

Copyright Law*

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Chapter I General Provisions

Section 1 General Rules

(Purpose)

Art. 1. The purpose of this Law is, by providing for the rights of authors and the rights neighboring thereon with respect to works as well as performances, phonograms, broadcasts and wire diffusions, to secure the protection of the rights of authors, etc., having regard to a just and fair exploitation of these cultural products, and thereby to contribute to the development of culture.

(Definitions)

Art. 2.—

(1) In this Law, the following terms shall have the meaning hereby assigned to them respectively:

(i) “work” means a production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain;

(ii) “author” means a person who creates a work;

(iii) “performance” means the acting on stage, dancing, musical playing, singing, delivering, declaiming or performing in other ways of a work, and includes similar acts not involving the performance of a work which have the nature of public entertainment;

(iv) “performers” means actors, dancers, musicians, singers and other persons who give a performance as well as those who conduct or direct a performance;

(v) “phonograms” means fixations of sounds on phonographic discs, recording tapes and other material forms, excluding those intended for use exclusively with images;

(vi) “producers of phonograms” means those who first fix the sounds contained in phonograms;

(vii) “commercial phonograms” means copies of phonograms made for commercial purposes;

(viii) “broadcasting” means the transmission of radio communication intended for direct reception by the public;

(ix) “broadcasting organizations” means those who engage in the broadcasting business;

(ixbis) “wire diffusion” means the wire transmission intended for simultaneous reception by the public of the transmission having the same contents;

(ixter) “wire diffusion organizations” means those who engage in wire diffusion service;

(x) “makers of cinematographic works” means those who take the initiative in, and the responsibility for, the making of a cinematographic work;

(xbis) “program” means an expression of combined instructions given to a computer so as to make it function and obtain a certain result;

(xter) “databases” means an aggregate of information such as articles, numerals or diagrams, which is systematically constructed so that such information can be searched for with the aid of a computer;

(xi) “derivative work” means a work created by translating, arranging musically, transforming, dramatizing, cinematizing or otherwise adapting a preexisting work;

(xii) “joint work” means a work created by two or more persons in which the contribution of each person cannot be separately exploited;

(xiii) “sound recording” means the fixation of sounds on some material forms and the multiplication of such fixation;

(xiv) “visual recording” means the fixation of a sequence of images on some material forms and the multiplication of such fixation;

(xv) “reproduction” means the reproduction in a tangible form by means of printing, photography, polygraphy, sound or visual recording or otherwise; and

- (a) in the case of dramas and other similar dramatic works, it includes sound and visual recording of the actings, broadcasts or wire diffusions of these works, and
- (b) in the case of architectural works, it includes the construction of an architectural work according to its plan;

(xvi) “acting” means the performance of works by means other than musical playing (“musical playing” includes singing; the same shall apply hereinafter);

(xvii) “wire transmission” means the transmission of wire telecommunication intended for direct reception by the public, excluding the transmission by wire-telecommunication installations one part of which is located on the same premises where the other part is located or, if the premises are occupied by two or more persons, both parts of which are located within the area therein occupied by one person;

(xviii) “recitation” means the oral communication by means of reading or otherwise, not falling within the term “performance”;

(xix) “cinematographic presentation” means the projection of a cinematographic work on the screen or other material forms, and includes the intangible reproduction of sounds fixed in that cinematographic work accompanied by its projection;

(xx) “distribution” means the transfer and lending of copies of a work to the public, whether with or without payment, and in the case of a cinematographic work or a work reproduced therein, it includes the transfer and lending of copies of such work for the purpose of making the cinematographic work available to the public;

(xxi) “this country” means the jurisdiction in which this Law is effective.

(2) As used in this Law, “artistic work” includes a work of artistic craftsmanship.

(3) As used in this Law, “cinematographic work” includes a work expressed by a process producing visual or audiovisual effects analogous to those of cinematography and fixed in some material form.

(4) As used in this Law, “photographic work” includes a work expressed by a process analogous to photography.

(5) As used in this Law, “the public” includes a large number of specific persons.

(6) As used in this Law, “legal person” includes non-juridical associations or foundations having representatives or administrators.

(7) In this Law, “performance” and “recitation” include the performance or recitation of a work by means of sound or visual recordings, not falling within the term “broadcasting”, “wire transmission” or “cinematographic presentation”, and “performance”, “recitation” and “cinematographic presentation” include the communication by means of telecommunication installations of performances, recitations or cinematographic presentations of works, not falling within the term “broadcasting” or “wire transmission.”

(8) In this Law, “lending” includes any kind of similar act of acquiring the authority to use, whatever the purpose or means.

(9) In this Law, the meanings assigned to the terms defined in paragraph (1), items (viii), (ixbis) and (xiii) to (xx) and the preceding two paragraphs shall also apply to their variant forms, as the case may be.

(Publishing of works)

Art. 3.—

(1) A work has been “published” when copies of the work have been reproduced and distributed by a person who has the right mentioned in Article 21 or with the authorization of such person (“authorization” means the authorization to exploit a work under the provision of Article 63, paragraph (1); the same shall apply hereinafter in this and the next Chapters, with the exception of the said Article) or by a person in favor of whom the right of publication mentioned in Article 79 has been established, in such sufficient quantities as satisfy the reasonable requirements of the public, having regard to the nature of the work (without prejudice to the right of a person who has the right mentioned in Article 26 or Article 26bis).

(2) A work shall be considered as having been “published” when copies of its translation have been reproduced and distributed, in such quantities as provided for in the preceding paragraph, by a person who has the same right as that mentioned in Article 21 by virtue of the provisions of Article 28 or with the authorization of such person (without prejudice to the right of a person who has the same right as that mentioned in Article 26 or Article 26*bis* by virtue of the provision of Article 28).

(3) A person who would have the right mentioned in any of the preceding two paragraphs if this work were protected under this Law or a person who obtained the authorization to exploit the work from such person shall be considered to be a person who has such right or a person who obtained the authorization from such person, and these paragraphs shall apply with respect to those persons.

(Making public of works)

Art. 4.—

(1) A work has been “made public” when it has been published, or when it has been made available to the public, by a person who has the rights mentioned in Articles 22 to 26 or with the authorization of such person, by means of performance, broadcasting, wire transmission, recitation, exhibition or cinematographic presentation. In the case of architectural works, a work also has been “made public” when it has been constructed by a person who has the right mentioned in Article 21 or with the authorization of such person.

(2) A work shall be considered as having been “made public” when its translation has been made available to the public by a person who has the same rights as those mentioned in Articles 22 to 24 or Article 26 by virtue of the provision of Article 28 or with the authorization of such person by means of performance, broadcasting, wire transmission, recitation or cinematographic presentation.

(3) An artistic work or a photographic work shall be considered as having been “made public” when it has been exhibited, by such a person as mentioned in Article 45, paragraph (1), in such a manner as provided for in that paragraph.

(4) Works defined in Article 12*bis*, paragraph (1), shall be considered as having been “made public” when such works have been put, by a person having the rights mentioned in Article 23, paragraph (1), or with the authorization of such person, in such a state that they may be made available to the public by means of wire transmission made in response to a request from the public.

(5) A person who would have the right mentioned in paragraph (1) or (2) or the preceding paragraph of this Article if his work were protected under this Law or a person who obtained the authorization to exploit the work from such person shall be considered to be a person who has such right or a person who obtained the authorization from such person, and these paragraphs shall apply with respect to those persons.

(Priority of international treaty)

Art. 5. If an international treaty provides otherwise with respect to the rights of authors and the rights neighboring thereon, the provisions thereof shall prevail.

Section 2

Scope of Application

(Works)

Art. 6. The following shall be granted protection under this Law:

(i) works of Japanese nationals (“Japanese nationals” includes legal persons established under Japanese law and those who have their principal offices in this country; the same shall apply hereinafter);

(ii) works first published in this country, including those first published abroad and published in this country within 30 days of that first publication;

(iii) works not falling within those mentioned in the preceding two items, to which Japan has the obligation to grant protection under an international treaty.

(Performances)

Art. 7. The following shall be granted protection under this Law:

- (i) performances which take place in this country;
- (ii) performances fixed in the phonograms mentioned in item (i) or (ii) of the next Article;
- (iii) performances transmitted through the broadcasts mentioned in Article 9, item (i) or (ii), excluding those incorporated in sound or visual recordings before the transmission with the authorization of the performers concerned;
- (iv) performances transmitted through the wire diffusions mentioned in each item of Article 9*bis*, excluding those incorporated in sound or visual recordings before the transmission with the authorization of the performers concerned;
- (v) any of the following performances not falling within those mentioned in the preceding four items:
 - (a) performances which take place in a Contracting State of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter referred to as “the Convention for the Protection of Performers, etc.”),
 - (b) performances fixed in the phonograms mentioned in item (iii) of the next Article,
 - (c) performances transmitted through the broadcasts mentioned in Article 9, item (iii), excluding those incorporated in sound or visual recordings before the transmission with the authorization of the performers concerned;
- (vi) any of the following performances not falling within those mentioned in the preceding five items:
 - (a) performances which take place in a Member of the World Trade Organization,
 - (b) performances fixed in the phonograms mentioned in item (iv) of the next Article,
 - (c) performances transmitted through the broadcasts mentioned in Article 9, item (iv), excluding those incorporated in sound or visual recordings before the transmission with the authorization of the performers concerned.

(Phonograms)

Art. 8. The following shall be granted protection under this Law:

- (i) phonograms the producers of which are Japanese nationals;
- (ii) phonograms composed of the sounds which were first fixed in this country;
- (iii) any of the following phonograms not falling within those mentioned in the preceding two items:
 - (a) phonograms the producers of which are nationals of any of the Contracting States of the Convention for the Protection of Performers, etc. (“nationals” includes legal persons established under the law of such State and those who have their principal offices in such State; the same shall apply hereinafter),
 - (b) phonograms composed of the sounds which were first fixed in any of the Contracting States of the Convention for the Protection of Performers, etc.;
- (iv) any of the following phonograms not falling within those mentioned in the preceding three items:
 - (a) phonograms the producers of which are nationals of any of the Members of the World Trade Organization (“nationals” includes legal persons established under the law of such Member and those who have their principal offices in such Member; the same shall apply hereinafter),
 - (b) phonograms composed of the sounds which were first fixed in any of the Members of the World Trade Organization;
- (v) phonograms not falling within those mentioned in the preceding four items, to which Japan has the obligation to grant protection under the Convention for the Protection of Producers of Phonograms

Against Unauthorized Duplication of Their Phonograms (in Article 121*bis*, item (ii), referred to as “the Phonograms Convention”).

(Broadcasts)

Art. 9. The following shall be granted protection under this Law:

- (i) broadcasts transmitted by broadcasting organizations of Japanese nationality;
- (ii) broadcasts transmitted from transmitters situated in this country;
- (iii) any of the following broadcasts not falling within those mentioned in the preceding two items:
 - (a) broadcasts transmitted by broadcasting organizations which are nationals of any of the Contracting States of the Convention for the Protection of Performers, etc.,
 - (b) broadcasts transmitted from transmitters situated in any of the Contracting States of the Convention for the Protection of Performers, etc.;
- (iv) any of the following broadcasts not falling within those mentioned in the preceding three items:
 - (a) broadcasts transmitted by broadcasting organizations which are nationals of any of the Members of the World Trade Organization,
 - (b) broadcasts transmitted from transmitters situated in any of the Members of the World Trade Organization.

(Wire diffusions)

Art. 9bis. The following shall be granted protection under this Law:

- (i) wire diffusions transmitted by wire diffusion organizations of Japanese nationality (excluding those made upon receiving broadcasts; the same shall apply in the next item);
- (ii) wire diffusions transmitted from wire transmitters situated in this country.

Chapter II Rights of Authors

Section 1 *Works*

(Classification of works)

Art. 10.—

(1) As used in this Law, “works” shall include, in particular, the following:

- (i) novels, dramas, articles, lectures and other literary works;
- (ii) musical works;
- (iii) choreographic works and pantomimes;
- (iv) paintings, engravings, sculptures and other artistic works;
- (v) architectural works;
- (vi) maps as well as figurative works of a scientific nature such as plans, charts, and models;
- (vii) cinematographic works;
- (viii) photographic works;
- (ix) program works.

