

## ***Federal Law on Copyright in Works of Literature and Art and on Related Rights (1998)***

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Federal Law on Copyright in Works of Literature and Art and on Related Rights <sup>1</sup>

BGBl. No. 111/1936, as last amended (BGBl. I No. 25/1998)

### **PART I. COPYRIGHT IN WORKS OF LITERATURE AND ART ➔**

#### ***Chapter I. Works ➔***

##### *Works of Literature and Art*

1.—(1) Works within the meaning of this Law shall be original intellectual productions in the fields of literature, music, art and cinematography.

(2) The copyright protection provided by this Law shall extend to a work as a whole and to

its parts.

#### *Works of Literature*

2. Works of literature within the meaning of this Law shall be

1. works of language of any kind, including computer programs (Article 40a);
2. theatrical works expressed by gestures or other movements of the body (works of choreography and pantomime);
3. works of a scientific or didactic nature which consist of pictorial representations in two or three dimensions, unless they constitute works of art.

The prevailing view is that computer programs constitute works of literature.

#### *Works of Art*

3.—(1) Works of art within the meaning of this Law shall include works of photography (photographic works), architecture and applied art (commercial art).

(2) Works of photography (photographic works) are works produced by a photographic process or a process analogous to photography.

#### *Cinematographic Works*

4. Cinematographic works (films) within the meaning of this Law are motion pictures in which the events and actions that form the subject of the work are presented either by images only or simultaneously by images and sounds, irrespective of the nature of the process employed in the production or performance of the work.

#### *Adaptations*

5.—(1) Without prejudice to any copyright subsisting in the adapted work, translations and other adaptations shall be protected as original works, provided they are original intellectual creations of the translator or adapter.

(2) Use made of a work in creating another work shall not make that other work an adaptation, provided such work constitutes an independent new work in relation to the work used.

#### *Collective Works*

6. Collections which constitute an original intellectual production resulting from the combination of individual contributions to form a homogeneous whole shall enjoy copyright protection as collective works; any copyright in the individual contributions shall not be affected.

#### *Works Not Protected*

7.— (1) Laws, orders, official decrees, public notices and decisions, or official works produced exclusively or mainly for official use of the kind specified in Article 2, items 1 or 3,

shall not enjoy copyright protection.

(2) Cartographic works produced or adapted (Article 5(1)) by the Federal Standards and Survey Office and intended for distribution (Article 16) shall not constitute unprotected works.

#### *Works Made Public*

8. A work shall be deemed to have been made public if it has been made available to the public with the authorization of the right holder.

#### *Published Works*

9.—(1) A work shall be deemed published if, with the authorization of the right holder, copies in sufficient numbers have been made available for sale or circulated to the public.

(2) A work which has been published within a period of 30 days in Austria and abroad shall count as a work published in Austria.

## **Chapter II. ➔**

### *Authors*

10.—(1) The author of a work shall be the person who has created it.

(2) Unless the contrary is established by reference to the provision in paragraph (1), the term “author” within the meaning of this Law shall cover, in addition to the creator of the work, the persons on whom the copyright devolves after his death.

### *Joint Authors*

11.—(1) Where two or more persons have jointly created a work in such a manner that the result forms an indivisible whole, the copyright shall belong jointly to all the authors.

(2) Each joint author shall be separately entitled to institute proceedings for infringement of copyright. Any alteration or exploitation of the work shall require the consent of all joint authors. Where a joint author refuses his authorization without sufficient reason, any other joint author may institute proceedings to obtain such authorization. Where the defendant is not subject to the general jurisdiction of any court in Austria, the courts whose jurisdiction includes the First Municipal District of Vienna shall be competent.

(3) The combination of works of different kinds— such as of a musical work with a work of language or a cinematographic work—shall not in itself give rise to joint authorship.

### *Presumption of Authorship*

12.—(1) Failing proof to the contrary, the person designated in the usual manner as the author on the copies of a work which has been published or on the original of a work of art shall be presumed to be the author (Article 10(1)) provided the designation gives his true name or a pseudonym known to be used by him or—in the case of works of art—the artist’s known mark.

(2) The same shall apply to the person who, in the manner indicated in paragraph (1), is

designated as the author when a work is publicly delivered, performed or broadcast, unless another person is presumed to be the author under paragraph (1).

#### *Unnamed Authors*

13. As long as the author (Article 10(1)) of a work which has been published has not been designated in a manner that gives rise to presumption of authorship under Article 12, the editor or, where no editor is designated on the copies, the publisher shall be considered the person entitled to administer the author's copyright. In such cases, the editor or publisher shall be entitled to institute proceedings for infringement of copyright in his own name.

### **Chapter III. Copyright ➡**

#### **1. EXPLOITATION RIGHTS**

14.—(1) Within the limits defined by law, the author shall have the exclusive right to exploit his work in the manner reserved to him in the provisions which follow (exploitation rights).

(2) The author of a translation or other adaptation may exploit such work in the manner reserved to him only where the author of the adapted work has granted him the exclusive right or the permission to do so (right of adaptation or translation).

(3) Communication to the public of the contents of a work of literature or cinematography shall be reserved to the author, for as long as neither the work nor its substance has been published with his consent.

#### *Right of Reproduction*

15.—(1) The author shall have the exclusive right to reproduce his work by any process and in any quantity.

(2) Reproduction shall also be constituted by, in particular, the fixation of a recitation or performance of a work on any device permitting repeated visual or sound reproduction (video or audio recording media), such as film or phonograms.

(3) Devices permitting the repeated reproduction of works without recording of the sound, produced by perforating, punching, arranging pins or similar (barrel-organs, musical boxes, etc.) shall be considered equivalent to phonograms.

(4) In the case of plans and designs for works of art, the right of reproduction shall also include the exclusive right to execute the work according to such plans or designs.

#### *Right of Distribution*

16.—(1) The author shall have the exclusive right to distribute copies of his work. By virtue of this right, copies of the work may not be offered for sale or put into circulation in such manner that the work is made available to the public without the author's consent.

(2) For as long as a work remains unpublished, the right of distribution shall further include the exclusive right to make the work available to the public by publicly posting, printing, hanging, exhibiting or similarly using copies thereof.

(3) The right of distribution shall not extend, subject to Articles 16a and 16b, to copies of the work which, with the authorization of the person entitled thereto, have been put into circulation by transfer of the property rights therein; however, where such authorization has been given for a specified territory only, the right to distribute outside such territory copies put into circulation therein shall not be affected; this exception shall not apply to copies put into circulation, with the authorization of the entitled person, in a Member State of the European Economic Community or of the European Free Trade Association.

(4) The right of distribution in a work of art shall not extend to copies which are attached to immovable property.

(5) The term “to distribute a work”, as used in this Law, means only such distribution of copies as is reserved to the author under paragraphs (1) to (3).

#### *Rental and Lending*

16a.—(1) Article 16(3) shall not apply to the rental (paragraph (3)) of copies.

(2) Article 16(3) shall apply to the lending (paragraph (3)) of copies with the proviso that the author shall be entitled to equitable remuneration. Such claims may only be asserted by collecting societies.

(3) For the purposes of this provision, “rental” means making available for use for a limited period of time and for profit-making purposes, and lending means making available for use for a limited period of time, but not for profit-making purposes, by an institution to which the public has access (library, videogram or phonogram collection, art collection and the like).

(4) Paragraphs (1) and (2) shall not apply

1. to rental and lending for the purposes of broadcasting (Article 17) or public delivery and public performance and exhibition (Article 18);

2. to works of applied art (of commercial art).

(5) Where a person entitled to use a work, or a film producer entitled under Article 38(1), authorizes other parties, for consideration, to rent or lend copies, the author shall have a non-renounceable claim against the person entitled to use the work or against the film producer to an equitable share in such consideration. If the claim to remuneration for the lending of copies belongs to another person in accordance with the law or under a contract, the author shall have a non-renounceable claim to an equitable share of the remuneration.

#### *Exhibiting*

16b.—(1) Article 16(2) and (3) shall apply to the public exhibiting of copies, with the proviso that the author shall be entitled to equitable remuneration if copies of art works are commercially exhibited for payment. Such claims may only be asserted by collecting societies. Article 16a(5) shall apply mutatis mutandis.

(2) Paragraph (1) shall not apply to works of applied art (of commercial art).

#### *Right of Broadcasting*

17.—(1) The author shall have the exclusive right to broadcast his work by radio, television

on similar means.

(2) Where a work is publicly communicated in Austria by an entity located inside or outside the country in a manner comparable to broadcasting but with the aid of conductors, such communication shall be assimilated to broadcasting.

(3) The communication of broadcasts

1. by a broadcasting relay system and

2. via a community antenna system,

(a) where all the receivers are located only on contiguous pieces of ground, where no part of the system uses or crosses a public road and where the antenna is not more than 500 meters away from the nearest receiver, or

(b) where not more than 500 participants are connected to the system,

shall not be regarded as a new broadcast. In other respects the simultaneous communication, with the aid of conductors, of complete broadcasts of the Austrian Broadcasting Organization within the country, without alteration, shall be regarded as part of the original broadcasting.

17a. Where the program-carrying signals are transmitted in coded form, this shall be considered a broadcast only if means for decoding the transmission have been made available to the public by the broadcasting organization itself or with its consent.

17b.—(1) In the case of a satellite broadcast, the exploitation act reserved to the author shall be constituted by the introduction of the program-carrying signals, under the control and responsibility of the broadcasting organization, into an uninterrupted communication chain leading to the satellite and back to earth. The satellite broadcast shall therefore be deemed effected only in the country in which such introduction takes place, subject to paragraph (2).

(2) If the introduction referred to in paragraph (1) takes place in a country which is not a Member State of the European Economic Area and in which the level of protection provided for in Chapter II of the European Communities Council Directive of 27 September 1993 on the coordination of certain rules concerning copyright and the rights related to copyright applicable to satellite broadcasting and cable retransmission, Official Journal of the European Communities (OJCE), No. L 248 of 6 October 1993, p. 15, in the version applicable to Austria under Annex XVII of the European Economic Area Agreement, is not guaranteed, then the broadcast shall be deemed effected

1. in the Member State of the European Economic Area in which is located the uplink station from which the program-carrying signals are transmitted to the satellite;

2. in the Member State of the European Economic Area in which the broadcasting organization that commissioned the introduction referred to in paragraph (1) has its principal place of business, if the circumstance under item 1 does not apply.

(3) In the cases specified in paragraph (2), the operation of the uplink station or, as the case may be, the commissioning of introduction within the meaning of paragraph (1) shall be deemed broadcasting within the meaning of Article 17(1).

### *Right of Recitation, Performance and Presentation*

18.—(1) The author shall have the exclusive right to recite or perform publicly a work of language, to perform publicly a work of the kind specified in Article 2, item 2, or a work of music or cinematography, and to present a work of art publicly by means of an optical device.

(2) It shall be immaterial whether the recitation or performance is made live or by means of video or audio recordings.

(3) Public recitation, performance and presentation shall include the use of a broadcast for the public reproduction of the broadcast work by means of loudspeakers or other technical devices, as also the public communication, by such means, of a recitation, performance or presentation of a work outside the location (theatre, hall, public square, garden, etc.) where it is taking place.

## **2. PROTECTION OF MORAL INTERESTS**

### *Protection of Authorship*

19.—(1) Where the authorship of a work is contested or the work is attributed to a person other than its creator, the latter shall be entitled to claim authorship. After his death, the right to safeguard the authorship of the creator of the work shall, in such cases, be held by the persons upon whom the copyright devolves.

(2) Waiver of this right shall be without effect.

### *Designation of Author*

20.—(1) The author shall determine whether and in what manner the work is to bear a designation of author.

(2) An adaptation may not bear a designation of author in a manner that would make the adaptation appear to be an original work.

(3) Copies of works of art may not bear a designation of author that would make the copies appear to be originals.

