

Neighbouring Rights Act.

• CHAPTER 1 Definitions	1
• CHAPTER II Scope of neighbouring rights	2
• CHAPTER 3 The exercise and enforcement of neighbouring rights	8
• CHAPTER IV Criminal law provisions	11
• CHAPTER V Criteria of application	14
• CHAPTER 6 Amendment of the Copyright Act 1912	17
• CHAPTER 7 Final provisions	17

CHAPTER 1 Definitions ➡

Article 1

For the purposes of this Act and provisions laid down pursuant to this Act:

- a. performer means an actor, singer, musician, dancer or any other person who acts, sings, delivers or otherwise performs a literary or artistic work, or an artist who performs a variety or circus act or a puppet show;
- b. recording means the fixing of sounds, images or a combination thereof, for the first time, on any object suitable for reproducing or communication to the public such a fixation;
- c. phonogram means any recording of the sounds only of a performance or of other sounds;
- d. phonogram producer means the natural or legal person who first manufactures a phonogram or first has a phonogram manufactured;
- e. broadcasting organisation means an organisation that produces programmes and broadcasts them or has them broadcast under its responsibility, in accordance with the legislation of the country in which the broadcasting takes place;
- f. reproduction means the manufacture of one or more copies of a recording or of part of a recording;
- g. broadcasting means the distribution of programmes by means of a transmitter as referred to in article 1, paragraph 1, sub cc, of the Mediawet (Statute Book 1987, 249) or of a cable broadcasting installation as referred to in article 1, paragraph 1, sub g, of the Wet op de telecommunicatievoorzieningen Act (Statute Book 1988, 520);
- h. rebroadcasting means the simultaneous broadcasting by one institution of a programme that is being broadcast by another institution or broadcasting organisation;
- i. programme means a broadcast radio or television programme or part of such a

programme.

- j. rental means making available for use for a limited period of time for a direct or indirect economic or commercial advantage;
- k. lending means making available for use for a limited period of time by establishments accessible to the public, for no direct or indirect economic or commercial advantage.

CHAPTER II Scope of neighbouring rights ➔

Article 2

1. A performer shall have the exclusive right to authorize one or more of the following acts:

- a. the recording of a performance;
- b. the reproduction of a recording of a performance;
- c. the sale, rental, lending, supply or otherwise bringing into circulation, or the importing, offering or having in stock for such purposes of a recording of a performance or a reproduction thereof;
- d. the broadcasting, rebroadcasting or communication to the public in any other way of a performance or a recording of a performance or a reproduction thereof.

2. Where a reproduction of a recording of a performance has been brought into circulation for the first time by or with the consent of the holder of the exclusive right referred to in paragraph 1, in a Member State of the European Union or in a State party to the Agreement on the European Economic Area of 2 May 1992, the acquirer of such reproduction does not infringe that exclusive right by carrying out, with respect thereto, the acts referred to in paragraph 1, sub c, with the exception of rental and lending.

3. Without prejudice to the provisions of paragraph 2, the lending of a recording of a performance or a reproduction thereof, as referred to in paragraph 2, shall be permitted provided the person doing or arranging the lending pays an equitable remuneration.

4. Educational and research establishments, the libraries attached to them, and the Koninklijke Bibliotheek shall be exempt from payment of the remuneration as referred to in paragraph 3.

5. Libraries funded by the Libraries for the Blind and Visually Impaired Fund shall be exempt from payment of the remuneration referred to in paragraph 3 in respect of items lent to blind and visually impaired persons registered with the libraries in question.

6. Payment of the remuneration referred to in paragraph 3 shall not be required if the person subject to payment can demonstrate that the holder of the exclusive right has waived the right to an equitable remuneration. The holder of the exclusive right shall notify the legal persons referred to in articles 15a and 15b of the waiver in writing.

7. With regard to the provisions of paragraph 1, sub d, communication to the public shall

also mean a performance that takes place in a restricted circle, except where this is confined to relatives, friends or equivalent persons and no form of payment whatsoever is made for attendance.

8. Performing shall not include any performance which is exclusively for the purposes of education provided on behalf of the public authorities or a non-profit legal person, in so far as such a performance forms part of the school work plan, curriculum or college work plan, or serves a scientific purpose.

