

Übersetzung durch Ute Reusch.

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Act on Copyright and Related Rights (Urheberrechtsgesetz – UrhG)

Copyright Act of 9 September 1965 (Federal Law Gazette I, p. 1273), as last amended by Article 25 of the Act of 23 June 2021 (Federal Law Gazette I, p. 1858)

Part 1 Copyright

Division 1 General

Section 1 General

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

Division 2 Works

Section 2 Protected works

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

1. literary works, such as written works, speeches and computer programs;
2. musical works;
3. pantomimic works, including works of dance;
4. artistic works, including works of architecture and of applied art and drafts of such works;
5. photographic works, including works produced by processes similar to photography;
6. cinematographic works, including works produced by processes similar to cinematography;
7. illustrations of a scientific or technical nature, such as drawings, plans, maps, sketches, tables and three-dimensional representations.

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

Section 3 Adaptations

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

Section 4 Collections and database works

(1) Collections of works, data or other independent elements which by reason of the selection or arrangement of the elements constitute the author's own intellectual creation (collections) are protected as independent works without prejudice to an existing copyright or related right in one of the individual elements.

(2) For the purposes of this Act, 'database work' means a collection whose elements are arranged systematically or methodically and the individual elements of which are individually accessible by electronic or other means. A computer program (section 69a) used in the creation of the database work or to provide access to its elements does not constitute an integral part of the database work.

Section 5 Official works

(1) Acts, statutory instruments, official decrees and official notices, as well as decisions and official head notes of decisions do not enjoy copyright protection.

(2) The same applies to other official texts published in the official interest for general information purposes, subject to the proviso that the provisions concerning the prohibition of alteration and the acknowledgement of source in section 62 (1) to (3) and section 63 (1) and (2) apply accordingly.

(3) Copyright in respect of private normative works is not affected by subsections (1) and (2) if acts, statutory instruments, decrees or official notices refer to such works without reproducing their wording. In that case the author is obliged to grant every publisher, on equitable conditions, a right of reproduction and distribution. Where a third party is the owner of the exclusive right of reproduction and distribution, that third party is obliged to grant the right of use under sentence 2.

Section 6 Published works and released works

(1) A work is deemed to have been published when it has been made available to the public with the rightholder's consent.

(2) A work is deemed to have been released when copies of the work have been offered, with the rightholder's consent, to the public or put into circulation after their production in sufficient quantity. An artistic work is also deemed to have been released when the original or a copy of the work has been made permanently available to the public with the rightholder's consent.

Division 3 Authors

Section 7 Author

The author is the creator of the work.

Section 8 Joint authors

(1) Where several persons have jointly created a work without it being possible to separately exploit their individual shares in the work, they are joint authors of the work.

(2) The right of publication and of exploitation of the work accrues jointly to the joint authors; alterations to the work are permitted only with the joint authors' consent. However, a joint author may not refuse consent to publication, exploitation or alteration contrary to the principles of good faith. Each joint author is entitled to assert claims arising from violations of the joint copyright; a joint author may, however, demand performance only to all the joint authors.

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

(4) Joint authors may each waive their share of the exploitation rights (section 15). They must make a declaration of waiver to the other joint authors. Upon such declaration being made their share accrues to the other joint authors.

Section 9

Authors of compound works

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

Section 10

Presumption of authorship or ownership

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

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

(3) The presumption in subsection (1) applies accordingly to the holder of exclusive rights of use in the event of proceedings for temporary relief or injunctive relief. The presumption does not apply in the relationship to the author or the original holder of the related right.

Division 4

Scope of copyright

Subdivision 1

General

Section 11

General

Copyright protects the author in his or her intellectual and personal relationships to the work and in respect of the use of the work. It also serves to ensure equitable remuneration for the use of the work.

Subdivision 2

Moral rights of authors

Section 12

Right of publication

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

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

Section 13

Recognition of authorship

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

Section 14 **Distortion of work**

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

Subdivision 3 **Exploitation rights**

Section 15 **General**

(1) The author has the exclusive right to exploit his or her work in material form; this right in particular includes

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

(2) Further, the author has the exclusive right to communicate his or her work to the public in non-material form (right of communication to the public). The right of communication to the public in particular comprises

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

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

Section 16 **Right of reproduction**

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

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

Section 17 **Right of distribution**

(1) 'Right of distribution' means the right to offer the original or copies of the work to the public or to put them into circulation.

(2) Where the original or copies of the work have been put into circulation by sale with the consent of the person entitled to distribute them within the territory of the European Union or

another Contracting Party of the Agreement on the European Economic Area, their dissemination is permitted, except by means of rental.

(3) For the purposes of this Act, 'rental' means the time-limited transfer for use which directly or indirectly serves profit-making purposes. However, rental does not include the transfer of originals or copies

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

Section 18

Right of exhibition

'Right of exhibition' means the right to display in public the original or the copies of an unpublished artistic work or an unpublished photographic work.

Section 19

Right of recitation, performance and presentation

(1) 'Right of recitation' means the right to give a public recital of a literary work by means of personal performance.

(2) 'Right of performance' means the right to give a public recital of a musical work by means of personal performance or to give a public theatrical performance of a work.

(3) The right of recitation and the right of performance include the right to make speeches and performances perceivable to the public by means of a screen, loudspeaker or similar technical devices outside of that room in which the personal performance is taking place.

(4) 'Right of presentation' means the right to make an artistic work, a photographic work, a cinematographic work or illustrations of a scientific or technical nature perceivable to the public by the use of technical devices. The right of presentation does not include the right to make the radio broadcast or the making available to the public of such works perceivable to the public (section 22).

Section 19a

Right of making works available to public

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

Section 20

Right of broadcasting

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

Section 20a

European broadcasts transmitted by satellite

(1) Where a broadcast is transmitted by satellite within the territory of a Member State of the European Union or Contracting Party of the Agreement on the European Economic Area, it is deemed to have been transmitted solely in that Member State or Contracting Party of the Agreement.

