

Übersetzung durch Ute Reusch.

Translation provided by Ute Reusch.

Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 8 des Gesetzes vom 1.10.2013 (BGBl. I S. 3714)

Version information: The translation includes the amendment(s) to the Act by Article 8 of the Act of 1.10.2013 (Federal Law Gazette I p. 3714)

© 2014 juris GmbH, Saarbrücken

Act on Copyright and Related Rights (Copyright Act)

Copyright Act of 9 September 1965 (Federal Law Gazette Part I, p. 1273), as last amended by Article 8 of the Act of 1 October 2013 (Federal Law Gazette Part I, p. 3714)

Part 1 Copyright

Section I General

Article 1 General

The authors of works in the literary, scientific and artistic domain enjoy protection for their works in accordance with this Act.

Section II Works

Article 2 Protected works

(1) Protected works in the literary, scientific and artistic domain include, in particular:

1. Literary works, such as written works, speeches and computer programs;
2. Musical works;
3. Pantomimic works, including works of dance;
4. Artistic works, including works of architecture and of applied art and drafts of such works;
5. Photographic works, including works produced by processes similar to photography;
6. Cinematographic works, including works produced by processes similar to cinematography;
7. Illustrations of a scientific or technical nature, such as drawings, plans, maps, sketches, tables and three-dimensional representations.

(2) Only the author's own intellectual creations constitute works within the meaning of this Act.

Article 3 Adaptations

Translations and other adaptations of a work which are the adapter's own intellectual creations are protected as independent works without prejudice to the copyright in the adapted work. The insubstantial adaptation of an unprotected musical work is not protected as an independent work.

Article 4
Collections and database works

- (1) Collections of works, data or other independent elements which by reason of the selection or arrangement of the elements constitute the author's own intellectual creation (collections) are protected as independent works without prejudice to an existing copyright or related right in one of the individual elements.
- (2) A database work within the meaning of this Act is a collection whose elements are arranged systematically or methodically and the individual elements are individually accessible by electronic or other means. A computer program (Article 69a) used in the creation of the database work or to provide access to its elements does not constitute an integral part of the database work.

Article 5
Official works

- (1) Acts, ordinances, official decrees and official notices, as well as decisions and official head notes of decisions do not enjoy copyright protection.
- (2) The same applies to other official texts published in the official interest for general information purposes, subject to the proviso that the provisions concerning the prohibition of alteration and the indication of sources in Article 62 (1) to (3) and Article 63 (1) and (2) shall apply mutatis mutandis.
- (3) Copyright in respect of private normative works shall not be affected by paragraphs (1) and (2) if acts, ordinances, decrees or official notices refer to such works without reproducing their wording. In that case the author shall be obliged to grant every publisher, on equitable conditions, a right of reproduction and distribution. Where a third party is the owner of the exclusive right of reproduction and distribution, he shall be obliged to grant the right of exploitation pursuant to the second sentence.

Article 6
Published works and released works

- (1) A work shall be deemed to have been published when it has been made available to the public with the consent of the rightholder.
- (2) A work shall be deemed to have been released when copies of the work have been offered, with the rightholder's consent, to the public or brought to the market after their production in sufficient quantity. An artistic work shall also be deemed to have been released when the original or a copy of the work has been made permanently available to the public with the consent of the rightholder.

Section III
Authors

Article 7
Author

The author is the creator of the work.

Article 8
Joint authors

- (1) Where several persons have jointly created a work without it being possible to separately exploit their individual shares in the work, they are joint authors of the work.
- (2) The right of publication and of exploitation of the work accrues jointly to the joint authors; alterations to the work shall be permissible only with the consent of the joint authors. However, a joint author may not refuse his consent to publication, exploitation or alteration contrary to the principles of good faith. Each joint author shall be entitled to assert claims arising from violations of the joint copyright; he may, however, demand performance only to all of the joint authors.

(3) Proceeds derived from the use of the work shall be due to the joint authors according to the extent of their involvement in the creation of the work, unless otherwise agreed between the joint authors.

(4) A joint author may waive his share of the exploitation rights (Article 15). He shall make a declaration of waiver to the other joint authors. Upon his declaration his share shall accrue to the other joint authors.

Article 9

Authors of compound works

Where several authors have combined their works for the purpose of joint exploitation, each may require the consent of the others to the publication, exploitation or alteration of the compound works if the consent of the others may be reasonably expected in good faith.

Article 10

Presumption of authorship or ownership

(1) The person designated as the author in the usual manner on the copies of a released work or on the original of an artistic work shall be regarded as the author of the work in the absence of proof to the contrary; the same shall apply to any designation which is known to be a pseudonym or stage name of the author.

(2) Where the author has not been named according to paragraph (1), it shall be presumed that the person designated as the editor on the copies of the work is entitled to assert the rights of the author. Where no editor has been named, it shall be presumed that the publisher is entitled to assert such rights.

(3) The presumption in paragraph (1) shall apply mutatis mutandis to the holder of exclusive exploitation rights in the event of proceedings for temporary relief or injunctive relief. The presumption shall not apply in the relationship to the author or the original holder of the related right.

Section IV

Scope of copyright

Subsection 1

General

Article 11

General

Copyright protects the author in his intellectual and personal relationships to the work and in respect of the use of the work. It shall also serve to ensure equitable remuneration for the exploitation of the work.

Subsection 2

Moral rights of authors

Article 12

Right of publication

(1) The author has the right to determine whether and how his work shall be published.

(2) The author reserves the right to communicate or describe the content of his work to the public as long as neither the work nor the essential content or a description of the work has been published with his consent.

Article 13

Recognition of authorship

The author has the right to be identified as the author of the work. He may determine whether the work shall bear a designation of authorship and which designation is to be used.

Article 14
Distortion of the work

The author has the right to prohibit the distortion or any other derogatory treatment of his work which is capable of prejudicing his legitimate intellectual or personal interests in the work.

Subsection 3
Exploitation rights

Article 15
General

(1) The author has the exclusive right to exploit his work in material form; this right shall in particular include

1. the right of reproduction (Article 16),
2. the right of distribution (Article 17),
3. the right of exhibition (Article 18).

(2) The author further has the exclusive right to communicate his work to the public in non-material form (right of communication to the public). The right of communication to the public shall comprise in particular

1. the right of recitation, performance and presentation (Article 19),
2. the right of making the work available to the public (Article 19a),
3. the right of broadcasting (Article 20),
4. the right of communication by video or audio recordings (Article 21),
5. the right of communication of broadcasts and of works made available to the public (Article 22).

(3) The communication of a work shall be deemed public if it is intended for a plurality of members of the public. Anyone who is not connected by a personal relationship with the person exploiting the work or with the other persons to whom the work is made perceivable or made available in non-material form shall be deemed to be a member of the public.

Article 16
Right of reproduction

(1) The right of reproduction is the right to produce copies of the work, whether on a temporary or on a lasting basis and regardless of by which means of procedure or in which quantity they are made.

(2) The transfer of the work to devices for the purposes of repeated communication of video and sound sequences (video and audio recordings), regardless of whether this is the recording of a communication of the work on a video or audio recording medium or the transfer of the work from one video or audio recording medium to another, also constitutes reproduction.

Article 17
Right of distribution

(1) The right of distribution is the right to offer the original or copies of the work to the public or to bring it to the market.

(2) Where the original or copies of the work have been brought to the market by sale with the consent of the person entitled to distribute them within the territory of the European Union or another state party to the Agreement on the European Economic Area, their dissemination shall be permissible, except by means of rental.

(3) Rental within the meaning of the provisions of this Act is the time-limited transfer for use which directly or indirectly serves profit-making purposes. However, rental shall not include the transfer of originals or copies

1. of buildings or works of applied art, or
2. used in the context of an employment or service relationship for the exclusive purpose of fulfilling obligations resulting from the employment or service relationship.

Article 18
Right of exhibition

The right of exhibition is the right to display in public the original or the copies of an unpublished artistic work or an unpublished photographic work.

Article 19
Right of recitation, performance and presentation

- (1) The right of recitation is the right to give a public recital of a literary work by means of personal performance.
- (2) The right of performance is the right to give a public recital of a musical work by means of personal performance or to give a public theatrical performance of a work.
- (3) The right of recitation and the right of performance shall include the right to make speeches and performances perceivable to the public by means of a screen, loudspeaker or similar technical devices outside of that room in which the personal performance is taking place.
- (4) The right of presentation is the right to make an artistic work, a photographic work, a cinematographic work or illustrations of a scientific or technical nature perceivable to the public by the use of technical devices. The right of presentation does not include the right to make the radio broadcast or the making available to the public of such works perceivable to the public (Article 22).

Article 19a
Right of making works available to the public

The right of making works available to the public shall constitute the right to make the work available to the public, either by wire or wireless means, in such a manner that members of the public may access it from a place and at a time individually chosen by them.

Article 20
Right of broadcasting

The right of broadcasting is the right to make a work available to the public by broadcasting, such as radio and television transmission, satellite transmission, cable transmission or by similar technical means.

Article 20a
European broadcasts transmitted by satellite

- (1) Where a broadcast is transmitted by satellite within the territory of a Member State of the European Union or a state party to the Agreement on the European Economic Area, it shall be deemed to have been transmitted solely in that Member State or state party to the Agreement.
- (2) Where a broadcast is transmitted by satellite within the territory of a state which is neither a Member State of the European Union nor a state party to the Agreement on the European Economic Area and in which in respect of the right of satellite transmission the level of protection provided for under Chapter II of Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable

retransmission (OJ L 248 p. 15) is not guaranteed, it shall be deemed to have been transmitted solely in that Member State or state party to the Agreement

1. in which the uplink station is located from which the program-carrying signals are transmitted to the satellite, or
2. in which the broadcasting organisation has its place of business in cases where the condition under item 1 is not met.

The right of broadcasting shall be asserted against the operator of the uplink station in the case referred to in item 1 and against the broadcasting organisation in the case referred to in item 2.

(3) Satellite transmission within the meaning of paragraphs (1) and (2) shall be the introduction under the control and responsibility of the broadcasting organisation of program-carrying signals intended for reception by the public into an uninterrupted chain of transmission leading up to the satellite and down towards the earth.

Article 20b **Cable retransmission**

(1) The right to retransmit a transmitted work in the context of a simultaneous, unaltered and unabridged retransmission of a program by means of cable systems or microwave systems (cable retransmission) may be asserted only by a collecting society. This shall not apply to rights asserted by a broadcasting organisation in respect of its broadcasts.

(2) Where the author has granted the right of cable retransmission to a broadcasting organisation or to the producer of an audio recording or film, the cable operator shall nevertheless pay the author an equitable remuneration for the cable retransmission. The claim for remuneration may not be waived. It may be assigned in advance only to a collecting society and may be asserted only by a collecting society. This provision shall not conflict with the collective agreements, works agreements and joint remuneration agreement of broadcasting organisations insofar as the author is thereby granted equitable remuneration for each cable retransmission.

Article 21 **Right of communication by video or audio recordings**

The right of communication by video or audio recordings is the right to make speeches or performances of a work perceivable to the public by means of video or audio recordings. Article 19 (3) shall apply mutatis mutandis.

Article 22 **Right of communication of broadcasts and of works made available to the public**

The right of communication of broadcasts and of communication of the making available to the public shall constitute the right to make perceivable to the public by screen, loudspeaker or similar technical device, broadcasts and communications of the work as are based on its making available to the public. Article 19 (3) shall apply mutatis mutandis.

Article 23 **Adaptations and transformations**

Adaptations or other transformations of the work may be published or exploited only with the consent of the author of the adapted or transformed work. In the case of a film version of the work, the execution of plans and drafts of an artistic work, the reproduction of an architectural work or the adaptation or transformation of a database work, the production of the adaptation or transformation shall already require the consent of the author.

Article 24 **Free use**

(1) An independent work created in the free use of the work of another person may be published or exploited without the consent of the author of the work used.

(2) Paragraph (1) shall not apply to the use of a musical work in which a melody is recognisably taken from the work and used as the basis for a new work.

Subsection 4 Other rights of authors

Article 25 Access to copies of works

(1) The author may require that the owner of the original or of a copy of his work make the original or copy thereof available to him insofar as this is necessary for the production of copies or adaptations of the work and does not conflict with the legitimate interests of the owner.

(2) The owner shall not be obliged to surrender the original or the copy to the author.

Article 26 Right of resale

(1) If the original of an artistic work or of a photographic work is resold and if an art dealer or an auctioneer is involved as purchaser, vendor or intermediary, the vendor shall pay to the author a share of the selling price. The selling price within the meaning of the first sentence shall be deemed to be the sales price net of tax. If the vendor is a person acting in his private capacity, the art dealer or the auctioneer, involved as purchaser or intermediary, shall be jointly and severally liable in addition to the vendor; in their relationship inter se, it is the vendor who shall alone be liable for payment. The obligation pursuant to the first sentence shall not apply where the selling price amounts to less than 400 euro.

(2) The extent of the selling price portion shall amount to:

1. 4 per cent for the portion of the selling price up to 50,000 euro,
2. 3 per cent for the portion of the selling price from 50,000.01 to 200,000 euro,
3. 1 per cent for the portion of the selling price from 200,000.01 to 350,000 euro,
4. 0.5 per cent for the portion of the selling price from 350,000.01 to 500,000 euro,
5. 0.25 per cent for the portion of the selling price exceeding 500,000 euro.

The total amount of the royalty on resale shall not exceed 12,500 euro.

(3) The resale right shall be inalienable. The author may not waive his share in advance.

(4) The author may require provision of information from an art dealer or an auctioneer as to which of the author's originals of works of art have been resold with the involvement of the art dealer or the auctioneer during the last three years prior to the request for information.

(5) Where necessary for the assertion of his claim against the vendor, the author may require the art dealer or the auctioneer to provide information on the name and address of the vendor as well as on the amount of the selling price. The art dealer or the auctioneer may refuse to provide information on the name and address of the vendor if he pays the share due to the author.

(6) The claims under paragraphs (4) and (5) may only be asserted through a collecting society.

(7) Where there is reasonable doubt as to the accuracy or completeness of the information provided in accordance with paragraph (4) or (5), the collecting society may require access to the account books or to other documents to be granted, at the choice

of the person obliged to provide the information, either to the collecting society or to a chartered accountant or sworn auditor, designated by that person, to the extent which is necessary to ascertain the accuracy or completeness of the information. Where the information is found to be inaccurate or incomplete, the person obliged to provide the information shall bear the costs of the examination.

(8) The foregoing provisions shall not apply to architectural works and works of applied art.

Article 27

Remuneration for rental and lending

(1) Where the author has granted rental rights (Article 17) in respect of a video or audio recording to the producer of the audio recording or of a film, the lessor shall nevertheless pay the author an equitable remuneration for the rental. The claim for remuneration may not be waived. It may be assigned in advance only to a collecting society.

(2) The author shall be paid an equitable remuneration for the lending of those originals or copies of a work whose dissemination is permissible according to Article 17 (2) if the originals or copies are lent through a publicly accessible institution (library, collection of video or audio recordings or other originals or copies thereof). Lending within the meaning of the first sentence is the time-limited transfer for use which neither directly nor indirectly serves profit-making purposes; Article 17 (3), second sentence, shall apply *mutatis mutandis*.

(3) The claims for remuneration under paragraphs (1) and (2) may be asserted only through a collecting society.

Section 5

Dealings in rights in copyright

Subsection 1

Succession to copyright

Article 28

Inheritance of copyright

(1) Copyright shall be inheritable.

(2) The author may assign the exercise of copyright to an executor by testamentary disposition. Article 2210 of the German Civil Code (Bürgerliches Gesetzbuch) shall not apply.

Article 29

Transfer of copyright

(1) Copyright is not transferrable, unless it is transferred in execution of a testamentary disposition or to co-heirs as part of the partition of an estate.

(2) The granting of exploitation rights (Article 31), contractual authorisations and agreements based on exploitation rights, as well as contracts on moral rights of authors as regulated under Article 39 are permitted.

Article 30

Author's successor in title

The author's successor in title holds the rights to which the author is entitled according to this Act, unless otherwise provided for.

Subsection 2

Exploitation rights

Article 31

Grant of exploitation rights

- (1) The author may grant a right to another to use the work in a particular manner or in any manner (exploitation right). An exploitation right may be granted as a non-exclusive right or as an exclusive right, and may be limited in respect of place, time or content.
- (2) A non-exclusive exploitation right shall entitle the rightholder to use the work in the manner permitted to him, without excluding other persons.
- (3) An exclusive exploitation right shall entitle the rightholder to use the work in the manner permitted to him, to the exclusion of all other persons, and to grant exploitation rights. It may be agreed that utilisation by the author is reserved. Article 35 remains unaffected.
- (4) (repealed)
- (5) If the types of exploitation have not been specifically designated when an exploitation right was granted, the types of use to which the right extends shall be determined in accordance with the purpose envisaged by both parties to the contract. A corresponding rule shall apply to the questions of whether an exploitation right has in fact been granted, whether it shall be a non-exclusive or an exclusive exploitation right, how far the exploitation right and the right to forbid extent, and to what limitations the exploitation right shall be subject.

Article 31a

Contracts concerning unknown types of exploitation

- (1) A contract where the author grants rights in respect of unknown types of exploitation, or where he undertakes the obligation to do so, shall be drawn up in writing. There shall be no need for a written contract in cases where the author grants an unremunerated non-exclusive exploitation right for every person. The author may revoke this grant of a right or revoke the obligation thereto. The right of revocation shall expire after three months have elapsed since the other person sent the author, at the address last known to the sender, the information concerning intended commencement of the new type of exploitation of the author's work.
- (2) The right of revocation shall not apply where the parties, upon becoming aware of the new type of exploitation, have agreed on remuneration pursuant to Article 32c (1). The right of revocation shall also not apply where the parties have arranged for remuneration according to a joint remuneration agreement. The right of revocation shall expire upon the author's death.
- (3) If there is consolidation of more than one work, or more than one contribution to a work, into one entity which, in the new type of exploitation, may be used appropriately only in circumstances where there is exploitation of all works or contributions to a work, the author may not exercise his right of revocation contrary to good faith.
- (4) There can be no advance waiver of the rights pursuant to paragraphs (1) to (3).