9. The rebroadcasting of a programme by the organisation making the original broadcast shall not be deemed a separate communication to the public.

Article 2a

1. If a performer assigns the rental right referred to in article 2, paragraph 1, sub c, in respect of a performance recorded on a phonogram to the producer thereof, the latter shall pay the performer an equitable remuneration for the rental.

2. The right to an equitable remuneration as referred to in paragraph 1 may not be waived.

Article 3

An employer shall be entitled to exploit the rights of a performer as referred to in article 2, where this has been agreed between the parties or derives from the nature of the employment contract concluded between them, from custom or from the requirements of reasonableness and fairness. Unless it has been agreed otherwise or arises otherwise from the nature of the contract, from custom or from the requirements of reasonableness and fairness, the employer shall pay the performer or his assignee an equitable remuneration for each form of exploitation of the latter's rights. The employer shall respect the rights of the performer as referred to in article 5.

Article 4

Articles 45a up to and included 45g of the Copyright Act 1912 shall apply mutatis mutandis to any performance by a performer intended to contribute to the making of a cinematographic work as referred to in article 45a of said Act.

Article 5

1. A performer shall be entitled, even after he has assigned the right referred to in article 2:
 - a. to oppose the communication to the public of a performance without acknowledgement of his name or other designation as a performer, unless such opposition would be unreasonable;
 - b. to oppose the communication to the public of a performance under a name other than his own, and any alteration in the way in which he is designated, in so far as such name or designation is mentioned or communicated to the public in connection with the performance;
 - c. to oppose any other alteration to the performance, unless the nature of the alteration is such that opposition would be unreasonable;

- d. to oppose any distortion, mutilation or other impairment of the performance that could be prejudicial to his name or reputation or his dignity as a performer.

2. Upon the death of the performer, the rights referred to in the preceding paragraph shall belong, until the expiry of the rights referred to in article 2, to the person designated by him in his last will and testament or in a codicil.

3. The rights referred to in paragraph 1, sub a up to and included c may be waived in writing.

Article 6

1. A phonogram producer shall have the exclusive right to authorize:

- a. the reproduction of a phonogram manufactured by him;
- b. the sale, rental, lending, supply or otherwise bringing into circulation, or the importing, offering or having in stock for such purposes, of a phonogram manufactured by him or a reproduction thereof;
- c. the broadcasting, rebroadcasting or other communication to the public in any other way of a phonogram manufactured by him or a reproduction thereof. Article 2, paragraphs 6 up to and included 8, shall apply mutatis mutandis.

2. Where a phonogram or a reproduction thereof has been brought into circulation for the first time, by or with the consent of the holder of the exclusive right referred to in paragraph 1, in a Member State of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992, the acquirer of the phonogram or reproduction does not infringe that exclusive right by carrying out, with respect thereto, the acts referred to in paragraph 1, sub b, with the exception of rental and lending.

3. Without prejudice to the provisions of paragraph 2, the lending of a recording of a performance or a reproduction thereof, as referred to in paragraph 2, shall be permitted provided the person doing or arranging the lending pays an equitable remuneration.

4. Educational and research establishments, the libraries attached to them, and the Koninklijke Bibliotheek shall be exempt from payment of the remuneration as referred to in paragraph 3.

5. Libraries funded by the Libraries for the Blind and Visually Impaired Fund shall be exempt from payment of the remuneration referred to in paragraph 3 in respect of items lent to blind and visually impaired persons registered with the libraries in question.

6. Payment of the remuneration referred to in paragraphs 3 and 4 shall not be required if the person subject to payment can demonstrate that the holder of the exclusive right has waived the right to an equitable remuneration. The holder of the exclusive right shall notify the legal persons referred to in articles 15a and 15b of the waiver in writing.

Article 7

1. A phonogram or reproduction thereof published for commercial purposes may be

broadcast or otherwise communicated to the public without the consent of the producer or the performer or their assignees, provided an equitable remuneration is paid.

2. In the event of disagreement as to the amount of the equitable remuneration, the District Court of The Hague shall have sole competence at first instance to determine, on application of either of the parties, the amount of the remuneration.

3. The remuneration shall be payable to both the performer and the producer, or their assignees, and shall be divided between them equally.