(2) Where a broadcast is transmitted by satellite within the territory of a state which is neither a Member State of the European Union nor a Contracting Party of the Agreement on the European Economic Area and in which in respect of the right of satellite transmission the level of protection provided for under Chapter II of Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6.10.1993, p. 15) is not guaranteed, it is deemed to have been transmitted solely in that Member State or Contracting Party of the Agreement

1. in which the uplink station is located from which the programme-carrying signals are transmitted to the satellite or
2. in which the broadcasting organisation has its place of business in cases where the condition under no. 1 is not met.

The right of broadcasting is to be asserted against the operator of the uplink station in the case referred to in no. 1 and against the broadcasting organisation in the case referred to in no. 2.

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

Section 20b Retransmission

(1) The right to retransmit a transmitted work in the context of a simultaneous, unaltered and unabridged retransmission of a programme (retransmission) may be asserted only by a collecting society. This does not apply to

1. rights in a work which is transmitted exclusively via the internet,
2. rights asserted by a broadcasting organisation in relation to its own programmes.

(1a) In the case of retransmission via an internet access service, subsection (1) only applies if the operator of the retransmission service exclusively provides authorised users access to the programme in a secure environment.

(1b) 'Internet access service' within the meaning of subsection (1a) means a service pursuant to Article 2 (2) no. 2 of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1), as last amended by Directive (EU) 2018/1972 (OJ L 321, 17.12.2018, p. 36; L 334, 27.12.2019, p. 164).

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

Section 20c European additional online service

(1) 'Additional online service' means

1. the broadcasting of programmes via the internet simultaneously with their broadcasting in another manner,
2. the making available to the public via the internet of previously broadcast programmes which can then be retrieved for a limited period after the broadcast, including supplementary materials.

(2) The reproduction and communication to the public of works in the realisation of an additional online service by a broadcasting organisation in a Member State of the European Union or Contracting Party of the Agreement on the European Economic Area are deemed

to have been solely effected in that Member State or Contracting Party in which the broadcasting organisation has its main establishment. The rightholder and the broadcasting organisation may limit the scope of the rights of use in relation to the broadcasting organisation's additional online services.

(3) In the case of television programmes, subsection (2) only applies to the broadcasting organisation's own productions which it fully financed itself and to news programmes and reporting on current events, but not to the transmission of sports events.

Section 20d Direct injection

(1) Where a broadcasting organisation transmits the programme-carrying signals to a signal distributor without itself simultaneously communicating them to the public (direct injection), and the signal distributor communicates these programme-carrying signals to the public, the broadcasting organisation and the signal distributor are deemed to be parties involved in a single communication to the public.

(2) Section 20b applies accordingly.

Section 21 Right of communication by video or audio recordings

The right of communication by video or audio recordings is the right to make speeches or performances of a work perceivable to the public by means of video or audio recordings. Section 19 (3) applies accordingly.

**Section 22
Right of communication of broadcasts and of works made available to public**
'Right of communication of broadcasts and of communication of the making available to the public' means the right to make perceivable to the public, by screen, loudspeaker or similar technical device, broadcasts and communications of the work as are based on its making available to the public. Section 19 (3) applies accordingly.

Section 23 Adaptations and transformations

(1) Adaptations or other transformations of a work, including, in particular, of a melody, may be published or exploited only with the author's consent. If the newly created work maintains sufficient distance to the work used, this does not constitute adaptation or transformation within the meaning of sentence 1.

(2) In the case of

1. the film version of a work,
2. the execution of plans and drafts of an artistic work,
3. the reproduction of an architectural work or
4. the adaptation or transformation of a database work,

the production of the adaptation or transformation already requires the author's consent.

(3) Subsections (1) and (2) do not apply to alterations of a work for exclusively technical reasons in the case of uses in accordance with section 44b (2), 60d (1), section 60e (1) and section 60f (2).

Section 24 (repealed)

Subdivision 4 Other rights of authors

Section 25 Access to copies of works

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

Section 26

Right of resale

- (1) If the original of an artistic work or of a photographic work is resold and if an art dealer or an auctioneer is involved as purchaser, vendor or intermediary, the vendor is to pay the author a share of the selling price. 'Selling price' within the meaning of sentence 1 is deemed to be the sales price net of tax. If the vendor is a person acting in a private capacity, then the art dealer or the auctioneer who is involved as purchaser or intermediary is jointly and severally liable together with the vendor; in their relationship inter se, the vendor alone is liable for payment. The obligation under sentence 1 does not apply where the selling price amounts to less than 400 euros.
- (2) The portion of the selling price amounts to:
 1. 4 per cent for the portion of the selling price up to 50,000 euros,
 2. 3 per cent for the portion of the selling price from 50,000.01 to 200,000 euros,
 3. 1 per cent for the portion of the selling price from 200,000.01 to 350,000 euros,
 4. 0.5 per cent for the portion of the selling price from 350,000.01 to 500,000 euros,
 5. 0.25 per cent for the portion of the selling price exceeding 500,000 euros.

The total amount of the royalty on resale does not exceed 12,500 euros.

- (3) The resale right is inalienable. Authors may not waive their share in advance.
- (4) Authors may require provision of information from an art dealer or an auctioneer as to which of their originals of works of art have been resold with the involvement of the art dealer or the auctioneer during the last three years prior to the request for information.
- (5) Where necessary for the assertion of a claim against the vendor, authors may require the art dealer or the auctioneer to provide the name and address of the vendor as well as the amount of the selling price. The art dealer or the auctioneer may refuse to provide the name and address of the vendor if that vendor pays the share due to the author.
- (6) The claims under subsections (4) and (5) may only be asserted through a collecting society.
- (7) Where there is reasonable doubt as to the accuracy or completeness of the information provided in accordance with subsection (4) or (5), the collecting society may require access to the account books or to other documents to be granted, at the choice of the person obliged to provide the information, either to the collecting society or to a chartered accountant or sworn auditor designated by that person to the extent which is necessary to ascertain the accuracy or completeness of the information. Where the information is found to be inaccurate or incomplete, the person obliged to provide the information is to bear the costs of the examination.
- (8) The foregoing provisions do not apply to architectural works and works of applied art.