Article 32

Equitable remuneration

- (1) The author shall have a right to the contractually agreed remuneration for the granting of exploitation rights and permission for exploitation of the work. If the amount of the remuneration has not been determined, equitable remuneration shall be deemed to have been agreed. If the agreed remuneration is not equitable, the author may require the other party to consent to a modification of the agreement so that the author is granted equitable remuneration.
- (2) Remuneration shall be equitable if determined in accordance with a joint remuneration agreement (Article 36). Any other remuneration shall be equitable if at the time the agreement is concluded it corresponds to what in business relations is customary and fair, given the nature and extent of the possibility of exploitation granted, in particular the duration and time of exploitation, and considering all circumstances.
- (3) An agreement which deviates from paragraphs (1) and (2) to the detriment of the author may not be invoked by the other party to the agreement. The provisions stipulated in the first sentence shall apply even if they are circumvented by other

arrangements. The author may, however, grant a non-exclusive exploitation right to anyone free of charge.

(4) The author shall have no right pursuant to paragraph (1), third sentence, to the extent that the remuneration for exploitation of his works has been determined in a collective bargaining agreement.

Article 32a

Author's further participation

(1) Where the author has granted an exploitation right to another party on conditions which, taking into account the author's entire relationship with the other party, result in the agreed remuneration being conspicuously disproportionate to the proceeds and benefits derived from the exploitation of the work, the other party shall be obliged, at the author's request, to consent to a modification of the agreement which grants the author further equitable participation appropriate to the circumstances. It shall be irrelevant whether the parties to the agreement had foreseen or could have foreseen the amount of the proceeds or benefits obtained.

(2) If the other party has transferred the exploitation right or granted further exploitation rights and if the conspicuous disproportion results from proceeds or benefits enjoyed by a third party, the latter shall be directly liable to the author in accordance with paragraph (1), taking into account the contractual relationships within the licensing chain. The other party shall then not be liable.

(3) The rights under paragraphs (1) and (2) may not be waived in advance. An expected benefit shall not be subject to compulsory execution; any disposition regarding the expected benefit shall be ineffective. The author may, however, grant an unremunerated non-exclusive exploitation right for every person.

(4) The author shall not have a right pursuant to paragraph (1) if the remuneration has been determined in accordance with a joint remuneration agreement (Article 36) or in a collective agreement and explicitly provides for a further equitable participation in cases under paragraph (1).

Article 32b

Compulsory application

The application of Articles 32 and 32a shall be compulsory

1. if German law would be applicable to the exploitation agreement in the absence of a choice of law, or
2. to the extent that the agreement covers significant acts of exploitation within the territory to which this Act applies.

Article 32c

Remuneration for types of exploitation which subsequently become known

(1) The author shall be entitled to separate equitable remuneration where the other contracting party commences a new type of exploitation of the author's work, pursuant to Article 31a, which was agreed upon, but still unknown, at the time the contract was concluded. Article 32 (2) and (4) shall apply mutatis mutandis. The other contracting party shall, without delay, inform the author about the commencement of the new type of exploitation of his work.

(2) Where the other contracting party has transferred the right of exploitation to a third party, the third party shall be liable to provide the remuneration pursuant to paragraph (1) upon commencement of the new type of exploitation of the author's work. There shall be no liability on the part of the contracting party.

(3) There can be no advance waiver of the rights pursuant to paragraphs (1) and (2). The author may, however, grant an unremunerated, non-exclusive exploitation right for every person.

Article 33

Continuing effect of exploitation rights

Exclusive and non-exclusive exploitation rights shall remain effective with respect to exploitation rights granted later. The same rule shall apply if the rightholder who has granted the exploitation right changes or if he waives his right.

Article 34

Transfer of exploitation rights

- (1) An exploitation right may only be transferred with the author's consent. The author may not refuse his consent contrary to the principles of good faith.
- (2) Where the transfer of the exploitation right in respect of a collection (Article 4) includes the transfer of the exploitation right of the individual works in the collection, the consent of the author of the collection shall suffice.
- (3) An exploitation right may be transferred without the author's consent if the transfer is comprised in the sale of the whole of an enterprise or the sale of parts of an enterprise. The author may revoke the exploitation right if exercise of the exploitation right by the transferee may not be reasonably demanded of the author. The second sentence shall also apply when the shareholder relations with respect to the enterprise of the holder of the exploitation rights are substantially changed.
- (4) The transferee shall be jointly and severally liable for the discharge of the transferor's obligations under his agreement with the author, if the author has not expressly consented to the transfer of the exploitation right in the individual case.
- (5) The author may not waive the right of revocation and the liability of the transferee in advance. Otherwise, the holder of the exploitation right and the author may agree on different terms.

Article 35

Grant of further exploitation rights

- (1) The holder of an exclusive exploitation right may grant further exploitation rights only with the consent of the author. The author's consent shall not be required where the exclusive exploitation right is granted only to ensure that the author's interests are served.
- (2) The provisions under Article 34 (1), second sentence, paragraphs (2) and (5), second sentence, shall apply mutatis mutandis.

Article 36

Joint remuneration agreements

- (1) In order to determine whether remuneration is equitable pursuant to Article 32, authors' associations together with associations of users of works or individual users of works shall establish joint remuneration agreements. Joint remuneration agreements shall take account of the circumstances of the respective area of regulation, especially the structure and size of the users. Regulations contained in collective bargaining agreements shall take precedence over joint remuneration agreements.
- (2) Associations as referred to under paragraph (1) shall be representative, independent and empowered to establish joint remuneration agreements.
- (3) If the parties have so agreed, proceedings for the establishment of joint remuneration agreements shall be conducted before the arbitration board (Article 36a). Proceedings shall be conducted upon the written request of one of the parties, if
 1. the other party does not commence negotiations on joint remuneration agreements within three months of the written request of one of the parties to initiate such negotiations,
 2. negotiations on joint remuneration agreements do result in an outcome one year after the written request to initiate such negotiations, or

3. one of the parties declares that the negotiations have irretrievably failed.
- (4) The arbitration board shall submit to the parties a settlement proposal giving reasons and containing the contents of the joint remuneration agreement. The proposal shall be deemed to have been accepted if the arbitration board does not receive any written objection thereto within three months of the receipt of such proposal.

Article 36a
Arbitration board

- (1) In order to establish joint remuneration agreements, authors' associations together with associations of users of works or individual users of works shall set up an arbitration board, if the parties have agreed this or one of the parties has requested that arbitration proceedings be conducted.
- (2) The arbitration board shall consist of an equal number of assessors appointed by each of the respective parties, and an impartial chairperson, the appointment of whom both parties should agree upon.
- (3) If it is not possible for agreement to be reached on who is to be appointed as chairman, the higher regional court competent pursuant to Article 1062 of the Code of Civil Procedure (Zivilprozessordnung) shall appoint the chairman. The higher regional court shall also decide failing agreement as to the number of assessors. Articles 1063 and 1065 of the Code of Civil Procedure shall apply mutatis mutandis to the proceedings before the higher regional court.
- (4) A request for arbitration proceedings in accordance with Article 36 (3) second sentence must contain a proposal for the establishment of a joint remuneration agreement.
- (5) The arbitration board shall decide by majority vote following an oral consultation. The decision shall initially be taken by the assessors; if a majority vote cannot be obtained, the chairman shall, following further consultation, participate in a renewed vote. If one of the parties does not appoint any members or if the members appointed by one of the parties do not take part in the session in spite of a timely invitation to do so, the chairman and the members who have attended shall decide on their own in accordance with the first and second sentences. The decision of the arbitration board shall be set forth in writing, signed by the chairman and delivered to each party.
- (6) The parties shall bear their own costs as well as the costs of the assessor they have appointed. The other costs shall be borne by the parties to the extent of one half each. As joint and several debtors the parties shall make, at the request and for the receipt of the presiding judge, a requisite advance payment for the arbitration board's work.
- (7) The parties may lay down the details of proceedings before the arbitration board in the form of an agreement.
- (8) The Federal Ministry of Justice shall have the power to lay down by ordinance, without consent of the Bundesrat, further details of the procedure before the arbitration board, as well as further provisions on the costs of proceedings and the reimbursement of members of the arbitration board.

Article 37
Agreements to grant exploitation rights

- (1) Where the author grants another person an exploitation right in a work, he shall, in cases of doubt, retain the right to consent to the publication or exploitation of an adaptation of the work.
- (2) Where the author grants another person an exploitation right in the reproduction of the work, he shall, in cases of doubt, retain the right to transfer the work to video and audio recording mediums.
- (3) Where the author grants another person an exploitation right in a communication of the work to the public, he shall, in cases of doubt, not be entitled to make the

communication perceivable to the public by means of a screen, loudspeaker or similar technical devices outside of the event for which it is to be used.

Article 38

Contributions to collections

(1) Where the author permits the inclusion of the work in a collection which is published periodically, the publisher or editor shall, in cases of doubt, acquire an exclusive right of reproduction, distribution and making available to the public. However, the author may otherwise reproduce, distribute and make available to the public the work upon expiry of one year, unless otherwise agreed.

(2) Paragraph (1), second sentence, shall also apply to a contribution to a collection which is not published periodically the grant of permission of use for which does not entitle the author to payment of remuneration.

(3) Where the contribution is made available to a newspaper, the publisher or editor shall acquire a non-exclusive exploitation right, unless otherwise agreed. Where the author grants an exclusive exploitation right, he shall be authorised, immediately after the contribution is being released, to otherwise reproduce or distribute it, unless otherwise agreed.

(4) The author of a scientific contribution which is the result of a research activity publicly funded by at least fifty percent and which has appeared in a collection which is published periodically at least twice per year has the right, even if he has granted the publisher or editor an exclusive right of use, to make the contribution available to the public in the accepted manuscript version upon expiry of 12 months after first publication, unless this serves a commercial purpose. The source of the first publication shall be indicated. Any deviating agreement to the detriment of the author shall be ineffective.

Article 39

Alterations of the work

(1) The holder of an exploitation right shall not be permitted to alter the work, its title or designation of authorship (Article 10 (1)), unless otherwise agreed.

(2) Alterations to the work and its title to which the author cannot refuse his consent based on the principles of good faith shall be permissible.

Article 40

Agreements as to future works

(1) A contract in which the author undertakes to grant exploitation rights in future works which are not specified in any way or are only referred to by type shall be made in writing. The contract may be terminated by either party after a period of five years following its conclusion. The term of notice shall be six months, unless a shorter term is agreed.

(2) The right of termination may not be waived in advance. Other contractual or statutory rights of termination shall remain unaffected.

(3) Where exploitation rights in future works have been granted in the performance of the contract, upon the termination of the contract the provision concerning the works which have not yet been supplied shall become ineffective.

Article 41

Right of revocation for non-exercise

(1) Where the holder of an exclusive exploitation right does not exercise the right or only does so insufficiently and this significantly impairs the author's legitimate interests, the author may revoke the exploitation right. This shall not apply if the non-exercise or the insufficient exercise of the exploitation right is predominantly due to circumstances which the author can be reasonably expected to remedy.

(2) The right of revocation may not be exercised before the expiry of two years following the grant or transfer of the exploitation right or, if the work is delivered at a later date,

since its delivery. In the case of a contribution to a newspaper the period shall be three months, in the case of a contribution to a periodical published monthly or at shorter intervals six months, and in the case of a contribution to other periodicals one year.

(3) The revocation may not be declared until after the author has, upon notification of the revocation, granted the holder of the exploitation right an appropriate extension to sufficiently exploit the exploitation right. It shall not be necessary to determine an extension if it is impossible for the rightholder to exercise the exploitation right or he refuses to do so or if granting an extension would prejudice the author's overriding interests.

(4) The right of revocation may not be waived in advance. Its exercise may not be precluded in advance for more than five years.

(5) The exploitation right shall terminate when revocation becomes effective.

(6) The author shall compensate the person affected if and insofar as this is fair and equitable.

(7) The rights and claims of the persons involved according to other statutory provisions shall remain unaffected.

Article 42

Right of revocation for changed conviction

(1) The author may revoke an exploitation right vis-à-vis the rightholder if the work no longer reflects his conviction and he can therefore no longer be expected to agree to the exploitation of the work. The author's successor in title (Article 30) may exercise the right of revocation only if he can prove that the author would have been entitled to exercise this right prior to his death and that he was prevented from exercising the right or provided for its exercise by testamentary disposition.

(2) The right of revocation may not be waived in advance. Its exercise may not be precluded.

(3) The author must adequately compensate the holder of the exploitation right. The compensation must at least cover the costs which the holder of the exploitation right incurred until such time as the revocation was declared; however, no account will be taken of costs attributable to those uses of the work which have been already made. The revocation shall not become effective until the author has reimbursed the costs or provided security therefore. The holder of the exploitation right shall inform the author of the amount of the costs within three months of the revocation being declared; if he does not fulfil this obligation, the revocation shall become effective upon the expiry of this period.

(4) Should the author wish to resume exploitation of the work after revocation, he shall be obliged to offer a corresponding exploitation right to the previous holder of the exploitation right on reasonable conditions.

(5) The provisions under Article 41 (5) and (7) shall apply mutatis mutandis.

Article 42a

Compulsory licence for the production of audio recordings

(1) If a producer of audio recordings has been granted an exploitation right in a musical work entitling him to transfer the work onto audio recording mediums and to reproduce and distribute these for commercial purposes, the author shall be required upon release of the work to also grant an exploitation right with the same content on reasonable conditions to any other producer of audio recordings whose main establishment or whose place of residence is located on the territory to which this Act applies; this provision shall not apply if the exploitation right referred to is lawfully administered by a collecting society or if the work no longer reflects the author's conviction and he can therefore no longer reasonably be expected to agree to the exploitation of his work and he has for that reason revoked any existing exploitation right. Article 63 shall apply mutatis mutandis. The author shall not be required to authorise the use of the work in the production of a cinematographic work.

(2) The obligation under paragraph (1) shall be applicable with respect to a producer of audio recordings who has neither his main establishment nor his domicile on the territory to which this Act applies only if, as evidenced by a notification by the Federal Ministry of Justice in the Federal Law Gazette (Bundesgesetzblatt), a corresponding right is granted by the State, in which his main establishment or domicile is located, to producers of audio recordings whose main establishments or whose domiciles are on the territory to which this Act applies.

(3) An exploitation right granted under the foregoing provisions shall have effect only on the territory to which this Act applies and for export to States in which the work does not enjoy protection against transferral to audio mediums.

(4) If the author has granted the exclusive exploitation right to another person entitling that person to, for commercial purposes, transfer the work onto audio recording mediums and to reproduce and distribute those recordings, the foregoing provisions shall be applicable except that the holder of the exclusive exploitation right shall be required to grant the exploitation right referred to in paragraph (1).

(5) The foregoing provisions shall apply mutatis mutandis to a literary work employed as the text of a musical work, if the author of the literary work has granted to a producer of audio recordings a right to record the work of language in conjunction with the musical work on audio recording mediums and to reproduce and distribute such recordings.

(6) Actions claiming the grant of exploitation rights shall be heard in those cases where neither the author nor, in the case referred to in paragraph (4), the holder of the exclusive exploitation right has a legal domicile in the territory to which this Act applies, by the courts located in the district in which the Patent Office has its headquarters. Temporary injunctions may be issued even if the conditions set out in Articles 935 and 940 of the Code of Civil Procedure are not fulfilled.

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

Article 43

Authors in employment or service

The provisions of this Subsection shall also apply where the author has created the work in the fulfilment of obligations resulting from an employment or service relationship, unless otherwise provided in accordance with the terms or nature of the employment or service relationship.

Article 44

Sale of the original of a work

(1) If the author sells the original of a work he shall, in cases of doubt, not be deemed to have granted an exploitation right to the buyer.

(2) The owner of the original of an artistic work or of a photographic work shall be authorised to exhibit the work in public even if it has not yet been published, unless the author has explicitly ruled this out at the time of the sale of the original.

Section VI

Limitations on copyright

Article 44a

Temporary acts of reproduction

Those temporary acts of reproduction shall be permissible which are transient or incidental and constitute an integral and essential part of a technical process and whose sole purpose is to enable

1. a transmission in a network between third parties by an intermediary, or
2. a lawful use

of a work or other protected subject-matter to be made and which have no independent economic significance.

Article 45

Administration of justice and public security

- (1) It shall be permissible to make individual copies of works for use in proceedings before a court, an arbitration tribunal or authority or to have such copies made.
- (2) Courts and authorities may, for the purposes of the administration of justice and public security, make copies of portraits or to have these reproduced.
- (3) The distribution, exhibition in public and communication to the public of the works shall be permissible under the same conditions as apply to reproduction.

Article 45a

Persons with disabilities

- (1) The reproduction of a work for non-commercial purposes shall be permissible for, and its distribution exclusively to, persons whose access to the work, because of a disability, is not possible or is made considerably more difficult by the already available means of sensual perception, if such reproduction is necessary to facilitate access.
- (2) An equitable remuneration shall be paid to the author for reproduction and distribution; production solely of individual copies shall be exempted. Claims may only be asserted through a collecting society.