Article 7a

1. The producer of the first fixations of films shall have the exclusive right to authorize:

- a. the reproduction of the first fixation of a film manufactured by him or a reproduction thereof;
- b. the sale, rental, lending, supply or otherwise bringing into circulation, and the importing, offering or having in stock for such purposes, of the first fixation of a film manufactured by him or a reproduction thereof.

2. Where a first fixation or a reproduction has been brought into circulation for the first time, by or with the consent of the holder of the exclusive right referred to in paragraph 1, in a Member State of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992, the acquirer of said first fixation or reproduction does not infringe that exclusive right by carrying out, with respect thereto, the acts referred to in paragraph 1 sub b, with the exception of rental and lending.

3. Without prejudice to the provisions of paragraph 2, the lending of a first fixation or a reproduction thereof, as referred to in paragraph 2, is permitted provided the person doing or arranging the lending pays an equitable remuneration.

4. Educational and research establishments, the libraries attached to them, and the Koninklijke Bibliotheek shall be exempt from payment of a lending remuneration as referred to in paragraph 3.

5. Libraries funded by the Libraries for the Blind and Visually Impaired Fund shall be exempt from payment of the remuneration referred to in paragraph 3 in respect of items lent to blind and visually impaired persons registered with the libraries in question.

6. Payment of the remuneration referred to in paragraphs 3 and 4 shall not be required if the person subject to payment can demonstrate that the holder of the exclusive right has waived the right to payment of an equitable remuneration. The holder of the exclusive right shall notify the legal persons referred to in articles 15a and 15b in writing of the waiver.

Article 8

1. A broadcasting organisation shall have the exclusive right to authorize one or more of the following acts:

- a. the rebroadcasting of programmes;

- b. the recording of programmes and the reproduction of such recordings;
- c. the sale, rental, lending, supply or otherwise bringing into circulation, and the importing, offering or having in stock for such purposes, of a recording of a programme or a reproduction thereof;
- d. the communication to the public of a programme, whatever the technical facilities used for that purpose;
- e. the communication to the public of recordings of programmes or reproductions thereof, whatever the technical facilities used for that purpose.

2. Where a recording of a programme or a reproduction thereof has been brought into circulation for the first time, by or with the consent of the holder of the exclusive right referred to in paragraph 1, in a Member State of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992, the acquirer of the recording or reproduction does not infringe that exclusive right by carrying out, with respect thereto, the acts referred to in paragraph 1c, with the exception of rental and lending.

3. Without prejudice to the provisions of paragraph 2, the lending of a recording of a programme or a reproduction thereof, as referred to in paragraph 2, shall be permitted provided the person doing or arranging the lending pays an equitable remuneration.

4. Educational and research establishments, the libraries attached to them, and the Koninklijke Bibliotheek shall be exempt from payment of the remuneration as referred to in paragraph 3.

5. Libraries funded by the Libraries for the Blind and Visually Impaired Fund shall be exempt from payment of the remuneration referred to in paragraph 3 in respect of items lent to blind and visually impaired persons registered with the libraries in question.

6. Payment of the remuneration referred to in paragraphs 3 and 4 shall not be required if the person subject to payment can demonstrate that the holder of the exclusive right has waived the right to an equitable remuneration. The holder of the exclusive right shall notify the legal persons referred to in articles 15a and 15b in writing of the waiver.

Article 9

The rights conferred by this Act pass by succession. With the exception of the rights referred to in article 5, paragraph 1, they are assignable wholly or in part. The delivery required by whole or partial assignment shall be effected by means of a deed of assignment. The assignment shall comprise only such rights as are recorded in the deed or necessarily derive from the nature or purpose of the title. The provisions of the third and fourth sentences of this article shall apply mutatis mutandis to authorization as referred to in articles 2, 6, 7a and 8.