(2) News of the day and miscellaneous facts having the character of mere items of information shall not fall within the term “works” mentioned in item (i) of the preceding paragraph.

(3) The protection granted by this Law to works mentioned in paragraph (1), item (ix), shall not extend to any programming language, rule or algorithm used for making such works. In this case, the following terms shall have the meaning hereby assigned to them respectively:

- (i) “programming language” means letters and other symbols as well as their systems for use as means of expressing a program;
- (ii) “rule” means a special rule on how to use in a particular program a programming language mentioned in the preceding item;
- (iii) “algorithm” means methods of combining, in a program, instructions given to a computer.

(Derivative works)

Art. 11. The protection granted by this Law to derivative works shall not prejudice the rights of authors of preexisting works.

(Compilations)

Art. 12.—

(1) Compilations which, by reason of the selection or arrangement of their contents, constitute intellectual creations shall be protected as independent works.

(2) The provision of the preceding paragraph shall not prejudice the rights of authors of works which form part of compilations defined in that paragraph.

(Database works)

Art. 12bis.—

(1) Databases which, by reason of the selection or systematic construction of information contained therein, constitute intellectual creations shall be protected as independent works.

(2) The provision of the preceding paragraph shall not prejudice the rights of authors of works which form part of databases defined in that paragraph.

(Works not protected)

Art. 13. The following shall not form the subject matter of the rights provided for in this Chapter:

- (i) the Constitution and other laws and regulations;
- (ii) notifications, instructions, circular notices and the like issued by organs of the State or local public entities;
- (iii) judgments, decisions, orders and decrees of law courts, as well as rulings and decisions made by administrative organs in proceedings similar to judicial ones;
- (iv) translations and compilations, of those materials mentioned in the preceding three items, made by organs of the State or local public entities.

Section 2 *Authors*

(Presumption of authorship)

Art. 14. A person, whose name or appellation (hereinafter referred to as “true name”), or whose generally known pen name, abbreviation or other substitute for his true name (hereinafter referred to as “pseudonym”) is indicated as the name of the author in the customary manner on the original of his work or when his work is offered to or made available to the public, shall be presumed to be the author of that work.

(Authorship of a work made by an employee in the course of his duties)

Art. 15.—

(1) The authorship of a work (except a program work) which, on the initiative of a legal person or other employer (hereinafter in this Article referred to as “legal person, etc.”), is made by his employee in the course of his duties and is made public under the name of such legal person, etc., as the author shall be attributed to that legal person, etc., unless otherwise stipulated in a contract, work regulation or the like in force at the time of the making of the work.

(2) The authorship of a program work which, on the initiative of a legal person, etc., is made by his employee in the course of his duties, shall be attributed to that legal person, etc., unless otherwise stipulated in a contract, work regulation or the like in force at the time of the making of the work.

(Authorship of a cinematographic work)

Art. 16. The authorship of a cinematographic work shall be attributed to those who, by taking charge of producing, directing, filming, art direction, etc., have contributed to the creation of that work as a whole, excluding authors of novels, scenarios, music or other works adapted or reproduced in that work; provided, however, that the provision of the preceding Article is not applicable.

Section 3 *Contents of the Rights*

Subsection 1 General Rules

(Rights of authors)

Art. 17.—

(1) The author shall enjoy the rights mentioned in paragraph (1) of the next Article, Article 19, paragraph (1), and Article 20, paragraph (1) (hereinafter referred to as “moral rights”) as well as the rights mentioned in Articles 21 to 28 (hereinafter referred to as “copyright”).

(2) The enjoyment of moral rights and copyright shall not be subject to any formality.

Subsection 2 Moral Rights

(Right of making the work public)

Art. 18.—

(1) The author shall have the right to offer to and make available to the public his work which has not yet been made public (including a work which has been made public without his consent; the same shall apply in the next paragraph). The author shall have the same right with respect to works derived from his work which has not yet been made public.

(2) In the following cases, the author shall be presumed to have consented to the following acts:

(i) where copyright in his work which has not yet been made public has been transferred: the offering to and the making available to the public of the work by exercising the copyright therein;

(ii) where the original of his artistic or photographic work which has not yet been made public has been transferred: the making available to the public of the work by exhibiting its original;

(iii) where the ownership of copyright in his cinematographic work belongs to the maker under the provisions of Article 29: the offering to and the making available to the public of the work by exercising the copyright therein.

(Right of determining the indication of the author's name)

Art. 19.—

(1) The author shall have the right to determine whether or not his true name or pseudonym should be indicated as the name of the author, on the original of his work or when his work is offered to or made available to the public. The author shall have the same right with respect to the indication of his name when works derived from his work are offered to or made available to the public.

(2) In the absence of any declaration of the intention of the author to the contrary, a person using his work may indicate the name of the author in the same manner as that already adopted by the author.

(3) It shall be permissible to omit the name of the author where it is found that there is no risk of damage to the interests of the author in his claim to authorship in the light of the purpose and the manner of exploiting his work and insofar as such omission is compatible with fair practice.

(Right of preserving the integrity)

Art. 20.—

(1) The author shall have the right to preserve the integrity of his work and its title against any distortion, mutilation or other modification against his will.

(2) The provision of the preceding paragraph shall not apply to the following modifications:

(i) change of ideographs or words or other modifications deemed unavoidable for the purpose of school education in the case of the exploitation of works under the provisions of Article 33, paragraph (1) (including the case where its application *mutatis mutandis* is provided for under the provision of paragraph (4) of the same Article) and Article 34, paragraph (1);

(ii) modification of an architectural work by means of extension, rebuilding, repairing, or remodeling;

(iii) modification which is necessary for enabling the use in a particular computer of a program work which is otherwise unusable in that computer, or to make more effective the use of a program work in a computer;

(iv) other modifications not falling within those mentioned in the preceding three items, which are deemed unavoidable in the light of the nature of a work as well as the purpose and the manner of exploitation.

Subsection 3 Rights Comprised in Copyright

(Right of reproduction)

Art. 21. The author shall have the exclusive right to reproduce his work.

(Right of performance)

Art. 22. The author shall have the exclusive right to perform his work publicly (“publicly” means for the purpose of making a work seen or heard directly by the public; the same shall apply hereinafter).

(Rights of broadcasting, wire transmission, etc.)

Art. 23.—

(1) The author shall have the exclusive right to broadcast and transmit by wire his work.

(2) The author shall have the exclusive right to communicate publicly, by means of a receiving apparatus, his work broadcast or transmitted by wire.

(Right of recitation)

Art. 24. The author of a literary work shall have the exclusive right to recite publicly his work.

(Right of exhibition)

Art. 25. The author of an artistic work or of an unpublished photographic work shall have the exclusive right to exhibit publicly the original of his work.

(Right of cinematographic presentation and distribution)

Art. 26.—

(1) The author of a cinematographic work shall have the exclusive right to present publicly his work and distribute its copies.

(2) The author of a work reproduced in a cinematographic work shall have the exclusive right to present publicly his work and distribute its copies.

(Right of lending)

Art. 26bis. The author shall have the exclusive right to offer his work (except a cinematographic work) to the public by lending copies of the work (excluding copies of a cinematographic work in the case of a work reproduced in the cinematographic work).

(Rights of translation, adaptation, etc.)

Art. 27. The author shall have the exclusive right to translate, arrange musically, transform, dramatize, cinematize, or otherwise adapt his work.

(Right of the original author in the exploitation of a derivative work)

Art. 28. In the exploitation of a derivative work, the author of the preexisting work shall have the same rights as those the author of the derivative work has under this Subsection.

Subsection 4 Ownership of Copyright in Cinematographic Works

(Ownership of copyright in cinematographic works)

Art. 29.—

(1) Copyright in a cinematographic work, to which the provisions of Article 15, paragraph (1), the next paragraph and paragraph (3) of this Article are not applicable, shall belong to the maker of that work, provided that the authors of the work have undertaken to participate in the making thereof.

(2) In the case of a cinematographic work, which is made by a broadcasting organization alone for use exclusively for broadcasting purposes and to which the provision of Article 15, paragraph (1), is not

applicable, the following rights comprised in the copyright therein shall belong to that organization as the maker of cinematographic works:

- (i) right to broadcast that work, and to diffuse by wire and communicate publicly by means of a receiving apparatus the work thus broadcast;
- (ii) right to reproduce that work, and to distribute its copies thus reproduced among other broadcasting organizations.

(3) In the case of a cinematographic work, which is made by a wire diffusion organization alone for use exclusively for wire diffusion purposes and to which the provision of Article 15, paragraph (1), is not applicable, the following rights comprised in the copyright therein shall belong to that organization as the maker of cinematographic works:

- (i) right to diffuse by wire that work, and to communicate publicly by means of a receiving apparatus the work thus diffused by wire;
- (ii) right to reproduce that work, and to distribute its copies thus reproduced among other wire diffusion organizations.

Subsection 5 Limitations on Copyright

(Reproduction for private use)

Art. 30.—

(1) It shall be permissible for a user to reproduce by himself a work forming the subject matter of a copyright (hereinafter in this Subsection referred to as a “work”) for the purpose of his personal use, family use or other similar uses within a limited circle (hereinafter referred to as “private use”), except in the case where such reproduction is made by means of automatic reproducing machines (“automatic reproducing machine” means a machine having reproducing functions and in which all or the main parts of the reproducing devices are automatic) placed for the use of the public.

(2) Any person who, for the purpose of private use, makes sound or visual recordings on such a digital recording medium as specified by Cabinet Order by means of such a digital recording machine as specified by Cabinet Order (excluding (a) machines having special characteristics generally not employed for private use, such as those for broadcasting, and (b) machines having recording functions incidental to the primary functions, such as telephones with sound recording function) shall pay a reasonable amount of compensation to the copyright owners concerned.

(Reproduction in libraries, etc.)

Art. 31. It shall be permissible to reproduce a work included in library materials (“library materials” in this Article means books, documents and other materials held in the collections of libraries, etc.) within the scope of the nonprofit-making activities of libraries, etc. (“libraries, etc.” in this Article means libraries and other establishments, designated by Cabinet Order, having the purpose, among others, to offer library materials for the use of the public) in the following cases:

- (i) where, at the request of a user and for the purpose of his own investigation or research, he is furnished with a single copy of a part of a work already made public or of all of an individual work included in a periodical already published for a considerable period of time;
- (ii) where the reproduction is necessary for the purpose of preserving library materials;
- (iii) where other libraries, etc., are furnished with a copy of library materials which are rarely available through normal trade channels because the materials are out of print or for other similar reasons.

(Quotations)

Art. 32.—

(1) It shall be permissible to make quotations from a work already made public, provided that their making is compatible with fair practice and their extent does not exceed that justified by purposes such as news reporting, criticism or research.

(2) It shall also be permissible for the press or other periodicals to reproduce informatory, investigatory or statistical data, reports and other works of similar character which have been prepared by organs of the State or local public entities for the purpose of public information and which have been made public under their authorship, provided that the reproduction thereof is not expressly prohibited.

(Reproduction in school textbooks, etc.)

Art. 33.—

(1) It shall be permissible to reproduce in school textbooks (“school textbooks” means textbooks authorized by the Minister of Education or those compiled under the authorship of the Ministry of Education for the use of children or pupils in their education in primary schools, junior and senior high schools or other similar schools) works already made public, to the extent deemed necessary for the purpose of school education.

(2) A person who makes such reproduction shall inform the author thereof and pay to the copyright owner compensation, the amount of which is fixed each year by the Commissioner of the Agency for Cultural Affairs, by taking into account the purpose of the provision of the preceding paragraph, the nature and the purpose of the work, the ordinary rate of royalty, and other conditions.

(3) The Commissioner of the Agency for Cultural Affairs shall announce in the Official Gazette the amount of compensation fixed under the provision of the preceding paragraph.

(4) The preceding three paragraphs shall apply *mutatis mutandis* with respect to the reproduction of works in textbooks intended for senior high school correspondence courses and in guidance books of school textbooks mentioned in paragraph (1) intended for teachers (these guidance books shall be limited to those published by the same publisher of the textbooks).

(Broadcasting, etc., in school education programs)

Art. 34.—

(1) It shall be permissible to broadcast or diffuse by wire a work already made public, in broadcasting programs or wire diffusion programs which conform to the curriculum standards provided for in regulations on school education, and to reproduce it in teaching materials for these programs, to the extent deemed necessary for the purpose of school education.