Section 27

Remuneration for rental and lending

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

- (2) The author is to be paid equitable remuneration for the lending of those originals or copies of a work whose dissemination is permitted under section 17 (2) if the originals or copies are lent through a publicly accessible institution (library, collection of video or audio recordings or other originals or copies thereof). 'Lending' within the meaning of sentence 1 means the time-limited transfer for use which neither directly nor indirectly serves profit-making purposes; section 17 (3) sentence 2 applies accordingly.
- (3) The claims for remuneration under subsections (1) and (2) may be asserted only through a collecting society.

Division 5
Dealings in rights in copyright

Subdivision 1
Succession to copyright

Section 28
Inheritance of copyright

- (1) Copyright is inheritable.
- (2) The author may assign the exercise of copyright to an executor by testamentary disposition. Section 2210 of the Civil Code (*Bürgerliches Gesetzbuch*) does not apply.

Section 29
Transfer of copyright

- (1) Copyright is not transferrable, unless it is transferred in the execution of a testamentary disposition or to co-heirs as part of the partition of an estate.
- (2) The granting of rights of use (section 31), contractual authorisations and agreements based on exploitation rights, as well as contracts on the moral rights of authors as regulated under section 39 are permitted.

Section 30
Author's successor in title

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

Subdivision 2
Rights of use

Section 31
Grant of rights of use

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

Section 31a
Contracts concerning unknown types of use

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

Section 32

Equitable remuneration

- (1) The author is entitled to the contractually agreed remuneration for the granting of rights of use and permission to use the work. If the amount of the remuneration has not been determined, equitable remuneration is deemed to have been agreed. If the agreed remuneration is not equitable, the author may require the other party to consent to a modification of the agreement so that the author is granted equitable remuneration.
- (2) Remuneration is deemed to be equitable if it is determined in accordance with a joint remuneration agreement (section 36). Any other remuneration is deemed to be equitable if at the time the agreement is concluded it corresponds to what is customary and fair in business relations, given the nature and extent of the possibility of use granted, in particular the duration, frequency, extent and time of use, and considering all circumstances. Flat-rate remuneration must guarantee the author's equitable participation in the expected total proceeds from such use and must be justified in the light of sector-related specificities.
- (2a) A joint remuneration agreement may also be used as the basis to determine equitable remuneration in the case of contracts concluded prior to their temporal scope of application.
- (3) An agreement which deviates from subsections (1) to (2a) to the detriment of the author may not be invoked by the other party to the agreement. The provisions stipulated in sentence 1 apply even if they are circumvented by other arrangements. The author may, however, grant to all a non-exclusive right of use free of charge.
- (4) The author has no right under subsection (1) sentence 3 to the extent that the remuneration for the use of his or her works has been determined in a collective agreement.

Section 32a

Author's further participation

- (1) Where the author has granted to another a right of use on conditions which, taking into account the author's entire relationship with the other party, result in the agreed remuneration proving to be disproportionately low in comparison to the proceeds and benefits derived from the use of the work, the other party is obliged, at the author's request, to consent to a modification of the agreement which grants the author further equitable participation appropriate to the circumstances. It is irrelevant whether the parties to the agreement had foreseen or could have foreseen the amount of the proceeds or benefits obtained.
- (2) If the other party has transferred the right of use or granted further rights of use and if the author's disproportionately low remuneration results from proceeds or benefits enjoyed by a third party, the latter is directly liable to the author in accordance with subsection (1), taking into account the contractual relationships within the licence chain. The other party is then not liable.

(3) There can be no advance waiver of the rights under subsections (1) and (2). An expected benefit is not subject to compulsory execution; any disposition regarding the expected benefit is ineffective. The author may, however, grant to all an unremunerated non-exclusive right of use.

(4) The author does not have a right under subsection (1) if the remuneration has been determined in accordance with a joint remuneration agreement (section 36) or in a collective agreement and explicitly provides for further equitable participation in cases under subsection (1). Section 32 (2a) applies accordingly.

Section 32b

Compulsory application

The application of sections 32, 32a, 32d to 32f and 38 (4) is compulsory

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

Section 32c

Remuneration for types of use which subsequently become known

(1) The author is entitled to separate equitable remuneration where the other contracting party commences a new type of use of the author's work pursuant to section 31a which was agreed upon, but still unknown, at the time the contract was concluded. Section 32 (2) and (4) applies accordingly. The other contracting party is, without delay, to inform the author about the commencement of the new type of use of his or her work.

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

(3) There can be no advance waiver of the rights under subsections (1) and (2). The author may, however, grant to all an unremunerated non-exclusive right of use.

Section 32d

Provision of information by and accountability of contracting party

(1) Where a right of use has been granted in return for payment, then at least once a year the contracting party provides the author with information about the extent of the use of the work and the proceeds and benefits derived therefrom. The information is provided on the basis of that information which is generally available in the ordinary course of business activities. Such information is to be provided for the first time one year after the use of the work commences and only for the duration of its use.

(1a) The contracting party only needs to provide the names and addresses of its sub-licensees and to render accountability in relation to the information referred to in subsection (1) at the author's request.