### *Protection of Works*

21.—(1) Where a work is used in a manner which makes it available to the public, or where it is reproduced for the purpose of distribution, no abridgements, additions or other alterations to the work itself, its title or the designation of author may be made, even by a person entitled to such use, unless the author consents thereto or unless the law permits such alteration. Such alterations, in particular, shall be permissible, as the author may not prohibit in accordance with the accepted practices of fair trading, that it to say, alterations necessitated by the manner or purpose of the authorized use of the work.

(2) The provisions of paragraph (1) shall apply to the originals of works of art even where such originals are not used in a manner that makes the work available to the public.

(3) The fact of having given his consent to alterations which are not specifically designated shall not prevent the author from opposing distortions, mutilations or other alterations of the

work which seriously violate his moral interests in the work.

### **3. OBLIGATIONS OF OWNERS OF WORKS**

22. On request, the owner of a work shall be required to afford the author access to the work where necessary for the reproduction of the work: in such case, the author shall show due consideration for the interests of the owner. The owner shall not be required to surrender the work to the author for such purpose: neither shall he have an obligation towards the author to ensure the preservation of the work.

### **4. TRANSFER OF COPYRIGHT**

23.—(1) Copyright may be transferred by inheritance; it may also be transferred to specific successors in execution of a testamentary disposition.

(2) Where no one makes claim to the estate of a joint author and it does not revert to the State, the copyright of such joint author shall devolve upon the other joint authors. The same shall apply where one of the joint authors waives his copyright, to the extent that such waiver has effect.

(3) Copyright shall not otherwise be transferable.

(4) Where copyright is transferred to more than one person, the provisions applicable to joint authors (Article 11) shall be applicable to such persons *mutatis mutandis*.

### **5. AUTHORIZATION TO USE AND RIGHT TO USE A WORK**

24.—(1) The author may authorize others to use the work by some or all of the methods of exploitation reserved to the author under Articles 14 to 18 (authorization to use). He may also grant to other persons the exclusive right so to do (right to use).

(2) An authorization to use a work given prior to the granting or assignment of a right to use shall continue to have effect in respect of the person entitled to use, unless otherwise agreed with the holder of the authorization to use.

### **6. LIMITATIONS ON ENFORCEMENT**

25.—(1) Exploitation rights shall be exempt from enforcement of claims for money.

(2) Enforcement against a copy of a claim for money shall be inadmissible where the sale of such copy would violate the right of distribution belonging to the author or other entitled person.

(3) Paragraph (2) shall not apply to copies which, at the time of seizure, have been placed in pledge by or with the consent of the holder of the right of distribution.

(4) In the case of works of art, the right of distribution shall not prevent enforcement against copies that are offered for sale by the holder of the right of distribution.

(5) Devices intended exclusively for the reproduction of a work (such as moulds, plates, stones, blocks, film strips, etc.) and which belong to a person entitled thereto, shall be subject to enforcement claims for money only as an accessory in conjunction with the right



of reproduction.

(6) The same shall apply, *mutatis mutandis*, in the case of devices intended exclusively for the showing of a cinematographic work (film strips, etc.) and which belong to a holder of the right thereto.

## **Chapter IV. ➔**

### *Right to Use a Work*

26. The way in which an entitled person (Article 24(1), second sentence) may use a work, the means employed and any limits of place and time shall be governed by the contract concluded with the author. Insofar as the right to use extends thereto, the author shall abstain, as any third party, from making use of the work, but without prejudice to his right to institute copyright infringement proceedings. Upon the expiry of this obligation, the earlier exploitation right shall re-enter into force.

### *Transfer of Right to Use*

27.—(1) The right to use shall be heritable and alienable.

(2) As a rule, the right to use may be transferred to specific successors only with the consent of the author. Such consent may only be withheld for an important reason. Consent shall be deemed to have been given if the author does not refuse it within two months of receiving a written request from the holder of the right to use or from the person to whom the right to use is to be transferred; this condition must be expressly mentioned in the request.

(3) A person who acquires the right to use a work as a specific successor shall comply with the obligations incumbent upon the seller under the contract concluded between the seller and the author. The seller, as guarantor and payer, shall be liable for the payment due to the author, as well as for any damages for which the purchaser must compensate the author in the event of a breach of an obligation incumbent upon him under that contract.

(4) Any agreement entered into between the seller and the purchaser without the consent of the author and that contradicts the provisions of paragraph (3) to the prejudice of the author shall be without effect in respect to the author.

(5) The liability of the purchaser in the event of a claim against the seller for damages arising prior to the transfer shall be governed by the general rules of law.

28.—(1) Unless otherwise agreed, the right to use a work may be transferred to another person together with the business enterprise to which it belongs, or a branch thereof without the consent of the author.

(2) Furthermore, where the holder of the right to use the work is not required to exercise such right and has not agreed otherwise with the author, the following may be transferred without the consent of the author:

1. the right to use works of language and works of the kind referred to in Article 2, item 3, if they are created either on the commission of the holder of the right to use and according to his plan defining the contents and the method of treatment or if they are created merely as aids or accessories to the work of another person;

2. the right to use works of photography (photographs) and of applied art which are created for a commercial enterprise on its commission or in its service.

#### *Premature Rescission of the Contract*

29.—(1) Where the right to use a work is not exercised in accordance with the purpose for which it was granted or is exercised only to an extent so inadequate as to prejudice important interests of the author, the latter, provided he is not at fault, may rescind the contract prematurely insofar as it relates to such right to use.

(2) Rescission shall not become effective until the fruitless expiry of an appropriate additional term fixed by the author. Such term need not be fixed where the exercise of the right to use is impossible for the acquirer or is refused by him or where to allow such an additional term would jeopardize overriding interests of the author.

(3) The right to rescind the contract for the reasons specified in paragraph (1) may not be waived more than three years in advance. This term shall not include any period during which the holder of the right to use the work was prevented from doing so by circumstances attributable to the author.

(4) The effect of a declaration by the author rescinding the contract may not be disputed unless the holder of the right to use the work rejects such declaration within 14 days of receiving it.

30.—(1) The provisions of Article 29 shall apply to the rights to use a work specified in Article 28(2), items 1 and 2, only where the holder of the right to use the work is required to exercise such right.

(2) The provisions of Article 29 shall not affect the rights of the author, whether by a contract or by law, to terminate the contract for other reasons, to withdraw from the contract, to demand performance of the contract or to demand damages for non-performance.

#### *Right to Use in Respect of Future Works*

31.—(1) Valid dispositions may be made in advance in respect of works yet to be created.

(2) Where the author has contracted to grant to another person the right to use all his works, not specifically designated, or designated only as to their kind, to be created during his lifetime or during a period exceeding five years, either party may give notice of termination of the contract upon the expiry of five years from its conclusion. The right of termination may not be waived in advance. The period of notice shall be of three months unless a shorter period has been agreed. Notice of termination shall affect the contractual relationship only in respect of works which have not been completed by the end of the period of notice.

(3) The provisions of paragraph (2) shall not affect other rights to terminate the contract.

#### *Bankruptcy and Insolvency*

32.—(1) Where the author has granted to another person the exclusive right to reproduce and distribute a work, and insolvency or bankruptcy proceedings are commenced against the holder of the right to use, the fact that the author has delivered the work to be

reproduced to the holder of the right to use before the commencement of insolvency or bankruptcy proceedings shall not rule out the application of the provisions of the Insolvency Code and the Bankruptcy Code concerning bilateral contracts that have not yet been executed.

(2) Where the reproduction of the work has not begun at the time when insolvency or bankruptcy proceedings are commenced, the author may withdraw from the contract. Upon motion of the debtor or the administrator of the assets, the commissioner in the insolvency or bankruptcy proceedings shall set a time limit beyond which the author may no longer declare his withdrawal.

## **Chapter V. Reservations in Favor of the Author ➡**

### *Rules of Interpretation*

33.—(1) Where there is no agreement to the contrary, the granting of the right to use a work shall not extend to translations and other adaptations, the granting of the right to reproduce a work of literature or music shall not extend to the reproduction of the work on video or audio media and the granting of the right to broadcast a work (Article 17) shall not extend to the right to record the work on video or audio media during the broadcast or for the purpose of broadcasting.

(2) Unless otherwise agreed, the transfer of the ownership of a work shall not include the granting of an authorization or a right to use the work.

### *Complete Editions*

34. An author who has granted to another person the exclusive right to reproduce and distribute a work of literature or music shall, nevertheless, retain the right to reproduce and distribute such work in a complete edition as soon as 20 years have elapsed from the expiry of the calendar year in which the work appeared. This right cannot be limited or annulled by contract.

### *Reservation Relating to Works of Art*

35. An author who has granted to another person the exclusive right to reproduce and distribute a work of art shall, nevertheless, retain the right to reproduce and distribute such work in writings describing his artistic activity or by way of a sample of his creative activity.

### *Contributions to Collections*

36.—(1) Where a work is accepted as a contribution to a periodical collection (newspaper, magazine, annual, almanac, etc.), the author shall retain the right to reproduce and distribute the work in any other manner, unless there is an agreement to the contrary or unless the circumstances indicate that the publisher or editor of the collection is intended to acquire the right to distribute the work in the collection as an exclusive right, with the effect that the work may not be reproduced and distributed elsewhere.

(2) In the case of contributions to a newspaper, such exclusive right shall expire immediately upon the publication of the contribution in the newspaper. In the case of contributions to other collections published periodically, as well as of contributions which are accepted for a collection that is not published periodically and for which the author is not entitled to payment, such exclusive right shall expire upon the lapse of one year from the end of the calendar year in which the contribution was published.

37. Where the publisher or editor of a collection published periodically accepts a work as a contribution and nothing is stipulated as to when the contribution is to be reproduced and distributed in the collection, the editor or publisher, in case of doubt, shall be under no obligation to do so. The author, however, may in such case declare the right of the editor or publisher to have expired, unless the contribution is published in the collection within one year from its delivery; the right of the author to remuneration shall not be affected. Article 29(4) shall apply mutatis mutandis.

## **Chapter VI. Special Rules for Commercially Produced Cinematographic Works ➔**

### *Film Producers*

38.—(1) Subject to the limitations set out in Article 39(4), the exploitation rights in commercially produced cinematographic works shall belong to the owner of the film company (film producer). The film producer and the author shall each be entitled to one-half of the statutory claims to remuneration, unless such claims are non-renounceable and unless the film producer and the author have agreed otherwise. Copyrights subsisting in works used in creating the cinematographic work shall not be affected by this provision.

(2) Subject to the provision of Article 39(3), alterations to the cinematographic work, its title or the designation of the film producer may be made without the consent of the film producer only insofar as they are permissible under Article 21(1), as applied mutatis mutandis to the film producer.

(3) Failing proof to the contrary, the person designated as the producer in the usual manner on the copies of a cinematographic work by mention of his true name and of his company, or of a pseudonym or company designation that he is known to use, shall be presumed to be the producer of the film. The same shall apply to the person designated as the producer in the above-mentioned way in the case of a public performance or broadcast of the cinematographic work, except where the assumption specified in the preceding sentence suggests that another person is the film producer.

### *Authors*

39.—(1) A person who has participated in the creation of a commercially produced cinematographic work to such an extent as to give the work as a whole the character of an original intellectual creation may require from the producer that he be designated on the film and in advertisements for the cinematographic work as the author thereof.

(2) The designation of the author (paragraph (1)) shall be included in announcements of public performances and broadcasts of the cinematographic work.

(3) Without prejudice to the provision of Article 38(2), the consent of the author designated as such shall be required for any alteration to a cinematographic work, its title or the designation of author for which the consent of the author is required under Article 21.

(4) The consent of the author designated as such shall be required, in addition to the authorization of the film producer, for the exploitation of adaptations and translations of the cinematographic work. Unless otherwise agreed between such author and the film producer, consent shall not be required for translations and adaptations, including the completion of an unfinished cinematographic work, which are necessary for the normal exploitation of the cinematographic work in accordance with accepted fair practice and which do not prejudice the moral interests of the author in the work.