(2) A person who makes such exploitation of a work shall inform the author thereof and pay to the copyright owner a reasonable amount of compensation.

(Reproduction in schools and other educational institutions)

Art. 35. A person who is in charge of teaching in a school or other educational institutions not established for profit-making may reproduce a work already made public if and to the extent deemed necessary for the purpose of use in the course of teaching, provided that such reproduction does not unreasonably prejudice the interests of the copyright owner in the light of the nature and the purpose of the work as well as the number of copies and the character of reproduction.

(Reproduction in examination questions)

Art. 36.—

(1) It shall be permissible to reproduce a work already made public in questions of an entrance examination or other examinations of knowledge or skill, or such examination for a license, to the extent deemed necessary for that purpose.

(2) A person who makes such reproduction for profit-making purposes shall pay to the copyright owner compensation the amount of which corresponds to an ordinary rate of royalty.

(Reproduction in Braille, etc.)

Art. 37.—

(1) It shall be permissible to reproduce in Braille for the blind a work already made public.

(2) For Braille libraries and other establishments for the promotion of the welfare of the blind, designated by Cabinet Order, it shall be permissible to make sound recordings of a work already made public, exclusively for the purpose of lending such recordings for the use of the blind.

(Performance, etc., not for profit-making)

Art. 38.—

(1) It shall be permissible publicly to perform, recite, and present cinematographically a work already made public, for nonprofit-making purposes and without charging any fees (“fees” includes any kind of charge to be imposed with respect to the offering and the making available of a work to the public; the same shall apply hereinafter in this Article) to audiences or spectators; provided, however, that the performers or reciters concerned are not paid any remuneration for such performance, recitation or cinematographic presentation.

(2) It shall be permissible to diffuse by wire a work already broadcast, for nonprofit-making purposes and without charging any fees to audiences or spectators.

(3) It shall be permissible to communicate publicly, by means of a receiving apparatus, a work already broadcast or diffused by wire, for nonprofit-making purposes and without charging any fees to audiences or spectators. The same shall apply to such public communication made by means of a receiving apparatus of a kind commonly used in private homes.

(4) It shall be permissible to offer to the public a work (except a cinematographic work) already made public, by lending copies of the work (excluding copies of a cinematographic work in the case of a work reproduced in the cinematographic work) for nonprofit-making purposes and without charging any fees to borrowers of such copies.

(5) For audiovisual education establishments and other nonprofit-making establishments, designated by Cabinet Order, having the purposes, among others, to offer cinematographic films and other audiovisual materials for the use of the public, it shall be permissible to distribute a cinematographic work already made public, by lending copies of the work, without charging any fees to borrowers of such copies. In this case, a person who makes such distribution shall pay a reasonable amount of compensation to the owner of the right mentioned in Article 26 (including the owner of the same right as that mentioned in Article 26 by virtue of the provision of Article 28) with respect to such a cinematographic work or a work reproduced in that cinematographic work.

(Reproduction, etc., of articles on current topics)

Art. 39.—

(1) It shall be permissible to reproduce in the press, broadcast and diffuse by wire articles published in newspapers or periodicals on current political, economic or social topics, not having a scientific character, provided that such reproduction, broadcasting or wire diffusion thereof is not expressly prohibited.

(2) It shall also be permissible to communicate publicly, by means of a receiving apparatus, articles thus broadcast or diffused by wire.

(Exploitation of political speeches, etc.)

Art. 40.—

(1) It shall be permissible to exploit, by any means, political speeches delivered in public and speeches delivered in the course of judicial proceedings (including those corresponding to judicial proceedings such as determinations by administrative agencies; the same shall apply in Article 42), except such exploitation as involves a collection of the works of a single author.

(2) It shall be permissible to reproduce in the press, broadcast and diffuse by wire speeches not falling within the preceding paragraph, which are delivered in public in organs of the State or local public entities, to the extent justified by the informatory purpose.

(3) It shall also be permissible to communicate publicly, by means of a receiving apparatus, speeches thus broadcast or diffused by wire.

(Reporting of current events)

Art. 41. For the purpose of reporting current events by means of photography, cinematography, broadcasting or otherwise, it shall be permissible to reproduce and exploit a work implicated in the event or a work seen or heard in the course of the event, to the extent justified by the informatory purpose.

(Reproduction for judicial proceedings, etc.)

Art. 42. It shall be permissible to reproduce a work if and to the extent deemed necessary for the purpose of judicial proceedings and of internal use in legislative or administrative organs, provided that such reproduction does not unreasonably prejudice the interests of the copyright owner in the light of the nature and the purpose of the work as well as the number of copies and the character of reproduction.

(Exploitation by means of translation, adaptation, etc.)

Art. 43. The exploitation of works permitted under the provisions mentioned below shall include that made by the following means:

(i) Article 30, paragraph (1), and Articles 33 to 35: translation, musical arrangement, transformation and adaptation;

(ii) Article 31, item (i), Articles 32, 36 and 37, Article 39, paragraph (1), Article 40, paragraph (2), and the preceding two Articles: translation.

(Ephemeral recordings by broadcasting organizations, etc.)

Art. 44.—

(1) Broadcasting organizations may make ephemeral sound or visual recordings of a work which they are in a position to broadcast, without prejudice to the right of the author mentioned in Article 23, paragraph (1), for the purpose of their own broadcasts and by the means of their own facilities or facilities of other broadcasting organizations which are in a position to broadcast the same work.

(2) Wire diffusion organizations may make ephemeral sound or visual recordings of a work which they are in a position to diffuse by wire, without prejudice to the right of the author mentioned in Article 23, paragraph (1), for the purpose of their own wire diffusions (except those made upon receiving broadcasts) and by the means of their own facilities.

(3) It shall not be permissible to preserve such ephemeral recordings made in accordance with the provisions of the preceding two paragraphs for a period exceeding six months after their making or, if the recordings are broadcast or diffused by wire within this period, for a period exceeding six months after that

broadcasting or wire diffusion; provided, however, that such preservation is permitted if the preservation in official archives is authorized by Cabinet Order.

(Exhibition of an artistic work, etc., by the owner of the original thereof)

Art. 45.—

(1) The original of an artistic work or a photographic work may be publicly exhibited by its owner or with his authorization.

(2) The provision of the preceding paragraph shall not apply with respect to the permanent location of the original of an artistic work in open places accessible to the public, such as streets and parks, or at places easily seen by the public, such as the outer walls of buildings.

(Exploitation of an artistic work located in open places)

Art. 46. It shall be permissible to exploit artistic works permanently located in open places as mentioned in paragraph (2) of the preceding Article and architectural works by any means not falling within any of the following items:

- (i) multiplication of a sculpture;
- (ii) imitative reproduction of an architectural work;
- (iii) reproduction of a work for the purpose of locating it permanently in open places as mentioned in paragraph (2) of the preceding Article;
- (iv) reproduction of an artistic work exclusively for the purpose of selling its copies.

(Reproduction required for an exhibition of artistic works, etc.)

Art. 47. A person who, without prejudice to the right of the author mentioned in Article 25, exhibits publicly the originals of artistic works or photographic works may reproduce such works in pamphlets for the purpose of explaining or introducing them to spectators.

(Reproduction, etc., by the owner of a copy of a program work)

Art. 47bis.—

(1) The owner of a copy of a program work may make copies or adaptations (including the making of copies of a derivative work created by means of adaptation) of that work if and to the extent deemed necessary for the purpose of exploiting that work in a computer by himself, provided that the provision of Article 113, paragraph (2), does not apply to the use of such copies in connection with such exploitation.

(2) If the owner of copies mentioned in the preceding paragraph has ceased to have the ownership of any of the copies mentioned in that paragraph (including copies made in accordance with the provision of that paragraph) for reasons other than those of destruction, he may not thereafter preserve other copies in the absence of any declaration of the intention of the copyright owner to the contrary.

(Indication of sources)

Art. 48.—

(1) In any of the following cases, the source must be clearly indicated in the manner and to the extent deemed reasonable by the character of the reproduction or exploitation:

- (i) where reproduction is made of works in accordance with the provisions of Article 32 and Article 33, paragraph (1) (including the case where its application *mutatis mutandis* is provided for under the provision of paragraph (4) of the same Article), as well as Articles 37, 42 and 47;
- (ii) where exploitation is made of works in accordance with the provisions of Article 34, paragraph (1), Article 39, paragraph (1), and Article 40, paragraphs (1) and (2);

(iii) where exploitation, other than reproduction, is made of works in accordance with the provision of Article 32, and where exploitation is made of works in accordance with the provisions of Article 35, Article 36, paragraph (1), Article 38, paragraph (1), and Articles 41 and 46, provided that standard practice so requires.

(2) When indicating the source under the preceding paragraph, mention must be made of the name of the author if it appears on a work, except in the case where such indication identifies the author or the work is anonymous.

(3) Where exploitation is made of works by translating, arranging musically, transforming or adapting them in accordance with the provision of Article 43, mention must also be made of the source according to the provisions of the preceding two paragraphs.

(Uses, etc., of copies for other purposes)

Art. 49.—

(1) The following acts shall be considered to constitute the reproduction described in Article 21:

(i) the distribution of copies of works made in accordance with the provisions of Article 30, paragraph (1), Article 31, item (i), Article 35, Article 37, paragraph (2), as well as Articles 41 and 42 and Article 44, paragraphs (1) and (2), and the making available to the public of works by the use of these copies, for purposes other than those mentioned in these provisions;

(ii) the preservation by broadcasting organizations or wire diffusion organizations, of ephemeral recordings in violation of the provision of Article 44, paragraph (3);

(iii) the distribution of copies of works (excluding copies falling within those mentioned in item (ii) of the next paragraph) made in accordance with the provision of Article 47*bis*, paragraph (1), and the making available to the public of works by the use of these copies;

(iv) the preservation of copies mentioned in Article 47*bis*, paragraph (2), in violation of that paragraph (excluding copies falling within those mentioned in item (ii) of the next paragraph).

(2) The following acts shall be considered to constitute the translation, musical arrangement, transformation or adaptation described in Article 27 with respect to preexisting works of derivative works concerned:

(i) the distribution of copies of derivative works made in accordance with the provisions of each item of Article 43 and the making available to the public of derivative works by the use of these copies, for purposes other than those mentioned in Article 30, paragraph (1), Article 31, item (i), Article 35, Article 37, paragraph (2), and Articles 41 and 42;

(ii) the distribution of copies of derivative works made in accordance with the provision of Article 47*bis*, paragraph (1), and the making available to the public of derivative works by the use of these copies;

(iii) the preservation of copies mentioned in the preceding item in violation of the provision of Article 47*bis*, paragraph (2).

(Relationship with moral rights)

Art. 50. No provisions of this Subsection may be interpreted as affecting the protection of the moral rights of the author.

Section 4 *Term of Protection*

(In general)

Art. 51.—

(1) The duration of copyright shall begin with the creation of the work.

(2) Copyright shall continue to subsist until the end of a period of 50 years following the death of the author (or following the death of the last surviving co-author in the case of a joint work; the same shall apply in paragraph (1) of the next Article), unless otherwise provided in this Section.

(Anonymous and pseudonymous works)

Art. 52.—

(1) Copyright in anonymous and pseudonymous works shall continue to subsist until the end of a period of 50 years following the making public of the work, provided that a copyright subsisting in such work, the author of which is presumed to have been dead for 50 years, shall be considered expired as of the time dated from when the author is so presumed to have died.

(2) The provision of the preceding paragraph shall not apply in any of the following cases:

- (i) where the pseudonym adopted by the author is generally known as his own;
- (ii) where, within the period mentioned in the preceding paragraph, the author causes his true name to be registered in accordance with the provision of Article 75, paragraph (1);
- (iii) where, within the period mentioned in the preceding paragraph, the author has made public his work on which he indicates his true name or generally known pseudonym as the name of the author.

(Works bearing the name of a corporate body)

Art. 53.—

(1) Copyright in works bearing as the name of the author that of a legal person or other corporate body shall continue to subsist until the end of a period of 50 years following the making public of the work or the creation of the work if it has not been made public within the period of 50 years following its creation.

(2) The provision of the preceding paragraph shall not apply in the case where, within the period mentioned in the preceding paragraph, a person who is the author of a work bearing as the name of the author that of a legal person or other corporate body, has afterwards made public the work on which he indicates his true name or generally known pseudonym as the name of the author.

