculated in accordance with [Section 69](#).

(3) [Section 27\(2\)](#) and [\(3\)](#) as well as the provisions of [Chapter VI](#) of [Part I](#), with the exception of [Section 61](#), shall apply *mutatis mutandis*.

[Amended by Law of June 23, 1995]

### **Right of Participation**

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 [Section 76\(2\)](#) and [Section 77](#).

## **Chapter V Protection of Broadcasting Organizations**

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 and distribute such recordings or photographs, except for rental right;
3. to make its broadcast perceivable to the public in places only accessible to the public on payment of an entrance fee.

(2) The right shall expire 50 years after the first broadcast. The period shall be calculated in accordance with [Section 69](#)



(3) The provisions of [Chapter VI](#) of [Part I](#), with the exception of [Section 47\(2\)](#), second sentence, [Section 54\(l\)](#) and [Section 61](#), shall apply *mutatis mutandis*.

(4) Broadcasting organizations and cable operators shall be under a reciprocal obligation to conclude a contract with respect to the cable retransmission in accordance with [Section 20b \(1\)](#), first sentence, on reasonable conditions, to the extent that there exist no grounds that would technically justify a refusal to conclude a contract; the obligation of the broadcasting organization shall also apply to broadcasting rights afforded or assigned to it in respect of its own broadcast.

[Amended by Laws of June 24, 1985, June 23, 1995 and May 8, 1998]

## **Chapter VI**

### **Protection of Makers of Databases**

[Chapter VI added by Law of July 22, 1997]

#### **Definitions**

**87a.**—(1) For the purposes of this Law, “database” shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible with the help of electronic or other means and of which the obtaining, verification or presentation requires qualitatively or quantitatively a substantial investment. A database of which the contents have been substantially amended, qualitatively or quantitatively, shall be deemed a new database if the amendment requires a qualitatively or quantitatively substantial investment.

(2) For the purposes of this Law, “maker of a database” shall mean the person who has effected the investment within the meaning of [subsection \(1\)](#).

[Added by Law of July 22, 1997]

#### **Rights of Makers of Databases**

**87b.**—(1) The maker of a database shall have the exclusive right to reproduce, distribute and communicate to the public the database as a whole or a qualitatively or quantitatively substantial part of the database. The repeated and systematic reproduction, distribution or communication to the public of parts of the database that are not qualitatively and quantitatively substantial shall be deemed equivalent to the reproduction, distribution or communication to the public of a qualitatively or quantitatively substantial part of the database where such acts conflict with a normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.

(2) [Section 17\(2\)](#) and [Section 27\(2\)](#) and [\(3\)](#) shall apply *mutatis mutandis*.

[Added by Law of July 22, 1997]

#### **Limitations on the Rights of Makers of Databases**

**87c.**—(1) It shall be permissible to reproduce a qualitatively or quantitatively substantial part of a database

1. for private use; this shall not apply to a database whose materials are individually accessible with the help of electronic means;
2. for personal scientific use, if and to the extent reproduction is necessary for such purpose and the scientific use has no commercial purpose;
3. for use for illustration in teaching, insofar as the use has no commercial purpose.

In the cases referred to in [items 2](#) and [3](#), the source shall be clearly stated.

(2) It shall be permissible to reproduce, distribute and communicate to the public a qualitatively or quantitatively substantial part of a database for use in proceedings before a court, an arbitration tribunal or an authority or for the purposes of public security.

[Added by Law of July 22, 1997 and amended by Law of May 8, 1998]

### **Term of Rights**

**87d.** The rights of makers of databases shall expire 15 years after the publication of the database, but 15 years already after its making if the database has not been published within that period. The period shall be computed in accordance with [Section 69](#).