Article 46

Collections for religious, school or instructional use

- (1) Reproduction, distribution and making works available to the public shall be permissible after publication where limited parts of works, of small scale literary works and of musical works, individual artistic works or individual photographs are incorporated in a collection which combines the works of a considerable number of authors and is intended, by its nature, exclusively for instructional use in schools, in non-commercial basic and further training facilities or in vocational training facilities or for church use. Making a work available to the public being intended for instructional use at schools, shall be permissible only in cases where the person entitled has given his consent. The purpose for which the collection is to be used shall be clearly stated on the copies, or when making them available to the public.
- (2) Paragraph (1) shall only apply to musical works where these are incorporated in a collection intended for use in musical instruction in schools which are not schools of music.
- (3) Work on reproducing the work or making the work available to the public may only begin after the intention to exercise the entitlement according to paragraph (1) has been communicated by registered letter to the author or, if his place of residence or whereabouts are unknown, the holder of the exclusive exploitation right and two weeks have elapsed since the letter was sent. If the place of residence or whereabouts of the holder of the exclusive exploitation right are also not known, notification may be effected by publication in the Federal Gazette (Bundesanzeiger).
- (4) The author shall be paid equitable remuneration for the exploitation permissible in accordance with paragraphs (1) and (2).
- (5) The author may forbid the exploitation permissible in accordance with paragraphs (1) and (2) if the work no longer reflects his conviction and he can therefore no longer be reasonably expected to agree to the exploitation of the work and he has for that reason revoked any existing exploitation right (Article 42). The provisions under Article 136 (1) and (2) shall apply mutatis mutandis.

Article 47

School broadcasts

(1) Schools, teacher training and further training institutions may make individual copies of works to be used as part of a school broadcast by transferring the works to video or audio recording mediums. The same shall apply to youth welfare institutions and state image archives or comparable institutions under public ownership.

(2) The video or audio recording mediums may only be used for teaching purposes. They must be deleted at the latest at the end of the academic year following the transmission of the school broadcast, unless the author has been paid equitable remuneration.

Article 48 Public speeches

(1) It shall be permissible

1. to reproduce and distribute speeches relating to current affairs in newspapers, periodicals or other printed matter or other data carriers which mainly record current events, where the speeches were made at public gatherings or were published by means of communication to the public within the meaning of Article 19a or Article 20, and to communicate such speeches to the public,

2. to reproduce, distribute and communicate to the public a speech delivered during public negotiations before state, local authority or church organs.

(2) It shall, however, not be permissible to reproduce and distribute the speeches designated in paragraph (1), item 2, in the form of a collection predominantly containing speeches by the same author.

Article 49 Newspaper articles and broadcast commentaries

(1) It shall be permissible to reproduce and distribute individual broadcast commentaries and individual articles, as well as illustrations published in connection therewith, from newspapers and other information sheets devoted solely to current affairs in other newspapers or information sheets of this kind, and it shall be permissible to communicate such commentaries, articles and illustrations to the public, if they concern current political, economic or religious issues and do not contain a statement reserving rights. The author shall be paid equitable remuneration for the reproduction, distribution and communication to the public, unless the reproduction, distribution and communication to the public is of short extracts of several commentaries or articles in the form of an overview. A claim may be asserted only through a collecting agency.

(2) It shall be permissible without limitation to reproduce, distribute and communicate to the public miscellaneous news items of a factual nature and news of the day which has been published via the press or broadcasting; protection granted under other statutory provisions shall remain unaffected thereby.

Article 50 Reporting on current events

For the purposes of reporting on current events by broadcasting or similar technical means in newspapers, periodicals and other printed matter or other data carriers mainly devoted to current events, as well as on film, the reproduction, distribution and communication to the public of works which become perceivable in the course of these events shall be permitted to the extent justified by the purpose of the report.

Article 51 Quotations

It shall be permissible to reproduce, distribute and communicate to the public a published work for the purpose of quotation so far as such exploitation is justified to that extent by the particular purpose. This shall be permissible in particular where

1. subsequent to publication individual works are included in an independent scientific work for the purpose of explaining the contents,
2. subsequent to publication passages from a work are quoted in an independent work of language,
3. individual passages from a released musical work are quoted in an independent musical work.

Article 52
Communication to the public

- (1) It shall be permissible to communicate to the public a published work if that communication serves a non-profit-making purpose for the organiser, if participants are admitted free of charge and, in the case of a lecture or performance of a work, if none of the performers (Article 73) is paid a special remuneration. Equitable remuneration shall be paid for the communication. The obligation to pay remuneration shall not apply to events organised by the youth welfare service, the social welfare service, geriatric and welfare service, the prisoners' welfare service, as well as to school events insofar as they are only available to a specific, limited group of persons on account of their social or educational purpose. This shall not apply where the event serves the profit-making purpose of a third party; in such cases the third party shall pay the remuneration.
- (2) It shall also be permissible to communicate to the public a published work in a religious service or at a religious celebration organised by a church or religious community. The organiser shall, however, pay the author equitable remuneration.
- (3) Public stage performances, making available to the public and broadcasting of a work, as well as public screenings of a cinematographic work shall always only be permissible with the consent of the rightholder.

Article 52a
Making works available to the public for instruction and research

- (1) It shall be permissible for:
1. published small, limited parts of a work, small scale works, as well as individual articles from newspapers or periodicals for illustration in teaching at schools, universities, non-commercial institutions of education and further education, and at vocational training institutions, exclusively for the specifically limited circle of those taking part in the instruction, or
 2. published limited parts of a work, small scale works, as well as individual articles from newspapers or periodicals exclusively for a specifically limited circle of persons for their personal scientific research
- to be made available to the public, to the extent that this is necessary for the respective purpose and is justified for the pursuit of non-commercial aims..
- (2) Making a work intended for use in instruction in schools available to the public shall in all cases be permissible only with the consent of the copyright owner. Making a cinematographic work available to the public, in the territory to which this Act applies, before the expiration of two years from the beginning of normal regular utilisation in film theatres, shall in all cases be permissible only with the consent of the rightholder.
- (3) It shall be permissible, in the cases referred to in paragraph (1), to produce copies also needed for making the work available to the public.
- (4) An equitable remuneration shall be paid for making works available to the public in accordance with paragraph (1). Claims may only be asserted through a collecting society.

Article 52b
Communication of works at terminals in public libraries, museums and archives

So far as there are no contractual provisions to the contrary, it shall be permissible to make published works available from the stocks of publicly accessible libraries, museums or archives, which neither directly nor indirectly serve economic or commercial purposes, exclusively on the premises of the relevant institution at terminals dedicated to the purpose of research and for private study. In principle, reproduction of a work in excess of the number stocked by the institution shall not be made simultaneously available at such terminals. Equitable remuneration shall be paid in consideration of their being made available. The claim may only be asserted by a collecting society.

Article 53

Reproduction for private and other personal uses

(1) It shall be permissible for a natural person to make single copies of a work for private use on any medium, insofar as they neither directly nor indirectly serve commercial purposes, as long as no obviously unlawfully-produced model or a model which has been unlawfully made available to the public is used for copying. A person authorised to make copies may also cause such copies to be made by another person if no payment is received therefore, or if it involves copies on paper or a similar medium which have been effected by the use of any kind of photomechanical technique or by some other process having similar effects.

(2) It shall be permissible to make single copies of a work or to have these made

1. for one's own scientific use if and to the extent that such reproduction is necessary for the purpose and it does not serve a commercial purpose,
2. for inclusion in a personal archive if and insofar as the reproduction is necessary for this purpose and one's own personal copy of the work is used as the model from which the copy is made,
3. for one's own personal information concerning current affairs if the work was broadcasted,
4. for other personal use
 - a) in the case of small parts of a released work or individual articles being released in newspapers or periodicals,
 - b) in the case of a work which has been out of print for at least two years.

This shall apply in the case under the first sentence, number 2 only if in addition,

1. the reproduction is effected on paper or any similar medium by the use of any kind of photographic technique or by some other process having similar effects, or
2. exclusively analogue use takes place, or
3. the archive acting in the public interest and pursues no direct or indirect economic or commercial purpose.

This shall apply in the cases referred to under the first sentence, numbers 3 and 4 only if in addition one of the conditions under the second sentence, numbers 1 or 2 pertains.

(3) It shall be permissible to make copies for personal use of small parts of a work, of small-scale works or of individual articles released in newspapers or periodicals or made available to the public

1. for the purpose of illustration for teaching in schools, in non-commercial training and further training institutions, as well as vocational training institutions in quantities required for the persons receiving instruction, or

2. for state examinations and examinations in schools, higher education institutions, non-commercial training and further training institutions, as well as vocational training institutions in the required quantity,
or to have these copies made if and insofar as reproduction is necessary for this purpose. The reproduction of a work intended for instructional use at schools shall be permissible only in cases where the person entitled has given his consent.

(4) The reproduction of

a) graphic recordings of musical works,

b) a book or a periodical, in the case of an essentially complete reproduction, shall, insofar as this does not occur by means of manual transcription, always be permissible only with the consent of the rightholder or under the conditions in accordance with paragraph (2), first sentence, item 2, or for personal use if, the work has been out of print for at least two years.

(5) Paragraph (1), paragraph (2), first sentence, items 2 to 4, as well as paragraph (3), item 2, shall not apply to database works the elements of which are individually accessible by electronic means. Paragraph (2), first sentence, item 1, as well as paragraph (3), item 1, shall apply to such database works on condition that the scientific use or use in instruction does not serve commercial purposes.

(6) The copies may neither be distributed nor communicated to the public. It shall, however, be permissible to lend lawfully produced copies of newspapers and out-of-print works, as well as those works in which no damaged or missing parts have been replaced by means of copies.

(7) The recording of public lectures, productions or performances of a work on video or audio recording mediums, the realisation of plans and drafts of artistic works and the reconstruction of architectural works shall always be permissible only with the consent of the rightholder.

Article 53a

Order for dispatch of copies

(1) It shall be permissible, in response to an individual order, for public libraries to reproduce and transmit by post or facsimile individual contributions released in newspapers and periodicals and also small parts of a released work so far as the exploitation by the person placing the order is permissible pursuant to Article 53. Reproduction and transmission in other electronic form shall be permissible solely as a graphic data file and for the purpose of illustration for teaching or for scientific research, to the extent justified by the non-commercial purpose to be achieved. Reproduction and transmission in other electronic form shall, moreover, be permitted only where it is not made manifestly possible, upon agreed contractual terms, for members of the public to access the contributions or small parts of a work from a place and at a time individually chosen by them and on terms which are equitable.

(2) Equitable remuneration shall be paid to the author for the reproduction and transmission. The claim may only be asserted by a collecting society.

Article 54

Obligation to pay remuneration

(1) Where the nature of a work makes it probable that it will be reproduced, pursuant to Article 53 (1) to (3), the author of the work shall be entitled to payment of equitable remuneration from the manufacturer of appliances and of storage mediums, where the type of appliance or storage medium is used solely or together with other appliances, storage mediums or accessories, for the making of such reproductions.

(2) The claim according to paragraph (1) shall not apply where in the light of the circumstances it can be expected that the appliances or storage mediums will not be used for reproductions in the territory to which this Act applies.

Article 54a

Amount of remuneration

(1) The amount of remuneration shall be determined by the extent to which the appliances and storage mediums are actually used as types for reproductions pursuant to Article 53 (1) to (3). Here account shall be taken of the degree of use of technological protection measures in respect of the works concerned pursuant to Article 95a.

(2) Remuneration in respect of appliances shall be set so as to be altogether equitable also in relation to the obligation to pay remuneration for storage mediums contained in such appliances or for other appliances or storage mediums functioning together therewith.

(3) In determining the amount of remuneration, account shall be taken of such properties of the appliances and storage mediums as are relevant to exploitation, in particular the capacity of appliances, as well as the storage capacity of storage mediums and the extent to which they are rewritable.

(4) The remuneration shall not have an inequitable effect on the manufacturers of appliances and storage mediums; its relationship to the price level of the appliance or of the storage medium must be economically equitable.

Article 54b

Trader's or importer's obligation to pay remuneration

(1) Alongside the manufacturer any person who, on a commercial scale, imports or re-imports the appliances or storage mediums into the territory to which this Act applies or any person who trades therewith shall bear liability as a joint and several debtor.

(2) The importer shall be the person who introduces the appliances or storage mediums, or who causes them to be introduced, into the territory to which this Act applies. Where importation is based on a contract with a non-resident, the importer shall be solely the contracting party residing in the territory to which this Act applies as long as he is acting on a commercial scale. Any person acting only as forwarding agent, carrier, or in a similar function, in the introduction of the goods shall not be deemed to be the importer. Any person who introduces items from third countries into a free zone or a free warehouse pursuant to Article 166 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, p. 1) shall be deemed to be the importer only if the items are used in that area or if they are released for free circulation for customs purposes.

(3) There shall be no obligation incumbent on the trader to pay remuneration

1. if a person obliged to pay the remuneration, from whom the trader obtains the appliances or storage mediums, is bound by an inclusive contract concerning the remuneration, or

2. if the trader notifies the receiving office pursuant to Article 54h (3) in writing of the nature and quantity of the appliances and storage mediums received and of his source of supply by 10 January and 10 July for each preceding six months of a calendar year.

Article 54c

Obligation incumbent on the operator of photocopiers to pay remuneration

(1) Where appliances of the type referred to in Article 54 (1), being appliances for reproduction by means of photocopying or by some other process having a similar effect, are operated in schools, universities, vocational training institutions or other educational and further education institutions (educational establishments), research institutions, public libraries or in institutions which keep appliances available for making photocopies in return for payment, the author shall be entitled to payment of equitable remuneration also from the operator of the appliance.

(2) The amount of remuneration altogether owed by the operator shall be calculated in accordance with the type and extent of the use of the appliance which is likely in the circumstances, particularly its location and the usual use thereof.

Article 54d

Obligation to make a reference

So far as there is an obligation under Article 14 (2), first sentence, item 2, second sentence, of the Turnover Tax Act (Umsatzsteuergesetz) to submit an invoice, reference shall be made, in invoices on the sale or other placement on the market of the appliances or storage mediums referred to in Article 54 (1), to the remuneration due in respect of the appliance or storage medium.

Article 54e

Obligation to report

(1) Any person who on a commercial scale imports or re-imports appliances or storage mediums into the territory to which this Act applies shall be obliged in respect of the author to report in writing the nature and quantity of the imported items to the receiving office designated pursuant to Article 54h (3) monthly by the tenth day after the end of each calendar month.

(2) Where the person obliged to make such report does not meet his obligation, or only does so incompletely or otherwise incorrectly, twice the rate of remuneration may be demanded.

Article 54f

Obligation to provide information

(1) The author may require information from the person obliged to pay remuneration pursuant to Article 54 or Article 54b as to the nature and quantity of appliances and storage mediums, sold or otherwise placed on the market in the territory to which this Act applies. The trader's obligation to provide information shall also extend to naming sources of supply; it shall also subsist in the case of Article 54b (3), item 1. Article 26 (7) shall apply mutatis mutandis.

(2) The author may require such information from the operator of an appliance in an institution within the meaning of Article 54c (1) as is necessary for the assessment of remuneration.

(3) Where the person obliged to pay remuneration does not meet his obligation, or only does so incompletely or otherwise incorrectly, twice the rate of remuneration may be demanded.

Article 54g

Inspection

So far as necessary for the assessment of remuneration owed by the operator pursuant to Article 54c, the author may demand permission to enter, during the usual operational or business hours, the operational and business premises of an operator who keeps appliances available for making photocopies in return for payment. The inspection must be carried out in such a manner that avoidable interruptions of operations do not occur.

Article 54h

Collecting societies; handling of reports

(1) Claims pursuant to Articles 54 to 54c, 54e (2), Articles 54f and 54g may be asserted only through a collecting society.

(2) Each rightholder shall be entitled to an equitable share of the remuneration paid pursuant to Articles 54 to 54c. So far as works are protected by technological measures pursuant to Article 95a, they shall not be taken into account when income is distributed.

(3) For reports pursuant to Article 54b (3) and Article 54e the collecting societies shall designate in respect of the German Patent and Trade Mark Office (Deutsches Patent-

und Markenamt) a joint receiving office. The German Patent and Trade Mark Office shall specify the joint receiving office in the Federal Gazette.

(4) The German Patent and Trade Mark Office may publish specimens for the reports pursuant to Article 54b (3), item 2, and to Article 54e in the Federal Gazette. If specimens are published, their use shall be compulsory.

(5) The collecting societies and the receiving office may only use the information received pursuant to Article 54b (3), item 2, and to Articles 54e and 54f for the purpose of asserting claims pursuant to paragraph (1).

Article 55

Reproduction by broadcasting organisations

(1) A broadcasting organisation which is authorised to broadcast a work shall be permitted to transfer the work, by its own means, to video or audio recording mediums in order to use them once each for the purposes of broadcasting via its transmitters or relay stations. The video or audio recording mediums shall be deleted at the latest one month after the work is first broadcasted.

(2) Video or audio recordings of an exceptional documentary value need not be deleted if they are to be included in an official archive. The author must be notified immediately of their inclusion in the archive.

Article 55a

Use of a database work

The adaptation or reproduction of a database work shall be permissible for the owner of a copy of the database work which was brought to the market by sale with the consent of the author, that person who is otherwise authorised to use the database work or that person who is given access to the database work on the basis of a contract concluded with the author or with his consent with a third party if and insofar as the adaptation or reproduction is necessary to gain access to the elements of the database work and for its customary use. If, on the basis of the contract in accordance with the first sentence, access is given only to a part of the database work, only the adaptation and reproduction of that part shall be permissible. Any contractual agreements to the contrary shall be null and void.

Article 56

Reproduction and communication to the public in commercial enterprises

(1) In commercial enterprises which distribute appliances for making or communicating video or audio recordings, for the reception of broadcasts, or for electronic data processing, or which repair them, works may be transferred onto video or audio mediums, or onto data carriers, made perceivable to the public using video or audio recordings, or onto data carriers, and broadcasts may be made perceivable to the public and works may be made available to the public where it is necessary to demonstrate such appliances to customers or to repair them.

(2) Video or audio recordings, or data recorded on data carriers, made pursuant to paragraph (1) must be deleted immediately.

Article 57

Incidental works

It shall be permissible to reproduce, distribute and communicate to the public works if they are to be regarded as works incidental to the actual subject-matter being reproduced, distributed or communicated to the public.

Article 58

Works in exhibitions, on public sale and in institutions accessible to the public

(1) Reproduction, distribution and making available to the public of artistic works and photographic works which are exhibited in public or intended for public exhibition or

public sale by the organiser shall be permitted for advertising purposes to the extent necessary for the promotion of the event.