(2) Subsections (1) and (1a) do not apply insofar as

1. the author has made only a secondary contribution to a work, product or service, unless the author provides clear indications based on verifiable facts that the information is needed in relation to the amendment of a contract (section 32a (1) and (2)); a contribution is, in particular, secondary where it has little influence on the overall impression created by a work or the nature of a product or service, for example because it does not belong to the typical content of a work, product or service, or
2. the claim on the contracting party is disproportionate for other reasons, in particular if the effort involved in providing the information would be disproportionate to the income generated from the use of the work.

(3) Derogation from subsections (1) to (2) is possible only by an agreement which is based on a joint remuneration agreement (section 36) or collective agreement. In the case referred to in sentence 1, it is presumed that the collective agreements at least guarantee the author a degree of transparency comparable to that guaranteed under statutory provisions.

Section 32e

Provision of information by and accountability of third parties in licence chain

(1) Where the author's contracting partner has transferred the right of use or granted further rights of use, the author may also demand information and accountability to the extent set out in section 32d (1) to (2) from those third parties

1. which economically essentially determine the use processes in the licence chain or
2. from whose profits or benefits the author's disproportionately low remuneration in accordance with section 32a (2) results.

The author may assert claims under sentence 1 only to the extent that the contracting party does not meet the obligation to provide information under section 32d within three months after the due date or sufficient information is not provided about how third parties are using the work and the profits and benefits derived therefrom.

(2) To assert the claims under subsection (1) it is sufficient for there to be clear indications based on verifiable facts that their conditions are met.

(3) Section 32d (3) applies.

Section 32f

Mediation and out-of-court dispute resolution

(1) Authors and users of works may, in particular in the case of disputes concerning rights and claims under sections 32 to 32e, institute a mediation procedure or another voluntary out-of-court dispute resolution procedure.

(2) The author's contracting partner or other users of works cannot rely on an agreement which deviates from subsection (1) to the detriment of the author.

Section 32g

Representation by associations

Authors may be represented by authors' associations in disputes concerning rights and claims under sections 32 to 32f in accordance with the provisions of the Legal Services Act (*Rechtsdienstleistungsgesetz*) and rules of procedure.

Section 33

Continuing effect of rights of use

Exclusive and non-exclusive rights of use remain effective with respect to rights of use granted subsequently. The same rule applies if the rightholder who has granted the right of use changes or if the rightholder waives the right.

Section 34

Transfer of rights of use

(1) A right of use may only be transferred with the author's consent. The author may not refuse consent contrary to the principles of good faith.

(2) Where the transfer of the right of use in respect of a collection (section 4) includes the transfer of the rights of use of the individual works in the collection, the consent of the author of the collection suffices.

(3) A right of use may be transferred without the author's consent if the transfer is made in the context of the sale of the whole of an enterprise or the sale of parts of an enterprise. The author may revoke the right of use if exercise of the right of use by the transferee may not be reasonably demanded of the author. Sentence 2 also applies if the shareholder relations in respect of the enterprise of the holder of the right of use substantially change.

(4) The transferee is jointly and severally liable together with the author for the discharge of the transferor's obligations under the agreement if the author has not expressly consented to the transfer of the right of use in the individual case.

(5) The author may not waive the right of revocation and the transferee's liability in advance. In all other cases, the holder of the right of use and the author may agree on different terms.

Section 35

Grant of further rights of use

(1) The holder of an exclusive right of use may grant further rights of use only with the author's consent. The author's consent is not required if the exclusive right of use is granted only to ensure that the author's interests are served.

(2) The provisions of section 34 (1) sentence 2, (2) and (5) sentence 2 apply accordingly.

Section 35a

Mediation and out-of-court dispute resolution in relation to video-on-demand services

Especially in the case of contractual negotiations relating to the granting of rights of use or the making available to the public of audio-visual works via video-on-demand services, the rightholders and users of works may institute a mediation procedure or another voluntary out-of-court dispute resolution procedure.

Section 36

Joint remuneration agreements

(1) In order to determine whether remuneration is equitable pursuant to section 32, 32a and 32c, to regulate the provision of information as required by sections 32d and 32e, and to determine whether the participation is appropriate pursuant to section 87k (1), authors' associations together with associations of users of works or individual users of works are to establish joint remuneration agreements. Joint remuneration agreements are, as a rule, to take account of the circumstances of the respective area of regulation, especially the users' structure and size. Regulations contained in collective agreements take precedence over joint remuneration agreements.

(2) Associations as referred to in subsection (1) must be representative, independent and empowered to establish joint remuneration agreements. An association which represents a significant proportion of the respective authors or users of a work is deemed to be empowered within the meaning of sentence 1, unless the members of the association reach a decision to the contrary.

(3) If the parties have so agreed, proceedings for the establishment of joint remuneration agreements are conducted before an arbitration board (section 36a). Proceedings are conducted upon the written request of one of the parties if

1. the other party does not commence negotiations on joint remuneration agreements within three months after the written request of one of the parties to initiate such negotiations,
2. negotiations on joint remuneration agreements do result in an outcome within one year after the written request to initiate such negotiations or
3. one of the parties declares that the negotiations have irretrievably failed.

(4) The arbitration board is to submit to all those parties which participated in this procedure or were called to participate pursuant to section 36a (4a) a settlement proposal, giving reasons, which contains the contents of the joint remuneration agreement. The proposal is deemed to have been accepted if none of the parties referred to in sentence 1 objects within six weeks after receiving the proposal.

Section 36a

Arbitration board

(1) In order to establish joint remuneration agreements, authors' associations together with associations of users of works or individual users of works are to set up an arbitration board if the parties have agreed this or one of the parties has requested that arbitration proceedings be conducted.

(2) The arbitration board consists of an equal number of assessors appointed by each of the respective parties, and an impartial chairperson, the appointment of whom both parties are, as a rule, to agree upon.