[Added by Law of July 22, 1997]

### **Contracts for the Use of Databases**

**87e.** Any contractual agreement under which the owner of a copy of a database put in circulation by way of sale with the consent of the maker of the database, a person entitled in any other way to make use of the database or a person to whom the database has been made accessible under a contract concluded with the maker of the database or with another person having the maker's consent, which contains an obligation towards 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 where such acts neither conflict with a normal exploitation of the database nor unreasonably prejudice the legitimate interests of the maker of the database.

[Added by Law of July 22, 1997]

## **PART III SPECIAL PROVISIONS ON FILMS**

### **Chapter I Cinematographic Works**

#### **The Right of Cinematographic Adaptation**

**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 [subsection \(1\)](#) 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 [Sections 70](#) and [71](#).

### **Rights in Cinematographic Works**

**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 [subsection \(1\)](#), 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**

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

### **Rights in Photographs**

**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**

**92.—**(1) If a performer concludes a contract with a film producer concerning his contribution to the making of a cinematographic work, the rights under [Section 75\(1\)](#) and [\(2\)](#) and [Section 76\(1\)](#) shall be deemed to have been assigned in the event of a doubt with regard to the exploitation of the cinematographic work.

(2) If a performer has assigned the right referred to in [subsection \(1\)](#) in advance to another person, he shall nevertheless maintain the authority to assign such right with respect to the exploitation of the cinematographic work to the film producer.

[Amended by Law of June 23, 1995]

### **Protection Against Distortion**

**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 [Sections 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**

**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 50 years after publication of the video recording or video and audio recording or, if its first authorized use for public communication took place at an earlier date, after that date; however, it shall expire 50 years after production if the video recording or video and audio recording has not been published or lawfully communicated to the public within that period.

(4) [Sections 20b](#), [27\(2\)](#) and [\(3\)](#) and the provisions of [Chapter VI](#) of [Part I](#), with the exception of [Section 61](#), shall apply *mutatis mutandis*.

[Amended by Laws of June 23, 1995 and May 8, 1998]

## **Chapter II Moving Pictures**

95. [Sections 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**

### **Chapter I Prohibition of Exploitation**

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.

### **Chapter II Infringements**

#### *1. Civil Law Provisions; Remedies*

##### **Actions for Injunction and Damages**

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 ([Section 70](#)), photographers ([Section 72](#)) and performers ([Section 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.

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

[Amended by Law of June 23, 1995]

##### **Claim to Destruction or Surrender of Copies**

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 [subsection \(1\)](#), 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 [subsections \(1\)](#) 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 Law of March 7, 1990]

### **Claim to Destruction or Surrender of Devices**

**99.** The provisions of [Section 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 Law of March 7, 1990]

### **Liability of the Owner of an Enterprise**

**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 [Sections 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**

**101.**—(1) If, in the event of infringement of a right protected under this Law, the claims of the injured party for injunctive relief ([Section 97](#)), for destruction or surrender of the copies ([Section 98](#)) or the devices ([Section 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 [Sections 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 Law of March 7, 1990]

### **Claim to Information in Respect of Third Parties**

**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 [subsection \(1\)](#) 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 [*Gesetz über Ordnungswidrigkeiten*] against the person required to give information, or against a dependent person under [Section 52\(1\)](#) of the Code of Criminal Procedure [*Strafprozessordnung*], 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.

[Added by Law of March 7, 1990]

### **Prescription**

**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. [Section 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 Law of March 7, 1990]

### **Publication of Judgment**

**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**

**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**

**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 [subsections \(1\) 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 [subsection \(1\)](#) 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.<sup>3</sup>

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

## *2. Criminal Law Provisions*

### **Unauthorized Exploitation of Copyrighted Works**

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<sup>3</sup> This subsection, as amended by the Law of September 2, 1994, will read as follows:  
“(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 subsection (1) by lawyers admitted to the Provincial Court which would otherwise be competent.

[Amended by Law of September 2, 1994]”

It will enter into force on January 1, 2000, for the following *Länder* of Germany: Baden-Württemberg, Bavaria, Berlin, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland and Schleswig-Holstein; it will enter into force on January 1, 2005, for the other *Länder*.