(3) With respect to the duration of copyright in works the authorship of which is attributed to a legal person or other corporate body in accordance with the provision of Article 15, paragraph (2), the provision of paragraph (1) shall apply to such works not falling within those mentioned in paragraph (1) as if such works bore the name of such corporate body as the author.

(Cinematographic works)

Art. 54.—

(1) Copyright in cinematographic works shall continue to subsist until the end of a period of 50 years following the making public of the work or the creation of the work if it has not been made public within the period of 50 years following its creation.

(2) When copyright in a cinematographic work has expired at the end of its duration, copyrights subsisting in the original works adapted cinematographically shall also expire but only with respect to the exploitation of the cinematographic work.

(3) The provisions of the preceding two Articles shall not apply to copyright in cinematographic works.

(Photographic works)

Art. 55.—

(1) Copyright in photographic works shall continue to subsist until the end of a period of 50 years following the making public of the work or the creation of the work if it has not been made public within the period of 50 years following its creation.

(2) The provisions of Articles 52 and 53 shall not apply to copyright in photographic works.

(The time when serial publications, etc., have been made public)

Art. 56.—

(1) In Article 52, paragraph (1), Article 53, paragraph (1), Article 54, paragraph (1), and paragraph (1) of the preceding Article, the time when works have been made public shall be determined by the making public of each volume, issue or installment in the case of works which are made public in regularly succeeding volumes, issues or installments, or by the making public of the last part in the case of works which are made public in parts.

(2) In the case of works which are made public in parts, the last part already made public shall be considered to be the last one mentioned in the preceding paragraph if the next part is not made public before the expiration of a period of three years following the making public of the preceding part.

(Calculation of the term of protection)

Art. 57. In Article 51, paragraph (2), Article 52, paragraph (1), Article 53, paragraph (1), Article 54, paragraph (1), and Article 55, paragraph (1), the term of protection subsequent to the author's death, the making public of a work or the creation of a work shall be calculated from the beginning of the year following the date when such event occurred.

(Exceptional provisions for the term of protection)

Art. 58. In the case of works not falling within Article 6, item (i), if the country of origin thereof is considered to be a foreign country member of the International Union established by the Berne Convention for the Protection of Literary and Artistic Works or a foreign Member of the World Trade Organization in accordance with the provisions of this Convention or the Marrakesh Agreement Establishing the World Trade Organization and if the duration of copyright therein granted by that country of origin is shorter than that provided in Articles 51 to 55, the duration of copyright shall be that granted by that country of origin.

Section 5 *Inalienability of Moral Rights, etc.*

(Inalienability of moral rights)

Art. 59. Moral rights of the author shall be exclusively personal to him and inalienable.

(Protection of the moral interests after the author's death)

Art. 60. Even after the death of the author, no person who offers or makes available a work to the public may commit an act which would be prejudicial to the moral rights of the author if he were alive; provided, however, that such act is permitted if it is deemed not to be against the will of the author in the light of the nature and extent of the act as well as a change in social situation and other conditions.

Section 6 *Transfer and Expiry of Copyright*

(Transfer of copyright)

Art. 61.—

(1) Copyright may be transferred in whole or in part.

(2) Where a contract for the transfer of copyright makes no particular reference to the rights mentioned in Articles 27 and 28, these rights shall be presumed to be reserved to the transferor.

(Expiry of copyright in the case where no heirs exist, etc.)

Art. 62.—

(1) Copyright shall expire in the following cases:

(i) where, after the author's death, the copyright is to belong to the National Treasury in accordance with the provision of Article 959 of the Civil Code (Law No. 89, of 1896);

(ii) where, after the dissolution of a legal person who is the owner of the copyright, the copyright shall belong to the National Treasury in accordance with the provision of Article 72, paragraph (3), of the Civil Code or the provisions of other similar laws.

(2) The provision of Article 54, paragraph (2), shall apply *mutatis mutandis* in the case where copyright in cinematographic works has expired through the operation of the preceding paragraph.

Section 7 Exercise of Rights

(Authorization to exploit works)

Art. 63.—

(1) The copyright owner may grant another person authorization to exploit the work.

(2) The person who obtained such authorization shall be entitled to exploit the work in the manner and to the extent so authorized.

(3) The right of exploitation thus authorized may not be transferred without the consent of the copyright owner.

(4) Unless otherwise stipulated in a contract, the authorization to broadcast or diffuse by wire a work shall not imply the authorization to make sound or visual recordings of the work.

(Exercise of moral rights of co-authors)

Art. 64.—

(1) Moral rights of co-authors of a joint work may not be exercised without unanimous agreement of all the co-authors.

(2) Each of the co-authors may not, in bad faith, prevent the agreement mentioned in the preceding paragraph from being reached.

(3) Co-authors may be represented by a person chosen from among them in the exercise of their moral rights.

(4) Limitations on the representation mentioned in the preceding paragraph shall not be effective against a *bona fide* third person.

(Exercise of joint copyright)

Art. 65.—

(1) Each co-owner of copyright in a joint work or of copyright in co-ownership (hereinafter in this Article referred to as "joint copyright") shall not be entitled to transfer or pledge his share without the consent of the other co-owners.

(2) Joint copyright may not be exercised without the unanimous agreement of all the co-owners.

(3) In the preceding two paragraphs, each co-owner may not, without reasonable justification, refuse the consent mentioned in paragraph (1) or prevent the agreement mentioned in the preceding paragraph from being reached.

(4) The provisions of paragraphs (3) and (4) of the preceding Article shall apply *mutatis mutandis* to the exercise of joint copyright.

(Copyright on which the right of pledge is established)

Art. 66.—

(1) Unless otherwise stipulated in the contract establishing the right of pledge, the copyright owner shall be entitled to exercise copyright on which the right of pledge has been established.

(2) The right of pledge may be exercised with respect to money or the like accruing from the transfer of copyright or the exploitation of the work (including counter-value for the establishment of the right of publication), provided that payment or delivery is preceded by the seizure of the right to receive money or the like mentioned above.

Section 8 *Exploitation of Works*

Under Compulsory License

(Exploitation of works in the case where the copyright owner thereof is unknown)

Art. 67.—

(1) Where a work has been made public, or where it is clear that it has been offered to or made available to the public for a considerable period of time, the work may be exploited under the authority of a compulsory license issued by the Commissioner of the Agency for Cultural Affairs and upon depositing on behalf of the copyright owner compensation the amount of which is fixed by the Commissioner as corresponding to an ordinary rate of royalty, provided that, after due diligence, the copyright owner cannot be found for the reason that he is unknown or for other reasons.

(2) Copies of the work reproduced in accordance with the provision of the preceding paragraph must bear an indication to the effect that the reproduction of these copies has been licensed in accordance with the provision of that paragraph and give the date when the license was issued.

(Broadcasting of works)

Art. 68.—

(1) A work already made public may be broadcast by a broadcasting organization under the authority of a compulsory license issued by the Commissioner of the Agency for Cultural Affairs and upon payment to the copyright owner of compensation the amount of which is fixed by the Commissioner as corresponding to an ordinary rate of royalty, provided that such organization requested the authorization to broadcast the work from the copyright owner and failed to reach an agreement or that the organization was unable to enter into negotiations with him.

(2) Works thus broadcast may also be diffused by wire or communicated publicly by means of a receiving apparatus upon payment to the copyright owner of compensation the amount of which corresponds to an ordinary rate of royalty, except in the case where the provisions of Article 38, paragraphs (2) and (3), shall be applicable.

(Recording on commercial phonograms)

Art. 69. When commercial phonograms have been sold for the first time in this country and after the expiration of a period of three years from the date of that first sale, a person who intends to make a sound recording of a musical work already recorded on such phonograms with the authorization of the copyright owner and thereby to manufacture other commercial phonograms may make that recording under the authority of a compulsory license issued by the Commissioner of the Agency for Cultural Affairs and upon

payment to the copyright owner of compensation the amount of which is fixed by the Commissioner as corresponding to an ordinary rate of royalty, provided that such person requested the authorization to make a sound recording of the work from the copyright owner and failed to reach an agreement or that he was unable to enter into negotiations with the copyright owner.

(Procedures and standards of compulsory licensing)

Art. 70.—

(1) Applicants for a license mentioned in Article 67, paragraph (1), Article 68, paragraph (1), or the preceding Article shall pay an application fee, the amount of which shall be fixed by Cabinet Order, taking into account the actual cost.

(2) Upon receipt of an application for a license mentioned in Article 68, paragraph (1), or the preceding Article, the Commissioner of the Agency for Cultural Affairs shall notify the copyright owner concerned thereof in order to afford him an opportunity to express his opinion within an adequately specified period of time.

(3) Even upon receipt of an application for a license mentioned in Article 67, paragraph (1), Article 68, paragraph (1), or the preceding Article, the Commissioner of the Agency for Cultural Affairs shall not issue such license if he recognizes:

(i) that it is evident that the author has the intention to halt forever the publication or other exploitation of his work; or

(ii) that unavoidable circumstances obliged the copyright owner to refuse to give the authorization to the broadcasting organization applying for a license mentioned in Article 68, paragraph (1).

(4) The Commissioner of the Agency for Cultural Affairs shall, when intending to refuse to issue the license, give prior notice to the applicant of the reason for such refusal and afford him an opportunity to explain his position and furnish evidence favorable to him. The Commissioner shall, when refusing to issue such license, notify the applicant of such refusal in writing accompanied by the reason therefor.

(5) The Commissioner of the Agency for Cultural Affairs shall, upon issuing the license mentioned in Article 67, paragraph (1), give public notice thereof in the Official Gazette and notify the applicant thereof. The Commissioner shall, upon issuing the license mentioned in Article 68, paragraph (1), or the preceding Article, notify the parties concerned thereof.

(6) Other than those provided in the preceding paragraphs, necessary matters in connection with the licenses mentioned in this Section shall be provided by Cabinet Order.

Section 9 *Compensation*

(Consultation with the Copyright Council)

Art. 71. The Commissioner of the Agency for Cultural Affairs shall, when fixing the amount of compensation mentioned in Article 33, paragraph (2) (including the case where its application *mutatis mutandis* is provided for under the provision of paragraph (4) of the same Article), Article 67, paragraph (1), Article 68, paragraph (1), and Article 69, consult with the Copyright Council.

(Dissatisfaction with the amount of compensation fixed)

Art. 72.—

(1) The parties concerned who are dissatisfied with the amount of compensation fixed in accordance with the provision of Article 67, paragraph (1), Article 68, paragraph (1), or Article 69 may bring an action for an increase or decrease therein, within a period of three months from the date when they learned that a license had been issued under any of these provisions.

(2) In an action under the preceding paragraph, the copyright owner shall be a defendant in the case where the person who brings the action is the user of the work, and the user of the work shall be a defendant in the case where the person who brings the action is the copyright owner.

(Limitations on objections to the amount of compensation fixed)

Art. 73. In an objection raised under the Administrative Dissatisfaction Inspection Law (Law No. 160, of 1962) to a license issued in accordance with the provisions of Article 67, paragraph (1), Article 68, paragraph (1), or Article 69, dissatisfaction with the amount of the compensation fixed shall not constitute a reason for this dissatisfaction with the issuance of the license, except in the case where a person who obtained a license mentioned in Article 67, paragraph (1), cannot bring an action mentioned in paragraph (1) of the preceding Article because the copyright owner is unknown or for other similar reasons.

(Deposit of compensation)

Art. 74.—

(1) A person who is liable to pay compensation mentioned in Article 33, paragraph (2) (including the case where its application *mutatis mutandis* is provided for under the provision of paragraph (4) of the same Article), Article 68, paragraph (1), or Article 69 shall deposit the compensation instead of paying that compensation, in any of the following cases:

- (i) where the copyright owner refuses to receive or cannot receive the compensation;
- (ii) where the copyright owner cannot be identified through no fault on the part of the above-mentioned person;
- (iii) where that person brings an action mentioned in Article 72, paragraph (1), with respect to the amount of the compensation;
- (iv) where the right of pledge has been established on the copyright (except in the case where the authorization is obtained from the pledgee).

(2) In item (iii) of the preceding paragraph, a person who is liable to pay the compensation shall, at the request of the copyright owner, pay the sum according to his estimate and deposit the balance between his estimate and the amount of the compensation fixed.