(3) If the parties do not reach agreement, the higher regional court competent pursuant to section 1062 of the Code of Civil Procedure (*Zivilprozessordnung*) takes a decision, upon the application of one of the parties, on

1. who is to be appointed chairperson,
2. the number of assessors,
3. the conditions applicable to arbitration proceedings concerning
 - a) the ability of the users of the work and associations of users of the work and authors to be a party to the arbitration proceedings (section 36 (1) sentence 1 and (2),
 - b) proceedings before the arbitration board conducted at the request of only one of the parties (section 36 (3) sentence 2).

Until such time as the place at which the arbitration proceedings are to be conducted has been determined, that higher regional court is responsible for the decision in whose district the respondent has his or her principal place of business or habitual residence. Sections 1063 and 1065 of the Code of Civil Procedure apply accordingly to the proceedings before the higher regional court.

(4) A request for arbitration proceedings in accordance with section 36 (3) sentence 2 must contain a proposal for the establishment of a joint remuneration agreement. The arbitration board sends the request for arbitration proceedings to the other party and calls on that party to comment in writing within one month.

(4a) Each party may, within three months after learning of the arbitration proceedings, demand that the arbitration board call on other associations of authors to participate if the proposal referred to in subsection (4) sentence 1 concerns works or associated works which can generally only be created with the involvement of other authors who are represented by the aforementioned associations. Subsection (4) sentence 2 applies accordingly. If the association of authors participates, then it and the party representing the users of the work each appoints additional assessors.

(5) The arbitration board decides by majority vote following an oral consultation. The decision is initially taken by the assessors; if a majority vote cannot be obtained, then, following further consultation, the chairperson participates in a renewed vote. If one of the parties does not appoint any members or if the members appointed by one of the parties do not take part in the session despite a timely invitation to do so, the chairperson and the members who have attended decide on their own in accordance with sentences 1 and 2. The arbitration board's decision is to be set forth in writing, signed by the chairperson and delivered to each party.

(6) The parties bear their own costs as well as the costs of the assessor they have appointed. The other costs are borne by the parties representing the authors participating in the proceedings and the parties representing the users of the work to the extent of one half each. As joint and several debtors they are required, at the request and for the receipt of the presiding judge, to make requisite advance payment for the arbitration board's work.

(7) The parties may lay down the details of proceedings before the arbitration board in the form of an agreement. The arbitration board informs any participating associations of authors pursuant to subsection (4a) of the progress of proceedings.

(8) The Federal Ministry of Justice and Consumer Protection is authorised to regulate, by statutory instrument not requiring the approval of the Bundesrat, further details of the procedure before the arbitration board, as well as further provisions on the costs of proceedings and the reimbursement of members of the arbitration board.

Section 36b

Injunctive relief following breach of joint remuneration agreement

(1) Any person who uses a provision in a contract with an author which deviates from the joint remuneration agreement to the detriment of the author may be required by the injured party to cease and desist if and insofar as that person

1. has themselves established the joint remuneration agreement as the user of a work or
2. is a member of an association of users of a work which established the joint remuneration agreement.

Those associations of authors or of users of a work which and those individual users of a work who established the joint agreement are entitled to injunctive relief.

(2) Section 8c (1), (2) no. 1 and (3) and section 12 (1), (3) and (4), and section 13 (1) of the Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*) apply accordingly to the procedure; if the notification is justified, the notifying party may demand reimbursement of necessary expenses from the party notified. Section 103 applies in respect of publication of the judgment.

Section 36c

Individual consequences of breach of joint remuneration agreement

A contracting party involved in establishing a joint remuneration agreement pursuant to section 36b (1) sentence 1 no. 1 or no. 2 cannot invoke a provision which deviates from the joint remuneration agreement to the detriment of the author. The author may demand from the contracting party consent to the agreement being amended so as to eliminate the deviation.

Section 36d

Injunctive relief following failure to provide information

(1) If the user of a work does not provide authors with the information as required by section 32d or section 32e in several cases which are the same or similar in nature, that user may be required to cease and desist. The claim under sentence 1 may only be asserted by authors' associations which meet the requirements of section 36 (2) as regards the relevant group of authors.

(2) To assert the claim under subsection (1) it is sufficient for there to be clear indications based on verifiable facts that its conditions are met.

(3) The claim under subsection (1) is ruled out where the obligation to provide information under section 32d or section 32e is regulated by an agreement which is based on a joint remuneration agreement (section 36) or collective agreement.

(4) Section 36b (2) applies.

Section 37

Agreements to grant rights of use

(1) Where the author grants to another a right of use in a work, then, in cases of doubt, the author retains the right to consent to the publication or exploitation of an adaptation of the work.

(2) Where the author grants to another a right of use in the reproduction of the work, then, in cases of doubt, the author retains the right to transfer the work to video and audio recording mediums.

(3) Where the author grants to another a right of use in a communication of the work to the public, then, in cases of doubt, the author is not entitled to make the communication

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

Section 38

Contributions to collections

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

(2) Subsection (1) sentence 2 also applies to a contribution to a collection which is not published periodically the grant of permission of use for which does not entitle the author to payment of remuneration.

(3) Where the contribution is made available to a newspaper, the publisher or editor acquires a non-exclusive right of use, unless otherwise agreed. Where the author grants an exclusive right of use, he or she is authorised, immediately after the contribution is released, to otherwise reproduce or distribute it, unless otherwise agreed.

(4) The author of a scientific contribution which results from research activities at least half of which were financed by public funds and which was reprinted in a collection which is published periodically at least twice per year also has the right, if he or she has granted the publisher or editor an exclusive right of use, to make the contribution available to the public upon expiry of 12 months after first publication in the accepted manuscript version, unless this serves a commercial purpose. The source of the first publication must be cited. Any deviating agreement to the detriment of the author is ineffective.

Section 39

Alterations of work

(1) The holder of a right of use is not permitted to alter the work, its title or designation of authorship (section 10 (1)), unless otherwise agreed.