**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 Laws of March 2, 1974 and March 7, 1990]

### **Unlawful Affixing of Designation of Author**

**107.**—(1) Any person who,

1. without the author’s consent, affixes a designation of author ([Section 10\(1\)](#)) to the original of a work of fine art or distributes an original bearing such designation;
2. affixes a designation of author ([Section 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 Laws of March 2, 1974 and March 7, 1990]

### **Infringement of Neighboring Rights**

**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 ([Section 70](#)) or an adaptation or transformation of such edition;
2. exploits a posthumous work or an adaptation or transformation of such work contrary to [Section 71](#);
3. reproduces, distributes or publicly communicates a photograph ([Section 72](#)) or an adaptation or transformation of a photograph;
4. exploits a performance contrary to [Sections 74, 75\(1\)](#) or [\(2\)](#) or [Section 76\(1\)](#);
5. exploits an audio recording contrary to [Section 85](#);
6. exploits a broadcast contrary to [Section 87](#);
7. exploits a video or video and audio recording contrary to [Section 94](#) or [Section 95](#) in conjunction with [Section 94](#);
8. exploits a database contrary to [Section 87b\(1\)](#),

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 Laws of March 2, 1974, March 7, 1990, June 23, 1995 and July 22, 1997]

### **Unlawful Exploitation on a Commercial Basis**

**108a.**—(1) Where the person committing the acts referred to in [Sections 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 Law of June 24, 1985 and amended by Law of March 7, 1990]

### **Criminal Prosecution**

**109.** Offenses under [Sections 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 Law of June 24, 1985]

### **Confiscation**

**110.** Objects implicated in an offense under [Sections 106](#), [107\(1\)](#), [item 2](#), [108](#) and [108a](#) may be confiscated. [Section 74a](#) of the Penal Code [*Strafgesetzbuch*] shall apply. Where the claims referred to in [Sections 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 ([Sections 403 to 406c](#)), the provisions on confiscation shall not be applied.

[Amended by Law of March 7, 1990]

### **Publication of the Judgment**

**111.** If in cases covered by [Sections 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 Law of June 24, 1985]

## ***3. Measures by the Customs Authorities***

**111a.**—(1) Where the manufacture or distribution of copies infringes copyright or any other right protected by this Law those copies, where Council Regulation (EC) No. 3295/94 of December 22, 1994 laying down measures to prohibit the release from free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods (OJ No. L 341, p. 8), in its current version, is not applicable, 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

Union and with other Contracting States to the Agreement on the European Economic Area 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 [*Grundgesetz*]) 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 [subsection \(2\)](#), first sentence, 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 [subsection \(1\)](#) 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 [subsection \(1\)](#) in respect of the seized copies or has not made a declaration without delay ([subsection \(4\)](#), second sentence), he shall be required to compensate the damages that seizure has occasioned to the person entitled to dispose.

(6) The petition under [subsection \(1\)](#) 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 [Section 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.

(8) In proceedings under Council Regulation (EC) No. 3295/94, [subsections \(1\) to \(7\)](#) shall apply *mutatis mutandis* unless otherwise provided by the Regulation.

[Added by Law of March 7, 1990 and amended by the Laws of September 27, 1993, July 19, 1996 and July 16, 1998]

## **Chapter III Enforcement**

### *1. General*

**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 [Sections 113 to 119](#).

### *2. Enforcement of Claims for Money Against Authors*

#### **Copyright**

**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 ([Section 31](#)). The consent may not be given through a legal representative.

#### **Originals of Works**

**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**

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

#### **Originals of Works**

**116.**—(1) A claim for money against the successor in title of an author ([Section 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 [Section 114\(2\)](#), first sentence;
2. for enforcement on the original of a work if the work has been published.