(2) It shall, further, be permissible to reproduce and distribute the works referred to in paragraph (1) in lists issued by public libraries, educational institutions or museums in connection with an exhibition with respect to content and time, or to take inventory, and with which no independent gainful purpose is served.

Article 59

Works in public places

(1) It shall be permissible to reproduce, distribute and make available to the public works located permanently in public roads and ways or public open spaces. In the case of buildings, this authorisation shall only extend to the façade.

(2) The reproductions may not be carried out on a building.

Article 60

Portraits

(1) Reproduction, as well as distribution for which no payment is received and is not for commercial purposes, of a portrait by the commissioner of the portrait or his successor in title or with a portrait created on commission by the person portrayed or, after his death, by his next of kin or by a third party acting on behalf of one of these persons shall be permissible. If the portrait is an artistic work, exploitation shall only be permissible by photography.

(2) Next of kin within the meaning of paragraph (1), first sentence, shall mean the spouse or registered partner and children or, if there is neither a spouse nor a registered partner nor any children, the parents.

Article 61

Orphan works

(1) The reproduction and the making available to the public of orphan works shall be permissible pursuant to paragraphs (3) to (5).

(2) Orphan works within the meaning of this Act shall be

1. works and other protected subject-matter in books, journals, newspapers, magazines or writings;
2. cinematographic works, as well as video recording mediums and video and audio recording mediums on which cinematographic works have been recorded; and
3. audio recording mediums

in the collections (holdings) of publicly accessible libraries, educational institutions, museums, archives and film or audio heritage institutions, if the holdings have already been published, the rightholder of which could not be identified or located despite a diligent search.

(3) Where an item in the holdings has several rightholders, its content may also be reproduced and made available to the public if, despite a diligent search, it was not possible to identify or locate all the rightholders, but permission to use the item in the holdings has been obtained from one of the known rightholders.

(4) Holdings which have not been published or broadcast may also be used by the institution referred to in paragraph (2) if they have already been made available to the public with the permission of the rightholder and, if it can be assumed in good faith that the rightholder would agree to the use in accordance with paragraph (1).

(5) The reproduction and the making available to the public by the institutions referred to in paragraph (2) shall be permissible only if the institutions are acting to fulfil their tasks which are in the public interest, in particular if they preserve and restore holdings and make them accessible in their collections, if this serves cultural and educational

purposes. The institutions may charge a fee for providing access to the orphan works which covers the costs of the digitalisation and the making available to the public.

Article 61a

Diligent search and documentation obligations

(1) A diligent search for the rightholder pursuant to Article 61 (2) must be carried out for each item in the holdings and for other protected subject-matter they contain; at the very least the sources set out in the Annex must be consulted. A diligent search shall be carried out in the Member States of the European Union in which the work was first published. Where there are indications that relevant information concerning rightholders may be found in other states, available sources of information in these other states must also be consulted. The institution using the sources may also commission a third party with carrying out the diligent search.

(2) In the case of cinematographic works, as well as video recording mediums and audio and video recording mediums on which cinematographic works have been recorded, the diligent search shall be carried out in those Member States of the European Union in which the producer has headquarters or habitual residence.

(3) In the case of the holdings referred to in Article 61 (4), a diligent search shall be carried out in the Member States of the European Union in which the institution which issued or lent out the item of the holdings with the permission of the rightholder has its headquarters.

(4) The institution using the work shall document its diligent search and forward the following information to the German Patent and Trade Mark Office:

1. the exact description of the item in the holdings which, based on the outcome of the diligent search, has been orphaned,
2. the type and nature of the use of the orphan work by the institution,
3. any change in the status of a used orphan work pursuant to Article 61b,
4. the contact details of the institution, such as name, address, possibly telephone number, fax number and email address.

The German Patent and Trade Mark Office shall without delay forward this information to the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(5) No diligent search need be carried out in the case of holdings which have already been recorded as orphaned in the database of the Office for Harmonisation of the Internal Market (Trade Marks and Designs).

Article 61b

Termination of use and obligation to pay remuneration

Where a rightholder of an item in the holdings is subsequently identified or located, the institution using the item in the holdings shall without delay cease the acts of use as soon as it learns thereof. The rightholder shall be entitled to payment of equitable remuneration for the use already made of the item in the holdings against the institution using it.

Article 61c

Use of orphan works by public broadcasting organisations

The reproduction and making available to the public of

1. cinematographic works, as well as video recording mediums and video and audio recording mediums on which cinematographic works have been recorded, and
2. audio recording mediums

which were produced before 1 January 2003 by public broadcasting organisations and which are in their collection shall also be permissible by public broadcasting organisations under the conditions set out in Article 61 (2) to (5). Articles 61a and 61b shall apply mutatis mutandis.

Article 62
Prohibition of alteration

(1) Where according to the provisions of this Section the use of a work is permissible, no alterations to the work shall be permissible. Article 39 shall apply mutatis mutandis.

(2) Where necessitated on account of the purpose of the use, translations and such alterations to the work shall be permissible if they only constitute extracts or transpositions into another key or pitch.

(3) In the case of artistic works and photographic works, such rendering of the work into another size and such alterations shall be permissible which result from the procedure used for its reproduction.

(4) In the case of collections for church, school and teaching purposes (Article 46), such alterations of literary works shall be permissible which are necessary for church, school and teaching purposes in addition to those alterations which are permissible according to paragraphs (1) to (3). These alterations shall, however, require the consent of the author, following his death the consent of his successor in title (Article 30) if he is a relative (Article 60 (2)) of the author or has acquired the copyright on account of the author's testamentary disposition. Consent shall be deemed to have been given if the author or the successor in title does not object within one month of being notified of the intended alteration and his attention has been drawn in the notification of the alteration to this legal consequence.

Article 63
Acknowledgement of source

(1) If a work or part of a work is reproduced pursuant to Article 45(1), Articles 45a to 48, 50, 51, 53 paragraph (2), first sentence, item 1, and paragraph (3), item 1, as well as Articles 58, 59, 61 and 61c, the source must in all cases be clearly acknowledged. In the case of the reproduction of entire literary works or entire musical works, the publishing house which released the work shall be indicated in addition to the author and it shall also be clearly indicated whether the work has been abridged or other alterations have been made. The obligation to indicate the source shall not apply where the source is neither named on the copy of the work nor is named when the work used is communicated nor is otherwise known to the person authorised to make the reproduction.

(2) Where according to the provisions of this Section it is permissible to communicate a work to the public, the source shall be clearly indicated if and insofar as this is required by customary practice. In cases of communication to the public pursuant to Articles 46, 48, 51 and 52a and making available to the public in accordance with sections 61 and 61c, the source, including the name of the author, must in all cases be acknowledged unless this is not possible.

(3) If an article in a newspaper or in another information leaflet is printed according to Article 49 (1) in another newspaper or in another information leaflet or is broadcasted, the newspaper or the information leaflet from which the article was taken shall be cited along with the author designated in the source used; if a different newspaper or a different information leaflet is cited there, that newspaper or information leaflet shall be indicated. If a broadcast commentary is printed in a newspaper or in another information leaflet or is broadcasted according to Article 49 (1), the broadcasting organisation which broadcasted the commentary shall be indicated along with the author.

Article 63a
Statutory remuneration rights

Statutory remuneration rights as provided in this Section may not be waived by the author in advance. They may be assigned in advance only to a collecting society, or together with the grant of the right of publication to the publisher, provided that the publisher lets them be managed by a collecting society which manages publishers' and authors' rights jointly.

Section VII Duration of copyright

Article 64 General

Copyright expires 70 years after the author's death.

Article 65

Joint authors, cinematographic works, musical compositions with words

(1) Where several joint authors hold copyright in a work (Article 8), it expires 70 years after the death of the last surviving joint author.

(2) Copyright in cinematographic works and works produced in a manner similar to cinematographic works expires 70 years after the death of the last surviving of the following persons: the principle film director, the author of the screenplay, the author of the dialogues, the composer of music specifically composed for use in the cinematographic work in question.

(3) The term of protection of a musical composition with text expires 70 years after the death of the last surviving of the following persons: the author of the lyrics, the composer of the musical composition, provided that both contributions were specifically created for the respective musical composition with words. This shall apply regardless of whether these persons are designated as joint authors.

Article 66

Anonymous and pseudonymous works

(1) Copyright in anonymous and pseudonymous works expires 70 years after publication. It shall, however, expire 70 years after the creation of the work if the work was not published within this period.

(2) If the author reveals his identity within the period designated in paragraph (1), first sentence, or if the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be calculated according to Articles 64 and 65. The same shall apply if an application is made for the author's real name to be entered in the register of anonymous and pseudonymous works (Article 138) within the period designated in paragraph (1), first sentence.

(3) The author, after his death his successor in title (Article 30) or the executor (Article 28 (2)), shall be authorised to perform the acts according to paragraph (2).

Article 67

Serial works

In the case of works published in substantively incomplete parts (instalments), the term of protection in cases referred to in Article 66 (1), first sentence, shall be calculated separately for each instalment from the time of its publication.

Article 68 (repealed)

Article 69

Calculation of time limits

The periods specified in this Section shall commence at the end of that calendar year in which the event giving rise to them occurs.

Section VIII

Special provisions on computer programs

Article 69a

Object of protection

(1) Computer programs within the meaning of this Act are programs of any form, including the drafts and their preparatory design material.

- (2) The protection granted shall apply to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including the ideas and principles which underlie its interfaces, shall not be protected.
- (3) Computer programs shall be protected if they represent individual works in the sense that they are the result of the author's own intellectual creation. No other criteria, especially qualitative or aesthetic criteria, shall be applied in to determine its eligibility for protection.
- (4) The provisions applicable to literary works shall apply to computer programs, unless provided otherwise in this Section.
- (5) The provisions of Articles 95a to 95d shall not apply to computer programs.

Article 69b

Authors in employment or service relationships

- (1) Where a computer program is created by an employee in the execution of his duties or following the instructions of his employer, the employer exclusively shall be entitled to exercise all economic rights in the computer program, unless otherwise agreed.
- (2) Paragraph (1) shall apply mutatis mutandis to service relationships.

Article 69c

Restricted acts

The rightholder shall have the exclusive right to perform or authorise the following acts:

1. the permanent or temporary reproduction, in whole or in part, of a computer program by any means and in any form. Insofar as loading, displaying, running, transmission or storage of the computer program necessitates such reproduction, these actions shall be subject to authorisation by the rightholder;
2. the translation, adaptation, arrangement and other modifications of a computer program, as well as the reproduction of the results thereof. The rights of those persons who adapt the program shall remain unaffected;
3. any form of distribution of the original of a computer program or of copies thereof, including rental. Where a copy of a computer program is brought to the market with the rightholder's consent in the area of the European Union or another state party to the Agreement on the European Economic Area by sale, the right of distribution shall exhaust in respect of this copy, with the exception of the rental right;
4. communication to the public of a computer program, either by wire or wireless means, including making the work available to the public in such a way that it is available to members of the public from places and at times individually chosen by them.

Article 69d

Exceptions to the restricted acts

- (1) Unless provided otherwise by special contractual provisions, the acts referred to in Article 69c, items 1 and 2, shall not require authorisation by the rightholder if they are necessary for the use of the computer program in accordance with its intended purpose, including for error correction, by any person authorised to use a copy of the program.
- (2) The making of a back-up copy by a person having a right to use the computer program may not be prevented by contract if it is necessary to secure future use.
- (3) The person having a right to use a copy of a computer program shall be entitled, without the rightholder's authorisation, to observe, study or test the functioning of that program in order to determine the ideas and principles which underlie any element of the program if this occurs while performing any acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

Article 69e
Decompilation

(1) The authorisation of the rightholder shall not be required where reproduction of the code or translation of its form within the meaning of Article 69c, items 1 and 2, is indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

1. The acts are performed by the licensee or by another person having a right to use a copy of a program or on their behalf by a person authorised to do so;
2. The information necessary to achieve interoperability has not previously been made readily available to the persons referred to in item 1;
3. The acts are confined to those parts of the original program which are necessary to achieve interoperability.

(2) Information obtained through acts according to paragraph (1) may not be

1. used for purposes other than to achieve the interoperability of the independently created program,
2. given to third parties, except when necessary for the interoperability of the independently created program,
3. used for the development, production or marketing of a computer program substantially similar in its expression, or for any other acts which infringe copyright.

(3) Paragraphs (1) and (2) shall be interpreted such that their application neither impairs the normal exploitation of the work nor unreasonably impairs the rightholder's legitimate interests.

Article 69f
Infringement of rights

(1) The rightholder may require of the owner or proprietor that all unlawfully produced or distributed copies or all copies intended for unlawful distribution be destroyed. Article 98 (3) and (4) shall apply mutatis mutandis.

(2) Paragraph (1) shall apply mutatis mutandis to means the sole purpose of which is to facilitate the unauthorised removal or circumvention of any technical device which may have been applied to protect the computer program.

Article 69g
Application of other legal provisions; law of contract

(1) The provisions of this Section shall be without prejudice to the application of other legal provisions concerning computer programs, particularly those concerning the protection of inventions, topographies of semi-conductor products, trade marks and protection against unfair competition, including the protection of business and trade secrets, as well as agreements based on the law of obligations.

(2) Contractual provisions which are contrary to Article 69d (2) and (3) and Article 69e shall be null and void.

Part 2
Related rights

Section I
Protection of certain editions

Article 70
Scientific editions

- (1) Editions of works or texts which are not protected by copyright shall be protected mutatis mutandis under the provisions of Part 1 if they represent the result of scientifically organised activity and differ substantially from previously known editions of the works or texts.
- (2) The author of the edition shall be entitled to exercise the right.
- (3) The right shall expire 25 years after publication of the edition, but 25 years after its production if the edition was not released within that period. The period shall be calculated according to Article 69.

Article 71 **Posthumous works**

- (1) Anyone who has a previously unreleased work released legally for the first time after the expiry of the copyright or communicates it to the public shall have the exclusive right to exploit the work. The same shall apply to unreleased works which were never protected within the territory to which this Act applies, but whose author died more than 70 years previously. Articles 5 and 10 (1), as well as Articles 15 to 24, 26, 27, 44a to 63 and 88 shall apply mutatis mutandis.
- (2) The right shall be transferrable.
- (3) The right shall expire 25 years after the work was released or, if its first communication to the public was made prior to that date, 25 years thereafter. The time limit shall be calculated in accordance with Article 69.

Section II **Protection of photographs**

Article 72 **Photographs**

- (1) The provisions of Part 1 applicable to photographic works shall apply mutatis mutandis to photographs and products manufactured in a similar manner to photographs.
- (2) The photographer shall be entitled to exercise the right according to paragraph (1).
- (3) The right according to paragraph (1) shall expire 50 years after the photograph was released or, if its communication to the public occurred prior to that date, 50 years thereafter, although the right shall already expire 50 years after production if the photograph was not released or legally communicated to the public within this period. The period shall be calculated according to Article 69.

Section III **Protection of performers**

Article 73 **Performers**

For the purposes of this Act, performer shall mean a person who performs, sings, acts or in another manner presents a work or an expression of popular art or who participates artistically in such a presentation.

Article 74 **Recognition as a performer**

- (1) The performer shall have the right in relation to his performance to be recognised as such. He may thereby determine whether and with which name he identifies himself.
- (2) If a work is performed by several performers together, and if identifying each of them individually requires a disproportionate amount of effort, they may only require to be named as a group of artists. If the group of artists has an elected representative, the latter shall be the sole representative in respect of third parties. If a group has no such representative, the right may only be asserted by the leader of the group, and if there is none, only by a representative to be elected by the group. The right of a participating

performer to be individually named shall remain unaffected in the case of a special interest.

(3) Article 10 (1) shall apply mutatis mutandis.

Article 75

Derogatory treatment of the performance

A performer shall have the right to prohibit any distortion or other derogatory treatment of his performance of such nature as to jeopardise his standing or reputation as a performer. If a work is performed by several performers together, each performer shall take the others into due account when exercising the right.

Article 76

Duration of moral rights

The rights referred to in Articles 74 and 75 shall expire with the death of the performer, but not before 50 years have passed since the performance, if the performer has died prior to expiry of that period of time, and not prior to expiry of the period of time applicable to the rights of exploitation in accordance with Article 82. The period of time shall be calculated in accordance with Article 69. If a work is performed by several performers together, the death of the last of the participating performers shall be decisive. After the death of the performer, the rights shall belong to his next of kin (Article 60 (2)).

Article 77

Recording, reproduction and distribution

(1) The performer shall have the exclusive right to fix his performance on a video or audio recording medium.

(2) The performer shall have the exclusive right to reproduce and distribute the video or audio recording medium on which his performance has been fixed. Article 27 shall apply mutatis mutandis.

Article 78

Communication to the public

(1) The performer shall have the exclusive right to

1. make his performance available to the public (Article 19a),
2. broadcast his performance, unless the performance has been legally fixed on video or audio recording mediums which have been released or legally made available to the public,
3. make his performance perceivable to the public by screen, loudspeaker or similar technical devices in a place other than that in which the live rendering takes place.

(2) An equitable remuneration shall be paid to the performer if

1. the performance is legally broadcast pursuant to paragraph (1), item 2,
2. the performance is communicated to the public by means of video or audio recording mediums, or
3. the broadcast or the communication of the performance to the public which is based on the right of making works available the public is made perceivable to the public.

(3) The performer may not waive his claims to remuneration under paragraph (2) in advance. They may only be assigned in advance to a collecting society.

(4) Article 20b shall apply mutatis mutandis.

Article 79 **Exploitation rights**

(1) The performer may transfer his rights and claims afforded by Articles 77 and 78. Article 78 (3) and (4) shall remain unaffected.

(2) The performer may grant to another a right to use the performance in a particular manner or in any manner of exploitation to which he is entitled. Articles 31, 32 to 32b, 33 to 42 and 43 shall apply mutatis mutandis.

(3) Where the producer of an audio recording fails to offer sufficient quantity of the audio recording for sale or to make the audio recording available to the public, the performer may terminate the contract by which he granted or transferred his rights in the recording of the performance to the producer of the audio medium (transfer agreement).