Article 10

The acts referred to in articles 2, 6, 7a and 8 do not constitute an infringement of the rights referred to in those articles, if they are carried out for the purpose of:

- a. private practice, study or use by a person who records or reproduces a few copies;

article 16b, paragraph 5, and articles 16c up to and included 16g of the Copyright Act 1912 shall apply mutatis mutandis;

- b. reporting in public in a photographic, cinematographic, radio or television report on current affairs, provided that this is necessary in order to give a proper account of the current affairs that are the subject of the report and provided that short fragments only are used;
- c. a recording made by or on behalf of a broadcasting organisation that is authorised to broadcast or to have broadcasts made, for the purposes of its own programmes, provided that the recording is destroyed within 28 days after the first broadcast of the programme for which the recording was made, and in any event within six months of its manufacture; article 17b, paragraph 3, of the Copyright Act 1912 shall apply mutatis mutandis; article 5 shall be taken into account with regard to the performance of a performer;
- d. quotation in an announcement, criticism, polemic or scientific treatise; article 15a, paragraph 1, sub 1, 2 and 4 and paragraph 5, of the Copyright Act 1912 shall apply mutatis mutandis; article 5 shall be taken into account with regard to the performance of a performer.

Article 11

1. The acts mentioned in articles 2, 6, 7a and 8 do not constitute an infringement if they are carried out for the purpose of communication to the public parts of performances, phonograms or programmes or reproductions thereof by broadcasting a programme made to serve as illustration for teaching purposes; article 16, paragraph 1b, sub 1, 2, 4 and 5, and paragraph 5, of the Copyright Act 1912 (in so far as the last-named paragraph concerns the equitable remuneration to be paid) shall apply mutatis mutandis; article 5 shall be taken into account with regard to the performance of a performer;

2. The acts mentioned in articles 2, 6, 7a and 8 do not constitute an infringement if they are carried out for the purposes of the taking over of parts of performances, phonograms, first fixations of films or programmes or reproductions thereof in publications or sound or visual recordings made for use as illustration for teaching purposes illustrations in teaching; article 16, paragraph 1a, sub 1, 2, 4 and 5 and paragraph 5, of the Copyright Act 1912, (in so far as the last-named paragraph concerns the equitable remuneration to be paid) shall apply mutatis mutandis; article 5 shall be taken into account with regard to the performance of a performer.

Article 12

1. The rights of performers shall expire 50 years after 1 January of the year following that in which the performance took place. If, however, a recording of the performance was lawfully brought into circulation or communicated to the public within that period, the rights shall expire 50 years after 1 January of the year following that in which the recording was first lawfully brought into circulation or, if earlier, communicated to the public.

2. The rights of phonogram producers shall expire 50 years after 1 January of the year following that in which the phonogram was manufactured. If, however, the phonogram was lawfully brought into circulation or communicated to the public within that period, the rights shall expire 50 years after 1 January of the year following that in which the recording was first lawfully brought into circulation or, if earlier, communicated to the public.

3. The rights of broadcasting organisations shall expire 50 years after 1 January of the year following that in which a programme was first broadcast, regardless of the technical facilities used.

4. The rights of the producers of the first fixation of a film shall expire 50 years after 1 January of the year in which the first fixation took place. If, however, the first fixation was lawfully brought into circulation or communicated to the public within that period, the rights shall expire 50 years after 1 January of the year following that in which the recording was first lawfully brought into circulation or, if earlier, communicated to the public.

CHAPTER 3 The exercise and enforcement of neighbouring rights ➔

Article 13

In the event of a joint performance by six or more persons, the rights referred to in article 2 shall be exercised only by a representative elected by a majority of the performers participating in the performance. The first sentence of this article shall not apply to a soloist, director or conductor participating in the joint performance. The rights referred to in article 2 may be enforced, in the event of a joint performance, by any of the performers participating in the performance, unless otherwise agreed.

Article 14

Where a joint right with regard to one and the same phonogram or programme belongs to two or more producers of phonograms or the first fixation of a film or two or more broadcasting organisations, that right may be enforced by any one of them, unless otherwise agreed.

Article 14a

1. The right of the performer and the producer of phonograms to authorize the unaltered and unabridged rebroadcasting by a cable broadcasting installation, as referred to in article 1g of the Telecommunications Act, of a performance or phonogram or a reproduction thereof may be exercised exclusively by legal persons whose aim in accordance with their bylaws is to protect the interests of rightholders through the exercise of the right belonging to them, as referred to above.

2. The legal persons referred to in paragraph 1 shall also be entitled to protect the interests of rightholders who have not instructed them to do so, where they are exercising the rights defined in their bylaws. Where there is more than one legal person whose aim in accordance with their bylaws is to protect the interests of the same category of rightholders, the rightholder referred to in the first sentence of this paragraph may designate one of them as being authorised to protect his interests.