[Section 114\(2\)](#), second sentence, shall apply *mutatis mutandis*.

## **Executor**

**117.** If copyright is to be exercised in accordance with [Section 28\(2\)](#) by an executor, it shall be for the executor to give the consent required in [Sections 115](#) and [116](#).

### *4. Enforcement of Claims for Money Against Authors of Scientific Editions and Against Photographers*

**118.** [Sections 113 to 117](#) shall apply *mutatis mutandis*

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

### *5. Enforcement of Claims for Money on Certain Devices*

**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) [Subsections \(1\)](#) and [\(2\)](#) shall apply *mutatis mutandis* to editions protected under [Sections 70](#) and [71](#), to photographs protected under [Section 72](#), to video and audio recordings protected under [Section 75\(2\)](#) and [Sections 85](#), [87](#), [94](#) and [95](#) and to databases protected under [Section 87b\(1\)](#).

[Amended by Laws of June 23, 1995 and July 22, 1997]

## **PART V**

### **SCOPE OF APPLICATION TRANSITIONAL AND FINAL PROVISIONS**

#### **Chapter I**

#### **Scope of the Law**

## *1. Copyright*

### **German Nationals and Nationals of Other EU States and EEA States**

**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 ([Section 8](#)), it shall be sufficient if one of the joint authors is a German national.

(2) The following shall have equal status with German nationals:

1. Germans in the meaning of Article 116(1) of the Basic Law who do not possess German nationality; and
2. nationals of another Member State of the European Union or another Contracting State to the Agreement Concerning the European Economic Area.

[Amended by Law of June 23, 1995]

### **Foreign Nationals**

**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 [subsection \(1\)](#).

(3) The protection afforded under [subsection \(1\)](#) 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 Federal Law Gazette, German nationals enjoy in the State of which the author is a national equivalent protection for their works.

(5) Resale royalty right ([Section 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 Federal Law Gazette, German nationals an equivalent right.

(6) Foreign nationals shall enjoy protection under [Sections 12 to 14](#) with respect to all of their works, even if the conditions contained in [subsections \(1\) to \(5\)](#) are not fulfilled.

### **Stateless Persons**

**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**

**123.** The provisions of [Section 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 [Section 121](#).

## *2. Neighboring Rights*

### **Scientific Editions and Photographs**

**124.** [Sections 120 to 123](#) shall apply *mutatis mutandis* for the protection of scientific editions ([Section 70](#)) and the protection of photographs ([Section 72](#)).

### **Protection of Performers**

**125.**—(1) The protection afforded by [Sections 73 to 84](#) shall be enjoyed by German nationals with respect to all their performances, irrespective of where they take place. [Section 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 [subsections \(3\)](#) 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 [Section 75 \(2\)](#), [Section 76\(2\)](#) and [Section 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 ([Section 75\(1\)](#)), protection against the rebroadcasting of the broadcast ([Section 76\(1\)](#)) and the protection under [Section 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. [Section 121\(4\)](#), second sentence, and [Sections 122](#) and [123](#) shall apply *mutatis mutandis*.

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

(7) Where protection is afforded in accordance with [subsections \(2\) to \(4\)](#) or [\(6\)](#), it shall expire at the latest on expiry of the term of protection in the State of which the performer is a national, but shall not exceed the term of protection under [Section 82](#).

[Amended by Law of June 23, 1995]

### **Protection of Producers of Audio Recordings**

**126.**—(1) The protection afforded by [Sections 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. [Section 120\(2\)](#) shall apply. Enterprises with headquarters in another Member State of the European Union or in another Contracting State to the Agreement Concerning the European Economic Area shall be deemed equal to enterprises which have their headquarters in the territory to which this Law applies.

(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. Protection shall expire, however, at the latest on expiry of the term of protection in the State of which the producer of the audio recording possesses the nationality or in which the enterprise has its headquarters, but shall not exceed the term of protection under [Section 85\(2\)](#).