(3) The deposit of compensation in accordance with the provisions of Article 67, paragraph (1) or (2), shall be made at a deposit office conveniently near to the known domicile or residence of the copyright owner if he has such in this country or otherwise near to the domicile or the residence of the depositor.

(4) The depositor mentioned in the preceding paragraph shall notify the copyright owner of that deposit, except in the case where he cannot notify him thereof because he is unknown or for other reasons.

Section 10 *Registration*

(Registration of the true name)

Art. 75.—

(1) The author of an anonymous or pseudonymous work may have his true name registered with respect to that work, regardless of whether he actually owns the copyright therein.

(2) The author may designate by his will a person who may have such name registered after the author's death as described in the preceding paragraph.

(3) A person whose true name has been registered shall be presumed to be the author of the work concerned.

(Registration of the date of the first publication, etc.)

Art. 76.—

(1) The copyright owner as well as the publisher of an anonymous or pseudonymous work may have the date of the first publication or of the first making public of his work registered.

(2) Works as to which the date of the first publication or of the first making public is registered shall be presumed to have been first published or first made public on the date registered.

(Registration of the date of creation)

Art. 76bis.—

(1) The author of a program work may have the date of creation of his program work registered within the period of six months following the creation of that work.

(2) Program works as to which the date of creation is registered in accordance with the preceding paragraph shall be presumed to have been created on the date registered.

(Registration of copyright)

Art. 77. The following matters shall not be effective against any third party without registration thereof:

(i) the transfer (except that by inheritance or other successions in general; the same shall apply in the next item) of copyright or the restriction on the disposal of copyright;

(ii) the establishment, transfer, alteration or expiry (except because of the merger of the right of pledge, or because of the expiry of copyright or the obligatory right secured), or the restriction on the disposal, of the right of pledge established on copyright.

(Procedures, etc., for registration)

Art. 78.—

(1) The registrations mentioned in Article 75, paragraph (1), Article 76, paragraph (1), Article 76bis, paragraph (1), and the preceding Article shall be made by the Commissioner of the Agency for Cultural Affairs on the copyright register.

(2) The Commissioner of the Agency for Cultural Affairs shall, when having made a registration mentioned in Article 75, paragraph (1), give public notice thereof in the Official Gazette.

(3) Any person may demand of the Commissioner of the Agency for Cultural Affairs the delivery of a certified copy or a certified abstract of entries in the copyright register or the opportunity to inspect the register or its annexed documents.

(4) The person making such demand shall pay a fee the amount of which is fixed by Cabinet Order, taking into account actual cost.

(5) The provisions of Chapters 2 and 3 in the Administrative Procedure Law (Law No. 88, of 1993) shall not apply to the dispositions of the registrations mentioned in paragraph (1).

(6) Other than those provided in this Section, necessary matters in connection with registrations mentioned in paragraph (1) shall be provided by Cabinet Order.

(Exceptional provision for the registration of program works)

Art. 78bis. Other than those provided in this Section, matters relating to the registration of program works shall be provided by another law.

Chapter III Right of Publication

(Establishment of the right of publication)

Art. 79.—

(1) The owner of the right mentioned in Article 21 (hereinafter in this Chapter referred to as “the owner of the reproduction right”) may establish a right of publication in favor of a person who undertakes to publish the work in a writing or a printing.

(2) The owner of the reproduction right may establish a right of publication only with the authorization of the pledgee if the right of pledge is established on the reproduction right.

(Contents of the right of publication)

Art. 80.—

(1) The owner of the right of publication shall, as stipulated in the contract of establishment, have the exclusive right to reproduce the original text of the work, on which the right of publication is established, in a writing or a printing by means of typography or other mechanical or chemical processes for the purpose of distribution.

(2) If the author of the work dies within the duration of the right of publication or, after three years have passed from the first publication following the establishment of the right of publication, unless otherwise stipulated in the contract of establishment, the owner of the reproduction right may, notwithstanding the provision of the preceding paragraph, reproduce the work in a complete collection of works or other compilations comprising only the works of the same author.

(3) The owner of the right of publication may not authorize any third person to reproduce the work on which the right of publication is established.

(Obligation of publication)

Art. 81. Unless otherwise stipulated in the contract of establishment, the owner of the right of publication shall have the following obligations:

(i) to publish the work within a period of six months after the date when he received, from the owner of the reproduction right, manuscripts or other originals or those corresponding thereto which are necessary for the reproduction of the work; and

(ii) to publish the work continuously in accordance with business practice.

(Alterations, additions or deletions in works)

Art. 82.—

(1) In a new reproduction made by the owner of the right of publication, the author may make alterations, additions or deletions in his work to the extent justified.

(2) Whenever intending to make a new reproduction of the work on which the right of publication is established, the owner of the right of publication shall notify the author thereof in advance.

(Duration of the right of publication)

Art. 83.—

(1) The duration of the right of publication shall be provided by the contract of establishment.

(2) The right of publication shall expire at the end of a period of three years from the first publication after the establishment of the right, unless otherwise stipulated in the contract of establishment.

(Request to terminate the right of publication)

Art. 84.—

(1) When the owner of the right of publication has not discharged his obligation mentioned in Article 81, item (i), the owner of the reproduction right may terminate the right of publication by notifying the owner thereof.

(2) When the owner of the right of publication has not discharged his obligation mentioned in Article 81, item (ii), the owner of the reproduction right may terminate the right of publication by notifying the owner thereof, provided that the owner of the reproduction right has called upon the owner of the right of publication to discharge his obligation within a period exceeding three months, and that the owner of the right of publication has not discharged his obligation within that period.

(3) When the belief of the author who has the reproduction right in his work differs from the content of the work, he may terminate the right of publication by notifying the owner of the right of publication in order to halt forever the publication of the work, provided that he makes compensation in advance for damages usually caused to the owner of the right of publication by such termination.

(Distribution of copies of a work after the termination of the right of publication)

Art. 85.—

(1) After the termination of the right of publication because of the expiration of the duration of the right or for other reasons, the co-owner of the right may not distribute the copies of the work reproduced within the duration of the right, except in the following cases:

(i) where otherwise stipulated in the contract of establishment;

(ii) where he has already paid royalties or other remuneration to the owner of reproduction right within the duration of the right of publication, and he distributes copies corresponding to such payment.

(2) The distribution of copies in contradiction of the provisions of the preceding paragraph shall be considered to constitute the reproduction mentioned in Article 21 or Article 80, paragraph (1).

(Limitation on the right of publication)

Art. 86.—

(1) The provisions of Article 30, paragraph (1), Articles 31 and 32, Article 33, paragraph (1) (including the case where its application *mutatis mutandis* is provided for under the provision of paragraph (4) of the same Article), Article 34, paragraph (1), Article 35, Article 36, paragraph (1), Article 37, paragraph (1), Article 39, paragraph (1), Article 40, paragraphs (1) and (2), and Articles 41, 42, 46 and 47 shall apply *mutatis mutandis* to the reproduction of works on which the right of publication is established. In these cases, “the copyright owner” in Articles 35 and 42 shall read “the owner of the right of publication”.

(2) The distribution and the making available to the public of copies of works reproduced in accordance with the provisions of Article 30, paragraph (1), Article 31, item (i) or Article 35, 41 or 42 which apply *mutatis mutandis* in the preceding paragraph, for purposes other than those mentioned in these provisions, shall be considered to constitute the reproduction described in Article 80, paragraph (1).

(Transfer, etc., of the right of publication)

Art. 87. The right of publication may be transferred or pledged only with the authorization of the owner of the reproduction right.

(Registration of the right of publication)

Art. 88.—

(1) The following matters shall not be effective against any third party without the registration thereof:

(i) the establishment, transfer (except that by inheritance or other successions in general; the same shall apply in the next item), alteration or expiry except because of the merger, or because of the expiry of the reproduction right), or the restriction on the disposal of the right of publication;

(ii) the establishment, transfer, alteration or expiry (except because of the merger of the right of pledge, or because of the expiry of the right of publication or the obligatory rights secured), or the restriction on the disposal of the right of pledge established on the right of publication.

(2) The provision of Article 78 (except paragraph (2)) shall apply *mutatis mutandis* to the registration mentioned in the preceding paragraph. In this case, “the copyright register” shall read “the register of the right of publication”.

Chapter IV Neighboring Rights

Section 1 General Rules

(Neighboring rights)

Art. 89.—

(1) Performers shall enjoy the rights mentioned in Article 91, paragraph (1), Article 92, paragraph (1), and Article 95*bis*, paragraph (1), as well as the right to secondary use fees mentioned in Article 95, paragraph (1), and the right to remuneration mentioned in Article 95*bis*, paragraph (3).

(2) Producers of phonograms shall enjoy the right mentioned in Article 96, and Article 97*bis*, paragraph (1), as well as the right to secondary use fees mentioned in Article 97, paragraph (1), and the right to remuneration mentioned in Article 97*bis*, paragraph (3).

(3) Broadcasting organizations shall enjoy the rights mentioned in Articles 98 to 100.

(4) Wire diffusion organizations shall enjoy the rights mentioned in Articles 100*bis* to 100*quater*.

(5) The enjoyment of the rights referred to in any of the preceding paragraphs shall not be subject to any formality.

(6) The rights referred to in paragraphs (1) to (4) (except the right to secondary use fees and the right to remuneration referred to in paragraphs (1) and (2)) shall be called “neighboring rights”.

(Relationship with copyright)

Art. 90. No provisions in this Chapter may be interpreted as affecting the protection of the rights of authors.

Section 2 Rights of Performers

(Right of making sound or visual recordings)

Art. 91.—

(1) Performers shall have the exclusive right to make sound or visual recordings of their performances.

(2) The provision of the preceding paragraph shall not apply to performances which have been incorporated in cinematographic works with the authorization of the owner of the right mentioned in the same paragraph (this authorization means the authorization of exploitation mentioned in the provision of Article 63, paragraph (1), which applies *mutatis mutandis* in Article 103; the same shall apply hereinafter in this and the next Chapters), except in the case where such performances are to be incorporated in sound recordings (other than those intended for use exclusively with images).

(Right of broadcasting and wire transmission)

Art. 92.—

(1) Performers shall have the exclusive right to broadcast and transmit by wire their performances.

(2) The provision of the preceding paragraph shall not apply in the following cases:

- (i) where the wire diffusion is made of performances already broadcast;
- (ii) where the broadcasting takes place of, or the wire transmission is made of the following:
 - (a) performances incorporated in sound or visual recordings with the authorization of the owner of the right mentioned in paragraph (1) of the preceding Article,
 - (b) performances mentioned in paragraph (2) of the preceding Article and incorporated in recordings other than those mentioned in that paragraph.

(Fixation for broadcasting purposes)

Art. 93.—

(1) Broadcasting organizations which have obtained the authorization to broadcast performances from the owner of the right of broadcasting mentioned in paragraph (1) of the preceding Article, may make sound or visual recordings of such performances for broadcasting purposes, provided that the contract has no provision to the contrary or that the sound or visual recordings are not intended for the purpose of use in broadcasting programs different from those authorized.

(2) The following shall be considered to constitute the making of sound or visual recordings mentioned in Article 91, paragraph (1):

- (i) the use and the offering of sound or visual recordings made in accordance with the provision of the preceding paragraph for a purpose other than that of broadcasting or for the purpose mentioned in the proviso to the same paragraph;
- (ii) the further offering, by broadcasting organizations which have been offered such recordings, of sound or visual recordings made in accordance with the provision of the preceding paragraph, to other broadcasting organizations for their broadcasting.

(Broadcasting of fixations, etc., made for broadcasting purposes)

Art. 94.—

(1) Unless otherwise stipulated in the contract, the authorization to broadcast a performance from the owner of the right mentioned in Article 92, paragraph (1), shall also imply the following:

- (i) broadcasting by the authorized broadcasting organization of the performances incorporated in sound or visual recordings in accordance with the provision of paragraph (1) of the preceding Article;

(ii) broadcasting, of the performances incorporated by the authorized broadcasting organization in sound or visual recordings in accordance with the provision of paragraph (1) of the preceding Article, by another broadcasting organization which has been offered such recordings;

(iii) broadcasting (not falling in the preceding item), by another broadcasting organization which has been offered by the authorized broadcasting organization programs incorporating authorized performances, of such performances.