(5) (Repealed by BGBl. No. 151/1996.)

#### *Exploitation Right and Right to Use*

40.—(1) The exploitation rights held by the film producer may be inherited and alienated and may be subject to enforcement without limitation. Where such rights are transferred to another person, the transferee may also be granted the right to be designated as the producer of the cinematographic work. In such case, the transferee shall thereafter be regarded as the film producer and shall enjoy the protection afforded the producer under Article 38(2).

(2) Unless otherwise agreed with the producer, the right to use commercially produced cinematographic works may be transferred to another person without the consent of the producer.

(3) The provisions of Article 29 shall not apply to the right to use commercially produced cinematographic works.

### **Chapter Via. Special Provisions on Computer Programs ➡**

#### *Computer Programs*

40a.—(1) Computer programs shall constitute works within the meaning of this Law when they are the result of their author's own intellectual creation.

(2) The term "computer program" as used in this Law shall comprise all forms of expression, including the machine code, and the material for developing the program.

#### *Employees*

40b. If a computer program is created by an employee in the performance of his employment duties, the employer shall enjoy an unlimited right of utilization in the work unless he has agreed otherwise with the author of the program. In such cases, the employer shall also be entitled to exercise the rights referred to in Articles 20 and 21(1); the author's right to claim authorship for himself under Article 19 shall remain unaffected.

#### *Right to Use*

40c. Rights to use computer programs may be transferred to others without the consent of the author, unless otherwise agreed with the author. The provisions of Article 29 shall not apply to rights to use computer programs.

#### *Free Uses*

40d.—(1) Article 42 shall not apply to computer programs.

(2) Computer programs may be copied and adapted where this is necessary for the use of the computer program by the person entitled to use it in accordance with its intended purpose; this also includes adjustment to that person's needs.

(3) A person entitled to use a computer program may

1. make copies for security purposes (back-up copies), insofar as necessary for the use of the computer program:

2. observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

(4) Any renunciation of the rights under paragraphs (2) and (3) shall not be effective; this shall not exclude agreements reached on the extent of the intended purpose within the meaning of paragraph (2).

### *Decompilation*

40e.—(1) The code of a computer program may be reproduced and its form may be translated, provided that the following conditions are met:

1. the acts are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs;

2. the acts are performed by a person having the right to use a copy of a program or on his behalf by a person authorized to do so;

3. the information necessary to achieve interoperability has not previously been readily available to the persons referred to in item 1; and

4. the acts are confined to the parts of the program which are necessary to achieve interoperability.

(2) The information obtained under paragraph (1) may not

1. be used for purposes other than to achieve the interoperability of the independently created program;

2. be given to others, except where necessary for the interoperability of the independently created program;

3. be used for the development, reproduction or distribution of a program substantially similar in its expression or for other acts that infringe copyright.

(3) Renunciation of the right of decompilation (paragraph (1)) shall be without effect.

## **Chapter Vib. Special Provisions on Database Works ➡**

### *Databases and Database Works*

40f.—(1) For the purposes of this Law, “database” shall mean a collection of works, data or other independent elements which are systematically or methodically arranged and are separately accessible by electronic or other means. A computer program which is used for the production or operation of an electronically accessible database shall not constitute a component part of the database.

(2) Databases shall be protected by copyright as collective works (Article 6) if they constitute original intellectual creations (database works) by reason of the selection or arrangement of the material.

(3) Articles 40b and 40c shall apply to database works *mutatis mutandis*.

#### *Right of Reproduction*

40g. The author shall have the exclusive right to reproduce a database work for public use.

#### *Free Uses*

40h.—(1) Article 42(1) shall apply to database works of which the elements are separately accessible by electronic means, with the proviso that the personal use is justified by purposes of scientific research and is not made for profit and that the source is stated.

(2) Article 42(3) shall apply to database works with the proviso that reproduction is not made for profit and that the source is stated.

(3) The person entitled to use a database work or part thereof may perform acts of exploitation otherwise reserved to the author if they are necessary for access to the content of the database work or part thereof or in accordance with its intended purpose. Renunciation of this right shall have no effect; this shall not exclude agreements concerning the extent of use in accordance with the intended purpose.

## **Chapter VII. Limitations on Exploitation Rights ➔**

### **1. FREE USES OF WORKS**

#### *Free Uses in the Interests of the Administration of Justice and Public Administration*

41. Copyright shall not prevent the use of works as evidence in proceedings before courts or other authorities or for the purposes of administration of criminal justice and public safety.

#### *Reproduction for Personal Use*

42.—(1) Any person may make single copies of a work for personal use.

(2) Subject to paragraphs (3) and (4), a copy made for the purpose of making the work available to the public shall not constitute reproduction for personal use. Copies made for personal use may not be used for the purpose of making the work available to the public.

(3) Schools and higher educational establishments may make and distribute copies for purposes of teaching or training, in the quantities required for a specific class or lecture (reproduction by schools for own use). Authorization to make copies by schools for own use shall not apply to works which, by their nature and designation, are intended for teaching or training.

(4) Establishments which are open to the public and which collect works may, insofar as this is not done for profit (reproduction by collections for own use),

1. make a single copy of works in their possession; such copy may be exhibited (Article 16(2)), lent (Article 16a) and used in accordance with Article 56b in place of the work copied, subject to the same conditions as that work;

2. make single copies of works which have been made public, but have not been published or which have been sold out; for as long as the work has not appeared or has been sold out, such copies may be exhibited (Article 16(2)), lent under Article 16a and used in accordance with Article 56b.

(5) The following forms of reproduction, however, shall not be permissible at any time without the consent of the person entitled:

1. reproduction of whole books or periodicals, except where copied by hand, unless the work in question has not been published or has been sold out, or where paragraph (4), item 1 applies; the same shall also apply where the copy is not made from the book or periodical itself but from a copy thereof, produced by any method;

2. execution of a work of architecture according to a plan or design or a reproduction of such work.

42a. Single copies of a work may also be made, free of charge and on order, for the personal use of another person. Such reproduction shall, however, be permissible even if made for payment

1. where reproduction is by reprography or a similar method;

2. where a work of literature or music is copied by hand.

42b.—(1) If it is probable that, owing to its nature, a work which has been broadcast or recorded on a video or audio recording medium will be reproduced for personal use by fixing on a video or audio medium, the author shall be entitled to equitable remuneration (blank cassette levy) if recording material is commercially available on the domestic market; unrecorded video or audio media, suitable for such reproduction, or other video or audio recording media, shall be deemed to constitute recording material.

(2) If it is probable that, owing to its nature, a work will be reproduced for personal use by reprography or a similar method, the author shall be entitled to equitable remuneration (reprography levy)

1. if an appliance which, by its nature, is designed for such copying (reprographic appliance) is commercially available on the domestic market for payment (appliance levy); and

2. if the reprographic appliance is used in schools, higher educational establishments, vocational training establishments, establishments of further education, research institutes, public libraries or establishments which make such appliances available for payment (operator levy).

(3) The following persons shall be required to pay such levies:

1. blank cassette or appliance levy: the person who first makes the recording material or reprographic appliance commercially available for payment in Austria; the person who makes the recording material or reprographic appliance commercially available for payment



in Austria, but is not the first to put it into circulation or offer it for sale, shall be liable as guarantor and payer; however, persons who, within a six-month period, acquire audio recording media with not more than 5,000 hours playing time and video recording media with not more than 10,000 hours playing time shall be exempt from liability for the blank cassette levy;

2. operator levy: the operator of the reprographic appliance.

(4) The following circumstances shall be taken into particular consideration in assessing the amount of the levies:

1. in the case of the blank cassette levy, the playing time;

2. in the case of the appliance levy, the capacity of the appliance;

3. in the case of the operator levy, the type and extent of use of the reprographic appliance that is probable in the circumstances, particularly the type of establishment, the location of the appliance and the use normally made of the appliance.

(5) Claims for remuneration under paragraphs (1) and (2) may be asserted only by collecting societies.

(6) The collecting society shall refund the equitable remuneration

1. to persons who export recording material or reprographic appliances abroad prior to their sale to the end user;

2. to persons who use recording material for reproduction for non-personal use, unless such non-personal use constitutes a free use of the work; prima facie evidence shall suffice.

#### *Reporting of Current Events*

42c. Works which become perceivable to the public during the reporting of current events may, to the extent warranted by the purpose of information, be reproduced, distributed, broadcast or used for public lectures, performances or presentations.

#### *Free Uses of Works of Literature*

43.—(1) Speeches made in an assembly responsible for the conduct of public affairs, or in the course of proceedings before a court of law or other public agency, as well as political speeches given in public, may be reproduced, distributed, publicly delivered and broadcast for the purpose of reporting.

(2) Where a speech of such nature has been reproduced on an audio medium, such medium may be distributed only with the consent of the author.

(3) The reproduction and distribution of speeches as referred to in paragraph (1) in compilations of such works shall be reserved to the author.

44.—(1) Individual articles contained in a newspaper or periodical concerning current economic, political or religious issues may be reproduced and distributed in other newspapers and periodicals. This shall not apply, however, where reproduction is expressly

prohibited. A statement reserving the rights accompanying the article or in the heading of the newspaper or periodical shall suffice to constitute such prohibition.

(2) Articles contained in a newspaper or periodical, whose reproduction is permissible under paragraph (1), may also be publicly delivered and broadcast.

(3) Press reports constituting simple communications (miscellaneous news, news of the day) shall not enjoy copyright protection. Press reports of such kind shall be governed by Article 79.

45.—(1) Individual works of language or works as referred to in Article 2, item 3, may be reproduced and distributed after they have been published, to the extent justified by the purpose.

1. in a collection containing the works of several authors and intended by its nature and designation for use in churches, schools, or for educational purposes; a work as referred in Article 2, item 3, may be included only for the purpose of elucidating the content;

2. in a work which, by its nature and designation, is intended for use in schools, only for the purpose of elucidating the content.

(2) Works of language which have been published may also be used, to the extent justified by the purpose, in broadcasts designated as school broadcasts where the use of the work in schools has been authorized by the education authorities.

(3) The author shall be entitled to equitable remuneration for reproduction and distribution in accordance with paragraph (1) and for broadcasts in accordance with paragraph (2). Such claims may only be asserted by collecting societies.

46. Reproduction and distribution, as well as public recitation and broadcasting, shall be permissible

1. when citing individual passages of a work of language which has been published;

2. when individual works of language as referred to in Article 2, item 3, after they have been published in the quantity justified by the purpose, are included in a work of an essentially scientific nature; a work as referred to in Article 2, item 3, may be included only for the purpose of elucidating the contents.

47.—(1) Small portions of a work of language, or short works of language may, after they have been published, be reproduced, distributed, publicly performed and broadcast as the text created to be set to music as a musical work, in connection with that work.

(2) However, the author of the text set to music shall be entitled to an equitable share of the payment which the holder of the exclusive right in the public performance or broadcast of the musical work receives for authorizing public performances or broadcasts of the work in connection with the work of language which has been set to music.

(3) Paragraph (1) shall not apply to the reproduction and distribution of works of language on audio recording media.

(4) Paragraph (1) shall further not apply to works of language intended by their nature to be set to music, such as texts for oratorios, operas, operettas and musical plays, or to works of language published as the text of a musical work with a reservation precluding the

application of paragraph (1).

48. Small portions of a work of language, and short works of language which have been set to music may, after they have been published, be reproduced and distributed\*\*\* separately from the musical work

1. for the use of listeners who attend the live personal performance of the combined works (works combining words with music) at the place of performance, provided reference is made to this provision;

2. in programs announcing the broadcast of the combined works;

3. on record labels or in the texts accompanying audio media; the audio media may not be produced or distributed in violation of an exclusive right to reproduce or distribute the works recorded thereon, and the accompanying texts must be designated as such.

49. (Repealed)

50.—(1) The public recitation of a work of language which has been published shall be permitted where the members of the audience pay no admission or other fee and the recitation is not made for profit, or where the takings are intended exclusively for charitable purposes.