3. In the event of rightholders who have given no instructions as referred to in paragraph 2, the rights and obligations arising from an agreement concluded in respect of the broadcast referred to in paragraph 1 by a legal person entitled to exercise the same rights shall apply in full.

4. Claims against the legal person referred to in paragraph 1 in respect of the remunerations it has collected shall lapse 3 years after the beginning of the day following that on which the broadcast referred to in paragraph 1 took place.

5. This article does not apply to rights as referred to in paragraph 1 belonging to a broadcasting organisation in respect of its own broadcasts.

Article 14b

Parties shall be obliged to conduct negotiations regarding authorization for rebroadcasting, as referred to in article 14a, paragraph 1, in good faith and shall not prevent or hinder negotiation without valid justification.

Article 14c

1. If agreement cannot be reached on rebroadcasting, as referred to in article 14a, paragraph 1, each party may call upon the assistance of one or more mediators. The mediators shall be selected in such a way that their independence and impartiality are beyond reasonable doubt.

2. The mediators shall assist in the conducting of the negotiations and shall be entitled to serve notice of the proposals to the parties. Each party may serve notice to the other party of its objections to such proposals within three months of the date of receipt of the proposals. The mediators' proposals shall be binding on the parties unless one of them has served notice of its objections within the time-limit referred to in the previous sentence. Notice of the proposals and the objections shall be served on the parties in accordance with the provisions of Book 1, Title 1, Part 1 of the Code of Civil Procedure.

Article 14d

Articles 14b and 14c shall apply *mutatis mutandis* to the unaltered and unabridged rebroadcasting of a broadcasting organisation's programme by a cable broadcasting installation as referred to in article 1g of the Telecommunications Act.

Article 15

1. The equitable remuneration referred to in article 7 shall be paid to a representative legal person designated by Our Minister of Justice, who shall be exclusively entrusted with the collection and distribution of such remunerations. The legal person referred to in the preceding sentence shall represent the rightholders at law and otherwise in matters relating to the level and collection of the remuneration and the exercise of the exclusive right.

2. The legal person referred to in paragraph 1 shall be subject to supervision by a supervisory board, the members of which shall be appointed by Our Minister of Justice. Further rules concerning supervision shall be laid down by order in council.

3. The remunerations collected shall be distributed on the basis of regulations drawn up by the legal person referred to in paragraph 1 and approved by Our Minister of Justice. To this end Our Minister of Justice shall seek the opinion of the supervisory board referred to in paragraph 2.

Article 15a

1. The remunerations referred to in articles 2, 6, 7a and 8 shall be paid to a legal person to be designated by Our Minister of Justice in agreement with Our Minister of Education, Culture and Science, who is, in their opinion, representative, and who shall be exclusively entrusted with the collection and distribution of such remunerations. The legal person

referred to in the preceding sentence shall represent the rightholders at law and otherwise in matters relating to the level and collection of the remuneration and the exercise of the exclusive right.

2. The legal person referred to in paragraph 1 shall be subject to supervision by a supervisory board, the members of which shall be appointed by Our Minister of Justice in agreement with Our Minister of Education, Culture and Science. Further rules concerning supervision shall be laid down by order in council.

3. The remunerations collected shall be distributed on the basis of regulations drawn up by the legal person referred to in paragraph 1 and approved by Our Minister of Justice in agreement with Our Minister of Education, Culture and Science. To this end Our Minister of Justice shall seek the opinion of the supervisory board referred to in paragraph 2.

Article 15b

The level of the remuneration referred to in article 2, paragraph 3, article 6, paragraph 3, article 7a, paragraph 3, and article 8, paragraph 3, shall be determined by a foundation to be designated by Our Minister of Justice in agreement with Our Minister of Education, Culture and Science, the board of which shall be so composed as to represent in a balanced manner the interests of rightholders and those who have to pay in accordance with the articles mentioned hereabove. The chair of the board of this organisation shall be appointed by Our Minister of Justice in agreement with Our Minister of Education, Culture and Science. The number of members of the board shall be uneven.