(2) Alterations to the work and its title to which the author cannot refuse consent based on the principles of good faith are permitted.

Section 40

Agreements as to future works

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

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

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

Section 40a

Right to other exploitation after 10 years in case of flat-rate remuneration

(1) Where the author has granted an exclusive right of use against payment of flat-rate remuneration, the author is nevertheless entitled to exploit the work in another manner after the expiry of 10 years. The first owner's right of use continues as a non-exclusive right of use for the remainder of the period for which it was granted. The period referred to in sentence 1 begins to run upon the granting of the right of use or, if the work is delivered at a later stage, upon delivery. Section 38 (4) sentence 2 applies accordingly.

(2) The contracting parties may extend the exclusivity of the right to cover the entire duration for which the right of use was granted at the earliest five years after the point in time referred to in subsection (1) sentence 3.

(3) In derogation from subsection (1), the author may, when concluding the contract, grant an exclusive right of use without any limitation of time if

1. the author makes only a secondary contribution to a work, product or service; a contribution is, in particular, secondary where it has little influence on the overall impression created by a work or the nature of a product or service, for example because it does not belong to the typical content of a work, product or service,
2. the work is a work of architecture or the draft of such a work,
3. the work is, with the author's consent, intended for use in a trade mark or other distinctive sign, in a design or Community design or
4. the work is not intended for publication.

(4) Derogation from subsections (1) to (3) to the detriment of the author is possible only by an agreement which is based on a joint remuneration agreement (section 36) or collective agreement.

Section 41

Right of revocation for non-exercise

(1) If the holder of an exclusive right of use does not exercise this right or only does so insufficiently, the author may revoke either the exclusiveness of the right of use alone or the right of use as a whole. This does not apply if the non-exercise or the insufficient exercise of the right of use is predominantly due to circumstances which the author can be reasonably expected to remedy.

(2) The right of revocation may not be exercised before the expiry of two years following the grant or transfer of the right of use or, if the work is delivered at a later date, since its delivery. In the case of a contribution to a newspaper the period is three months, in the case of a contribution to a periodical published monthly or at shorter intervals six months, and in the case of a contribution to other periodicals one year.

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

(4) Derogation from subsections (1) to (3) to the detriment of the author is possible only by an agreement which is based on a joint remuneration agreement (section 36) or collective agreement.

(5) Upon the revocation as per subsection (1) becoming effective, the exclusive right of use becomes a non-exclusive right of use or expires as a whole.

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

(7) The rights and claims of the persons involved in accordance with other statutory provisions remain unaffected.

Section 42

Right of revocation for changed conviction

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

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

(3) The author must adequately compensate the holder of the right of use. The compensation must at least cover the costs which the holder of the right of use incurred until

such time as the revocation was declared; however, no account is taken of costs attributable to those uses of the work which have already been made. The revocation does not become effective until the author has reimbursed the costs or provided security therefor. The holder of the right of use is to inform the author of the amount of the costs within three months after the revocation is declared; if the holder of the right of use does not fulfil this obligation, the revocation becomes effective upon the expiry of this period.

(4) If the author wishes to resume exploitation of the work after revocation, he or she is obliged to offer a corresponding right of use to the previous holder of the right of use on reasonable conditions.

(5) The provisions of section 41 (5) and (7) apply accordingly.

Section 42a

Compulsory licence for production of audio recordings

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

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

(3) A right of use granted under the foregoing provisions has effect only within the territory to which this Act applies and for export to states in which the work does not enjoy protection against transferral to audio mediums.

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

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

(6) In those cases where neither the author nor, in the case referred to in subsection (4), the holder of the exclusive right of use has a legal domicile within the territory to which this Act applies, actions claiming the grant of rights of use are to be heard by the courts located in the district in which the Patent Office has its principal place of business. Temporary injunctions may be issued even if the conditions of sections 935 and 940 of the Code of Civil Procedure are not fulfilled.

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

Section 43

Authors in employment or service

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

Section 44

Sale of original of work

- (1) If the author sells the original of a work, then, in cases of doubt, he or she is not deemed to have granted a right of use to the buyer.
- (2) The owner of the original of an artistic work or of a photographic work is authorised to exhibit the work in public even if it has not yet been published, unless the author has explicitly ruled this out at the time of the sale of the original.

Division 6

Limitations on copyright through uses permitted by law

Subdivision 1

Uses permitted by law

Section 44a

Temporary acts of reproduction

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

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

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

Section 44b

Text and data mining

- (1) 'Text and data mining' means the automated analysis of individual or several digital or digitised works for the purpose of gathering information, in particular regarding patterns, trends and correlations.
- (2) It is permitted to reproduce lawfully accessible works in order to carry out text and data mining. Copies are to be deleted when they are no longer needed to carry out text and data mining.
- (3) Uses in accordance with subsection (2) sentence 1 are permitted only if they have not been reserved by the rightholder. A reservation of use in the case of works which are available online is effective only if it is made in a machine-readable format.

Section 45

Administration of justice and public security

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

Section 45a

Persons with disabilities

- (1) It is permitted to reproduce a work for non-commercial purposes for and to distribute it exclusively to persons whose access to the work is, owing to a disability, not possible or is

made considerably more difficult by the already available means of sensual perception, if such reproduction is necessary to facilitate access.

(2) Equitable remuneration is to be paid to the author for such reproduction and distribution; production of only individual copies is exempted. Claims may only be asserted through a collecting society.

(3) Subsections (1) and (2) do not apply, only sections 45b and 45c, to the use of literary works and graphic recordings of musical works for the benefit of persons with a visual impairment or reading disability.

Section 45b

Persons with visual impairment or reading disability

(1) Persons with a visual impairment or reading disability may reproduce, for their personal use, published literary works which are available in text or audio format as well as graphic recordings of musical works, or may have them reproduced, in order that they may be converted into an accessible format. This authorisation also encompasses illustrations of all kinds which are contained within literary or musical works. Copies may only be produced of works to which persons with a visual impairment or reading disability have lawful access.