Termination shall be permissible

1. 50 years after the release of the audio recording or 50 years after the first lawful use of the audio recording for communication to the public if the audio recording was not released, and
2. if the producer of an audio recording does not execute both of the acts of exploitation set out in the first sentence within a year of notification by the performer that the latter wishes to terminate the transfer agreement.

Once the transfer agreement has been terminated, the rights of the producer of the audio recording in the audio recording shall expire. The performer may not waive the right of termination.

Article 79a **Performer's right to remuneration**

(1) Where the performer has granted or transferred rights in his performance to a producer of an audio recording against payment of a non-recurring remuneration, the producer of the audio recording shall pay the performer additional remuneration in the amount of 20 per cent of the revenue which the producer of the audio recording has derived from the reproduction, distribution and making available of the audio recording containing the performance. Where an audio recording contains the recording of performances by several performers, the amount of the remuneration shall likewise amount to a total of 20 per cent of the revenue. Revenue shall be the income generated by the producer of the audio recording before the deduction of expenditures.

(2) The right to remuneration shall exist for each full year immediately following the 50th year after publication of the audio recording containing the performance or, if it was not published, following the 50th year after its first lawful use for communication to the public.

(3) The performer may not waive the right to remuneration in accordance with paragraph (1). The right to remuneration may only be asserted by a collecting society. It may be assigned in advance only to a collecting society.

(4) The producer of the audio recording shall be obliged to provide the performer upon request with information about the revenue generated and other information required to quantify the right to remuneration in accordance with paragraph (1).

(5) Where the performer has granted or transferred the rights in his performance to the producer of the audio recording against payment of a recurring fee, the producer of the audio recording may, after expiry of the following periods, deduct neither advance payments nor contractually defined deductions from the remuneration:

1. 50 years after release of the audio recording containing the performance, or
2. 50 years after the first lawful use of the audio recording containing the performance for communication to the public if the audio recording was not released.

Article 80 **Work performed by several performers jointly**

(1) If several performers perform a work jointly and their respective contributions cannot be separately exploited, they shall have the joint right of exploitation. None of the

participating performers may unreasonably refuse their consent to the exploitation of the work. Article 8 paragraph (2), third sentence, and paragraphs (3) and (4) shall apply mutatis mutandis.

(2) For the purpose of asserting rights and claims afforded by Articles 77, 78 and 79 (3), Article 74 (2), second and third sentences, shall apply mutatis mutandis.

Article 81
Protection of organisers

If the performance of the performer is organised by an enterprise, the rights pursuant to Article 77 (1) and (2), first sentence, as well as Article 78(1) shall be enjoyed by the performer as well as by the owner of the enterprise. Article 10 (1), Article 31 as well as Articles 33 and 38 shall apply mutatis mutandis.

Article 82
Duration of exploitation rights

(1) Where a performance has been recorded on an audio recording medium, the rights of the performer referred to in Articles 77 and 78 shall expire 70 years after the release of the audio recording, or, if its first lawful use for communication to the public took place earlier, 70 years after the latter. Where the performance was not recorded on an audio recording medium, the rights of the performer referred to in Articles 77 and 78 shall expire 50 years after the release of the recording or, if its first lawful use for communication to the public occurred earlier, 50 years thereafter. However, the rights of the performer shall already expire 50 years after the performance if a recording has not been released or not lawfully used for communication to the public within that period of time.

(2) The rights of the organiser referred to in Article 81 shall expire 25 years after the release of a recording of the performance or, if the first lawful use for communication to the public occurred earlier, 25 years thereafter. The rights shall already expire 25 years after the performance if no recording was released within this period of time or was not lawfully used for communication to the public within that period of time.

(3) The periods of time shall be calculated in accordance with Article 69.

Article 83
Limitations of exploitation rights

The provisions of Section VI of Part 1 shall apply mutatis mutandis to the rights afforded to the performer in accordance with Articles 77 and 78 and to the organiser in accordance with Article 81.

Article 84
(repealed)

Section IV
Protection of producers of audio recordings

Article 85
Exploitation rights

(1) The producer of an audio recording has the exclusive right to reproduce, distribute and to make available to the public the audio recording. If the audio recording was produced in an enterprise, the owner of the enterprise shall be deemed to be the producer. The right shall not accrue on account of a reproduction of an audio recording.

(2) The right shall be transferable. The producer of an audio recording may grant to another the right to use the audio recording in a particular manner or in any manner of exploitation to which he is entitled. Article 31 and Articles 33 and 38 shall apply mutatis mutandis.

(3) The right shall expire 70 years after release of the audio recording. If the audio recording was not released within 70 years of production, but was used lawfully for

communication to the public, the right shall expire 50 years after the latter. If the audio recording has not been released or lawfully used for communication to the public during that period, the right shall expire 50 years after production of the audio recording. The period shall be calculated in accordance with Article 69.

(4) Article 10 (1) and Article 27 (2) and (3), as well as the provisions set out in Section VI of Part 1 shall apply mutatis mutandis.

Article 86

Right of participation

If an audio recording which has been released or lawfully made available to the public on which the performance of the performer was fixed is used for communication of the performance to the public, the producer of the audio recording shall have a right against the performer to an equitable share in the remuneration which he receives in accordance with Article 78 (2).

Section V

Protection of broadcasting organisations

Article 87

Broadcasting organisation

(1) The broadcasting organisation has the exclusive right to

1. rebroadcast its broadcast and to make it available to the public,
2. make video or audio recordings of its broadcast, to take photographs of its broadcast, as well as to reproduce and distribute the video and audio recordings or photographs, with the exception of rental right,
3. make its broadcast perceivable to the public in places which are accessible to the general public only against payment of an entrance fee.

(2) The right shall be transferable. The broadcasting organisation may grant to another the right to use the broadcast in a particular manner or in any manner of exploitation to which it is entitled. Article 31 and Articles 33 and 38 shall apply mutatis mutandis.

(3) The right shall expire 50 years after the first broadcast. The term shall be calculated in accordance with Article 69.

(4) Article 10 (1) and the provisions of Section VI of Part 1, with the exception of Article 47 (2), second sentence, and Article 54 (1), shall apply mutatis mutandis.

(5) Broadcasting organisations and cable operators shall be mutually obliged to conclude a contract on reasonable conditions concerning cable retransmission within the meaning of Article 20b (1), first sentence, unless there are objectively justifiable reasons to refuse to conclude such a contract; the broadcasting organisation's obligation shall also apply in respect of the broadcasting rights granted or transferred to it in regard to its own broadcast. Upon the request of the cable operator or the broadcasting organisation, the contract shall be concluded with the collecting societies which are entitled to assert a claim in relation to cable retransmission, so far as there is no objective ground to justify the refusal of joint conclusion of the contract.

Section VI

Protection of makers of a database

Article 87a

Definitions

(1) A database within the meaning of this Act is a collection of works, data or other independent elements arranged in a systematic or methodical way and individually accessible by electronic or other means and whose obtaining, verification or presentation requires a substantial qualitative or quantitative investment. A database whose content has been changed in a qualitatively or quantitatively substantial manner

shall be deemed to be a new database insofar as the change requires a substantial qualitative or quantitative investment.

(2) The producer of a database within the meaning of this Act is that person who has made the investment within the meaning of paragraph (1).

Article 87b

Rights of makers of a database

(1) The producer of the database has the exclusive right to reproduce and distribute the database as a whole or a qualitatively or quantitatively substantial part of the database and to make this available to the public. The reproduction, distribution or communication to the public of a qualitatively or quantitatively substantial part of the database shall be equivalent to the repeated and systematic reproduction, distribution or communication to the public of qualitatively or quantitatively insubstantial parts of the database insofar as these actions run contrary to a normal utilisation of the database or unreasonably impair the legitimate interests of the producer of the database.

(2) Article 10 (1), Article 17 (2) and Article 27 (2) and (3) shall apply mutatis mutandis.

Article 87c

Limitations on the rights of makers of a database

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

1. for private use; this shall not apply to a database whose elements are accessible individually by electronic means,
2. for personal scientific use if and insofar as the reproduction is justified for that purpose and the scientific use does not serve commercial purposes,
3. for purpose of illustrative teaching insofar as this does not serve commercial purposes.

In the cases referred to in items 2 and 3 the source shall be clearly indicated.

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

Article 87d

Duration of rights

The rights of the producer of a database shall expire 15 years after the publication of the database, but already after 15 years following its production if the database was not published within that period. The term shall be calculated according to Article 69.

Article 87e

Contracts dealing with the use of a database

A contractual agreement by which the owner of a copy of the database, which was brought to the market by sale with the consent of the producer of the database, that person who is otherwise authorised to use the copy of the database or that person who is given access to a database on the basis of a contract concluded with the producer of the database or of a contract concluded with a third party with the consent of the producer of the database, undertakes vis-à-vis the producer of the database to refrain from reproducing, distributing or communicating to the public quantitatively or qualitatively insubstantial parts of the database shall be ineffective insofar as these acts neither run counter to any normal utilisation of the database nor unreasonably impair the legitimate interests of the producer of the database.

Section VII

Protection of publishers of newspapers and magazines

Article 87f
Press publishers

(1) The producer of a press product (press publisher) shall have the exclusive right to make the press product or parts thereof available to the public for commercial purposes, unless this pertains to individual words or the smallest of text excerpts. If the press product was produced within an enterprise, the owner of the enterprise shall be deemed to be the producer.

(2) A press product shall be the editorial and technical fixation of journalistic contributions in the context of a collection published periodically on any media under a single title, which, following an assessment of the overall circumstances, can be regarded as predominantly typical for the publishing house and the overwhelming majority of which does not serve self-advertising purposes. Journalistic contributions shall include, in particular, articles and illustrations which serve to provide information, form opinions or entertain.

Article 87g
Transferability, term of protection and limitations

(1) The right of the press publisher in accordance with Article 87f (1), first sentence, shall be transferable. Articles 31 and 33 shall apply mutatis mutandis.

(2) The right shall expire one year after publication of the press product.

(3) The right of the press publisher may not be asserted to the detriment of the author or the holder of a right related to copyright whose work or subject-matter protected under this Act is contained in the press product.

(4) It shall be permissible to make press products or parts thereof available to the public unless this is done by commercial providers of search engines or commercial providers of services which process the content accordingly. For the rest, the provisions of Part 1, Section VI shall apply mutatis mutandis.

Article 87h
Right of participation of the author

The author shall be entitled to an equitable share of the remuneration.

Part 3
Special provisions on films

Section I
Cinematographic works

Article 88
Right to make a film

(1) If the author permits another person to make a film of his work, this shall, in cases of doubt, be deemed to involve the granting of the exclusive right to use the work in unaltered form or following adaptation or transformation in the production of a cinematographic work and to use the cinematographic work as well as translations and other cinematographic adaptations in all manners of use. Article 31a (1), third and fourth sentences, and (2) to (4) shall not apply.

(2) The entitlements designated in paragraph (1) shall not, in cases of doubt, entitle the work to be re-filmed. The author shall, in cases of doubt, be authorised to utilise his work cinematically in another manner after the expiry of ten years following the conclusion of the contract.

(3) (repealed)

Article 89
Rights in cinematographic works

(1) In cases of doubt, anyone who undertakes to participate in the production of a film shall, in the event that he acquires a copyright in the cinematographic work, grant the

producer of the film the exclusive right to use in all manners the cinematographic work, as well as translations and other cinematographic adaptations or transformations of the cinematographic work. Article 31a (1), third and fourth sentences, and (2) to (4) shall not apply.

(2) Where the author of the cinematographic work grants the exploitation right designated in paragraph (1) in advance to a third party, he shall nevertheless always retain the right to grant this right to the film producer, either in a limited or an unlimited form.

(3) The copyrights in the works used in the production of the cinematographic work, such as a novel, screenplay and film music, shall remain unaffected.

(4) Concerning the rights of cinematographic exploitation in photographs and photographic works produced in connection with the creation of a cinematographic work, paragraphs (1) and (2) shall apply mutatis mutandis.

Article 90 Limitation of rights

The provisions on the transfer of exploitation rights (Article 34) and the grant of further exploitation rights (Article 35) as well as on the right of revocation for non-exercise (Article 41) and for changed conviction (Article 42) shall not apply to the rights referred to in Article 88 (1) and Article 89 (1). The first sentence shall not apply to the right to make a film until the commencement of the shooting of the film.

Article 91 (repealed)

Article 92 Performers

(1) Where a performer concludes with the producer of the film a contract in respect of his participation in the production of a cinematographic work, this shall in cases of doubt be deemed to have included the granting of the right to use the performance in a particular manner of exploitation to which the performer is entitled in accordance with Article 77(1) and (2), first sentence, and Article 78(1) items 1 and 2.

(2) If the performer has assigned in advance a right referred to in paragraph (1) or granted to a third party an exploitation right therein, he shall nevertheless retain the entitlement to assign or grant this right in respect of exploitation of the cinematographic work to the film producer.

(3) Article 90 shall apply mutatis mutandis.

Article 93 Protection against distortion; claim to identification

(1) The authors of a cinematographic work and of works used in its production, and the holders of related rights who participate in the production of the cinematographic work or whose contributions are used in its production may prohibit, in accordance with Articles 14 and 75, only gross distortions or other gross derogatory treatment of their works or their contributions with respect to the production and exploitation of the cinematographic work. Each author or rightholder shall take the others and the film producer into due account when exercising the right.

(2) The identification of each individual performer participating in a film shall not be necessary if it requires a disproportionate amount of effort.

Article 94 Protection of producers of films

(1) The producer of the film shall have the exclusive right to reproduce, to distribute, use for public presentation, broadcasting or the making available to the public the video recording or combined video and audio recording. The producer of the film shall, further,

have the right to prohibit any distortion or abridging of the video recording or combined video and audio recording which is capable of prejudicing his legitimate interests therein.

(2) The right shall be transferable. The producer of the film may grant to another the right to use the video recording or combined video and audio recording in a particular manner or in any manner of exploitation to which he is entitled. Article 31 and Articles 33 and 38 shall apply mutatis mutandis.

(3) The right shall expire 50 years after the video recording or the video and audio recording is released or, if the first authorised use for communication to the public occurs earlier, 50 years thereafter, but already 50 years after its production if the video recording or the video and audio recording was not released or legally used for communication to the public within this period.

(4) Article 10 (1) and Articles 20b and 27 (2) and (3), as well as the provisions of Section VI of Part 1 shall apply mutatis mutandis.

Section II Moving pictures

Article 95 Moving pictures

Articles 88, 89 (4), 90, 93 and 94 shall apply mutatis mutandis to sequences of images and sequences of images and sounds which are not protected as cinematographic works.

Part 4 Common provisions on copyright and related rights

Section I Supplementary protective provisions

Article 95a Protection of technological measures

(1) Effective technological measures to protect a work protected under this Act or other subject-matter protected under this Act may not be circumvented without the consent of the rightholder where the person acts in the knowledge or with reasonable grounds to know that circumvention is taking place in order to facilitate access to such a work or protected subject-matter or its exploitation.

(2) For the purpose of this Act, technological measures shall be technologies, devices and components which, in the normal course of their operation, are designed to prevent or restrict acts, in respect of protected works or other subject-matter protected pursuant to this Act, which are not authorised by the rightholder. Technological measures shall be deemed effective where the use of a protected work or of other subject-matter protected pursuant to this Act is controlled by the rightholder through application of an access control, a protection process, such as encryption, scrambling or other transformation, or a copy control mechanism, which achieves the protection objective.

(3) The production, import, distribution, sale, rental, advertising with a view to selling or rental and possession for commercial purposes of devices, products or components, as well as providing services, shall be prohibited which

1. are the subject-matter of sales promotions, advertising or marketing with the aim of circumventing effective technological measures, or
2. apart from circumventing effective technological measures only have a restricted economic purpose or benefit, or
3. are mostly drafted, produced, adjusted or provided in order to facilitate or make easier the circumvention of effective technological measures.

(4) Tasks and powers of public agencies for the purposes of protecting public security or the administration of criminal justice shall remain unaffected by the prohibitions contained in paragraphs (1) and (3).

Article 95b
Measures in respect of limitations

(1) Where a rightholder applies the technological measures in accordance with this Act, he shall be obliged to provide to the beneficiaries of the provisions below, where they have legal access to the work or the protected subject-matter concerned, the means of benefiting from these provisions to the necessary extent:

1. Article 45 (Administration of justice and public security),
2. Article 45a (Persons with disabilities),
3. Article 46 (Collections for religious, school or instructional use), with the exception of religious use,
4. Article 47 (School broadcasts),
5. Article 52a (Making works available to the public for instruction and research),
6. Article 53 (Reproduction for private and other personal uses)
 - a) paragraph (1) where it is a matter of copies on paper or a similar medium which have been affected by the use of any kind of photographic technique or by some other process having similar effects,
 - b) paragraph (2), first sentence, item 1,
 - c) paragraph (2), first sentence, item 2 in conjunction with the second sentence, item 1 or 3,
 - d) paragraph (2), first sentence, items 3 and 4, in each case in conjunction with the second sentence, item 1, and the third sentence,
 - e) paragraph (3),
7. Article 55 (Reproduction by broadcasting organisations).

Agreements which exclude the obligations pursuant to the first sentence shall be invalid.

(2) Any person who violates the principle provided for under paragraph (1) may be pursued by the beneficiary of one of the named provisions for this to provide the means required to bring about the respective entitlement. If the means offered is in accordance with an agreement between the associations of the rightholders and the beneficiaries of the restriction provision, it shall be presumed that the means is sufficient.

(3) Paragraphs (1) and (2) shall not apply to works and other protected subject-matter made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(4) Technological measures applied in order to meet the obligations stipulated under paragraph (1), including the measures applied to implement voluntary agreements, shall enjoy legal protection afforded by the provisions of Article 95a.