Article 15c

Disputes concerning the remuneration referred to in article 2, paragraph 3, article 6, paragraph 3, article 7a, paragraph 3, and article 8, paragraph 3, shall be exclusively decided at first instance by the Arrondissementsrechtbank at The Hague.

Article 15d

Persons required to pay the remuneration referred to in article 2, paragraph 3, article 6, paragraph 3, article 7a, paragraph 3, and article 8, paragraph 3, shall be obliged to submit to, before 1 April of every calendar year unless otherwise agreed, the legal person referred to in article 15a, paragraph 1, the number of juridical acts referred to in said articles. They shall also be obliged to give said legal person, upon request, immediate access to the documents and other data carriers needed to establish indebtedness and the level of the remuneration.

Article 16

1. In addition to claiming damages, the rightholder referred to in articles 2, 6, 7a and 8 may request the court to order anyone who has infringed his rights to handing over the profits originating from the infringement and to render account therefor.

2. The rightholder may also file one or both of the claims referred to in paragraph 1 partly or wholly on behalf of a licensee, without prejudice to the latter's right to intervene in proceedings instituted by the rightholder independently or partly or wholly on his behalf in order to directly obtain compensation for the damage he has suffered or to obtain a proportionate share of the profits to be surrendered by the defendant. A licensee may file one or both of the claims referred to in paragraph 1 only if he has obtained the authority to do so.

Article 17

1. The rights referred to in articles 2, 5, 6, 7a and 8 shall entitle the rightholder to claim as his property any recordings or reproductions thereof communicated to the public in violation of said rights and any unauthorised reproductions, or to apply for them to be destroyed or rendered useless. The same entitlement shall apply to goods that are not filed in the public records, and which have directly served to manufacture the recordings or reproductions referred to in the first sentence, and to the entrance money paid by those attending a performance and other monies that may be assumed to have been obtained by or as a result of a violation of one of the rights referred to in articles 2, 5, 6, 7a and 8.

2. The provisions of the Code of Civil Procedure concerning seizure and execution for the purposes of handing over goods that are not filed in the public records shall apply. In the event of cumulation of seizure the person seizing pursuant to this article shall take precedence.

3. The court may order that the handing over be conditional on payment by the plaintiff of a compensation to be determined by the court.

4. Unless otherwise agreed, the licensee shall have the right to exercise the rights referred to in paragraph 1 in so far as their purpose is to protect the rights he is entitled to exercise.

Article 18

The right referred to in article 17, paragraph 1, may not be exercised in respect of recordings or reproductions thereof in the possession of persons who do not trade in such goods and who have obtained them exclusively for their private use, unless they themselves have infringed the relevant right.

Article 19

(deleted following the Act of April 6, 1994, Statute Book)

Article 20

1. Upon request of one or more commercial or professional organisations which Our Minister of Justice considers representative, which are legal persons with full legal capacity and whose aim is to protect the interests of persons who sell, rent, lend, supply or otherwise brought into circulation or import, offer or have in stock for such purposes recordings or reproductions thereof on a professional or commercial basis, said Minister may provide that members of the profession or industry concerned, designated by him, are obliged to keep their records in a manner to be indicated by him.

2. Anyone who fails to fulfil the obligation referred to in the preceding paragraph shall be subject to a second-category fine. Such failure shall constitute a summary offence.

CHAPTER IV Criminal law provisions ➔

Article 21

A person who intentionally infringes the rights referred to in articles 2, 6, 7a and 8 of this Act is liable to a term of imprisonment of not more than six months or a fine of the fourth

category.

Article 22

A person who intentionally:

- a. broadcasts, rebroadcasts or otherwise communicates to the public in any other way;
- b. publicly offers for distribution;
- c. has in his possession for the purpose of reproduction or distribution;
- d. imports, conveys in transit or exports, or
- e. keeps for profit

a recording or a reproduction thereof which he knows that it constitutes an infringement of the rights referred to in articles 2, 6, 7a and 8 of this Act is liable to a term of imprisonment of not more than six months or a fine of the fourth category.

Article 23

A person who commits the criminal offences referred to in articles 21 and 22 as his profession or business is liable to a term of imprisonment of not more than four years or a fine of the fifth category.