(2) When a broadcasting mentioned in any of the items of the preceding paragraph has been made, the authorized broadcasting organization mentioned therein shall pay a reasonable amount of remuneration to the owner of the right mentioned in Article 92, paragraph (1).

(Secondary use of commercial phonograms)

Art. 95.—

(1) When broadcasting organizations and wire diffusion organizations (hereinafter in this Article and Article 97, paragraph (1), referred to as “broadcasting organizations, etc.”) have broadcast or diffused by wire commercial phonograms incorporating performances with the authorization of the owner of the right mentioned in Article 91, paragraph (1) (except broadcast or wire diffusion made upon receiving such broadcasts or wire diffusions), they shall pay secondary use fees to the performers whose performances (which are mentioned in Article 7, items (i) to (v), and in which neighboring rights subsist; the same shall apply in the next paragraph and paragraph (3)) have been so broadcast or diffused by wire.

(2) The provisions of the preceding paragraph shall not apply to performers whose performances are fixed in phonograms the producers of which are nationals of any of the Contracting States of the Convention for the Protection of Performers, etc., which has made a declaration under the relevant provisions of that Convention stating that it will not apply the provisions of Article 12 of that Convention.

(3) If the term of the protection provided for by the provisions of Article 12 of the Convention for the Protection of Performers, etc., which is granted by a Contracting State of that Convention with respect to phonograms mentioned in Article 8, item (i) is shorter than that for which performers are granted protection in accordance with the provisions of paragraph (1), the term for which performers, whose performances are fixed in phonograms the producers of which are nationals of that State, are granted protection in accordance with the provisions of that paragraph shall be that of the protection provided for by the provisions of Article 12 of that Convention which is granted by that State with respect to phonograms mentioned in Article 8, item (i).

(4) Where there is an association (including a federation of associations) which is composed of a considerable number of professional performers practicing in this country and which is so designated, with its consent, by the Commissioner of the Agency for Cultural Affairs, the right to secondary use fees mentioned in paragraph (1) shall be exercised exclusively through the intermediary of such association.

(5) The Commissioner of the Agency for Cultural Affairs may designate only such an association as satisfies the following conditions:

(i) that it is not established for profit-making;

(ii) that its members may voluntarily join and withdraw;

(iii) that its members are granted an equal right to vote and to be elected;

(iv) that it has sufficient ability to practice properly by itself the business of exercising the right on behalf of the owners of the right to secondary use fees mentioned in paragraph (1) (hereinafter in this Article referred to as “the owners of the right”).

(6) Such association may not refuse the request of the owners of the right for the exercise of the right on their behalf.

(7) Upon receipt of the request mentioned in the preceding paragraph, such association shall have authority to deal, on behalf of the owners of the right and in its own name, with juridical and non-juridical matters in regard to the right.

(8) As provided by Cabinet Order, the Commissioner of the Agency for Cultural Affairs may ask such association to report on their business concerning secondary use fees mentioned in paragraph (1) or to

submit account books, documents and other data, or make necessary recommendations for improving their business practices.

(9) The amount of secondary use fees which such association may demand on behalf of the owners of the right in accordance with the provision of paragraph (4) shall be fixed each year by mutual agreement between such association and broadcasting organizations, etc., or their federation.

(10) If the agreement mentioned in the preceding paragraph is not reached, the parties concerned may, as provided by Cabinet Order, request that the Commissioner of the Agency for Cultural Affairs issue a ruling fixing the amount of secondary use fees.

(11) The provisions of Article 70, paragraphs (2), (5) and (6), as well as Articles 71 to 74 shall apply *mutatis mutandis* to the ruling and secondary use fees mentioned in the preceding paragraph. In this case, “the copyright owner” in Article 70, paragraph (2), shall read “the parties concerned”, “the user of the work” in Article 72, paragraph (2), shall read “broadcasting organizations, etc., mentioned in Article 95, paragraph (1)”, “the copyright owner” in the same paragraph shall read “the association mentioned in paragraph (4) of the same Article”, and “the copyright owner” in Article 74 shall read “the association mentioned in Article 95, paragraph (4)”.

(12) The provisions of the Law Relating to Prohibition of Private Monopoly and Methods of Preserving Fair Trade (Law No. 54, of 1947) shall not apply to mutual agreements mentioned in paragraph (9) and to acts made under it, provided that the trading method is fair and without unreasonable prejudice to the interests of concerned entrepreneurs.

(13) Other than those provided for in paragraphs (4) to (10), necessary matters in connection with payment of secondary use fees mentioned in paragraph (1) and the association mentioned in paragraph (4) shall be provided by Cabinet Order.

(Right of lending, etc.)

Art. 95bis.—

(1) Performers shall have the exclusive right to offer their performances to the public by lending commercial phonograms incorporating their performances.

(2) The provision of the preceding paragraph shall not apply to the lending of commercial phonograms going beyond the period as prescribed by Cabinet Order within the limits of one to 12 months from the first sale of such phonograms (including commercial phonograms containing the same phonograms as those incorporated in such commercial phonograms; hereinafter referred to as “commercial phonograms going beyond the period”).

(3) When those who engage in the business of lending commercial phonograms to the public (hereinafter referred to as “commercial phonogram lenders”) have offered performances to the public by lending commercial phonograms going beyond the period, they shall pay a reasonable amount of remuneration to the performers whose performances (in which neighboring rights subsist) are incorporated in such phonograms.

(4) The provisions of the preceding Article, paragraphs (4) to (13), shall apply *mutatis mutandis* to the right to remuneration mentioned in the preceding paragraph. In this case, “broadcasting organizations, etc.” in paragraph (9) of the same Article and “broadcasting organizations, etc., mentioned in Article 95, paragraph (1)” in paragraph (11) of the same Article shall read “commercial phonogram lenders mentioned in Article 95bis, paragraph (3).”

(5) The right to royalties with respect to authorization given by owners of the right mentioned in paragraph (1) may be exercised through the intermediary of the association mentioned in the preceding Article, paragraph (4), which shall apply *mutatis mutandis* in the preceding paragraph.

(6) The provisions of the preceding Article, paragraphs (6) to (13), shall apply *mutatis mutandis* in the preceding paragraph. In this case, the second sentence of paragraph (4) of this Article shall apply *mutatis mutandis*.

Section 3
Rights of Producers of Phonograms

(Right of reproduction)

Art. 96. Producers of phonograms shall have the exclusive right to reproduce their phonograms.

(Secondary use of commercial phonograms)

Art. 97.—

(1) When broadcasting organizations, etc., have broadcast or diffused by wire commercial phonograms (except broadcast or wire diffusion made upon receiving such broadcasts or wire diffusions), they shall pay secondary use fees to the producers whose phonograms (which are mentioned in Article 8, items (i) to (iii), and in which neighboring rights subsist) have been so broadcast or diffused by wire.

(2) The provisions of Article 95, paragraph (2), shall apply *mutatis mutandis* to the producers of phonograms provided for in the preceding paragraph, and the provisions of paragraph (3) of the same Article shall apply *mutatis mutandis* to the term of the protection provided for in the preceding paragraph. In this case, “performers whose performances are fixed in phonograms the producers of which are nationals” in paragraphs (2) and (3) of the same Article shall read “producers of phonograms who are nationals”, and “that for which performers are granted protection” in paragraph (3) shall read “that for which producers of phonograms are granted protection”.

(3) Where there is an association (including a federation of associations) which is composed of a considerable number of producers of phonograms practicing in this country and which is so designated, with its consent, by the Commissioner of the Agency for Cultural Affairs, the right to secondary use fees mentioned in paragraph (1) shall be exercised exclusively through the intermediary of such association.

(4) The provisions of Article 95, paragraphs (5) to (13), shall apply *mutatis mutandis* to secondary use fees mentioned in paragraph (1) and to the association mentioned in the preceding paragraph.

(Right of lending, etc.)

Art. 97bis.—

(1) Producers of phonograms shall have the exclusive right to offer their phonograms to the public by lending commercial phonograms in which their phonograms are reproduced.

(2) The provision of the preceding paragraph shall not apply to the lending of commercial phonograms going beyond the period.

(3) When commercial phonogram lenders have offered phonograms to the public by lending commercial phonograms going beyond the period, they shall pay a reasonable amount of remuneration to the producers whose phonograms (in which neighboring rights subsist) have been so offered to the public.

(4) The provision of the preceding Article, paragraph (3), shall apply *mutatis mutandis* to the exercise of the right to remuneration mentioned in the preceding paragraph.

(5) The provisions of Article 95, paragraphs (5) to (13), shall apply *mutatis mutandis* to remuneration mentioned in paragraph (3), of this Article and to associations mentioned in the preceding Article, paragraph (3), which shall apply *mutatis mutandis* in the preceding paragraph. In this case, the provision of the first sentence of Article 95bis, paragraph (4), shall apply *mutatis mutandis*.

(6) The right to royalties with respect to authorization given by owners of the right mentioned in paragraph (1) of this Article may be exercised through the intermediary of the association mentioned in the preceding Article, paragraph (3), which shall apply *mutatis mutandis* in paragraph (4) of this Article.

(7) The provision of paragraph (5) of this Article shall apply *mutatis mutandis* in the preceding paragraph. In this case, “Article 95, paragraph (5)” in paragraph (5) shall read “Article 95, paragraph (6)”.

Section 4
Rights of Broadcasting Organizations

(Right of reproduction)

Art. 98. Broadcasting organizations shall have the exclusive right to make sound or visual recordings of their broadcasts or those diffused by wire from such broadcasts, and to reproduce by means of photography or other similar processes the sounds or images incorporated in these broadcasts.

(Right of rebroadcasting and wire diffusion)

Art. 99.—

(1) Broadcasting organizations shall have the exclusive right to rebroadcast and diffuse by wire their broadcasts.

(2) The provision of the preceding paragraph shall not apply to the wire diffusion which is made by a person who is required to do so under the provisions of laws and regulations.

(Right of communication of television broadcasts)

Art. 100. Broadcasting organizations shall have the exclusive right to communicate to the public their television broadcasts or those diffused by wire from such broadcasts, by means of a special instrument for enlarging images.

Section 5
Rights of Wire Diffusion Organizations

(Right of reproduction)

Art. 100bis. Wire diffusion organizations shall have the exclusive right to make sound or visual recordings of their wire diffusions, and to reproduce by means of photography or other similar processes the sounds or images incorporated in their wire diffusions.

(Right of broadcasting and wire re-diffusion)

Art. 100ter. Wire diffusion organizations shall have the exclusive right to broadcast and re-diffuse by wire their wire diffusions.

(Right of communication of wire television diffusions)

Art. 100quater. Wire diffusion organizations shall have the exclusive right to communicate their wire television diffusions to the public, by means of a special instrument for enlarging images.

Section 6
Term of Protection

(Term of protection for performances, phonograms, broadcasts and wire diffusions)

Art. 101. The duration of neighboring rights shall begin with the following date, and shall expire at the end of a period of 50 years from the year following the date:

- (i) when the performance took place, for performances;

- (ii) when the first fixation of sounds was made, for phonograms;
- (iii) when the broadcast took place, for broadcasts;
- (iv) when the wire diffusion took place, for wire diffusions.

Section 7
Limitations, Transfer, Exercise
and Registration of the Rights

(Limitations on neighboring rights)

Art. 102.—

(1) The provisions of Article 30, paragraph (1), Articles 31, 32, 35 and 36, Article 37, paragraph (2), Article 38, paragraphs (2) and (4), and Articles 41, 42 and 44 (except paragraph (2)) shall apply *mutatis mutandis* to the exploitation of performances, phonograms, broadcasts or wire diffusions which are the subject matter of neighboring rights, the provision of Article 30, paragraph (2), shall apply *mutatis mutandis* to the exploitation of performances or phonograms which are the subject matter of neighboring rights, and the provision of Article 44, paragraph (2), shall apply *mutatis mutandis* to the exploitation of performances, phonograms or wire diffusions which are the subject matter of neighboring rights. In this case, “Article 23, paragraph (1)” in Article 44, paragraph (1), shall read “Article 92, paragraph (1), Article 99, paragraph (1) or Article 100ter”, and “Article 23, paragraph (1)” in Article 44, paragraph (2) shall read “Article 92, paragraph (1), or Article 100ter”.