Article 95c
Protection of information required for rights-management

(1) Information from rightholders for the management of rights may not be removed or altered if any of the information concerned is affixed to a copy of a work or of other protected subject-matter or in the context of communication to the public of such a work or protected subject-matter is published and if removal or alteration has been knowingly

undertaken without authorisation, and those acting know or have reasonable grounds to know that by doing so they are inducing, enabling, facilitating or concealing an infringement of copyright or related rights.

(2) Rights-management information within the meaning of this Act shall be electronic information which identifies the works or other protected subject-matter, the author or any other rightholder, information on the terms and conditions for the exploitation of the works or protected subject-matter, and any numbers and codes which represent such information.

(3) Works or other protected subject-matter from which information for rights-management has been removed or altered without authorisation may not be knowingly distributed, imported for distribution, broadcasted, communicated to the public or made available to the public without authorisation if the person acts in the knowledge or with reasonable grounds to know that they have induced, enabled, facilitated or concealed an infringement of copyright or related rights.

Article 95d Labelling obligations

(1) Works and other protected subject-matter which are protected by technological measures shall be clearly labelled with information on the characteristics of the technological measures.

(2) Any person who protects works and other protected subject-matter by technological measures shall label these in order to facilitate rights-management as afforded by the provisions of Article 95b (2) with his name or the name of the enterprise and the address to which documents are to be delivered. The first sentence shall not apply in cases under Article 95b (3).

Article 96 Prohibition of exploitation

(1) Illegally produced copies may neither be distributed nor used for the purposes of communication to the public.

(2) Illegally made broadcasts may not be fixed on video or audio recording mediums or communicated to the public.

Section II Infringements

Subsection 1 Civil law provisions; legal recourse

Article 97

Right to require cessation of infringement and to damages

(1) Any person who infringes copyright or any other right protected under this Act may be required by the injured party to eliminate the infringement or, where there is a risk of repeated infringement, may be required by the injured party to cease and desist.

Entitlement to prohibit the infringer from future infringement shall also exist where the risk of infringement exists for the first time.

(2) Any person who intentionally or negligently performs such an act shall be obliged to pay the injured party damages for the prejudice suffered as a result of the infringement. When setting the damages any profit obtained by the infringer as a result of the infringement of the right may also be taken into account. Entitlement to damages may also be assessed on the basis of the amount the infringer would have had to pay in equitable remuneration if the infringer had requested authorisation to use the right infringed. Authors, writers of scientific editions (Article 70), photographers (Article 72) and performers (Article 73) may also demand monetary compensation for damage which is non-pecuniary in nature provided and to the extent that this is equitable.

Article 97a Notification

(1) The injured party shall notify the infringer before instituting proceedings in court to desist from infringement and shall give him the opportunity to settle the dispute by entering into an obligation to desist from infringement accompanied by an equitable contractual penalty.

(2) The notification shall clearly and comprehensibly

1. indicate the name or enterprise of the injured party if it is not the injured party but a representative who gives notification,
2. specify the exact infringement,
3. break down claims to payment asserted into claims for damages and claims for compensation, and
4. if the notification contains a request to enter into an obligation to desist from infringement, to state to what extent the proposed obligation to desist from infringement goes beyond the infringement notified.

A notification which does not meet the conditions set out in the first sentence shall not be effective.

(3) To the extent that the notification is justified and meets the conditions set out in paragraph (2), first sentence, items 1 to 4, reimbursement of expenses necessarily incurred may be demanded. Reimbursement of the expenses necessarily incurred in the form of statutory fees for using the services of a lawyer shall be limited to fees for a claim to desist from and eliminate the infringement with a value in dispute of EUR 1,000 if the recipient of the notification is

1. a natural person who does not use the works protected under this Act or other subject-matter protected under this Act for his commercial or self-employed business activity, and
2. not already obliged to desist from infringement on the basis of a contractual claim on the part of the issuer of the notification, a legally binding decision or a temporary injunction.

The value referred to in the second sentence shall also be decisive where a claim to desist from and a claim to eliminate the infringement are asserted in parallel. The second sentence shall not apply where the value referred to is unreasonable considering the specific circumstances of the individual case.

(4) To the extent that the notification is unjustified or ineffective, the person notified may demand reimbursement of the necessary expenses incurred in respect of defending his rights, unless the person giving notification was not able to recognise at the point in time when notification was made that the notification was unjustified. Rights to reimbursement over and above this shall remain unaffected.

Article 98 Claim to destruction, recall and release of copies

(1) Any person who infringes copyright or another right protected under this Act may be required by the injured party to destroy the unlawfully produced or distributed copies or copies which are intended for illegal distribution which are in the injuring party's possession or are his property. The first sentence shall apply mutatis mutandis to devices which are the property of the injuring party which have predominantly served the production of these copies.

(2) Any person who infringes copyright or another right protected under this Act may be required by the injured party to recall unlawfully produced or distributed copies or copies

intended for unlawful distribution or to definitively remove them from the channels of commerce.

(3) As an alternative to the measures provided for in paragraph (1), the injured party may require that the copies which are the injuring party's property be released against payment of an equitable remuneration which may not exceed the production costs.

(4) The claims under paragraphs (1) to (3) shall be excluded if the measure is disproportionate in the individual case. Account shall also be taken of the legitimate interests of third parties when examining the aspect of proportionality.

(5) Buildings as well as removable parts of copies and devices whose production and distribution is not unlawful shall not be subject to the measures provided for in paragraphs (1) to (3).

Article 99

Liability of the owner of an enterprise

Where a right protected under this Act has been infringed in an enterprise by an employee or agent, the injured party shall also be entitled to assert the rights set out in Article 97 (1) and Article 98 against the owner of the enterprise.

Article 100

Pecuniary compensation

Where the injuring party acts neither intentionally nor negligently, he may, in order to avert the assertion of the claims under Article 97 and 98, pay pecuniary compensation to the injured party if the fulfilment of the claims would cause disproportionate harm and the injured party can be expected to accept pecuniary compensation. The compensation shall total that amount which would constitute equitable remuneration were the right to be contractually granted. Payment of such compensation shall be equivalent to granting the injuring party permission to exploit the right to the customary extent.

Article 101

Right of information

(1) Any person who infringes copyright or another right protected under this Act on a commercial scale may be required by the injured party to provide information without delay as to the origin and the distribution networks of infringing copies or other products. The commercial scale may be deemed to exist on the basis either of the number of infringements or the severity of the infringement.

(2) In cases of manifest infringement or in cases where the injured party has brought a court action against the infringer, such a right shall exist, without prejudice to paragraph (1), also against any person who, on a commercial scale,

1. was in possession of infringing copies,
2. was using infringing services,
3. was providing services used in infringing activities, or
4. was indicated by the person referred to in item 1, 2 or 3, as being involved in the production, manufacture or distribution of such copies, other products or services,

unless the person concerned would, under Articles 383 to 385 of the Code of Civil Procedure, be entitled to refuse testimony as a witness in the proceedings against the infringer. In the event of a claim pursuant to the first sentence being brought before a court, the court may, upon application, suspend the litigation pending against the infringer until disposal of any litigation being conducted in respect of a right to information. The person obliged to provide information may demand reimbursement from the injured party of the expenses necessarily incurred in providing the information.

(3) The person obliged to provide information must supply the following information:

1. The name and address of the producers, suppliers and other previous holders of the copies or other products, the users of the services, as well as the intended wholesalers and retailers, and
 2. the quantities of produced, delivered, received or ordered copies or other products, as well as the prices paid for the copies or other products in question.
- (4) The claims under paragraphs (1) and (2) shall be precluded where their assertion is disproportionate in the individual case.
- (5) Where the person obliged to provide information intentionally or gross negligently provides incorrect or incomplete information, he shall be obliged to reimburse the injured party for the resulting damage.
- (6) Any person who provides truthful information without having been obliged to do so according to paragraph (1) or paragraph (2) shall only be held liable against third parties if he knew that he was not obliged to provide the information.
- (7) In the event of an obvious infringement, the obligation to provide information may be issued by way of a temporary injunction according to Articles 935 to 945 of the Code of Civil Procedure.
- (8) The findings may be used in criminal proceedings or in proceedings based on the Regulatory Offences Act (Gesetz über Ordnungswidrigkeiten) in respect of an act committed before the information was provided against the person obliged to provide information or against a relative designated in Article 52 (1) of the Code of Criminal Procedure (Strafprozessordnung) only with the consent of the person obliged to provide information.
- (9) Where the information can be provided only by using traffic data (Article 3, item 30, of the Telecommunications Act (Telekommunikationsgesetz)), a prior judicial order, which must be applied for by the injured party as to the admissibility of use of the traffic data shall be required for the provision of such information. Sole jurisdiction for issuing any such order shall lie, regardless of the value of the claim, with the regional court in whose district the person obliged to provide information has his domicile, his seat or a branch office. The decision shall be rendered by the civil division. The provisions of the Act on Procedure in Family Matters and Non-Contentious Issues (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit) shall apply mutatis mutandis to the proceedings. The costs of the judicial order shall be borne by the injured party. The remedy of immediate complaint is admissible in respect of the regional court decision. It shall be submitted within a period of two weeks. The provisions on the protection of personal data shall otherwise remain unaffected.
- (10) The fundamental right to secrecy of telecommunications (Article 10 of the Basic Law (Grundgesetz)) shall be limited on account of paragraph (2) read in conjunction with paragraph (9).

Article 101a

Entitlement to presentation and inspection

- (1) Any person who has with sufficient probability infringed copyright or another right protected under this Act may be required by the injured party to present a document or to permit the inspection of an object in his possession if this is necessary in order to substantiate his claims. Where an infringement has with sufficient probability occurred on a commercial scale, the entitlement shall also extend to the presentation of banking, financial or commercial documents. Where the supposed infringer asserts that this information is confidential, the court shall take the measures necessary to guarantee the level of protection required in the individual case.
- (2) The claim according to paragraph (1) shall be precluded if its assertion is disproportionate in the individual case.

(3) The obligation to present a document or to permit the inspection of an object may be ordered by way of a temporary injunction according to Articles 935 to 945 of the Code of Civil Procedure. The court shall take the measures necessary to guarantee the protection of confidential information. This shall in particular apply in cases in which the temporary injunction is issued without the opposing party having been heard.

(4) Article 811 of the German Civil Code and Article 101 (8) of this Act shall apply *mutatis mutandis*.

(5) If there was no infringement or no risk of an infringement, the supposed injuring party may demand compensation for the damage caused by the request for presentation or inspection according to paragraph (1) from the person who required this of him.

Article 101b

Securing claims for damages

(1) In the event of an infringement committed on a commercial scale in the cases referred to in Article 97 (2), the injured party may require that the injuring party presents banking, financial or commercial documents or appropriate access to the relevant information which are in the injuring party's possession and which are necessary to enforce the claim for damages if without such presentation recovery of damages is endangered. Where the injuring party asserts that the information is confidential, the court shall take the measures necessary to guarantee the level of protection required in the individual case.

(2) The claim according to paragraph (1) shall be precluded if its assertion is disproportionate in the individual case.

(3) The obligation to present the documents designated in paragraph (1) may be ordered by way of a temporary injunction according to Articles 935 to 945 of the Code of Civil Procedure if the entitlement to damages obviously exists. The court shall take the measures necessary to guarantee the protection of confidential information. This shall in particular apply in cases in which the temporary injunction is issued without the opposing party having been heard.

(4) Article 811 of the German Civil Code and Article 101 (8) of this Act shall apply *mutatis mutandis*.

Article 102

Limitation period

The provisions set out in Division 5 of Book 1 of the German Civil Code shall apply *mutatis mutandis* in respect of the limitation period regarding claims on account of an infringement of copyright or another right protected under this Act. Where the obligated party obtained something on account of the infringement at the expense of the rightholder, Article 852 of the German Civil Code shall apply *mutatis mutandis*.

Article 102a

Entitlements resulting from other statutory provisions

Entitlements resulting from other statutory provisions shall remain unaffected.

Article 103

Publication of judgment

Where an action was filed on the basis of this Act, the successful party may be authorised by judgment to publish the judgment at the expense of the unsuccessful party if a legitimate interest therein is substantiated. The nature and extent of the publication shall be determined in the judgment. This authorisation shall expire if it is not made use of within three months after the judgment becomes final. The judgment may be published only after it becomes final, unless otherwise provided for by the court.

Article 104

Legal recourse

Recourse to the courts shall be permitted in respect of all legal disputes by means of which a claim is asserted on account of a legal relationship regulated under this Act (copyright litigation matters). As regards copyright litigation matters resulting from employment or service relationships which have as their object only claims for payment of an agreed remuneration, recourse to the labour courts and the administrative courts shall remain unaffected.

Article 104a

Place of jurisdiction

(1) As regards actions brought on account of copyright litigation matters against a natural person who does not use works protected under this Act or other subject-matter protected under this Act for his commercial or self-employed business activity, that court shall have exclusive jurisdiction in whose district that person has his domicile at the time when the action is brought, for want of such domicile his habitual place of residence. Where the defendant neither has his domicile or habitual place of residence in Germany, that court shall have jurisdiction in whose district the act was carried out.

(2) Article 105 shall remain unaffected.

Article 105

Courts for copyright litigation

(1) The Land (federal state) governments shall be authorised to assign, by way of legal ordinance, copyright litigation matters for which the regional court is competent as court of first instance or as appeal court to one of the several regional courts competent within a district where this serves the administration of justice.

(2) The Land governments shall further be authorised to assign, by way of legal ordinance, copyright litigation matters which are within the jurisdiction of the local courts to one of several local courts within a district where this serves the administration of justice.

(3) The Land governments may transfer the authorisations according to paragraphs (1) and (2) to the Land judicial administrations.

(4) and (5) (repealed)

Subsection 2

Criminal and regulatory fine provisions

Article 106

Unlawful exploitation of copyrighted works

(1) Anyone who without the consent of the rightholder reproduces, distributes or communicates to the public a work or an adaptation or transformation of a work in manners other than those permitted by law shall be liable to imprisonment of not more than 3 years or a fine.

(2) Any attempt shall be punishable.

Article 107

Unlawful affixing of designation of author

(1) Any person who

1. without the consent of the author affixes to the original of an artistic work the designation of author (Article 10 (1)) or distributes an original bearing such designation,
2. affixes to a copy, an adaptation or transformation of an artistic work the designation of author (Article 10 (1)) in a manner which gives the copy, adaptation or transformation the appearance of an original, or distributes a copy, such an adaptation or transformation bearing such designation,

shall be liable to imprisonment of not more than three years or a fine, unless other provisions impose a more serious sentence.

(2) Any attempt shall be punishable.

Article 108

Infringement of related rights

(1) Any person who without the consent of the rightholder

1. reproduces, distributes or communicates to the public a scientific edition (Article 70) or an adaptation or transformation of such an edition,
2. exploits a posthumous work or an adaptation or transformation of such a work contrary to Article 71,
3. reproduces, distributes or communicates to the public a photograph (Article 72) or an adaptation or transformation of a photograph,
4. exploits a performance by a performer contrary to Article 77 (1) or (2), first sentence, Article 78 (1),
5. exploits an audio recording contrary to Article 85,
6. exploits a broadcast contrary to Article 87,
7. exploits a video recording or a video and audio recording contrary to Articles 94 or 95 read in conjunction with Article 94,
8. exploits a database contrary to Article 87b (1),

in manners other than those permitted by law shall be liable to imprisonment of not more than three years or a fine.

(2) Any attempt shall be punishable.

Article 108a

Unlawful exploitation on a commercial scale

(1) Where the offender in the cases referred to in Articles 106 to 108 acts on a commercial basis, the penalty shall be imprisonment of not more than five years or a fine.

(2) Any attempt shall be punishable.

Article 108b

Infringement of technological measures and rights-management information

(1) Any person who,

1. with the intention of enabling for himself or a third party access to a work which is protected under this Act or to other subject-matter protected under this Act or its exploitation, circumvents an effective technological measure without the consent of the rightholder, or
2. knowingly without authorisation
 - a) removes or alters rights-management information provided by rightholders, if any of the information concerned is affixed to a copy of a work or of other protected subject-matter, or is released in the context of the communication to the public of such a work or protected subject-matter, or
 - b) distributes, imports for distribution, broadcasts, communicates to the public or makes available to the public a work or other protected subject-matter where rights-management information was removed or altered without authorisation

by doing so, has at least carelessly induced, enabled, facilitated or concealed an infringement of copyright or related rights,

if the offence was not committed exclusively for the personal private use of the offender or of persons personally associated with the offender or does not relate to such use, shall be liable to imprisonment of not more than one year or a fine.

(2) Punishment shall also be imposed on any person who in violation of Article 95a (3) produces, imports, distributes, sells or rents a device, a product or component for commercial purposes.

(3) If in cases under paragraph (1) the offender acts on a commercial scale, the penalty shall be imprisonment of not more than three years or a fine.

Article 109

Application for criminal prosecution

In the cases referred to in Articles 106 to 108 and in Article 108b, the act shall only be pursued upon application, unless the criminal prosecution authority regards ex officio action to be necessary on account of the particular public interest in the criminal prosecution.

Article 110

Confiscation

Articles which are the object of a criminal offence according to Articles 106, 107 (1), item 2, Articles 108 to 108b may be confiscated. Article 74a of the Criminal Code (Strafgesetzbuch) shall apply. Where the claims designated in Article 98 are upheld in proceedings under the provisions of the Code of Criminal Procedure concerning compensation of the injured party (Articles 403 to 406c), the provisions concerning confiscation shall not apply.

Article 111

Publication of judgement

Where in the cases referred to in Articles 106 to 108b a penalty is imposed, the court shall order, if the injured party makes an application and substantiates a legitimate interest therein, that the conviction be published upon request. The manner of the publication shall be determined in the judgment.

Article 111a

Regulatory fine provisions

(1) Any person who

1. in violation of Article 95a (3)
 - a) sells, rents or distributes a device, a product or component outside the group of people with whom the offender is personally associated, or
 - b) for commercial purposes possesses, advertises for sale or rental or provides a service in respect of a device, a product or a component,
2. in violation of Article 95b (1), first sentence, does not provide necessary means, or
3. in violation of Article 95d (2), first sentence, does not or does not fully label works or other protected subject-matter,

shall be deemed to have committed a regulatory offence.