Article 24

A person who:

- a. broadcasts, rebroadcasts or otherwise communicates to the public;
- b. publicly offers for distribution;
- c. has in his possession for the purpose of reproduction or distribution;
- d. imports, conveys in transit or exports, or
- e. keeps for profit

a recording or a reproduction thereof having reasonable grounds to know that it constitutes an infringement of the rights referred to in articles 2, 6, 7a and 8 of this Act is liable to a fine of the third category.

Article 25

A person who intentionally and unlawfully makes any changes in a performance, the title of such a performance or the designation of the performer, or who impairs such a performance in any other way that could be prejudicial to the name or reputation of the

performer or his dignity as such, is liable to a term of imprisonment of not more than six months or a fine of the fourth category.

Article 26

Acts defined in articles 21, 22, 23, 24 and 25 shall constitute serious offences.

Article 27

A person who intentionally furnishes false or incomplete information in a written request or notification to the legal person referred to in article 15, paragraph 1, for use in determining that which is due pursuant to article 7 of this Act is liable to a term of detention of not more than three months or a fine of the third category. Such an act shall be deemed to constitute a lesser offence.

Article 27a

A person who intentionally fails to submit a notification as referred to in article 15d or intentionally includes false or incomplete information in such a notification is liable to a term of detention of not more than three months or a fine of the third category. Such an act shall be deemed to constitute a lesser offence.

Article 28

Investigating officers shall be authorised, for the purposes of investigating offences punishable under this Act and seizing that which is subject to seizure, to enter any premises. If they are denied access, they may effect entry, if necessary with the assistance of the police. They shall not enter a house against the will of the occupant except on presentation of a special warrant in writing from or in the presence of a public prosecutor or an assistant public prosecutor. An official report of such entry shall be drawn up by them within twenty-four hours.

Article 29

Investigating officers may at any time, for the purposes of investigating offences punishable under this Act, require access to any documents or other data carriers which they may reasonably be required which they have to examine in order to fulfil their duties, from persons who in the exercise of their profession or business reproduce, sell, supply or otherwise brought into circulation recordings or reproductions thereof, to which the rights referred to in articles 2, 6, 7a and 8 relate, or who import, offer or store them for said purposes or communicate to the public.

Article 30

1. Reproductions declared forfeit by the criminal court shall be destroyed; the court may, however, provide in its judgment that they be handed over to the rightholder if the latter applies to the office of the Clerk within one month of the judgment becoming final and conclusive.

2. Upon such handing over, ownership of the reproductions shall be assigned to the rightholder. The court may order that handing over be conditional on payment by the rightholder of a compensation that shall accrue to the State.

Article 31

A person who is involved in the implementation of this Act and who thereby obtains knowledge of information which he knows or shall reasonably assume to be confidential, and who is not obliged to keep such information confidential by virtue of his office, profession or any statutory provision, shall be subject to an obligation of confidentiality, except where he is required to make the information known pursuant to a statutory provision or by virtue of his responsibility in relation to the implementation of this Act.

CHAPTER V Criteria of application ➔

Article 32

1. The preceding articles shall apply to a performer if:

- a. he is a national of one of the Member States of the European Union or of a State party to the Agreement on the European Economic Area of 2 May 1992, or has his normal place of residence in the Netherlands or is a national of a State party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; or
- b. his performance took place in the Netherlands or in a State party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; or
- c. his performance was recorded on a phonogram as referred to in paragraph 2 below; or
- d. his performance was not recorded on a phonogram but has been communicated to the public in a programme of a broadcasting organisation as referred to in paragraph 6 below.

2. The preceding articles shall apply to a phonogram producer if:

- a. he is a national of or a legal person established under the laws of one of the Member States of the European Union or of a State party to the Agreement on the European Economic Area of 2 May 1992, or has his registered office or normal place of residence in the Netherlands, or is a national of or legal person established under the laws of a State party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations or to the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms; or
- b. the recording took place in the Netherlands or in a State party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations or to the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms; or
- c. the phonogram was brought into circulation for the first time, or within 30 days of its first release in another country, in the Netherlands or in a State party to the International Convention for the Protection of Performers, Producers of Phonograms

and Broadcasting Organisations or to the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms.

3. Bringing into circulation, as referred to in paragraph 2, means that sufficient copies of authorised reproductions of a phonogram have been made available to meet the reasonable needs of the public.