(2) However, this provision shall not apply where the performers receive payment; nor shall it apply where the recitation is effected by means of audio media produced or distributed in infringement of an exclusive right to reproduce and distribute the work of language recorded thereon.

#### *Free Uses of Musical Works*

51.— (1) Individual musical works which have been published may, to the extent justified by the purpose, be reproduced and distributed in the form of a musical notation in a work which, by its nature and designation, is intended for school use

1. where they are included in a collection intended for the teaching of singing and composed of works by several authors;

2. where they are included only for the purpose of elucidating the content.

(2) The author shall be entitled to equitable remuneration for reproduction and distribution in accordance with paragraph (1). Such claims may only be asserted by collecting societies.

52. Reproduction and distribution, as well as public performance and broadcasting, shall be permitted

1. where isolated passages of a musical work which has been published are quoted in an independent new musical work;

2. where isolated passages of a musical work which has been published are quoted in a literary work;

3. where isolated musical works which have been published are included, to the extent

justified by the purpose, in a work that is predominantly scientific.

53.—(1) The public performance of a musical work which has been published shall be permitted

1. where the performance is effected by means of barrel organs, musical boxes or other audio media of the kind referred to in Article 15(3) which cannot be manipulated in such a way as to reproduce the work in the manner of a personal performance;

2. where the work is performed at an ecclesiastical or civil ceremony or at a military event, and the members of the audience are admitted free of charge;

3. where the members of the audience pay neither an admission charge nor any other fee and the performance does not serve any profit-making purpose, or where the takings are intended exclusively for charitable purposes;

4. where the performance is given by a band composed of non-professional musicians or by a choir that exists, as attested to by the competent provincial government, to maintain folk customs and whose members do not participate for profit, and where such performance consists, at least to a clearly preponderant extent, of folk music, or of music or adaptations of music in the public domain; however, in communities of more than 2,500 inhabitants, such performance may not take place on the premises of a commercial establishment and in communities of not more than 2,500 inhabitants such performance may take place on the premises of a commercial establishment only where other suitable premises are not available and where no profit accrues to the commercial establishment.

(2) The provisions of paragraph (1), items 1 to 3, shall not apply where the performance is effected by means of an audio medium which has been produced or distributed in infringement of an exclusive right to reproduce or distribute the work recorded thereon; neither shall the provisions of paragraph (1), item 3, apply where the performers receive payment.

(3) The provisions of paragraph (1) shall not apply to stage performances of an opera or other musical work combined with a literary work or to the performance of a musical work in combination with a cinematographic work or other cinematographic product.

#### *Free Uses of Works of Art*

54.—(1) It shall be permissible

1. to reproduce and distribute reproductions of works of art permanently placed in a public collection and listed in catalogues issued to visitors by the owner of such collection;

2. to reproduce and distribute, in catalogues of works on offer or other advertising material, reproductions of published works of art to be sold at auctions or otherwise; however, such advertising material may be distributed by the publisher free of charge or at a price not exceeding the cost of manufacture;

3. to reproduce and distribute individual works of art which have been published, in a work of language which, by its nature and designation, is intended for use in schools or teaching, provided this serves only to elucidate the contents, or in a schoolbook for the purpose of educating the young in the arts;

3a. to reproduce and distribute individual works of art which have been published, in a work that is predominantly scientific;

4. to present in public, by means of optical devices, works of art which have been published, in a predominantly scientific or educational lecture, provided this serves only to elucidate the contents, and to make copies as necessary for this purpose;

5. to reproduce, distribute, present in public by means of optical devices and broadcast works of architecture after their construction or other works of art permanently located in a place used as a public thoroughfare; this provision shall not extend to the replication of a work of architecture and the reproduction of a painting or a graphic work for the purpose of placing such reproduction permanently in a place of such kind, or to the three-dimensional reproduction of a three-dimensional work.

(2) The author shall be entitled to claim equitable remuneration for reproduction and distribution in accordance with paragraph (1), item 3. Such claims may only be asserted by collecting societies.

55.—(1) Unless otherwise agreed, the person who commissions a portrait and his heirs, as well as the person portrayed and, after his death, his lineal descendants and surviving spouse, may make or have made, including for consideration, individual photographs of such portrait, including copies made.

(2) However, paragraph (1) shall apply to portraits produced by a printing process or by photography or a process analogous to photography, only where the persons referred to in paragraph (1) cannot obtain copies so produced from the right holder or can do so only with unreasonable difficulty.

(3) Copies made in a manner authorized under paragraphs (1) and (2) may be distributed free of charge.

#### *Use of Video or Audio Media and of Broadcasts in Certain Commercial Enterprises*

56.—(1) In commercial enterprises engaged in the manufacture, sale or maintenance of video or audio media or of appliances for making or playing them, recitations, performances and presentations of works may be fixed on video or audio media, and such video or audio media used for the public recitation, performance and presentation of the works so fixed, to the extent necessary in order to demonstrate to customers the video or audio media, or the appliances for their making or playing or to test their suitability.

(2) The same shall apply to the use of broadcasts for the public reproduction of a work by means of loudspeakers or other technical devices in commercial enterprises which are engaged in the production, sale or maintenance of broadcasting apparatus.

(3) Paragraph (1) shall not apply to the use of a video or audio medium made or distributed in infringement of an exclusive right to reproduce or distribute the work fixed thereon.

#### *Provision of Video or Audio Media to Federal Institutions for Audiovisual Media*

56a.—(1) Video or audio media on which a published work has been fixed may be distributed to Federal Institutions for Audiovisual Media (Article 30a of the Research Organization Law, BGBl. No. 341/1981). A copy of the video or audio medium may also be made for the purpose of this provision.

(2) Paragraph (1) shall not apply to video or audio media made or distributed in infringement of an exclusive right to reproduce or distribute the work fixed thereon.

#### *Use of Video or Audio Media in Libraries*

56b.—(1) Establishments open to the public (libraries, video or record libraries, etc.) may use video or audio media for public recitation, performance or presentation of the works fixed thereon for not more than two visitors at a time, provided this is not done for profit. The author shall be entitled to equitable remuneration therefor. Such claims may only be asserted by collecting societies.

(2) Paragraph (1) shall not apply to video or audio media made or distributed in infringement of an exclusive right to reproduce or distribute the work fixed thereon.

#### *Public Communication for Teaching*

56c.—(1) Schools and higher educational establishments may, for the purpose of teaching and lectures and to the extent justified thereby, publicly perform cinematographic works and the associated musical works; higher educational establishments alone, however, shall have the right to show feature films.

(2) The author shall be entitled to claim equitable remuneration for public performance in accordance with paragraph (1). Such claims may be asserted only by collecting societies.

(3) Paragraphs (1) and (2) shall not apply

1. to cinematographic works which, by their nature and designation, are intended for use in schools or teaching;

2. where the video or audio medium used has been produced or distributed in infringement of an exclusive right to reproduce or distribute the work fixed thereon.

#### *Public Communication in Accommodation Enterprises*

56d.—(1) Accommodation enterprises may publicly show cinematographic works to their guests, provided

1. at least two years have elapsed since the first performance of the cinematographic work in Austria or in the German language or in a language of an ethnic group recognized in Austria;

2. the performance is carried out with the aid of a video or audio medium made for commercial purposes whose distribution is permitted under Article 16(3);

3. the spectators are admitted free of charge.

(2) The author shall be entitled to claim equitable remuneration for public performance in accordance with paragraph (1). Such claims may be asserted only by collecting societies.

#### *Protection of Moral Interests in Relation to Free Use of Works*

57.—(1) The permissibility of abridging, adding to or otherwise altering a work itself, its title

or the designation of the author shall also be determined in accordance with Article 21 in the case of free uses. In no event may the meaning and essential nature of the work be distorted.

(2) Where passages of a work are reproduced in accordance with Article 46, item 1, or Article 52, item 1, by means other than audio media, or where a work is reproduced in whole or in part in accordance with Article 45, 46, item 2, 47, 48, 51, 52 items 2 or 3, or 54, items 1 to 3, the source must always be clearly shown. The statement of the source shall include the title of the work and the designation of the author in accordance with the provisions of Article 21(1). Where individual passages of works of language are used in schoolbooks under Article 45, the title of the work need only be shown where such work is not designated by the name or pseudonym of the author. Where passages or parts of works of language are reproduced under Article 46, they shall be clearly identified in the statement of the source, enabling them to be readily located in the original work. Where a work reproduced under Article 46 is taken from a collection, the collection shall also be identified; in such case, the title of the original work may be replaced by a reference to the relevant passage in the collection.

(3) In the cases referred to in Article 44(1) and (2), the newspaper or periodical from which the article was taken shall be shown in addition to the name or pseudonym of the author given in the source used; where the source given is another newspaper or periodical, the latter must be clearly stated. Where statement of such newspaper or periodical is omitted, the editor thereof or, if no editor is named, the publisher thereof shall have the same rights as an author in the event of unlawful omission of the designation of the author.

(4) Whether, and to what extent, a statement of the source may be omitted in the case of free uses of works other than those referred to in paragraphs (2) and (3) shall be determined in accordance with fair practice.

## **2. COMPULSORY LICENSE FOR AUDIO RECORDING**

58.—(1) Where the entitled person has permitted another person to reproduce and distribute a musical work on an audio medium, any manufacturer of such media may require the entitled person, once the work has been published, to grant him the same uses of the work for equitable payment; where the manufacturer has his place of residence or principal place of business abroad, this shall apply, subject to international treaties, only on condition that manufacturers having their place of residence or principal place of business in Austria are treated, in the State concerned, in approximately the same way, or at least in the same way as manufacturers having their place of residence or principal place of business in that State. Such reciprocity shall be deemed to exist when it has been established in a notice by the Federal Minister for Justice with regard to the legal situation in the State concerned. In addition, the competent authorities may conclude an agreement on reciprocity with another State where this appears appropriate in order to safeguard the interests of Austrian manufacturers of audio media. The authorization to use the work shall apply only to the reproduction and distribution of the work on audio media in Austria and to export to States in which the author does not enjoy protection against the reproduction and distribution of the work on audio media.

(2) Paragraph (1) shall apply mutatis mutandis to works of language combined with a musical work, where the right holder has permitted another person to reproduce and distribute the work of language, so combined, on audio media.

(3) In actions to obtain a license under paragraphs (1) or (2), where the defendant is not subject to the general jurisdiction of any court in Austria, the courts whose jurisdiction includes the First Municipal District of Vienna shall be competent.

(4) When applying the provisions of paragraphs (1) and (2) devices intended for repeatable simultaneous visual and sound reproduction (video and audio media) shall be disregarded.

### 3. USE OF BROADCASTS

59. Broadcasts of works of language and of musical works may be used for public recitation and performance, by means of loudspeakers, of the broadcast works where the organizer of such public reproduction has obtained authorization therefor from the competent collecting society (Article 3 of the Law on Collecting Societies, BGBl. No. 112/1936). The collecting society shall apportion the fees received for such authorization in the same manner as fees received from the public telegraph institution responsible for the general radio service in Austria for authorization to broadcast works of language or musical works.

59a.—(1) The right to use broadcasts of works, including satellite broadcasts, for simultaneous, complete and unchanged retransmission by cable may only be asserted by collecting societies; however, this shall not apply to the right to institute proceedings for infringement of copyright.

(2) Broadcasts may be used for retransmission within the meaning of paragraph (1) if the retransmitting broadcasting organization has authorization to make such use from the competent collecting society (Article 3, Law on Collecting Societies, BGBl. No. 112/1936). With reference to such authorization, authors who have not entered into a representation contract with the collecting society and whose rights are not asserted under an agreement on reciprocity with a foreign collecting society, shall enjoy the same rights and obligations as the beneficiary of the collecting society.

(3) Paragraphs (1) and (2) shall not apply, however, where the right of retransmission within the meaning of paragraph (1) is held by the broadcasting organization whose broadcast is retransmitted.