(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. [Section 121\(4\)](#), second sentence, and [Sections 122](#) and [123](#) shall apply *mutatis mutandis*.

[Amended by Law of June 23, 1995]

### **Protection of Broadcasting Organizations**

**127.**—(1) Broadcasting organizations which have their headquarters in the territory to which this Law applies shall enjoy the protection afforded by [Section 87](#) with respect to all of their broadcasts, irrespective of where they are broadcast. [Section 126\(1\)](#), third sentence, shall be of application.

(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. Protection shall expire at the latest on expiry of the term of protection in the State in which the broadcasting organization has its headquarters, but shall not exceed the term of protection under [Section 87\(2\)](#).

(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. [Section 121\(4\)](#), second sentence, shall apply *mutatis mutandis*.

[Amended by Law of June 23, 1995]

### **Protection of Makers of Databases**

**127a.**—(1) German nationals and legal persons with headquarters in the territory to which this Law applies shall enjoy the protection afforded by [Section 87b](#). [Section 120\(2\)](#) shall be of application.

(2) Legal persons established under German law or under the law of one of the States designated in [Section 120\(2\)](#), [item 2](#), who do not have their headquarters in the territory to which this Law applies shall enjoy the protection afforded by [Section 87b](#) if

1. their principal administration or principal establishment is located in the territory of one of the States designated in [Section 120\(2\)](#), [item 2](#); or
2. their statutory headquarters are located in the territory of one of those States and their activities show a real connection with the German economy or with the economy of one of those States.

(3) Foreign nationals and legal persons shall further enjoy protection in accordance with the provisions of treaties and of agreements concluded by the European Community with non-Member States; such agreements shall be notified by the Federal Ministry of Justice in the Federal Law Gazette.

[Added by Law of July 22, 1997]

### **Protection of Film Producers**

**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 [Sections 94](#) and [95](#) with respect to their video or video and audio recordings, irrespective of whether and where they have been published. [Section 120\(2\)](#) and [Section 126\(1\)](#), third sentence, shall be of application.

(2) The provisions of [Section 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.

[Amended by Law of June 23, 1995]

## **Chapter II Transitional Provisions**

### **Works**

**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**

**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**

**131.** Works of language set to music which could be reproduced, distributed and publicly communicated without the consent of the author under [Section 20](#) of the Law on Copyright in Works of Literature and Music [*Gesetz betreffend das Urheberrecht an Werken der Literatur und der Tonkunst*] 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**

**132.**—(1) The provisions of this Law, with the exception of [Sections 42, 43](#) and [79](#), shall not apply to contracts concluded prior to the entry into force of this Law. [Sections 40](#) and [41](#) shall apply to such contracts, except that the periods mentioned in [Section 40\(1\)](#), second sentence, and [Section 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.

**133.** [Repealed by Law of August 17, 1973]

### **Authors**

**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 [Section 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**

**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**

**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 Law of November 10, 1972]

### **Reproduction and Distribution**

**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 [subsection \(1\)](#) 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 [subsection \(2\)](#) may be distributed without payment of remuneration.

### **Transfer of Rights**

**137.—**(1) If copyright has been transferred prior to the entry into force of this Law, the transferee shall enjoy the corresponding exploitation rights ([Section 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 [Sections 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 [subsection \(2\)](#), 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) [Subsection \(1\)](#) shall apply to neighboring rights, *mutatis mutandis*.

### **Photographic Works**

**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 Law of June 24, 1985]

### **Certain Editions**

**137b.**—(1) The provisions of this Law concerning the term of protection under [Sections 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 [Section 137\(3\)](#) and [\(4\)](#) shall apply *mutatis mutandis*.

[Added by Law of March 7, 1990]

### **Performers**

**137c.**—(1) The provisions of this Law concerning the term of protection under [Section 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 [Section 137\(3\)](#) and [\(4\)](#) shall apply *mutatis mutandis*.