(2) Where reproduction is made of performances, phonograms, sounds or images already broadcast or diffused by wire (hereinafter referred to as “performances, etc.”) in accordance with the provisions of Article 32, Article 37, paragraph (2), or Article 42 which are applicable *mutatis mutandis* in the preceding paragraph, the source must be clearly indicated in the manner and to the extent deemed reasonable by the character of the reproduction, provided that standard practice so requires.

(3) Where it is permissible to broadcast or diffuse by wire works under the provision of Article 39, paragraph (1), or Article 40, paragraph (1) or (2), it shall also be permissible to diffuse by wire the broadcasts or wire diffusions of such works and to communicate them to the public by means of a special instrument for enlarging images.

(4) The following shall be considered to constitute the making of sound or visual recordings or the reproduction described in Article 91, paragraph (1), Article 96, Article 98 or Article 100bis:

- (i) the distribution of copies of performances, etc., made in accordance with the provisions of Article 30, paragraph (1), Article 31, item (i), Article 35, Article 37, paragraph (2), Article 41, Article 42, or Article 44, paragraph (1) or (2), which apply *mutatis mutandis* in paragraph (1) of this Article, and the making available to the public of performances, of sounds of phonograms, or of sounds or images of broadcasts or wire diffusions by the use of these copies, for purposes other than those mentioned in these provisions;
- (ii) the preservation by broadcasting organizations or wire diffusion organizations of sound or visual recordings in violation of Article 44, paragraph (3), which apply *mutatis mutandis* in paragraph (1) of this Article.

(Transfer, exercise, etc., of neighboring rights)

Art. 103. The provision of Article 61, paragraph (1), shall apply *mutatis mutandis* to the transfer of neighboring rights, the provision of Article 62, paragraph (1), to the expiry of these rights, and the provision of Article 63 to the authorization to exploit performances, phonograms, broadcasts or wire diffusions, and the provision of Article 65 shall apply *mutatis mutandis* with respect to the joint authorship of these rights, and the provision of Article 66 with respect to the establishment of a pledge on these rights.

(Registration of neighboring rights)

Art. 104. The provisions of Articles 77 and 78 (except paragraph (2)) shall apply *mutatis mutandis* to the registration of neighboring rights. In this case, “the copyright register” in paragraphs (1) and (3) of the latter Article shall read “the register of neighboring rights”.

Chapter V Compensation for Private Recording

(Exercise of the right to claim compensation for private recording)

Art. 104bis.—

(1) Where there is an association which is established for the purpose of exercising the right to claim compensation as mentioned in Article 30, paragraph (2) (including the case where its application *mutatis mutandis* is provided for under the provision of Article 102, paragraph (1); the same shall apply hereinafter in this Chapter) (hereinafter in this Chapter referred to as “compensation for private recording”) on behalf of the owners of such right (hereinafter in this Chapter referred to as “the owners of the right”) and which is designated, with its consent, by the Commissioner of the Agency for Cultural Affairs as the only association throughout the country for each of the following two categories of compensation for private recording (hereinafter in this Chapter referred to as “the designated association”), the right to claim compensation for private recording shall be exercised exclusively through the intermediary of the designated association:

- (i) compensation for sound recording made for the purpose of private use (excluding such sound recording as made exclusively with visual recording; hereinafter in this Chapter referred to as “private sound recording”);
- (ii) compensation for visual recording made for the purpose of private use (including such visual recording as made exclusively with sound recording; hereinafter in this Chapter referred to as “private visual recording”).

(2) The designated association shall have the authority to deal, on behalf of the owners of the right and in its own name, with juridical and non-juridical matters in regard to the right to claim compensation for private recording.

(Conditions for designation)

Art. 104ter. The Commissioner of the Agency for Cultural Affairs shall designate only such an association as satisfies the following conditions:

- (i) that it is a legal person established under the provisions of Article 34 (Establishment of non-profit legal persons) of the Civil Law;
- (ii) that it is composed of, in the case of compensation for private sound recording, the associations mentioned in the following (a), (c) and (d), and, in the case of compensation for private visual recording, the associations mentioned in the following (b), (c) and (d), respectively:
 - (a) an association (including a federation of associations) which is composed of the persons holding the right of reproduction with respect to works of which private sound recording is made, and which is deemed to represent the interests of such right holders in this country,
 - (b) an association (including a federation of associations) which is composed of the persons holding the right of reproduction with respect to works of which private visual recording is made, and which is deemed to represent the interests of such right holders in this country,
 - (c) an association (including a federation of associations) which is composed of a considerable number of professional performers practicing in this country,

- (d) an association (including a federation of associations) which is composed of a considerable number of producers of phonograms practicing in this country;
- (iii) that each of the associations mentioned in (a), (b), (c) and (d) in the preceding item satisfies the following conditions:
 - (a) that it is not established for profit-making,
 - (b) that its members may freely join and withdraw,
 - (c) that its members are granted an equal right to vote and to be elected;
 - (iv) that it has sufficient ability to conduct properly the business of exercising the right to claim compensation for private recording (including the business relating to the activities mentioned in Article 104*octies*, paragraph (1); hereinafter in this Chapter referred to as “the business related to compensation”) on behalf of the owners of the right.

(Special provisions for the payment of compensation for private recording)

*Art. 104*quater.—

(1) Any purchaser of a recording machine or a recording medium which is specified by Cabinet Order in accordance with the provision of Article 30, paragraph (2) (hereinafter in this Chapter referred to as “a specified recording machine” and “a specified recording medium”, respectively) (limited to the initial purchasers of such retailed recording machines or media) shall pay, at the time of the purchase and on the claim by the designated association, a lump-sum compensation for private recording the amount of which is fixed, for such recording machine and medium, respectively, in accordance with the provision of Article 104*sexies*, paragraph (1).

(2) Any person who has paid such compensation may claim its repayment from the designated association by certifying that he or she uses such a specified recording machine or medium exclusively for a purpose other than that of private recording.

(3) Notwithstanding the provision of Article 30, paragraph (2), any person who makes a private recording on a specified recording medium, for which compensation has been paid, by means of a specified recording machine, for which compensation has been paid, shall not be required to pay compensation for private recording, provided that compensation has not been repaid for such a specified recording machine or medium concerned in accordance with the provision of the preceding paragraph.

(Cooperation by manufacturers and importers)

*Art. 104*quinquies. When the designated association claims compensation for private recording in accordance with the provision of paragraph (1) of the preceding Article, any manufacturer or importer of specified recording machines or media shall cooperate with the designated association in claiming and receiving such compensation.

(Amount of compensation for private recording)

*Art. 104*sexies.—

(1) Before exercising the right to claim compensation for private recording in accordance with the provision of Article 104*bis*, paragraph (1), the designated association shall fix the amount of such compensation and obtain the approval thereof from the Commissioner of the Agency for Cultural Affairs. The same shall apply when the designated association intends to change such amount.

(2) When the approval mentioned in the preceding paragraph is given, the amount of compensation for private recording shall, notwithstanding the provision of Article 30, paragraph (2), be that as approved.

(3) Before applying for such approval, the designated association shall consult with associations which are composed of manufacturers and importers of specified recording machines or media and are deemed to represent their opinions.

(4) The Commissioner of the Agency for Cultural Affairs shall approve the amount of compensation applied for only when it is deemed appropriate by taking into account the spirit of the provisions of

Article 30, paragraph (1) (including the case where its application *mutatis mutandis* is provided for under the provision of Article 102, paragraph (1)) and Article 104*quater*, paragraph (1), concerning the ordinary rate of sound or visual recording royalties and other circumstances.

(5) Before approving the amount of compensation, the Commissioner of the Agency for Cultural Affairs shall consult the Copyright Council.

(Rules on the execution of the business related to compensation)

Art. 104septies.—

(1) When initiating the business related to compensation, the designated association shall establish rules on the execution of such business and report those rules to the Commissioner of the Agency for Cultural Affairs. The same shall apply when the designated association intends to amend such rules.

(2) The rules mentioned in the preceding paragraph shall include the matters relating to the distribution of compensation for private recording (limited to such compensation as paid in accordance with the provision of Article 104*quater*, paragraph (1)), and the designated association shall take into account the spirit of the provision of Article 30, paragraph (2), when establishing the rules on such matters.

(Allocation for such activities as contributing to the protection of copyright, etc.)

Art. 104octies.—

(1) The designated association shall allocate an amount corresponding to the rate fixed by Cabinet Order within 20% of the compensation received (limited to such compensation as paid in accordance with the provision of Article 104*quater*, paragraph (1)) for such activities as contributing to the protection of copyright and neighboring rights as well as to the promotion of the creation and dissemination of works.

(2) When intending to draft the Cabinet Order mentioned in the preceding paragraph or to draft its amendment, the Commissioner of the Agency for Cultural Affairs shall consult the Copyright Council.

(3) The Commissioner of the Agency for Cultural Affairs may issue to the designated association an order necessary for supervising the business relating to the activities mentioned in paragraph (1) when it is deemed necessary for assuring the proper execution of such business.

(Request for report, etc.)

Art. 104novies. The Commissioner of the Agency for Cultural Affairs may request the designated association to make a report on its business related to compensation or to submit account books, documents and other information, and may make recommendations necessary for improving the manner of execution of the business related to compensation when it is deemed necessary for assuring the proper execution of such business.

(Non-application of the Law on Intermediary Business Concerning Copyrights)

Art. 104decies. The provisions of the Law on Intermediary Business Concerning Copyrights (Law No. 67, of 1939) shall not apply to business related to compensation executed by the designated association.

(Delegation to Cabinet Order)

Art. 104undecies. In addition to those provided for in this Chapter, necessary matters with respect to the designated association and the business related to compensation shall be prescribed by Cabinet Order.

Chapter VI Settlement of Disputes

(Mediators for the settlement of disputes concerning copyright)

Art. 105.—

(1) In order to settle, through mediation, disputes concerning the rights provided for in this Law, the Agency for Cultural Affairs shall provide mediators for the settlement of disputes concerning copyright (hereinafter in this Chapter referred to as “mediators”).

(2) Whenever an affair arises, mediators not exceeding three in number shall be appointed by the Commissioner of the Agency for Cultural Affairs from among persons of learning and experience in the field of copyright or neighboring rights.

(Application for mediation)

Art. 106. When a dispute arises in relation to the rights provided for in this Law, the parties concerned may apply for mediation to the Commissioner of the Agency for Cultural Affairs.

(Application fee)

Art. 107. Applicants shall pay an application fee the amount of which shall be fixed by Cabinet Order, taking into account the actual cost.

(Submission to mediation)

Art. 108.—

(1) Upon receipt of an application under the provision of Article 106 of both parties concerned or that of one party to which the other party consented, the Commissioner of the Agency for Cultural Affairs shall submit the matter to the mediators.

(2) The Commissioner of the Agency for Cultural Affairs may desist from submitting a matter to the mediators when he deems its nature inappropriate for submission to mediation or when he deems that the parties concerned applied for mediation for improper purposes.

(Mediation)

Art. 109.—

(1) The mediators shall mediate between the parties concerned in order to settle the dispute in conformity with actual circumstances and in consideration of the points in dispute.

(2) The mediators may stop the mediation when they deem that the likelihood of settlement of the dispute no longer exists.

(Report, etc.)

Art. 110.—

(1) Upon completion of the mediation, the mediators shall report thereon to the Commissioner of the Agency for Cultural Affairs.

(2) When stopping mediation, they shall inform the parties concerned thereof and indicate the reasons therefor, which shall also be reported to the Commissioner of the Agency for Cultural Affairs.

(Mandate to Cabinet Order)

Art. 111. Other than those provided for in this Chapter, necessary matters in connection with procedures of mediation and mediators shall be provided for by Cabinet Order.

Chapter VII Infringements

(Right of demanding cessation)

Art. 112.—

(1) Against those who infringe or are likely to infringe moral rights, copyright, right of publication or neighboring rights, the authors as well as the owners of these rights may demand cessation or prevention of such infringements.

(2) In making such demands, the authors, the owners of copyright, the owners of the right of publication or the owners of neighboring rights may demand that measures necessary to effect such cessation or prevention of infringement be taken, such as the abandonment of objects the making of which constituted an infringement, objects made by an infringement or implements and tools used solely for an infringement.