(2) In cases under paragraph (1) items 1 and 2, the regulatory offence may be sanctioned with a regulatory fine of not more than 50,000 euro and in other cases with a regulatory fine of not more than 10,000 euro.

Subsection 3
Provisions on measures taken by the customs authorities

Article 111b
Proceedings under German law

(1) If the production or distribution of copies infringes copyright or another right protected under this Act, insofar as Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (OJ L 196 p. 7) is applicable as amended, the copies shall, upon application and against payment of a security by the rightholder, following their import or export, be subject to confiscation by the customs authority insofar as the infringement is obvious. This shall apply to dealings with other Member States of the European Union and with other states party to the Agreement on the European Economic Area only insofar as the customs authorities are responsible for controls.

(2) Where the customs authority orders the confiscation, it shall inform the person authorised to dispose of the articles and the applicant thereof without delay. The applicant shall be informed of the origin, quantity and whereabouts of the copies, as well as of the name and address of the person authorised to dispose of the articles; privacy of correspondence and post (Article 10 of the Basic Law) shall thereby be restricted. The applicant shall be given the opportunity to inspect the copies insofar as this does not interfere with business or trade secrets.

(3) Where no objection is raised to the seizure within two weeks following service of the notification according to paragraph (2), first sentence, the customs authority shall order the confiscation of the seized copies.

(4) Where the person authorised to dispose of the articles objects to the seizure, the customs authority shall inform the applicant thereof without delay. The applicant shall declare to the customs authority without delay whether he will uphold the application according to paragraph (1) in respect of the seized copies.

1. Where the applicant withdraws the application, the customs authority shall revoke the seizure without delay.

2. Where the applicant upholds the application and submits an executable court decision ordering the storage of the seized copies or ordering a limitation on the right of disposal, the customs authority shall take the necessary measures.

Where the cases referred to in item 1 or 2 do not exist, the customs authority shall revoke the seizure following the expiry of two weeks after service of the notification on the applicant according to the first sentence; if the applicant can furnish proof that an application for the court decision according to item 2 has been made but has not yet been served on him, the seizure shall be maintained for no longer than a further two weeks.

(5) Where the seizure proves to have been unjustified from the outset and the applicant has upheld the application according to paragraph (1) in respect of the seized copies or did not make a declaration without delay (paragraph (4), second sentence), he shall be obliged to reimburse the person authorised to dispose of the articles for the damage arising on account of the seizure.

(6) The application according to paragraph (1) shall be made to the Federal Finance Office (Bundesfinanzdirektion) and shall be effective for one year, unless a shorter period is applied for; a renewed application shall be possible. The applicant shall be asked to pay costs in accordance with Article 178 of the Fiscal Code (Abgabenordnung) for official acts performed in connection with the application.

(7) The seizure and the confiscation may be contested by means of the legal remedies permissible against seizure and confiscation in regulatory fine proceedings under the Regulatory Offences Act. The applicant shall be heard in the appeal proceedings. An

immediate appeal shall be admissible against the decision of the local court; the higher regional court shall decide in the matter.

(8) (repealed)

Article 111c

Proceedings according to Council Regulation (EC) No 1383/2003

(1) Where the competent customs authority suspends the release of the goods or detains these according to Article 9 of Council Regulation (EC) No 1383/2003, it shall inform the rightholder, as well as the declarant, the possessor or owner of the goods thereof without delay.

(2) In the case referred to in paragraph (1), the rightholder may apply to have the goods destroyed in the simplified proceedings described below within the meaning of Article 11 of Council Regulation (EC) No 1383/2003.

(3) The application must be submitted in writing to the customs authority within ten working days of receipt of the notification provided for in paragraph (1). It must contain the information that the goods concerned by the procedure infringe a right protected under this Act. The written agreement of the declarant, the possessor or owner of the goods for their destruction must be enclosed. In derogation of the third sentence, the declarant, the possessor or owner may make the written declaration in respect of whether he agrees or objects to their destruction directly to the customs authority. Upon the rightholder's application, the period designated in the first sentence may be extended by ten working days before the expiry of the period.

(4) Agreement to destruction shall be presumed to have been given if the declarant, the possessor or owner of the goods has not specifically opposed destruction within ten working days after receipt of the notification provided for in paragraph (1). Reference to this fact shall be made in the notification provided for in paragraph (1).

(5) Destruction of the goods be carried out at the expense and under the responsibility of the rightholder.

(6) The customs office may take responsibility for organising the destruction. Paragraph (5) remains unaffected.

(7) The period of keeping according to Article 11 (1), second indent, of Council Regulation (EC) No 1383/2003 shall be one year.

(8) For the rest, Article 111b shall apply mutatis mutandis, unless Council Regulation (EC) No 1383/2003 contains provisions contrary thereto.

Section III

Compulsory enforcement

Subsection 1

General

Article 112

General

The admissibility of compulsory execution on a right protected under this Act shall be subject to general legal provisions, unless provided otherwise in Articles 113 to 119.

Subsection 2

Compulsory enforcement for pecuniary claims against the author

Article 113

Copyright

Execution on copyright for pecuniary claims against the author shall be admissible only with his consent and only to the extent that he may grant exploitation rights (Article 31). The consent may not be given through the legal representative.

Article 114

Originals of works

(1) Execution for pecuniary claims against the author on originals of his work which he owns shall be admissible only with his consent. The consent may not be given through the legal representative.

(2) No consent shall be required

1. insofar as the execution on the original of the work is necessary to levy the execution on an exploitation right in the work,
2. for execution on the original of an architectural work,
3. for execution on the original of another artistic work if the work has been published.

In the cases referred to in item 2 and 3, the original of the work may be distributed without the consent of the author.

Subsection 3

Compulsory enforcement for pecuniary claims against the author's successor in title

Article 115

Copyright

Execution on copyright for pecuniary claims against the author's successor in title (Article 30) shall be admissible only with his consent and only to the extent that he may grant exploitation rights (Article 31). No consent shall be required if the work has been released.

Article 116

Originals of works

(1) Execution for pecuniary claims against the author's successor in title (Article 30) on originals of the author's work which he owns shall be admissible only with his consent.

(2) No consent shall be required

1. in the cases referred to in Article 114 (2), first sentence,
 2. for execution on the original of a work if the work has been released.
- Article 114 (2), second sentence, shall apply mutatis mutandis.

Article 117

Executor

Where according to Article 28 (2) the exercise of copyright by an executor has been ordered, the consent required according to Articles 115 and 116 shall be given by the executor.

Subsection 4

Compulsory enforcement for pecuniary claims against authors of scientific editions and against photographers

Article 118

Application mutatis mutandis

Articles 113 to 117 shall apply mutatis mutandis

1. to execution for pecuniary claims against the author of scientific editions (Article 70) and his successor in title,
2. to execution for pecuniary claims against the photographer (Article 72) and his successor in title.

Subsection 5

Compulsory enforcement for pecuniary claims in respect of certain devices

Article 119

Compulsory enforcement in respect of certain devices

(1) Devices intended exclusively for the reproduction or broadcasting of a work, such as moulds, plates, engraving stones, blocks, stencils and negatives, shall be subject to execution for pecuniary claims only insofar as the creditor is authorised to use the work by means of such devices.

(2) The same shall apply to devices intended exclusively for the presentation of a cinematographic work, such as reels of film and suchlike.

(3) Paragraphs (1) and (2) shall apply mutatis mutandis to editions protected according to Articles 70 and 71, to photographs protected according to Article 72, to video and audio recordings protected according to Article 77 (2), first sentence, Articles 85, 87, 94 and 95, and to databases protected according to Article 87b (1).

Part 5

Scope of application, transitional and final provisions

Section I

Scope of the Act

Subsection 1

Copyright

Article 120

German nationals and nationals of another Member State of the EU or of another Contracting State to the Agreement on the EEA

(1) German nationals enjoy copyright protection for all their works, regardless of whether and where the works were released. Where a work was created by joint authors (Article 8), it shall be sufficient for one joint author to be a German national.

(2) The following are deemed equal to German nationals:

1. Germans within the meaning of Article 116 paragraph 1 of the Basic Law who do not hold German nationality, and
2. Nationals of another Member State of the European Union (EU) or of another state party to the Agreement on the European Economic Area (EEA).

Article 121

Foreign nationals

(1) Foreign nationals enjoy copyright protection for their works released within the territory to which this Act applies, unless the work or a translation of the work was released outside the territory to which this Act applies, more than 30 days prior to release within that territorial scope. Foreign nationals also enjoy protection with the same limitations for such works as were released only in translation within the territory to which this Act applies.

(2) Artistic works which are a permanent fixture on real property located within the territory to which this Act applies, shall be deemed equal to works within the meaning of paragraph (1) released within the territory to which this Act applies.

(3) The protection granted under paragraph (1) may be limited by way of a legal ordinance issued by the Federal Minister of Justice in respect of foreign nationals who are not nationals of any Member State of the Berne Convention for the Protection of Literary and Artistic Works and at the time of the release of the work have their place of residence neither within the territory to which this Act applies nor in another Member State if the state of which they are a national does not grant German nationals sufficient protection for their works.

(4) For the rest, foreign nationals enjoy copyright protection according to state treaties. Where no state treaties exist, copyright protection shall exist for such works insofar as, in accordance with notification published by the Federal Minister of Justice in the

Federal Law Gazette, German nationals enjoy corresponding protection of their works in the state of which the author is a national.

(5) Foreign nationals shall be entitled to resale rights (Article 26) only if, in accordance with notification published by the Federal Minister of Justice in the Federal Law Gazette, the state of which they are a national grants German nationals a corresponding right.

(6) Foreign nationals shall enjoy protection according to Articles 12 to 14 for all their works even if the conditions provided for in paragraphs (1) to (5) are not met.

Article 122

Stateless persons

(1) Stateless persons who are habitually resident within the territory to which this Act applies enjoy the same copyright protection of their works as German nationals.

(2) Stateless persons who are not habitually resident within the territory to which this Act applies enjoy the same copyright protection for their works as members of that foreign state in which they are habitually resident.

Article 123

Foreign refugees

The provisions set out in Article 122 shall apply mutatis mutandis to foreigners who are refugees within the meaning of international treaties or other statutory provisions. This shall not preclude protection according to Article 121.

Subsection 2

Related rights

Article 124

Scientific editions and photographs

Articles 120 to 123 shall apply mutatis mutandis in respect of the protection of scientific editions (Article 70) and the protection of photographs (Article 72).

Article 125

Protection of performers

(1) German nationals enjoy the protection granted under Articles 73 to 83 for all their performances, regardless of where they take place. Article 120 (2) shall apply.

(2) Foreign nationals enjoy protection with respect to all their performances which take place within the territory to which this Act applies, unless paragraphs (3) and (4) provide otherwise.

(3) Where performances by foreign nationals are lawfully fixed on video or audio recording mediums and these are released, foreign nationals shall enjoy the protection granted under Article 77 (2), first sentence, Article 78 (1), item 1, and (2) in respect of these video or audio recordings if the video or audio recordings were released within the territory to which this Act applies, unless the video or audio recordings were released outside the territory to which this Act applies more than 30 days before they were released within the territory to which this Act applies.

(4) Where performances by foreign nationals are broadcasted lawfully, the foreign nationals shall enjoy protection against the fixing of the broadcast on video or audio recording mediums (Article 77 (1)) and rebroadcasting of the broadcast (Article 78 (1), item 2), as well as protection according to Article 78 if the broadcast was transmitted within the territory to which this Act applies.

(5) For the rest, foreign nationals enjoy protection according to international treaties. Article 121 (4), second sentence, as well as Articles 122 and 123 shall apply mutatis mutandis.

(6) Foreign nationals enjoy protection according to Articles 74 and 75, Article 77 (1), as well as Article 78 (1), item 3, for all their performances, even if the conditions set out in paragraphs (2) to (5) are not met. The same applies in respect of protection according to Article 78 (1), item 2, where a direct broadcast of the performance is concerned.

(7) Where protection is granted under paragraphs (2) to (4) or (6), it shall expire at the latest with the expiry of the term of protection in that state of which the performer is a national, without exceeding the term of protection according to Article 82.

Article 126

Protection of producers of audio recordings

(1) German nationals or enterprises whose principal place of business is located within the territory to which this Act applies enjoy the protection granted under Articles 85 and 86 for all their audio recordings, regardless of whether and where they were released. Article 120 (2) shall apply. Enterprises whose principal place of business is located in another Member State of the European Union or in another state party to the Agreement on the European Economic Area are deemed equivalent to enterprises whose principal place of business is located within the territory to which this Act applies.

(2) Foreign nationals or enterprises with no principal place of business within the territory to which this Act applies enjoy protection for all audio recordings released within the territory to which this Act applies, unless the audio recording was released outside the territory to which this Act applies more than 30 days before it was released within the territory to which this Act applies. The protection shall, however, expire at the latest after the expiry of the term of protection in that state of which the producer of the audio recording is a national or in which the enterprise has its principal place of business, without exceeding the term of protection according to Article 85 (3).

(3) For the rest, foreign nationals or enterprises whose principal place of business is not located within the territory to which his Act applies enjoy protection according to international treaties. Article 121 (4), second sentence, as well as Articles 122 and 123 shall apply *mutatis mutandis*.

Article 127

Protection of broadcasting organisations

(1) Broadcasting organisations whose principal place of business is located within the territory to which this Act applies enjoy protection according to Article 87 for all broadcasts, regardless of where they are transmitted. Article 126 (1), third sentence, shall apply.

(2) Broadcasting organisations with no principal place of business within the territory to which this Act applies enjoy protection for all broadcasts they transmit within the territory to which this Act applies. The protection shall expire with the expiry of the term of protection granted in that state in which the broadcasting organisation has its principal place of business, without exceeding the term of protection according to Article 87 (3).

(3) For the rest, broadcasting organisations with no principal place of business within the territory to which this Act applies enjoy protection according to the content of international treaties. Article 121 (4), second sentence, shall apply *mutatis mutandis*.

Article 127a

Protection of makers of a database

(1) German nationals and legal entities whose principal place of business is located within the territory to which this Act applies enjoy protection according to Article 87b. Article 120 (2) shall apply.

(2) Legal entities with no principal place of business within the territory to which this Act applies which were established under German law or the law of one of the states designated in Article 120 (2), item 2, enjoy the protection granted according to Article 87b if

1. their head office or main office is located in the territory of one of the states designated in Article 120 (2), item 2, or

2. their registered office is located in the territory of one of these states and there is an actual link between their activities and the German economy or the economy of one of these states.

(3) For the rest, foreign nationals and legal entities enjoy the protection granted according to international treaties, as well as agreements which the European Community concludes with third-party states; the Federal Ministry of Justice shall give notification of these agreements by publication in the Federal Law Gazette.

Article 128

Protection of producers of films

(1) German nationals or enterprises with a principal place of business within the territory to which this Act applies enjoy the protection granted under Article 94 and 95 for all their video recordings or video and audio recordings, regardless of whether and where they are released. Article 120 (2) and Article 126 (1), third sentence, shall apply.

(2) The provisions set out in Article 126 (2) and (3) shall apply mutatis mutandis for foreign nationals or enterprises with no principal place of business within the territory to which this Act applies.

Section II

Transitional provisions

Article 129

Works

(1) The provisions of this Act shall also apply to works created before its entry into force, unless they were not protected by copyright at that point in time or this Act provides otherwise. This shall apply mutatis mutandis to related rights.

(2) The duration of copyright in a work published after the expiry of 50 years after the author's death but before the entry into force of this Act shall be determined according to the previously applicable provisions.

Article 130

Translations

The rights of the author of a translation which was lawfully released before 1 January 1902 without the consent of the author of the translated work shall remain unaffected.

Article 131

Literary works set to music

Literary works set to music which it was permissible to reproduce, distribute and communicate to the public without the consent of the author according to Article 20 of the Act on copyright in works of literature and of musical art (Gesetz betreffend das Urheberrecht an Werken der Literatur und der Tonkunst) of 19 June 1901 (Reich Law Gazette p. 227) as amended by the Act Implementing the revised Berne Convention for the Protection of Literary and Artistic Works (Gesetz zur Ausführung der revidierten Berner Übereinkunft zum Schutze von Werken der Literatur und Kunst) of 22 May 1910 (Reich Law Gazette p. 793) may continue to be reproduced, distributed and communicated to the public in the same measure if the setting to music of the work was released before the entry into force of this Act.

Article 132

Contracts

(1) The provisions of this Act, with the exception of Articles 42 and 43, shall not apply to contracts concluded before 1 January 1966. Article 43 shall apply mutatis mutandis to performers. Articles 40 and 41 shall apply to such contracts with the proviso that the terms designated in Article 40 (1), second sentence, and in Article 41 (2) shall be calculated from 1 January 1966 at the earliest.

(2) Dispositions made before 1 January 1966 shall remain effective.

(3) The provisions of this Act as amended on 28 March 2002 shall continue to apply to contracts concluded, or other facts which occurred, before 1 July 2002, subject to the second and third sentences. Article 32a shall apply to facts which occurred after 28 March 2002. Article 32 shall apply to contracts concluded between 1 June 2001 and 30 June 2002, if the right granted or the permission is used after 30 June 2002.

(4) Paragraph (3) shall apply mutatis mutandis to performers.

**Article 133
(repealed)**

**Article 134
Authors**

Any person who is regarded as the author of a work according to previously applicable provisions but, upon the entry into force of this Act, is no longer regarded as the author of a work according to the provisions of this Act will, regardless of the cases referred to in Article 135, continue to be regarded as the author. Where according to the previously applicable provisions a legal entity must be regarded as the author of a work, the previously applicable provisions shall apply in respect of the calculation of the term of protection.

**Article 135
Holders of related rights**

Any person who upon the entry into force of this Act is regarded according to previously applicable provisions as the author of a photograph or of the transferral of a work to devices for mechanical communication is the holder of the corresponding related rights granted under this Act.