[Added by Law of March 7, 1990]

### **Computer Programs**

**137d.**—(1) The provisions of [Chapter VIII](#) of [Part I](#) shall also apply to computer programs created prior to June 24, 1993. However, the exclusive rental right ([Section 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) [Section 69g\(2\)](#) shall also apply to contracts concluded prior to June 24, 1993.

[Added by Law of June 9, 1993]

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

**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 ([Sections 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 right holders an equitable remuneration; [Section 27\(1\)](#), second and third sentences, with respect to the claims of authors and performers and [Section 27\(3\)](#) shall apply *mutatis mutandis*. [Section 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 [subsection \(2\)](#), second sentence.

(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 Law of June 23, 1995]

### **Transitional Provision for the Implementation of Directive 93/98/EEC**

**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 State 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 ([Section 71](#)), of performers ([Section 73](#)), of the producers of audio recordings ([Section 85](#)), of broadcasting organizations ([Section 87](#)) and of film producers ([Sections 94](#) and [95](#)).

(3) Where the protection for a work within the territory to which this Law applies resumes in accordance with [subsection \(2\)](#), 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 Law of June 23, 1995]

#### **Transitional Provision for the Implementation of Directive 96/9/EEC**

**137g.**—(1) [Section 23](#), second sentence, [Section 53\(5\)](#), [Sections 55a](#) and [63\(1\)](#), second sentence, shall apply to databases created prior to January 1, 1998.

(2) The provisions of [Chapter VI](#) of [Part II](#) shall also apply to databases made between January 1, 1983 and December 31, 1997. The term of protection shall begin on January 1, 1998 in such cases.

(3) [Sections 55a](#) and [87e](#) shall not apply to contracts concluded prior to January 1, 1998.

[Added by Law of July 22, 1997]

#### **Transitional Provision for the Implementation of Directive 93/83/EEC**

**137h.**—(1) The provision in [Section 20a](#) shall not apply until January 1, 2000 to contracts concluded prior to June 1, 1998 where such contracts expire after that date.

(2) Where a contract for the joint production of a video or audio recording was concluded prior to June 1, 1998 between several producers, of which at least one belongs to a Member State of the European Union or a Contracting State of the European Economic Area, provides for the geographical division between the producers of the right of broadcasting, without making a distinction between satellite broadcasting and other types of broadcasting, and if the satellite broadcast of the joint production by one producer would prejudice the exploitation of the geographically or linguistically limited exclusive rights of another producer, the satellite broadcast shall be permissible only if the holder of those exclusive rights has given his consent.

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

[Added by Law of May 8, 1998]

## Chapter III Final Provisions

### Register of Authors

**138.**—(1) The Register of Authors for the entries set out in [Section 66\(2\)](#), second sentence, 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 [*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit*]. The court costs shall be governed by the Regulations on Costs [*Kostenordnung*]; the fees shall be determined by [Section 131](#) of the Regulations on Costs.

(3) The entries shall be published in the Official Bulletin. 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 DEM 30.

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

[Amended by Laws of June 23, 1970 and June 23, 1995]

**139-141.** [Amending and Repealing Provisions]

### Application in *Land* Berlin

**142.** This Law shall also apply in the *Land* Berlin in accordance with [Section 13\(1\)](#), of the Third Transitional Law [*Drittes Überleitungsgesetz*] of January 4, 1952 (Federal Law Gazette I, p.1). Statutory orders issued pursuant to this Law shall also apply in the *Land* Berlin in accordance with [Section 14](#) of the Third Transitional Law.

## Entry into Force

143.—(1) [Sections 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 [Section 54d\(1\)](#) of the Copyright Law)

. . .<sup>4</sup>

(This text replaces the one previously published under the same code number.)

## Annex<sup>1</sup>

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<sup>4</sup> See footnote 1.

<sup>1</sup> Not reproduced here (*Editor's note*).