### 4. RETRANSMISSION OF SATELLITE PROGRAMS

59b.—(1) Where no contract to authorize retransmission within the meaning of Article 59a is concluded, each party may request contractual assistance from the Arbitration Board (Article III, Copyright Amending Law, 1980). The Arbitration Board may submit proposals to the parties. Such proposal shall be deemed to have been accepted by the parties if no objection is raised by a party within a period of three months.

(2) If a contract authorizing retransmission within the meaning of Article 59a(1) fails to be concluded for the sole reason that the collecting society or the entitled broadcasting organization (Article 59a(3)) has not entered into negotiations in good faith or has, without good reason, hindered or prevented the conduct of negotiations, the retransmitting broadcasting organization shall be entitled to obtain authorization on equitable terms.

## Chapter VIII. Term of Copyright ➔

### *Works of Literature, Music and Art*

60. Copyright in works of literature, music and art of which the authors (Article 10(1)) have been designated in a manner which creates a presumption of authorship under Article 12 shall terminate 70 years after the death of the author (Article 10(1)); in the case of a work jointly created by more than one author (Article 11), copyright shall terminate 70 years after the death of the last surviving joint author (Article 10(1)).



61. Where the author of a work (Article 10(1)) has not been designated in a manner that creates a presumption of authorship under Article 12, copyright shall terminate 70 years after the creation of the work. However, where the work is published before the expiry of that period, copyright shall terminate 70 years after the work was made public.

#### *Register of Authors*

61a. Within the term specified in Article 61, the true name of the author (Article 10(1)) may be notified, by the author himself or by the person upon whom the copyright has devolved after his death, to the Register of Authors maintained by the Federal Minister for Justice. Upon such notification, the term of protection shall be computed in accordance with Article 60.

61b.—(1) Notification shall be made in writing. Each notification shall include the type and title of the work or other designation, the time, place and method of publication, the author's designations used hitherto, the forename and surname of the author (Article 10(1)), and the forename and surname, occupation and place of residence of the person making the registration. A notification may cover more than one work attributed to the same author.

(2) The registration shall be made by the Federal Minister for Justice without verification of the entitlement of the person making the notification to do so or of the correctness of the facts notified; it shall in any event contain the particulars required under paragraph (1). Where the notification also states the day and place of birth or death of the author, or his nationality, such particulars shall also be entered.

61c.—(1) The registration shall be publicly announced in the *Amtsblatt zur Wiener Zeitung* at the expense of the person making the notification.

(2) Any person may consult the Register of Authors and request officially certified abstracts, or request a certificate to the effect that a specific work has not been entered in the Register of Authors.

#### *Cinematographic Works*

62. Copyright in cinematographic works shall terminate 70 years after the death of the last surviving person among the following: the principal director of the film and the authors of the screenplay, the dialogues and the musical work specially created for the cinematographic work.

#### *Serial Works*

63. For works which are made public in several volumes, parts issues, numbers or episodes, and for which publication determines the commencement of the term of protection, that term shall be computed from the publication of each separate element.

#### *Computation of Terms of Protection*

64. In computing terms of protection (Articles 60 to 63), the calendar year in which occurs the event that determines the commencement of the term shall not be counted.

#### *Rights Extending Beyond the Term of Protection*

65. The creator of a work shall be entitled to assert his rights under Articles 19 and 21(3)

during his lifetime even if the term of protection has expired.

## **PART II. RELATED RIGHTS** ➔

### ***Chapter I. Protection of Recitation and Performance of Works of Literature and Music*** ➔

#### **1. EXPLOITATION BY MEANS OF VIDEO AND AUDIO MEDIA**

66.—(1) Any person reciting or performing a work of literature or music shall have the exclusive right, within the limitations of the law, to fix his recitation or performance, including broadcasting thereof, on a video or audio recording medium, and to reproduce or distribute such recording. Reproduction shall also include the use of a video or audio medium to transfer the recitation or performance to another video or audio medium.

(2) In the case of recitation and performance effected through the collaboration of several persons under a single director, such as the performance of a play or a choral or orchestral work, the exploitation rights (paragraph (1)) of persons who merely collaborate as members of the choir or orchestra, or in a similar manner, may be exercised only through a common representative.

(3) Where such representation is not already regulated by law, statutes or collective or individual contract, the common representative of the collaborators referred to in paragraph (2) shall be elected on a simple majority with no account taken of any abstentions.

(4) In the absence of a common representative, the District Court of Inner Vienna shall appoint an administrator to act in place of the common representative. Anyone having a prima facie interest in the exploitation of the recitation or performance shall be entitled to file a request.

(5) Unless an exception is permitted by law, and subject to paragraph (1), recitation and performances given on the instructions of a promoter may be recorded on video or audio media only with the consent of the promoter. Video or audio media produced in violation of this provision may not be reproduced or distributed.

(6) Whether an obligation subsists towards the promoter of recitations and performances that are to be exploited under paragraph (1), to participate therein and to permit such exploitation shall be determined by the regulations and agreements governing the legal relationship between the participants and the promoter. Whether a participant has a claim against the promoter for special payment shall be determined in the same way. In each case the promoter with whose permission a recitation or performance is to be fixed shall be requested to notify the participants in advance, in an appropriate manner, even where they are under obligation to participate.

(7) Video or audio media produced or distributed in violation of paragraphs (1) and (5) may not be used for broadcasting (Article 17) or a public communication of the recitation or performance.

#### *Exploitation Rights*

67.—(1) The exploitation rights of persons referred to in Article 66(1) and (5) shall expire 50 years after the recitation or performance; however, if a video or audio medium on which the

recitation or performance is fixed is published before the expiry of such term, they shall expire 50 years after publication. The terms shall be computed in accordance with Article 64.

(2) Articles 11, 12, 13, 15(1), 16(1) and (3), 16a, 23, 24, 25(1), (2), (3) and (5), 26, 27, 28(1), 29, 31, 32, and 33(2) shall apply mutatis mutandis; however, the term of five years stipulated in Article 31(2) shall be replaced by a term of one year.

#### *Protection of Moral Interests*

68.—(1) At the request of the holder of an exploitation right under Article 66(1), his name (or pseudonym) shall be shown on the video or audio media. This may not be done without his consent. Consent may be withdrawn if a video or audio medium reproduces the recitation or performance with such alterations or in such poor quality that its use is liable to impair the artistic reputation of the holder of the exploitation right.

(2) The rights referred to in paragraph (1) shall in no case terminate before the death of the holder of the exploitation right under Article 66(1). After his death, and until such rights have expired, they shall vest in the persons upon whom such rights have devolved.

(3) Paragraphs (1) and (2) shall not apply to persons who participate simply as members of a choir or orchestra or in a similar manner.

#### *Exceptions*

69.—(1) For the reproduction and distribution of commercially produced cinematographic works and other cinematographic products, it shall not be necessary to obtain the consent otherwise required under Article 66(1) from persons who have participated in recitations or performances undertaken for the purpose of producing the cinematographic work or cinematographic product in full knowledge of that purpose.

(2) Any person may, for personal use, fix on a video or audio medium, recitations or performances that are broadcast or recitations or performances communicated by means of video or audio media, and may make individual copies thereof. Such video or audio recordings may not be distributed or used for broadcasting or public communication of the recitation or performance. Articles 42(3) and (4), 42a and 42b(1) and (3) to (6) shall apply mutatis mutandis.

(3) Articles 56(1) and (3) and 56a shall apply mutatis mutandis.

## **2. EXPLOITATION BY BROADCASTING**

70.—(1) The recitation or performance of a work of literature or music may be broadcast (Article 17) only with the consent of the persons whose consent for recording on video or audio media is required under Article 66(1) and (5); Articles 33(1), 66(6), 59a and 59b shall apply mutatis mutandis.

(2) The consent required under paragraph (1) shall not be required for a broadcast using video or audio media, except where Article 66(7) or Article 69(2) does not permit them to be used for broadcasting.

## **3. EXPLOITATION FOR PUBLIC COMMUNICATION**

71.—(1) Recitations or performances of a work of literature or music may be publicly

communicated by means of loudspeakers or other technical devices outside the place (theatre, hall, public square, garden, etc.) where they take place, only with the consent of the persons whose consent is required under Article 66(1) and (5) for recording on video and audio media; Article 66(6) shall apply mutatis mutandis. However, only the consent of the promoter of the recitation or performance shall be required where its communication is effected by means of video or audio media or of broadcasts that may be used for that purpose under the provisions of this Chapter.

(2) A broadcast of the recitation or performance of a work of literature or music in accordance with Article 70 may be used for public communication of the recitation or performance by means of loudspeakers or other technical devices.

#### **4. COMMON PROVISIONS**

72.—(1) Articles 66 to 71 shall apply even where the works of literature or music recited or performed do not enjoy copyright protection under this Law.

(2) Article 41 shall apply mutatis mutandis to protection rights subsisting in recitations and performances.

(3) For the purpose of reporting current events, recitations and performances perceivable to the public during the events being reported on may, to the extent justified by the purpose of information, be fixed on video or audio media, broadcast and publicly communicated; such video or audio media may be reproduced and distributed to that same extent. Whether and to what extent the holders of exploitation rights under Article 66(1) may, in such case, require that their names be shown on the video or audio medium shall be determined in accordance with fair practice.

(4) The use of individual recitations or performances of works of literature or music for scientific or educational purposes shall be permitted to the extent justified by the purpose.

(5) Recitations or performances of works of literature or music may be fixed on a video or audio medium by the promoter and may, with the help of such medium or other technical device, be communicated within the building in which the event is taking place for the purpose of making the event perceivable in another part of the premises.

(6) The provisions of Articles 66 to 71 shall not apply to the delivery by the speaker himself of a speech as referred to in Article 43.

## ***Chapter II. Protection of Photographs, Audio Recordings, Broadcasts and Posthumous Works ➔***

### **1. PHOTOGRAPHS**

73.—(1) For the purposes of this Law, “photographs” mean images produced by a photographic process. A process similar to photography shall be considered a photographic process.

(2) Moving pictures (cinematographic products) produced in such manner shall, without prejudice to copyright provisions relating to the protection of cinematographic works, be subject to the provisions applicable to photographs.

#### *Protection Rights*

74.—(1) The person who takes a photograph (the producer) shall have the exclusive right, subject to the limitations of law, to reproduce, distribute, publicly present by means of optical devices and broadcast the photograph. In the case of photographs commercially produced, the owner of the enterprise shall be deemed the producer.

(2) The exploitation rights held by the producer under paragraph (1) shall be heritable and alienable.

(3) Where the producer has marked his name (pseudonym, trade name) on a photograph, copies thereof made by other persons and intended for distribution shall also bear a corresponding reference to the producer. Where a copy bearing such reference reproduces the photograph with substantial alterations, the reference to the producer shall be accompanied by an appropriate additional reference.

(4) In the case of copies bearing the producer reference, the subject designation may depart from that given by the producer only to the extent compatible with fair practice.

(5) After the death of the producer, the protection afforded him under paragraphs (3) and (4) shall accrue to the persons upon whom devolve the exploitation rights. Where the exploitation rights are transferred to another person, the transferee may acquire the right to be designated as the producer of the photograph. In such case, the transferee shall thereafter be deemed the producer and, provided he is named as such on the photograph, shall enjoy protection under the provisions of paragraphs (3) and (4).

(6) Copyright protection in respect of photographs shall terminate 50 years after they were taken or, where the photograph is made public before the expiry of that term, 50 years after publication. The terms shall be computed in accordance with Article 64.

(7) Articles 5, 7 to 9, 11 to 13, 14(2), 15(1), 16, 16a, 16b, 17, 17a, 17b, 18(3), 23(2) and (4), 24, 25(2) to (6), 26, 27(1), (3), (4) and (5), 31(1), 32(1), 33(2), 36, 37, 41, 42, 42a, 42b, 42c, 54(1), items 3, 3a and 4, and (2), 56, 56a, 56b, 59a and 59b shall apply to photographs and Articles 56c and 56d shall apply mutatis mutandis to cinematographic products; however, the second sentence of Article 42a, item 1, shall not apply to the reproduction of commercially produced photographs from a master obtained by a photographic process.