(2) For the purposes of this Act, 'persons with a visual impairment or reading disability' means persons who are unable, as a result of a physical or mental impairment or perceptual disability, to read literary works, even with the assistance of a visual aid, to substantially the same degree as persons without such an impairment or disability.

Section 45c

Authorised entities; remuneration; authorisation to issue statutory instruments

(1) Authorised entities may reproduce published literary works which are available in text or audio format as well as graphic recordings of musical works in order that they may be converted into an accessible format for the exclusive use of persons with a visual impairment or reading disability. Section 45b (1) sentence 2 and 3 applies accordingly.

(2) Authorised entities may lend out and disseminate copies produced in accordance with subsection (1) to persons with a visual impairment or reading disability or to other authorised entities and may use them to make the works available to the public or for other communication to the public.

(3) 'Authorised entity' means any establishment providing education or accessible reading or information access on a non-profit basis to people with a visual impairment or reading disability.

(4) Authors are entitled to payment of equitable remuneration for uses in accordance with subsections (1) and (2). Claims may only be asserted by a collecting society.

(5) The Federal Ministry of Justice and Consumer Protection is authorised to regulate the following by statutory instrument not requiring the approval of the Bundesrat concerning authorised entities:

1. their duties in relation to uses pursuant to subsections (1) and (2),
2. their duty to notify the German Patent and Trade Mark Office of their status as an authorised entity,
3. oversight by the German Patent and Trade Mark Office concerning compliance with the duties under no. 1, with the proviso under section 85 (1) and (3) and section 89 of the Collecting Societies Act (*Verwertungsgesellschaftengesetz*).

Section 45d

Use permitted by law and contractually authorised use

The rightholder may not invoke agreements which restrict or prohibit uses permitted in accordance with sections 45b and 45c and such restriction or prohibition is to the detriment of the persons entitled to such use.

Section 46 **Collections for religious use**

(1) Following publication, it is permitted to reproduce, distribute and make available to the public parts of works, small-scale literary works and musical works, individual artistic works or individual photographs which are incorporated in a collection combining the works of a considerable number of authors and are intended, by their nature, exclusively for use during religious ceremonies. The purpose for which the collection is to be used must be clearly stated on the copies or when making them available to the public.

(2) (repealed)

(3) Work on reproducing the work or making the work available to the public may only begin after the intention to exercise the entitlement under subsection (1) has been communicated by registered letter to the author or, if his or her place of residence or whereabouts are unknown, the holder of the exclusive right of use and two weeks have elapsed since the letter was sent. If the place of residence or whereabouts of the holder of the exclusive right of use are also not known, notification may be effected by publication in the Federal Gazette.

(4) The author is to be paid equitable remuneration for the exploitation permitted in accordance with this provision.

(5) The author may forbid the exploitation permitted in accordance with this provision if the work no longer reflects his or her conviction and the author can therefore no longer be reasonably expected to agree to the exploitation of the work and has for that reason revoked any existing right of use (section 42). The provisions of section 136 (1) and (2) apply accordingly.

Section 47 **School broadcasts**

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

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

Section 48 **Public speeches**

(1) It is permitted

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

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

(2) It is, however, not permitted to reproduce and distribute the speeches designated in subsection (1) no. 2 in the form of a collection predominantly containing speeches by the same author.

Section 49 **Newspaper articles and broadcast commentaries**

(1) It is permitted to reproduce and distribute individual broadcast commentaries and individual articles, as well as illustrations published in connection therewith, from newspapers and other information sheets devoted solely to current affairs in other newspapers or information sheets of this kind, and it is permitted to communicate such commentaries, articles and illustrations to the public if they concern current political,

economic or religious issues and do not contain a statement reserving rights. The author is to be paid equitable remuneration for the reproduction, distribution and communication to the public, unless the reproduction, distribution and communication to the public is of short extracts of several commentaries or articles in the form of an overview. Claims may be asserted only through a collecting society.

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

Section 50 **Reporting on current events**

For the purposes of reporting on current events by broadcasting or similar technical means in newspapers, periodicals and other printed matter or other data carriers which are mainly devoted to current events, as well as on film, it is permitted to reproduce, distribute and communicate to the public works which become perceivable in the course of these events, to the extent justified by the purpose of the report.

Section 51 **Quotations**

It is permitted to reproduce, distribute and communicate to the public a published work for the purpose of quotation insofar as such use is justified to that extent by the particular purpose. This is, in particular, permitted where

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

The authorisation to quote under sentences 1 and 2 includes the use of an illustration or other reproduction of the cited work, even if this is itself protected by copyright or a related right.

Section 51a **Caricature, parody and pastiche**

It is permitted to reproduce, distribute and communicate to the public a published work for the purpose of caricature, parody and pastiche. The authorisation under sentence 1 includes the use of an illustration or other reproduction of the work used even if this is itself protected by copyright or a related right.

Section 52 **Communication to public**

(1) It is permitted to communicate to the public a published work if that communication serves a non-profit-making purpose for the organiser of an event, if participants are admitted free of charge and, in the case of a lecture or performance of a work, if none of the performers (section 73) is paid special remuneration. Equitable remuneration is to be paid for the communication. The obligation to pay remuneration does not apply to events organised by the youth welfare service, the social welfare service, the geriatric and welfare service, and the prisoners' welfare service insofar as they are only available to a specifically delimited circle of persons on account of their social or educational purpose. This does not apply where the event serves the profit-making purpose of a third party; in such cases the third party is required to pay the remuneration.

(2) It is also permitted to communicate to the public a published work in a religious service or at a religious celebration organised by a church or religious community. However, the organiser is to pay the author equitable remuneration.