**Article 135a
Calculation of the term of protection**

If on account of the application of this Act the term of protection for a right arising prior to the entry into force of this Act is curtailed and the event which is decisive in respect of the commencement of the term of protection according to this Act occurred before the entry into force of this Act, the term shall be calculated from the entry into force of this Act. The protection shall, however, expire at the latest with the expiry of the term of protection according to the previously applicable provisions.

**Article 136
Reproduction and distribution**

(1) If a reproduction which is prohibited under this Act was previously permissible, the production of copies which began prior to the entry into force of this Act may be completed.

(2) The copies produced according to paragraph (1) or prior to the entry into force of this Act may be distributed.

(3) If under this Act an equitable remuneration must be paid to the rightholder for a reproduction which was freely permissible according to previous provisions, the copies designated in paragraph (2) may be distributed without payment of remuneration.

**Article 137
Transfer of rights**

(1) Insofar as the copyright was transferred to another prior to the entry into force of this Act, the transferee shall be entitled to the corresponding exploitation rights (Article 31). However, the transfer shall, in cases of doubt, not extend to entitlements which were first established under this Act.

(2) If the copyright was transferred in whole or in part to another prior to the entry into force of this Act, the transfer shall, in cases of doubt, also extend to the period by which the term of protection was extended according to Articles 64 to 66. The same shall

apply, mutatis mutandis, if prior to the entry into force of this Act another person was authorised to exercise a right to which the author was entitled.

(3) In the cases referred to in paragraph (2) the transferee or licensee must pay the transferor or licensor an equitable remuneration insofar as it can be assumed that he would have obtained a higher return on account of the transfer or the authorisation if at that time the extended term of protection had already been determined.

(4) The claim for the remuneration shall not apply if as soon as it has been asserted the transferee makes available to the transferor the right for the period after the expiry of the previously determined term of protection or the licensee relinquishes the authorisation for this period. If the transferee resells the copyright prior to the entry into force of this Act, the remuneration must not be paid insofar as it would, considering the circumstances of the resale, place an unreasonable burden on the transferee.

(5) Paragraph (1) shall apply mutatis mutandis to related rights.

Article 137a

Photographic works

(1) The provisions of this Act concerning the term of protection shall also apply to photographic works whose term of protection had not yet expired on 1 July 1985 according to the law applicable up until that date.

(2) Where an exploitation right in a photographic work was previously granted to another, the granting or transfer shall, in cases of doubt, not extend to that period by which the term of protection in photographic works has been extended.

Article 137b

Certain editions

(1) The provisions of this Act concerning the term of protection according to Articles 70 and 71 shall also apply to scientific editions and editions of posthumous works whose term of protection had not yet expired on 1 July 1990 according to the law applicable until that date.

(2) Where an exploitation right in a scientific edition or in an edition of posthumous works was granted or transferred to another before 1 July 1990, the grant or transfer shall, in cases of doubt, also extend to the period by which the term of the related right has been extended.

(3) The provisions set out in Article 137 (3) and (4) shall apply mutatis mutandis.

Article 137c

Performers

(1) The provisions of this Act concerning the term of protection according to Article 82 shall also apply to performances fixed on video or audio recording mediums before 1 July 1990 if on 1 January 1991 a period of 50 years had not yet expired since the video or audio recording was released. If the video or audio recording was not released within this period, the period shall be calculated from the time of the performance. The protection under this Act shall on no account extend beyond 50 years after the release of the video or audio recording, or if the video or audio recording was not released, 50 years after the performance.

(2) Where an exploitation right in a performance was granted or transferred to another prior to 1 July 1990, the grant or transfer shall, in cases of doubt, also extend to the period by which the term of protection was extended.

(3) The provisions set out in Article 137 (3) and (4) shall apply mutatis mutandis.

Article 137d

Computer programs

(1) The provisions set out in Section VIII of Part 1 shall also apply to computer programs created prior to 24 June 1993. However, the exclusive rental right (Article 69c, item 3)

shall not extend to copies of a program which a third party acquired prior to 1 January 1993 for rental purposes.

(2) Article 69g (2) shall also apply to contracts concluded prior to 24 June 1993.

Article 137e

Transitional provisions in implementation of Council Directive 92/100/EEC

(1) The provisions of this Act which entered into force on 30 June 1995 shall also apply to works, performances, audio recordings, broadcasts and films created prior to that date, unless they were no longer protected on that date.

(2) Where an original or a copy of a work or of a video or audio recording was acquired prior to 30 June 1995 or a third person was given permission to use it for rental purposes, the consent of the holder of the rental right (Articles 17, 77 (2), first sentence, Articles 85 and 94) required for rental after this date shall be deemed to have been given. The lessor must pay each of these rightholders an equitable remuneration; Article 27 (1), second and third sentence, in respect of the claims of authors and performers and Article 27 (3) shall apply mutatis mutandis. Article 137d shall remain unaffected.

(3) Where a video or audio recording which was acquired or a third person was given permission to use it for rental purposes prior to 30 June 1995 was rented between 1 July 1994 and 30 June 1995, a right to remuneration shall apply mutatis mutandis to this rental in application of paragraph (2), second sentence.

(4) Where an author granted an exclusive right of distribution prior to 30 June 1995, the grant shall also apply to the rental right. Where a performer participated in the production of a cinematographic work prior to this date or consented to the use of his performance in the production of a cinematographic work, his exclusive rights shall be deemed to have been transferred to the producer of the film. If he consented to the fixing of his performance on audio recording mediums or to the reproduction prior to this date, the grant shall also be considered as constituting a transferral of the right of distribution, including rental.

Article 137f

Transitional provisions in implementation of Council Directive 93/98/EEC

(1) If, by application of this Act as amended on 1 July 1995, the term of protection of a previously accruing right is curtailed, the protection shall expire with the expiry of the term of protection according to the provisions applicable until 30 June 1995. For the rest, the provisions of this Act concerning the term of protection as amended on 1 July 1995 shall also apply to works and related rights whose protection had not yet expired on 1 July 1995.

(2) The provisions of this Act as amended on 1 July 1995 shall apply to works whose protection according to this Act expired prior to 1 July 1995 but which continues to exist under the law of another Member State of the European Union or of a state party to the Agreement on the European Economic Area at that point in time. The first sentence shall apply mutatis mutandis to the related rights of the editor of posthumous works (Article 71), of the performer (Article 73), the producers of audio recordings (Article 85), of broadcasting organisations (Article 87) and producers of films (Articles 94 and 95).

(3) Where, according to paragraph (2), the protection of a work is revived within the territory to which this Act applies, the author shall be entitled to the revived rights. An act of use begun prior to 1 July 1995 may, however, be continued to the extent provided for. An equitable remuneration shall be paid for the use from 1 July 1995 onwards. The first to third sentences shall apply mutatis mutandis to related rights.

(4) Where an exploitation right in a performance which is still protected according to this Act is granted or transferred to another prior to 1 July 1995, the grant or transferral shall, in cases of doubt, also extend to the period by which the term of protection was extended. In the case referred to in the first sentence, an equitable remuneration shall be paid.

Article 137g

Transitional provisions in implementation of Directive 96/9/EC

- (1) Article 23, second sentence, Article 53 (5), Articles 55a and 63 (1), second sentence, shall also apply to database works created prior to 1 January 1998.
- (2) The provisions set out in Section VI of Part 2 shall also apply to databases produced between 1 January 1983 and 31 December 1997. In these cases the term of protection shall commence on 1 January 1998.
- (3) Articles 55a and 87e shall not apply to contracts concluded prior to 1 January 1998.

Article 137h

Transitional provisions in implementation of Council Directive 93/83/EEC

- (1) The provision set out in Article 20a shall not apply to contracts concluded before 1 June 1998 until after 1 January 2000 insofar as they expire after that date.
- (2) Where a contract on the joint production of a video or audio recording concluded prior to 1 June 1998 between several producers of which at least one is a national of a Member State of the European Union or a state party to the Agreement on the European Economic Area provides for the geographical division of the broadcasting right amongst the producers without differentiating between satellite broadcast and other types of broadcast and if the satellite broadcast by one producer of the jointly produced production would prejudice the exploitation of the exclusive right of another producer limited in respect of place or language, the satellite broadcast shall be permissible only if the holder of these exclusive rights has consented thereto.
- (3) The provision set out in Article 20b (2) shall apply only insofar as the contract on the granting of the cable retransmission right was concluded after 1 June 1998.

Article 137i

Transitional provisions regarding the Act to Modernize the Law of Obligations

Article 229 (6) of the Introductory Act to the German Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch) shall apply with the proviso that Article 26 (7), Article 36 (2) and Article 102 in the version applicable until 1 January 2002 shall be equivalent to the provisions of the German Civil Code on the limitation period in the version applicable until 1 January 2002.

Article 137j

Transitional provisions towards the implementation of Directive 2001/29/EC

- (1) Article 95d (1) shall apply to all works and other protected subject-matter put into circulation for the first time as of 1 December 2003.
- (2) The provision contained in this Act on the term of protection for producers of audio recordings in the version applicable from 13 September 2003 shall also apply to related rights, the protection of which has not yet expired on 22 December 2002.
- (3) If pursuant to paragraph (2) the protection of an audio medium is revived, the producer of the audio recording shall be entitled to the revived rights.
- (4) If prior to 13 September 2003 an exploitation right in an audio recording still protected under this Act had been granted or transferred to another, the granting or transfer in cases of doubt shall apply, in the event of an extension of the term of protection provided under Article 85 (3), also to this period. In the case of the first sentence, equitable remuneration shall be afforded.

Article 137k

Transitional provision for making works available to the public for instruction and research

Article 52a shall no longer apply on expiry of 31 December 2014.

Article 137l

Transitional provisions for new types of exploitation

(1) Where between 1 January 1966 and 1 January 2008, the author has granted another person all essential exploitation rights, exclusively as well as without limitation of place and time, the exploitation rights which were not known at the time the contract was concluded shall be deemed also to have been granted to the other person, so far as the author does not indicate to the other person that he objects to such exploitation. In respect of types of exploitation that were already known on 1 January 2008 the objection may be made only within one year. Otherwise the right of objection shall expire after three months have elapsed since the other person sent the author, at the address last known to the sender, the information concerning the intended commencement of the new type of exploitation of the author's work. The first to third sentences shall not apply to exploitation rights which have become known in the meantime and which the author has already granted to a third person.

(2) Where the other person has granted a third person all the exploitation rights which he himself was originally granted, paragraph (1) shall apply to such third person *mutatis mutandis*. Where the author declares his objection *vis-à-vis* the contracting party with whom he originally contracted a contract, such contracting party shall give him, without delay, all the information required in respect of the third person.

(3) The right of objection pursuant to paragraphs (1) and (2) shall not apply where the parties have reached an express agreement regarding a type of exploitation which has become known in the meantime.

(4) If there is consolidation of more than one work, or more than one contribution to a work, into one entity which, in the new type of exploitation, can be used appropriately only in circumstances where there is exploitation of all works or contributions to a work, the author may not exercise his right of objection contrary to good faith.

(5) The author shall be entitled to separate equitable remuneration where the other person commences a new type of exploitation pursuant to paragraph (1) which was still unknown at the time the contract was concluded. Article 32 (2) and (4) shall apply *mutatis mutandis*. The claim may be asserted only through a collecting society. Where the other contracting party has transferred the right of exploitation to a third person, the third person shall be liable for remuneration upon commencement of the new type of exploitation of the author's work. The liability of the other person shall not apply.

Article 137m

Transitional provision occasioned by implementation of Directive 2011/77/EU

(1) The provisions concerning the term of protection in accordance with Articles 82 and 85 (3) and concerning the rights and claims of the performer in accordance with Article 79 (3) and Article 79a shall apply to recordings of performances and audio recordings whose term of protection for the performer and producer of the audio recording had not yet expired on 1 November 2013 in accordance with the provisions of this Act as amended on 6 July 2013, and to recordings of performances and audio recordings created after 1 November 2013.

(2) Article 65 (3) shall apply to musical compositions with words whose musical composition or lyrics were protected in at least one Member State of the European Union on 1 November 2013 and for musical compositions with words created after that date. Where the protection of the musical composition or of the lyrics is revived in accordance with the first sentence, the revived rights are accorded the author. However, any act of exploitation commencing before 1 November 2013 may be continued in the context provided for. Equitable remuneration shall be paid for any exploitation after 1 November 2013.

(3) Where a transfer agreement was concluded between a performer and a producer of an audio recording before 1 November 2013, in the case of the extension of the term of protection the transfer shall extend to this period unless there are clear, contractual indications to the contrary.

Article 137n

Transitional provision occasioned by implementation of Directive 2012/28/EU

Article 61 (4) shall be applied only to holdings bequeathed to the institution using them before 29 October 2014.

Section III

Final provisions

Article 138

Register of anonymous and pseudonymous works

(1) The Patent Office shall be responsible for keeping the register of anonymous and pseudonymous works in respect of the entries to be made according to Article 66 (2), second sentence. The Patent Office shall effect the entries without examining the applicant's authorisation or the correctness of the facts registered for entry.

(2) If the entry is refused, the applicant may apply for a court decision. The decision shall be taken by reasoned order to be issued by the higher regional court in whose jurisdiction the Patent Office is located. The application must be made in writing to the higher regional court. The decision of the higher regional court shall be final. For the rest, the provisions of the Act on Procedure in Family Matters and Non-Contentious Issues shall apply mutatis mutandis in respect of the court proceedings.

(3) The entries shall be published in the Federal Gazette. The costs of the publication shall be paid in advance by the applicant.

(4) Permission to inspect the register shall be granted to any person. Extracts from the register shall be issued upon request.

(5) The Federal Minister of Justice shall be authorised to

1. issue provisions concerning the form of the application and the maintenance of the register,

2. order the imposition of costs (fees and expenses) to cover administrative costs for the entry, the issuing of a certificate of entry and the issuing of other extracts and their certification, as well as provisions concerning the debtor of the costs, the due date for the payment of costs, the obligation to pay costs in advance, exemptions from payment of costs, the limitation period, the procedure for the fixing of costs and legal remedies against the fixing of costs,

by way of legal ordinance.

(6) Entries made with Leipzig City Council according to Article 56 of the Act on copyright in works of literature and of musical art of 19 June 1901 shall remain effective.

Article 139

Amendment to the Code of Criminal Procedure

-

Article 140

Amendment to the Act concerning the Universal Copyright Convention of 6 September 1952

-

Article 141

Repealed provisions

-

Article 142

(repealed)

Article 143

Entry into force

(1) Articles 64 to 67, 69, 105 (1) to (3) und Article 138 (5) shall enter into force on the day following the promulgation of this Act.

(2) For the rest, this Act shall enter into force on 1 January 1966.

Annex (to Article 61a)
Sources for a diligent search

1. For published books:
 - a) The catalogue of the German National Library and the library catalogues and key word lists kept by libraries and other institutions;
 - b) Information supplied by publishers' and authors' associations, in particular the Register of Books in Print (VLB);
 - c) Existing databases and registers, Writers, Artists and their Copyright Holders (WATCH) and the ISBN (International Standard Book Number);
 - d) The databases of the relevant collecting societies, in particular those collecting societies entrusted with asserting rights of reproduction such as VG Wort's database;
 - e) Sources bringing together several databases and registers, including the Joint Authority File (GND), Virtual International Authority Files (VIAF) and Accessible Registries of Rights Information and Orphan Works (ARROW);
2. For newspapers, magazines, trade journals and periodicals:
 - a) The German ISSN (International Standard Serial Number) – Centre for Regular Publications;
 - b) Indexes and catalogues of library holdings and collections, in particular the catalogue of the German National Library and the Newspaper Database (ZDB);
 - c) Depositories of officially deposited obligatory copies;
 - d) Publishers' associations and authors' and journalists' associations, in particular the Register of Newspapers in Print (VLZ), the Register of Books in Print (VLB), Banger Online, STAMM and presse katalog.de;
 - e) The databases of the relevant collecting societies, including those collecting societies entrusted with asserting rights of reproduction, in particular VG Wort's database;
3. For visual works, including artistic works, photographic works, illustrations, design and architectural works, as well as their drafts and other such works contained in books, magazines, newspapers or other works:
 - a) The sources referred to in items 1 and 2;
 - b) The databases of the relevant collecting societies, in particular of the collecting societies for artistic works, including the collecting societies entrusted with asserting rights of reproduction, such as VG BildKunst's database;
 - c) The databases of photographic agencies;
4. For cinematographic works, as well as for video recording mediums and audio and video recording mediums on which cinematographic works have been recorded, and for audio recording mediums:

- a) The depositories of officially deposited obligatory copies, in particular the catalogue of the German National Library;
 - b) Information provided by producers' associations;
 - c) Information provided by the film boards of the Federation and Länder;
 - d) The databases of institutions and national libraries active in the field of cinematographic and audio heritage, in particular the Association of Film Archives, the Federal Archive, the Foundation of German Film Archives, the German Film Institute (www.filmportal.de database and catalogue), the DEFA Foundation and the Friedrich Wilhelm Murnau Foundation, and the catalogues of the State Libraries in Berlin and Munich;
 - e) Databases with relevant standards and identifiers such as the ISAN (International Standard Audiovisual Number) for audio-visual material, the ISWC (International Standard Music Work Code) for musical works and the ISRC (International Standard Recording Code) for audio recordings;
 - f) The databases of the relevant collecting societies, in particular for authors, performers and producers of audio recordings and cinematographic works;
 - g) The performance of co-authors and other information on the work's packaging or in its opening or closing credits;
 - h) The databases of other relevant associations representing certain categories of rightholders, such as associations of film directors, screenwriters, film music composers, composers, theatre publishing houses, theatre and opera associations;
5. For unpublished holdings:
- a) Current and original owners of the work piece;
 - b) National registers of estates (Central Database of Estates and Kalliope);
 - c) Finding aids in the national archives;
 - d) Museum inventory lists;
 - e) Credit agencies and telephone books.