4. Article 7 shall apply to phonograms of which the producer is a national of or a legal person established under the law of a State party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations only to the extent that and as long as said State affords protection to phonograms of which the producer is a Dutch national and has his registered office in the Netherlands.

5. The right to an equitable remuneration referred to in article 7 shall not apply to phonograms of which the producer is not a national of or a legal person established under the law of a State party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

6. The preceding articles shall apply to broadcasting organisations if:

- a. the head office of the broadcasting organisation is established in one of the Member States of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992 or a State party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; or
- b. the broadcast took place in the Netherlands or in a State as referred to in paragraph 1a.

7. The provisions of paragraphs 4 and 5 shall not apply to phonograms the producer of which is a national of or a legal person established under the law of one of the Member States of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992.

8. The preceding articles shall apply to the producer of the first fixation of a film if:

- a. he is a national of or a legal person established under the law of one of the Member States of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992 or has his registered office or normal place of residence in the Netherlands; or
- b. the fixation took place in the Netherlands; or
- c. the fixation was brought into circulation for the first time, or within 30 days of its first release in another country, in the Netherlands. Paragraph 3 shall apply *mutatis mutandis*.

Article 32a

1. The preceding articles shall apply to the broadcasting of a performance, phonogram or programme or a reproduction thereof by satellite, if the programme-carrying signals

intended for reception by the public have been introduced in the Netherlands, under the control and responsibility of a broadcasting organisation, into an uninterrupted chain of communication leading to the satellite and back to earth. Where the programme-carrying signals are encrypted, this shall be deemed to constitute a broadcast as referred to in the first sentence if the means of decrypting the broadcast are made available to the public by or with the consent of the broadcasting organisation.

2. The preceding articles shall also apply to a broadcast as referred to in paragraph 1 if:

- a. the act referred to in paragraph 1 takes place in a country that is not a Member State of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992;
- b. the country where the act referred to in paragraph 1 took place does not offer the level of protection provided for in 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 EC L 248); and
- c. either the programme-carrying signals are transmitted to the satellite from an uplink station in the Netherlands or a broadcasting organisation with its principal establishment in the Netherlands has commissioned the broadcasting and no use is made of an uplink station situated in a Member State of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992.

Article 33

The rights conferred by this Act shall apply to performances, phonograms or programmes that took place or were manufactured or broadcast prior to the entry into force of this Act in respect of acts performed after the entry into force of this Act.

Article 33a

1. Performers who are nationals of a state which is not a Member State of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992 and which is not party to the Rome Convention, and broadcasting organisations with their head offices in such a State, may not invoke the rights conferred by this Act if the term of protection under national legislation has already expired.

2. The provisions of paragraph 1 shall also apply to:

- a. phonogram producers who are nationals of a state which is not a Member State of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992 and which is not party to the Convention referred to in paragraph 1 or to the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms;
- b. producers of the first fixation of a film, who are nationals of a state which is not a Member State of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992, the national legislation of which state provides for a term of protection shorter than that referred to in article 12, paragraph 4.

Article 34

The preceding articles of this Act shall not affect any invocation of article 162 of Book 6 of the Civil Code.

CHAPTER 6 Amendment of the Copyright Act 1912 ➡

Article 35

1. The terms of protection provided for in this Act shall apply, from the date on which this article enters into force, to performances, phonograms, first fixations of films or programmes which were protected on 1 July 1995 in at least one Member State of the European Union or one State party to the Agreement on the European Economic Area of 2 May 1992 by national legislation on neighbouring rights or which on that date satisfied the protection criteria of Council Directive 92/100/EEC of 19 November 1992 (OJ EC 1992, L 346/61) on rental right and lending right and on certain rights related to copyright in the field of intellectual property.

2. This Act shall not affect lawful acts of exploitation carried out or rights acquired before the date of entry into force of this article.

3. Anyone who, prior to 24 November 1993, carried out lawful acts of exploitation in relation to a performance, phonogram, first fixation of a film or programme, the term of protection for which had expired before the entry into force of this article and to which this Act again applies with the entry into force of this article, shall be entitled to continue such acts of exploitation with effect from the date of entry into force of this article.

CHAPTER 7 Final provisions ➡

Article 36

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

Article 37

This Act may be cited as the Neighbouring Rights Act.