(Acts considered to be infringements)

Art. 113.—

(1) The following acts shall be considered to constitute infringements on moral rights, copyright, right of publication or neighboring rights:

(i) the importation into this country, for distribution, of objects made by an act which would constitute an infringement of moral rights, copyright, right of publication or neighboring rights if they were made in this country at the time of such importation;

(ii) the distribution or the possession for distribution of objects made by an act infringing moral rights, copyright, right of publication or neighboring rights (including those imported as mentioned in the preceding item) by a person who is aware of such infringement.

(2) An act of using in a computer, in the conduct of business, copies made by an act infringing a copyright in a program work (including copies made by the owner of such copies in accordance with the provision of Article 47*bis*, paragraph (1), as well as copies of a program work imported as mentioned in item (i) of the preceding paragraph and copies made by the owner of such imported copies in accordance with the provision of Article 47*bis*, paragraph (1)) shall be considered to constitute an infringement of that copyright, so long as the person using such copies was aware of such infringement at the time when he acquired the authority to use these copies.

(3) An act of exploitation of a work prejudicial to the honor or reputation of the author shall be considered to constitute an infringement of his moral rights.

(Presumption of the amount of damages)

Art. 114.—

(1) In the case where an owner of copyright, right of publication or neighboring rights claims compensation for damages from a person who has infringed intentionally or negligently any of these rights, the profits, if any, obtained by the infringer from that infringement shall be presumed to be the amount of damages suffered by such owner.

(2) The owners of copyright and neighboring rights may claim compensation for damages from a person who has infringed intentionally or negligently their copyright or neighboring rights, the amount of

damages suffered being that corresponding to the ordinary amount of money which would be received by them through the exercise of these rights.

(3) The provision of the preceding paragraph shall not prejudice any claim to compensation for damages in excess of the amount mentioned therein. In such case, the court may consider the absence of any bad faith or gross negligence on the part of the infringer in fixing the amount of damages.

(Measures for recovery of honor, etc.)

Art. 115. The author may demand that the person who has infringed his moral rights intentionally or negligently take the measures necessary to identify him as the author, to correct distortions, mutilations or modifications, or to recover his honor or reputation either in place of indemnification of damages or together with indemnification of damages.

(Measures to protect the moral interests after the author's death)

Art. 116.—

(1) After the death of the author, his bereaved family ("bereaved family" means surviving spouse, children, parents, grandchildren, grandparents, brothers or sisters of the dead author; the same shall apply hereinafter in this Article) may make the demand described in Article 112 of a person who violates or is likely to violate the provision of Article 60 in respect of the author concerned, or the demand described in the preceding Article of a person who has infringed moral rights intentionally or negligently or who has violated the provision of Article 60.

(2) Unless otherwise determined by the will of the author, the demands by the bereaved family mentioned in the preceding paragraph may be made in accordance with the order of the enumeration of the bereaved family in that paragraph.

(3) The author may appoint by will a person who acts for the bereaved family. In this case, the appointed person may not make a demand after the expiration of a period of 50 years from the year following the date of the author's death or, if any bereaved family still survive at the time of such expiration, after the death of all the bereaved family.

(Infringement with respect to a joint work, etc.)

Art. 117.—

(1) Each co-author of, or each co-owner of the copyright in, a joint work shall be entitled to make, without the consent of the other co-authors or co-owners of the copyright, the demand described in Article 112 or a demand for compensation for damages to his share or a demand for the surrender of unjust enrichment corresponding to his share.

(2) The provision of the preceding paragraph shall apply *mutatis mutandis* to an infringement of copyright or neighboring rights in co-ownership.

(Safeguard of rights in anonymous or pseudonymous works)

Art. 118.—

(1) The publisher of an anonymous or pseudonymous work shall be entitled to make, in his own name and in favor of the author or the copyright owner of the work, the demand described in Article 112, Article 115 or Article 116, paragraph (1), or a demand for compensation or the surrender of unjust enrichment, provided that the pseudonym is not generally known as that of the author and that the true name of the author is not registered under the provision of Article 75, paragraph (1).

(2) A person whose true name or generally known pseudonym is indicated as the name of the publisher in the customary manner on copies of an anonymous or pseudonymous work shall be presumed to be the publisher of that work.

Chapter VIII Penal Provisions

Art. 119. The following shall be punishable by imprisonment for a term not exceeding three years or a fine not exceeding 1,000,000 yen:

(i) any person who infringes moral rights, copyright, right of publication or neighboring rights (excluding those who reproduce by themselves works or performances, etc., for the purpose of private use mentioned in Article 30, paragraph (1) (including the case where its application *mutatis mutandis* is provided for under the provisions of Article 102, paragraph (1));

(ii) any person who, for profit-making purposes, causes others to use automatic reproducing machines mentioned in Article 30, paragraph (1), for such reproduction of works or performances, etc., as constitutes an infringement of copyright, right of publication or neighboring rights.

Art. 120. Any person who violates the provision of Article 60 shall be punishable by a fine not exceeding 1,000,000 yen.

Art. 121. Any person who distributes copies of works on which the true name or generally known pseudonym of a non-author is indicated as the name of the author (including copies of derivative works on which the true name or generally known pseudonym of a non-author of the original work is indicated as the name of the original author) shall be punishable by imprisonment for a term not exceeding one year or a fine not exceeding 300,000 yen.

Art. 121bis.

Any person who makes, distributes or possesses for distribution copies of commercial phonograms reproduced from any of the following commercial phonograms (including copies of such commercial phonograms and those made through one or more intervening copies) shall be punishable by imprisonment for a term not exceeding one year or a fine not exceeding 300,000 yen, provided that such making, distribution or possession of copies is made within a period of 50 years from the year following the date of the first fixation of sounds on matrices of phonograms:

(i) commercial phonograms which have been manufactured, by those engaging in the business of manufacturing commercial phonograms in this country, from matrices of phonograms (except those phonograms falling within any of the four items of Article 8) offered by producers of phonograms;

(ii) commercial phonograms which have been manufactured, by those engaging in the business of manufacturing commercial phonograms outside the jurisdiction of this Law, from matrices of phonograms (except those phonograms falling within any of the four items of Article 8) offered by producers of phonograms who are nationals of any of the Contracting States of the Convention for the Protection of Performers, etc., the Members of the World Trade Organization or the Contracting States of the Phonograms Convention (including legal persons established under the law of such State or having their principal offices in such State).

Art. 122. Any person who violates the provisions of Article 48 or Article 102, paragraph (2), shall be punishable by a fine not exceeding 100,000 yen.

Art. 123.—

(1) In the case of offenses under Article 119 and Article 121*bis*, the prosecution shall take place only upon the complaint of the injured person.

(2) A publisher of an anonymous or a pseudonymous work may lodge a complaint with respect to such work published by him, except in the cases where the proviso to Article 118, paragraph (1), is applicable and where the complaint is contrary to the express will of the author.

Art. 124.—

(1) Where a representative of a legal person (including an administrator of a non-juridical association or foundation) or an agent, an employee or any other worker of a legal person or a person violates the

provisions of Articles 119 to 122 in connection with the business of such legal person or such person, the fine under each Article shall be imposed upon such legal person or such person in addition to the punishment of the offender.

(2) In the case where the provision of the preceding paragraph applies to a non-juridical association or foundation, its representative or administrator shall represent such association or foundation with regard to proceedings, and the provisions of the Code of Criminal Procedure which are used when a legal person is the accused or the suspect shall apply *mutatis mutandis*.

(3) In the case of paragraph (1), a complaint lodged against an offender or the withdrawal of such complaint shall be effective also with respect to the legal person or the person concerned, and a complaint lodged against a legal person or a person or the withdrawal of such complaint shall be effective also with respect to the offender concerned.

Supplementary Provisions (Law No. 112, of December 14, 1994)

(Date of enforcement)

1. This Law shall come into force on the date fixed by Cabinet Order within one year from the next day of the date on which the Marrakesh Agreement Establishing the World Trade Organization becomes effective with respect to Japan.

(Application of the provisions relating to neighboring rights)

2. The provisions of paragraph (3) of the Supplementary Provisions of the Law for Partial Amendments to the Copyright Law (Law No. 64, of 1986), paragraph (2) of the Supplementary Provisions of the Law for Partial Amendments to the Copyright Law (Law No. 43, of 1989; hereinafter referred to as “the Amendments Law of 1989”) and paragraph (2) of the Supplementary Provisions of the Law for Partial Amendments to the Copyright Law (Law No. 63, of 1991; in paragraph (4) of the Supplementary Provisions, referred to as “the Amendments Law of 1991”) shall not be applicable, in respect of the application of the provisions relating to neighboring rights (including the provisions of Article 95*bis*, paragraphs (3) and (4) of the Copyright Law amended by the provisions of Article 1 (hereinafter referred to as “the new Law”) to the performances mentioned in Article 7, item (iv), of the new Law (excluding those falling within the performances mentioned in Article 7, items (i) to (iii), and which fall within the following performances, or to the performances mentioned in Article 7, item (v), and which fall within the following performances:

(i) performances which took place in a Member of the World Trade Organization;

(ii) performances fixed in the following phonograms:

(a) phonograms the producers of which are nationals of any of the Members of the World Trade Organization (“nationals” includes legal persons established under the law of such Member and those who have their principal offices in such Member; the same shall apply hereinafter),

(b) phonograms composed of the sounds which were first fixed in any of the Members of the World Trade Organization;

(iii) performances transmitted through the following broadcasts, excluding those incorporated in sound or visual recordings before the transmission with the authorization of the performers concerned:

(a) broadcasts transmitted by broadcasting organizations that are nationals of any of the Members of the World Trade Organization,

(b) broadcasts transmitted from transmitters situated in any of the Members of the World Trade Organization.

3. The provisions of paragraph (4) of the Supplementary Provisions of the Amendments Law of 1989 shall not be applicable, in respect of the application of the provisions relating to neighboring rights of the

new Law (including the provisions of Article 95*bis*, paragraphs (3) and (4)) to foreign performers whose performances are mentioned in the preceding paragraph, items (i) to (iii), and who did not have their habitual residence in this country at the time when their performances took place.

4. The provisions of paragraph (2) of the Supplementary Provisions of the Law for Partial Amendments to the Copyright Law (Law No. 49, of 1978), paragraphs (2) and (3) of the Supplementary Provisions of the Amendments Law of 1989, and paragraph (3) of the Amendments Law of 1991 shall not be applicable, in respect of the application of the provisions relating to neighboring rights of the new Law (including the provisions of Article 97*bis*, paragraphs (3) to (5)) to the following phonograms:

- (i) phonograms mentioned in Article 8, item (iii), and which fall within the following phonograms:
 - (a) phonograms the producers of which are nationals of any of the Members of the World Trade Organization,
 - (b) phonograms composed of the sounds which were first fixed in any of the Members of the World Trade Organization;
- (ii) phonograms mentioned in Article 8, item (iv), and to which Japan has the obligation to grant protection under the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (in paragraph (6) of the Supplementary Provisions, referred to as “the Phonograms Convention”).

5. The provisions of paragraph (2) of the Supplementary Provisions of the Amendments Law of 1989 shall not be applicable, in respect of the application of the provisions relating to neighboring rights of the new Law to the broadcasts mentioned in Article 9, item (iii), and which fall within the following broadcasts:

- (i) broadcasts transmitted by broadcasting organizations that are nationals of any of the Members of the World Trade Organization;
- (ii) broadcasts transmitted from transmitters situated in any of the Members of the World Trade Organization.

(Transitional measures: the making of copies, etc., of commercial phonograms manufactured from matrices coming from foreign countries)

6. The provisions of Article 121*bis* of the new Law shall not apply to the acts, which are made after the enforcement of this Law, of the making, the distribution or the possession for distribution, of copies of commercial phonograms reproduced from commercial phonograms (including copies of such commercial phonograms and those made through one or more intervening copies) which have been manufactured, by those engaging in the business of manufacturing commercial phonograms outside the jurisdiction of the Copyright Law, from matrices of phonograms (except those phonograms falling within any of the five items of Article 8 of the new Law) offered by the producers of phonograms who are nationals of any of the members of the World Trade Organization (except those nationals of any of the Contracting States of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations or of the Phonograms Convention (“those nationals” includes legal persons established under the law of such State and those who have their principal offices in such State)) and in relation to which 20 years from the year following the date of the first fixation of sounds on the matrices have passed before the enforcement of the Law for Partial Amendments to the Copyright Law (Law No. 87, of 1988).