#### *Special Provisions for Photographic Portraits of Persons*

75.—(1) Unless otherwise agreed, the person who commissions a photographic portrait and his heirs, as well as the person represented and, after his death, his lineal descendants and surviving spouse, may make individual copies of such photograph by a photographic process, or cause such copies to be made by another person, including for payment, but only where copies produced by such process cannot be obtained from the right holder, or can only be obtained with unreasonable difficulty.

(2) Copies whose production is permitted under paragraph (1) may be distributed free of charge.

## **2. AUDIO RECORDINGS**

76.—(1) Any person who fixes acoustic phenomena on an audio medium for the purpose of repeatable communication (the producer) shall enjoy, subject to the limitations of law, the exclusive right to reproduce and distribute the audio medium. Reproduction shall be deemed to include the use of an audio medium for reproduction on another audio medium. In the case of commercially produced audio media, the owner of the enterprise shall be

deemed the producer.

(2) Audio media reproduced or distributed in violation of paragraph (1) may not be used for broadcasting (Article 17) or public performance.

(3) Where an audio medium made for commercial purposes is used for broadcasting (Article 17) or public communication, the user shall pay equitable remuneration to the producer (paragraph (1)), subject to Article 66(7) and to paragraph (2), above. The persons referred to in Article 66(1) may claim a share of such remuneration from the producer. In the absence of agreement between the entitled parties, such share shall be one-half of the remuneration remaining to the producer after deduction of the costs of collection. The claims of the producer and of the persons referred to in Article 66(1) may only be asserted by collecting societies or by a single collecting society.

(4) Any person may, for personal use, fix on an audio medium sounds reproduced by means of an audio medium, and may make individual copies thereof. Such audio media may not be distributed or used for broadcasting or for public communication. Articles 42(2) and (3), 42a and 42b(1) and (3) to (6) shall apply *mutatis mutandis*.

(5) Protection of audio recordings shall terminate 50 years after their production, but if the recording is made public before the expiration of such term, the term shall be 50 years after publication. The terms shall be computed according to Article 64.

(6) Articles 5, 7, 8, 9, 11, 12, 13, 14(2), 15(1), 16(1) and (3), 16a, 23(2) and (4), 24, 25(2), (3) and (5), 26, 27(1), (3), (4) and (5), 31(1), 32(1), 33(2), 41, 42c, 56, 72(4) and 74(2) to (5) shall apply *mutatis mutandis*.

### **3. BROADCASTS**

76a.—(1) Any person who transmits sounds or images by broadcasting or similar means (Article 17, broadcasting organizations) shall, subject to the limitations of law, have the exclusive right to transmit the broadcast simultaneously over another transmitter, to fix the broadcast on a video or audio medium (in particular, in photographic form) and to reproduce and distribute such medium. Reproduction shall be deemed to include the use of a video or audio medium for reproduction on another video or audio medium.

(2) Video or audio media reproduced or distributed in violation of paragraph (1) may not be used for broadcasting (Article 17) or public communication.

(3) Any person may, for personal use, fix a broadcast on a video or audio medium and make individual copies thereof. Such video or audio media may not be distributed or used for broadcasting or public communication. Article 42(3) and (4) shall apply *mutatis mutandis*.

(4) Protection of broadcasts shall terminate 50 years after the broadcast. The term shall be computed according to Article 64.

(5) Articles 5, 7, 8, 9, 11, 12, 13, 14(2), 15(1), 16(1) and (3), 16a, 18(2), 23(2) and (4), 24, 25(2), (3) and (5), 26, 27(1), (3), (4) and (5), 31(1), 32(1), 33(2), 41, 42c, 56, 56a, 72(4) and 74(2) to (5) shall apply *mutatis mutandis*.

### **4. POSTHUMOUS WORKS**

76b. Any person who, being authorized to do so, publishes a previously unpublished work

in which the copyright has expired, shall be entitled to the exploitation rights in respect of the work in the same way as an author. Such copyright shall terminate 25 years after publication; the term shall be computed according to Article 64.

## **Chapter IIa. Protected Databases ➔**

76c.—(1) A database (Article 40f(1)) shall enjoy protection under this Chapter if the obtaining, verification or presentation of its contents have required qualitatively or quantitatively a substantial investment.

(2) A database whose contents have been substantially amended, qualitatively or quantitatively, shall be deemed a new database if the amendment has required a qualitatively or quantitatively substantial investment; this shall also apply where the above condition is met only as a result of several successive amendments.

(3) Protection under this Chapter shall not be dependent on whether the database as such or the contents thereof are eligible for copyright protection or any other special form of protection.

(4) Protection under this Chapter shall not affect any rights that may subsist in respect of the contents of the database.

### *Protection Rights*

76d.—(1) Any person who has made an investment within the meaning of Article 76c (the maker) shall, subject to the limitations of law, have the exclusive right to reproduce, distribute, broadcast and publicly communicate the database as a whole or a qualitatively or quantitatively substantial part of the database. The repeated and systematic reproduction, distribution, broadcasting and public communication of non-substantial parts of the database shall be deemed equivalent to these acts of exploitation where such acts conflict with the normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.

(2) The maker's right of distribution shall not extend to lending (Article 16a(3)).

(3) The reproduction of a substantial part of a published database shall be permissible

1. for private purposes; this shall not apply to a database whose materials are individually accessible with the help of electronic means;

2. for scientific or educational purposes, to the extent justified by the purpose, provided there is no commercial purpose and the source is stated.

(4) The rights in databases shall expire 15 years after the completion of the database, however, if the database is published before the end of that period, the term shall be 15 years after publication. The terms shall be computed according to Article 64.

(5) Articles 8, 9, 11 to 13, 14(2), 15(1), 16, 16a(1) and (3), 17, 17a, 17b, 23(2) and (4), 24, 25(2), (3) and (5), 26, 27(1) and (3) to (5), 31(1), 32(1), 33(2) and 41 shall apply mutatis mutandis.

### *Contracts for the Use of Databases*

76e. Any contractual agreement under which the lawful user of a published database has an obligation towards the maker to refrain from reproducing, distributing, broadcasting or communicating to the public qualitatively or quantitatively insubstantial parts of the database shall be invalid where such acts neither conflict with the normal exploitation of the database nor unreasonably prejudice the legitimate interests of the maker of the database.

### **Chapter III. Protection of Letters and Portraits ➔**

#### *Protection of Letters*

77.—(1) Letters, diaries and similar confidential writings may not be read out in public or distributed in any other manner which would make them available to the public if the legitimate interests of the author or, should he have died without having authorized or ordered the publication of such writings, of a close relative would be prejudiced.

(2) Close relatives within the meaning of paragraph (1) shall be the lineal ascendants and descendants and the surviving spouse. Persons related to the author in the first degree and the surviving spouse shall enjoy such protection during their lifetimes, but other relatives only for 10 years from the expiry of the year of death of the author.

(3) Letters may also not be distributed in the manner referred to in paragraph (1) if the legitimate interests of the addressee of the letter or, should he have died without having authorized or ordered the publication of the letter, of a close relative would be prejudiced. Paragraph (2) shall apply mutatis mutandis.

(4) Paragraphs (1) to (3) shall apply whether or not the writings referred to in paragraph (1) enjoy copyright protection under this Law. The application of copyright provisions to such writings shall not be affected.

(5) Paragraphs (1) to (3) shall not apply to writings which, even if not exclusively so, were written for official use.

(6) The provisions of Article 41 shall apply mutatis mutandis.

#### *Protection of Portraits*

78.—(1) Portraits of persons may not be exhibited or otherwise distributed in a manner which would make them available to the public if legitimate interests of the person portrayed, or, should he have died without authorizing or ordering the publication of the portrait, of a close relative would be prejudiced.

(2) The provisions of Articles 41 and 77(2) and (4) shall apply mutatis mutandis.

### **Chapter IV. Protection of News. Protection of Titles of Works of Literature and Art ➔**

#### *Protection of News*

79.—(1) Press reports as referred to in Article 44(3) contained in reports by press correspondents or in other communications serving for the transmission for payment of news to newspapers or periodicals may only be reproduced in newspapers or periodicals if at least 12 hours have elapsed since their publication in a newspaper or periodical so



authorized by the collector of the news.

(2) For the application of paragraph (1), all establishments engaged in the periodical dissemination of news to the general public shall be assimilated to newspapers and periodicals. However, Article 59a shall apply *mutatis mutandis*.

#### *Protection of Titles*

80.—(1) The title or other designation of a work of literature or art or the get-up of copies may not be used in the course of trade for another work in a manner liable to cause confusion.

(2) Paragraph (1) shall also apply to works of literature and art which do not enjoy copyright protection under this Law.

### **PART III. EXERCISE OF RIGHTS** ➔

#### **Chapter I. Civil Actions** ➔

##### *Action for Injunction*

81.—(1) Any person whose exclusive right under this Law has been infringed or who has reason to suspect such infringement may bring an action for injunction. An action may also be brought against the owner of an enterprise where such infringement has been committed or is likely to be committed within the activities of the enterprise by one of his employees or agents.

(2) Temporary injunctions may be granted even in the absence of the conditions stipulated in Article 381 of the Code of Enforcement.

##### *Cease and Desist*

82.—(1) Any person whose exclusive rights under this Law are infringed may apply for a cease and desist order.

(2) The injured person may require, in particular, that copies produced or distributed in violation of this Law or copies intended for unlawful distribution be destroyed and the devices intended exclusively for unlawful reproduction (moulds, stones, plates, films, etc.) be rendered unusable.

(3) Where the infringing articles or devices referred to in paragraph (2) contain parts of which the unaltered state and use by the defendant do not infringe the exclusive right of the plaintiff, the court shall designate such parts in the decree ordering destruction or rendering unusable. When enforcing the decree, such parts shall, as far as possible, be exempted from destruction or rendering unusable if the person liable therefor pays in advance the associated costs. If it transpires during the process of enforcement that rendering the infringing devices unusable would entail disproportionately heavy costs, and if such costs are not paid in advance by the person liable therefor, the court which has ordered enforcement shall, after hearing the parties, direct the destruction of the infringing devices.

(4) Where relief may be provided other than in the manner referred to in paragraph (2), and where such measure would entail no, or less destruction of assets, the injured person may

require only such measure. In particular, copies shall not be destroyed merely because the statement of source is lacking or is not in compliance with the law.

(5) Instead of the destruction of the infringing articles or the rendering unusable of the infringing devices, the injured person may require that the infringing articles or devices be transferred to him by their owner for equitable remuneration not exceeding the costs of production.

(6) The cease and desist action shall be directed against the owner of the articles concerned by the injunctive relief. The claim may be asserted during the term of validity of the right infringed, for as long as such articles are in existence.

#### *Action for Injunction in Respect of Works of Art*

83.—(1) Where the original of a work of art has been altered without authorization, the author, unless otherwise provided below, may only require that the alteration be designated on such original as not originating with the creator of the work or that any designation of the author affixed to the work be removed or corrected.

(2) Where it is possible to restore the original and if to do so is not contrary to overriding public interest or the overriding interests of the owner, the creator of the work may, at his choice, require restoration in place of the measures referred to in paragraph (1).

(3) In the case of works of architecture, the author may not prohibit an unauthorized alteration under Article 81. Neither may he require that buildings be demolished, altered or transferred to him under Article 82(5). However, at his request, one of the measures referred to in paragraph (1) shall be applied or, depending on circumstances, a correspondingly accurate designation of author shall be affixed to the constructed work.

#### *Action for Injunction in Cases Governed by Articles 79 and 80*

84.—(1) In cases governed by Article 79, actions for injunction may be brought not only by the collector of the news, but also by any entrepreneur in competition with the offender or by associations for the promotion of the economic interests of entrepreneurs, where the offense affects such interests.

(2) In cases governed by Article 80, actions for injunction may be brought by such associations or by any entrepreneur engaged in placing on the market or the public recitation, performance or exhibition of a work whose title, designation or get-up are used for another work and whose interests are prejudiced by the offense. In the case of works protected by copyright, the author shall always also have the right to bring such action.

(3) In cases governed by Articles 79 and 80, the infringing articles shall be subject to injunctive relief only where they are intended for unlawful distribution. In such cases, a claim for the transfer of the infringing articles or devices (Article 82(5)) shall not subsist.

#### *Publication of Judgment*

85.—(1) Where an action is brought for an injunction, or for a judgment declaring the existence or nonexistence of an exclusive right under this Law or of authorship (Article 19), the court shall authorize the successful party, if that party has a legitimate interest therein and so requests, to publish the judgment within a certain period of time at the expense of the opposing party. The manner of such publication shall be set out in the judgment.

(2) Publication shall include the text of the judgment. However, at the request of the successful party the court may order the publication of a text whose content differs from or supplements the judgment in scope or wording. Such request shall be submitted within four weeks of the judgment becoming final. Where the request is not submitted until after completion of the oral proceedings, the court of first instance shall decide by means of an order after the judgment becomes final.

(3) At the request of the successful party, the court of first instance shall lay down the cost of publication and award such cost against the opposing party.

(4) Publication on the basis of a final decision or other enforcement order shall be carried out by the media promoter without undue delay.

#### *Right to Equitable Remuneration*

86.—(1) Any person who, without authorization,

1. uses a work of literature or art in a manner of exploitation reserved to the author under Articles 14 to 18,

2. fixes the recitation or performance of a work of literature or music, in violation of Article 66(1) and (5), on a video or audio medium or reproduces or distributes such medium in violation of Article 66(1) and (5), or Article 69(2),

3. broadcasts or communicates to the public the recitation or performance of a work of literature or music in violation of Articles 66(7), 69(2), 70 or 71,

4. uses a photograph or a audio medium in a manner of exploitation reserved to the producer under Articles 74 or 76,

5. uses a broadcast in a manner of exploitation reserved to the broadcasting organization under Article 76a, or

6. uses a database in a manner reserved to the maker under Article 76d,

shall, even where he is not at fault, pay equitable remuneration to the injured party whose authorization should have been obtained.

(2) However, no claim to such remuneration shall subsist where a broadcast or public communication is prohibited merely because it has been effected by means of video or audio medium or a broadcast which may not be used for such purpose under Articles 50(2), 53(2), 56(3), 56b(2), 56c(3), item 2, 56d(1), item 2, 66(7), 69(2), 70, 71, 74, 76 or 76a(2) and (3), if the user, by no fault of his own, was not aware of the nature of the video or audio medium or of the broadcast.

(3) Any person who uses a press report in violation of Article 79 shall, even where he is not at fault, pay equitable remuneration to the collector of the news.

#### *Claim to Damages and Surrender of Profits*

87.—(1) A person who, contrary to this Law, culpably causes prejudice to another person, shall also, irrespective of the degree of fault, reimburse the injured party for loss of profits.

(2) In such case, the injured party may further require equitable compensation for prejudice other than pecuniary which he has suffered as a result of such act.

(3) Where no greater damage can be proved, the injured party whose consent should have been obtained may claim twice the remuneration due to him under Article 86 by way of compensation for culpable pecuniary damage he has suffered (paragraph (1)).

(4) Where a work of literature or art is reproduced or distributed without authorization, the injured party whose authorization should have been obtained may further require the surrender of the profits derived by the offender from the culpable act. The same shall apply where the recitation or performance of a work of literature of music is exploited by means of a video or audio medium in violation of Article 66(1) or where a broadcast is exploited by means of a video or audio medium in violation of Article 76a or where a photograph or audio recording is reproduced or distributed in violation of Article 74 or Article 76, respectively.

(5) Compensation for pecuniary damage in addition to the equitable remuneration (Article 86) or the surrender of profits (paragraph (4)) may be required only to the extent that it exceeds the remuneration or the profits to be surrendered.

#### *Rendering of Accounts*

87a.—(1) Any person required under this Law to pay equitable remuneration or equitable compensation or an equitable share of such compensation, or to pay damages or to surrender the profits, shall be required to render accounts to the right holder and to have their correctness verified by an expert. If this verification results in the fixing of an amount greater than the one indicated in the accounts rendered, the expenses of this verification shall be charged to the debtor.

(2) Any person liable as guarantor and payer under Article 42b(3), item 1, shall also be required to inform the right holder of the name of the person from whom he has obtained the recording material or reproduction equipment except where he does not pay such remuneration.

(3) Paragraphs (1) and (2) shall also apply, mutatis mutandis, to persons exempted from liability under Article 42b(3), item 1.

#### *Right to Information*

87b. Any person who distributes in Austria copies in which the right of distribution is exhausted due to putting into circulation in a Member State of the European Economic Community or of the European Free Trade Association (Article 16(3)), shall be required to furnish the right holder on request with correct and complete information on the producer, content, country of origin and quantity of copies distributed. The right to information shall belong to the person to whom the right to distribute copies in Austria belonged at the time of exhaustion.

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

88.—(1) Where the infringement giving rise to equitable remuneration (Article 86) is committed by an employee or agent in the course of the activities of an enterprise, the owner of the enterprise shall be liable to pay such remuneration.

(2) Where an employee or agent in the course of the activities of an enterprise has violated this Law, notwithstanding any possible liability of such persons, the owner of the enterprise shall be liable to compensate damages (Article 87(1) to (3)) if he was aware or should have been aware of the violation. In such cases he shall be further required to surrender the profits in accordance with Article 87(4).

#### *Liability of More than One Person*

89. Where the right to equitable remuneration (Article 86), to damages (Article 87(1) to (3)) or to the surrender of profits (Article 87(4)) subsists against more than one person, such persons shall be jointly liable.

#### *Prescription*

90.—(1) Claims for equitable remuneration, for equitable compensation, for surrender of profits and for information shall be prescribed in accordance with the provisions on action for damages.

(2) Claims of individual right holders or groups of right holders against a collecting society shall be prescribed three years after the event on which the obligation to pay of the collecting society is founded whether or not the right holder had knowledge thereof.

90a.—(1) Recording material and reproduction equipment within the meaning of Article 42b released for free circulation or stored in a type D warehouse within the meaning of the Customs Regulations shall be declared by the declarer on a separate declaration form in accordance with the provisions of paragraphs (3) and (4). The declaration form shall include the quantity of items, the nature and trademark of the declared goods together with the names and addresses of the declarer and the recipient of the declared goods; in the case of recording material, it shall also include the playing time, and in the case of re-production equipment, the throughput capacity (number of copies per minute). The declaration form shall constitute a document required for customs clearance within the meaning of the Customs Regulations. Declaration forms shall be forwarded by the customs offices to collecting societies asserting claims under Article 42b and, in connection therewith, under Articles 69(3), 74(7) and 76(4).

(2) Consignments that remain duty-free under the Customs Regulations and, in the case of recording material, also consignments of not more than 100 items, shall be exempt from the obligation to declare in accordance with paragraph (1).

(3) The Federal Minister for Justice, in agreement with the Federal Minister for Finance, shall determine by ordinance which goods designated according to the provisions of the combined nomenclature (Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the Tariff and Statistical Nomenclature and on the Common Customs Tariff, OJEC, No. L 253 of 11 October 1993, p. 1, in the current versions) shall be subject to the obligation to declare under paragraph (1) and to which collecting societies the declaration forms shall be forwarded; the ordinance shall also determine the form and content of the declaration form. The ordinance shall take due account of the administrative outlay involved and of the requirements of collecting societies.

(4) The Federal Minister for Justice may, in agreement with the Federal Minister for Finance, determine by ordinance further exemptions from the duty to declare where the interests of facilitated circulation of goods or of simplified administration outbalance the interests of the collecting societies in receiving the declaration.

(5) The declarer and the person named in the declaration as the recipient of the declared goods shall provide the collecting societies referred to in paragraph (1), at their request, with correct and complete information on the circumstances giving rise to the obligation to pay.

## **Chapter II. Criminal Law Provisions ➔**

### *Infringement*

91.—(1) Any person who commits an infringement of the kind referred to in Article 86(1) shall be liable to imprisonment not exceeding six months or to a fine not exceeding 360 times the daily rate. The infringement shall not, however, be punishable if it only involves the unauthorized reproduction or an unauthorized recording of a recitation or a performance for personal use or for the personal use of another person, effected free of charge.

(1a) Any person who puts into circulation or possesses for commercial purposes any means the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of any technical device for the protection of computer programs shall likewise be liable to penalty.

(2) Any person who, as the owner or director of an enterprise, does not prevent an infringement of this kind (paragraphs (1) and (1a)) from being committed within the activities of the enterprise by an employee or agent shall also be liable to penalty.

(2a) Any person who by way of trade commits an offense under paragraphs (1), (1a) or (2) shall be liable to imprisonment not exceeding two years.

(3) The offender shall be prosecuted only at the request of the person whose right has been infringed.

(4) Article 85(1), (3) and (4) on publication of judgments shall apply *mutatis mutandis*.

(5) The criminal proceedings shall be heard by the judge of the court of first instance sitting alone.

### *Destruction and Rendering Unusable of Infringing Articles and Devices*

92.—(1) In the judgment by which a defendant is declared guilty of an offense under Article 91, the court, on a motion by the plaintiff shall order the destruction of infringing articles intended for unlawful distribution and the rendering unusable of infringing devices intended exclusively for unlawful reproduction and of those specified in Article 91(1a). Such infringing articles and devices shall be subject to such measures irrespective of their ownership. Buildings shall not be subject to such measures. The provisions of Article 82(3) shall apply *mutatis mutandis*.

(2) Where no specific person can be prosecuted or convicted, the criminal court, on a motion by the injured party, shall direct, in the order of acquittal or in an independent proceeding, that the measures specified in paragraph (1) be taken, provided the other conditions for such measures exist. In the case of an independent proceeding, the decision shall be taken by the court which would have jurisdiction in criminal proceedings, after the necessary investigation, if any, has been conducted and after a hearing in open court. The hearing, the decision and its publication, as well as any appeal from the decision, shall be governed *mutatis mutandis* by the regulations governing decisions in criminal proceedings.

The award shall be governed mutatis mutandis by the general regulations concerning costs in criminal proceedings; if the motion is granted, the costs shall be awarded against those parties which, in the proceedings, oppose the party bringing the claim.

(3) In the cases referred to in paragraphs (1) and (2), the owners of articles subject to destruction or to being rendered unusable shall be summoned to the hearing wherever possible. They shall be entitled, with regard to the statutory conditions for such measures to plead points of fact, to bring motions and to appeal the decision in the manner permitted by the Code of Criminal Procedure. They may also ask for the decision to be annulled if the court has exceeded the powers vested in it under paragraphs (1) and (2). They may represent themselves or be represented by an agent, and they may retain counsel from among the persons entered on the list of attorneys at law. The period allowed them for bringing an appeal shall begin with the pronouncement of the decision, even if they were not present thereat. They may not appeal a decision issued in their absence.

### *Seizure*

93.—(1) In order to secure compliance with the measures sought under Article 92, the infringing articles and devices may, on a motion by the plaintiff, be seized by the criminal court.

(2) The criminal court shall decide on such a motion without delay. The court may make the order of seizure dependent on deposit of security. Seizure shall be limited to the extent absolutely necessary. It shall be rescinded if adequate security is deposited to ensure that the articles seized will not be used in a non-authorized manner and will not be removed from the control of the court.

(3) Unless the seizure has already been rescinded, it shall remain in force until the decision in the proceedings concerning the motion for the destruction of the infringing articles or the rendering unusable of the infringing devices has become final and, where the decision so directs, until the measures directed have been executed.

(4) Orders directing, limiting or rescinding seizure may be appealed within three days; such appeal shall have the effect of suspending the order only where the appeal seeks to rescind or limit seizure.

(5) Where the court denies the motion for the destruction or the rendering unusable of the articles seized, the party bringing the motion shall be liable to compensate the party affected by seizure for all pecuniary damages caused thereby. Where, as a result of a settlement between the parties, no decision is issued concerning the motion for destruction or rendering unusable, the affected party may require damages only if it has reserved the right to do so in the settlement.

(6) Claims for damages under paragraph (5) shall be asserted in accordance with ordinary legal recourse.

## **PART IV. SCOPE OF APPLICATION OF THE LAW ➔**

### **1. WORKS OF LITERATURE AND ART**

#### *Works of Nationals*

94. A work shall enjoy copyright protection under this Law irrespective of whether or where it has been published, provided the author (Article 10(1)) or a joint author is an Austrian national.

*Works Published in Austria and Works Affixed to Real Estate Located in Austria*

95. Copyright protection under this Law shall also extend to all works not protected under Article 94 which have been published in Austria, as well as to works of art which are a part of or a fixture on real estate located in Austria.

*Works of Foreigners Not Published in Austria and Not Affixed to Real Estate Located in Austria*

96.—(1) Copyright protection for the works of foreign authors (Article 10(1)) not protected under Articles 94 or 95 shall be afforded, subject to international treaties, on condition that the works of Austrian authors are likewise protected in approximately the same way in the State of which the foreign author is a national, but in any event to the same extent as works of nationals of that State. Reciprocity shall be deemed to exist when it has been determined in a notice of the Federal Minister for Justice with respect to the legal situation in the State concerned. In addition, the competent authorities may conclude an agreement on reciprocity with another State where this appears appropriate in order to safeguard the interests of Austrian authors.

(2) The term of protection enjoyed by foreign authors in respect of their works in Austria under the Universal Copyright Convention of 6 September 1952, BGBl, No. 108/1957, or under the Universal Copyright Convention as revised on 24 July 1971, BGBl, No. 293/1982, shall be computed on the basis of their Articles IV.4.1 and IV.4(a), respectively.

## **2. RECITATIONS AND PERFORMANCES OF WORKS OF LITERATURE AND MUSIC**

97.—(1) Recitations and performances of works of literature and music which take place in Austria shall be protected under the provisions of Articles 66 to 72, irrespective of the nationality of the persons whose consent is required under Article 66(1) and (5) for the fixing of the recitation or performance on a video or audio medium.

(2) In the case of recitations and performances which take place abroad, Articles 66 to 72 shall apply in favor of Austrian nationals. Foreigners shall be protected in respect of such recitations and performances, subject to international treaties, on condition that the recitations and performances of Austrian nationals are also protected in approximately the same way in the State of which the foreigner is a national but, in any event, to the same extent as recitations and performances of nationals of that State. Reciprocity shall be deemed to exist when it has been determined in a notice of the Federal Minister for Justice with respect to the legal situation in the State concerned. In addition, the competent authorities may conclude an agreement on reciprocity with another State where this appears appropriate in order to safeguard the interests of Austrian holders of exploitation rights under Article 66(1).

## **3. PHOTOGRAPHS**

98.—(1) The applicability of the provisions for the protection of photographs (Articles 73 to 74) shall be governed mutatis mutandis by the provisions of Articles 94 to 96.

(2) Where the producer is a legal person, the requirement of Austrian nationality shall be satisfied if such legal person has its headquarters in Austria.



#### 4. AUDIO RECORDINGS AND BROADCAST AUDIO RECORDINGS

99.—(1) Audio recordings shall be protected in accordance with Article 76, irrespective of whether and how they have been published if the producer is an Austrian national. Article 98(2) shall apply mutatis mutandis.

(2) Other audio recordings shall be protected in accordance with Article 76(1), (2) and (4) to (6), if they have been published in Austria..

(3) Audio recordings of foreign producers that have not been published in Austria shall be protected under Article 76(1), (2) and (4) to (6), notwithstanding international treaties, on condition that audio recordings of Austrian producers are protected in an approximately similar manner in the State to which the foreign producer belongs or at least to the same extent as audio recordings of nationals of that State. Such reciprocity shall be deemed to exist if it has been determined in a notice of the Federal Minister for Justice with respect to the legal situation in the State concerned. Further, the competent authorities may contractually agree reciprocity with another State where such would appear to serve the interests of Austrian producers of audio recordings.

(4) Audio recordings of foreign producers which have not been published in Austria shall also be protected under Article 76(1), (2) and (4) to (6) if the producer is a national of a Contracting State of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms of 29 October 1971 (BGBl, No. 294/1982).

(5) In any event, protection under Article 76(3) may be claimed by foreigners only in accordance with international treaties.

##### *Broadcasts*

99a. Broadcasts which are not transmitted from a location in Austria shall be protected only in accordance with international treaties.

##### *Posthumous Works*

99b. The provisions of Articles 94 to 96 shall apply mutatis mutandis to the protection of posthumous works (Article 76b).

#### 4A. DATABASES

99c.—(1) Databases shall be protected in accordance with Article 76d if the maker is an Austrian national or is habitually resident in Austria. Article 98(2) shall apply mutatis mutandis.

(2) Other databases shall be protected in accordance with Article 76d if the maker is a legal person established in accordance with the statutory provisions of a Member State of the European Community or of a Contracting State to the Agreement on the European Economic Area and which

1. has its central administration or principal place of business in one of those States; or

2. has its statutory headquarters in one of those States and its activities have a de facto continuous connection with the economy of one of those States.

(3) Moreover, databases shall be protected in accordance with international treaties and with agreements concluded by the Council of the European Community under Article 11(3) of European Parliament and Council Directive 96/9/EC [of 11 March 1996] on the Legal Protection of Databases (OJEC, No. L 77 of 27 March 1996, p. 20).

## 5. PROTECTION OF NEWS AND TITLES

100.—(1) Foreigners who have no principal place of business in Austria shall be entitled to protection under Articles 79 and 80 only in accordance with international treaties or subject to reciprocity; the Federal Minister for Justice shall be empowered to give notice in the Bundesgesetzblatt whether and, where appropriate, to what extent reciprocity is guaranteed under the domestic legislation of the foreign State.

(2) The author of a protected work and holders of the right to use such work shall enjoy the protection laid down in Article 80 even in the absence of the conditions referred to in paragraph (1).

## **PART V. TRANSITIONAL AND FINAL PROVISIONS** ➔

101.—(1) Unless otherwise provided, the copyright provisions of this Law shall apply to works of literature and art created before the entry into force of this Law and which have not already fallen into the public domain on expiry of their term of protection.

(2) Works which enjoy copyright protection at the time of the entry into force of this Law because they are deemed under earlier law to have been published in Austria shall remain protected as works which have been published in Austria even if they do not qualify as works which have been published in Austria under Article 9.

(3) Reciprocal protection granted by orders in relation to foreign States shall extend to protection under this Law.

102.—(1) This Law shall determine who shall be entitled to copyright in works consisting of separate contributions by more than one joint author which nevertheless form a homogeneous whole and which were published prior to the entry into force of this Law by public authorities, corporations, educational establishments, public institutions, societies or associations (Article 40 of the Copyright Law, St.G.Bl. No. 417/1920). In case of doubt, however, the rights of use in such works shall belong to the publishers named therein.

(2) The person entitled to copyright in a portrait commissioned for payment (Article 13 of the Copyright Law, St.G.Bl. No. 417/1920) which was created before the entry into force of this Law shall be determined by this Law. In case of doubt, however, the rights of use in such a portrait shall belong to the person who commissioned it.

103. Where the exercise of copyright was transferred, with or without limitation, to another person before the entry into force of this Law, such transfer shall not, in case of doubt, extend to rights newly granted to the author under this Law.

104. The exploitation rights under Article 38 in a commercially produced cinematographic work shall belong to the film producer even where the work was created prior to the entry into force of this Law, save for agreement between the parties limiting such rights of the film producer. Where the author wishes to exercise an exploitation right in such work which, under Article 38, is held by the film producer, he must assert his right within one year from

the entry into force of this Law, failing which his right shall be forfeited.

105. The rights of authors of translations which were lawfully published before the entry into force of this Law without the consent of the author being required shall not be affected by this Law.

106.—(1) Where the free distribution of copies of a work was permissible under earlier provisions, copies produced before the entry into force of this Law may continue to be freely distributed, notwithstanding that their distribution without the consent of the right holder is not permitted under the provisions of this Law concerning free uses of a work.

(2) The legality of the quality of copies produced before the entry into force of this Law shall be assessed in accordance with the provisions hitherto in force.

107. The words belonging to a musical work lawfully published in connection with the musical work, before the entry into force of this Law (Article 25, item 5, of the Copyright Law, St.G.Bl. No. 417/1920), may continue to be used in such connection as authorized under Article 47(1) and (3). However, the provision of Article 47(2) shall be applied in such cases.

108. Where a work of literature or music has been recorded on a mechanical sound reproduction device, the copyright subsisting in the recording under Articles 23(3) and 28(2) of the Copyright Law, St.G.Bl. No. 417/1920, in favor of the persons considered under that Law to be the arrangers thereof, shall lapse on entry into force of this Law. The right of exploitation of a work granted by the author to another person for the purposes of mechanical reproduction shall not be affected. In case of doubt, however, such right shall not extend to devices intended for the simultaneous repeatable communication of images and sounds, nor shall such right be deemed to authorize the public recitation or performance or broadcasting of the work by means of an audio medium.

109.—(1) Devices for the mechanical sound reproduction of works of literature or music may continue to be used freely (Articles 25, item 6, and 30, item 5, of the Copyright Law, St.G.Bl. No. 417/1920) for public recitation and performance until the end of 1936.

(2) Paragraph (1) shall not apply to devices intended for the simultaneous repeatable communication of images and sounds.

110.—(1) The provisions of Articles 66 to 72 shall apply in favor of the persons referred to in Article 66(1) even where the recitation or the performance of a work of literature or music took place before the entry into force of this Law.

(2) If the recitation or performance has been fixed on a video or audio medium with the consent of the holder of the exploitation right under Article 66(1), before the entry into force of this Law, such consent shall be deemed, in case of doubt, to afford the producer of the video or audio medium the exclusive right to reproduce and to distribute such medium in the manner reserved to the holder of exploitation rights under Article 66. In case of doubt, such consent shall also be deemed to include permission to identify the video or audio medium with the name of the person carrying out the recitation or performance.

111. Articles 101 to 103 and 106 shall apply *mutatis mutandis* to photographs (Articles 73 to 75) taken before the entry into force of this Federal Law.

112. Audio recordings shall be protected under Article 76 even where the acoustic phenomena recorded took place before the entry into force of this Law.

113.—(1) The Copyright Law, R.G.BI. No. 197/1895 in the version at present in force (Enforcement Order, St.G.BI. No. 417/1920, and Ordinance, BGBl. No. 555/1933) is hereby repealed. Ordinance BGBl. No. 347/1933 is likewise cancelled.

(2) (Note: Amendment of the General Civil Code, JGS. No. 946/1811.)

(3) (Note: Amendment of the Federal Unfair Competition Law, BGBl. No. 531/1923.)

(4) Not applicable.

114.—(1) This Federal Law shall enter into force on 1 July 1936.

(2) The Federal Minister for Justice shall be responsible for the implementation of this Law, but with respect to Article 90a(1) to (4), he shall act in agreement with the Federal Minister for Finance.

(3) Orders under this Federal Law may be issued as from the day following its promulgation; however, such orders shall not enter into force earlier than this Law.

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1: German title: Urheberrechtsgesetz—UrhG. Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte.

Entry into force (of last amending law): January 1, 1998.

Source: Communication from the Austrian authorities.

Note: Translation by the International Bureau of WIPO on the basis of a consolidated German text communicated by the national authorities.

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