(3) Public stage performances, the making available to the public and broadcasting of a work, and public screenings of a cinematographic work are always only permitted with the rightholder's consent.

Sections 52a and 52b (repealed)

Section 53

Reproduction for private and other personal uses

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

(2) It is permitted to make single copies of a work or to have these made

1. (repealed)
2. for inclusion in a personal archive if and insofar as the reproduction is necessary for this purpose and one's own personal copy of the work is used as the model from which the copy is made,
3. for one's own personal information concerning current affairs if the work was broadcast,
4. for other personal use
 - a) in the case of small parts of a released work or individual articles being released in newspapers or periodicals,
 - b) in the case of a work which has been out of print for at least two years.

This only applies if, in addition,

1. the reproduction is effected on paper or a similar medium by the use of any kind of photographic technique or by some other process having a similar effect or
2. the use is exclusively analogue.

(3) (repealed)

(4) The reproduction of

- a) graphic recordings of musical works,
- b) a book or periodical, in the case of an essentially complete reproduction, insofar as this does not occur by means of manual transcription, is only ever permitted with the rightholder's consent or under the conditions of subsection (2) sentence 1 no. 2 or for personal use if the work has been out of print for at least two years.

(5) Subsections (1) and (2) sentence 1 nos. 2 to 4 do not apply to database works the elements of which are individually accessible by electronic means.

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

(7) The recording of public lectures, productions or performances of a work on video or audio recording mediums, the realisation of plans and drafts of artistic works and the reconstruction of architectural works are only ever permitted with the rightholder's consent.

Section 53a (repealed)

Subdivision 2

Remuneration for reproductions permitted under section 53 and sections 60a to 60f

Section 54

Obligation to pay remuneration

(1) Where, given the nature of a work, it is probable that the work will be reproduced and such reproduction is permitted under section 53 (1) or (2) or sections 60a to 60f, the author of the work is entitled to payment of equitable remuneration from the manufacturer of appliances and of storage mediums, where the type of appliance or storage medium is used alone or together with other appliances, storage mediums or accessories, to make such reproductions.

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

Section 54a

Amount of remuneration

(1) The amount of remuneration is determined by the extent to which the appliances and storage mediums are actually used as types for reproductions pursuant to section 53 (1) or (2) or sections 60a to 60f. Account is thereby to be taken of the extent to which technical protection measures pursuant to section 95a are used in respect of the works concerned.

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

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

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

Section 54b

Trader's or importer's obligation to pay remuneration

(1) Together with the manufacturer, any person who, on a commercial scale, imports or re-imports the appliances or storage mediums into the territory to which this Act applies or any person who trades in them bears liability as joint and several debtor.

(2) The importer is the person who introduces the appliances or storage mediums, or who causes them to be introduced, into the territory to which this Act applies. Where importation is based on a contract with a non-resident, the importer is only the contracting party residing in the territory to which this Act applies as long as that importer is acting on a commercial scale. Any person acting only as forwarding agent, carrier or in a similar function in the introduction of the goods is not deemed to be the importer. Any person who introduces items from third countries into a free zone or a free warehouse pursuant to Article 166 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1) is deemed to be the importer only if the items are used in that area or if they are released for free circulation for customs purposes.

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

1. if a person obliged to pay the remuneration from whom the trader obtains the appliances or storage mediums is bound by an inclusive contract concerning the remuneration or
2. if the trader notifies the receiving office pursuant to section 54h (3) in writing of the nature and quantity of the appliances and storage mediums received and of the source of supply by 10 January and 10 July for each preceding six months of a calendar year.

Section 54c

Obligation incumbent on operator of photocopiers to pay remuneration

(1) Where appliances of the type referred to in section 54 (1), being appliances for reproduction by means of photocopying or by some other process having a similar effect, are operated in schools, universities, vocational training institutions or other educational and further education institutions, research institutions, public libraries, in non-commercial archives or institutions in the field of cinematic or audio heritage, or in non-commercial publicly accessible museums or in institutions which keep appliances available for making photocopies in return for payment, the author is also entitled to payment of equitable remuneration from the operator of the appliance.

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

Section 54d

Obligation to make reference

Insofar as there is an obligation under section 14 (2) sentence 1 no. 2 sentence 2 of the Turnover Tax Act (*Umsatzsteuergesetz*) to submit an invoice, reference is to be made, in invoices on the sale or other putting into circulation of the appliances or storage mediums referred to in section 54 (1), to the remuneration due in respect of the appliance or storage medium.

Section 54e

Obligation to report

(1) Any person who, on a commercial scale, imports or re-imports appliances or storage mediums into the territory to which this Act applies is obliged, vis-à-vis the author, to report to the receiving office designated in section 54h (3) in writing the nature and quantity of the imported items, on a monthly basis by the 10th day after the end of each calendar month.

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

Section 54f

Obligation to provide information

(1) The author may require information from the person obliged to pay remuneration pursuant to section 54 or section 54b as to the nature and quantity of appliances and storage mediums sold or otherwise put into circulation within the territory to which this Act applies. The trader's obligation to provide information also extends to naming sources of supply; it also subsists in the case of section 54b (3) no. 1. Section 26 (7) applies accordingly.

(2) The author may require such information from the operator of an appliance in an institution within the meaning of section 54c (1) as is necessary to assess the amount of the remuneration.

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

Section 54g

Inspection

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

Section 54h

Collecting societies; handling of reports

- (1) Claims under sections 54 to 54c, section 54e (2) and sections 54f and 54g may be asserted only through a collecting society.
- (2) Each rightholder is entitled to an equitable share of the remuneration paid pursuant to sections 54 to 54c. Insofar as works are protected by technical measures pursuant to section 95a, they are not taken into account when income is distributed.
- (3) As regards the reports to be made pursuant to section 54b (3) and section 54e, the collecting societies are to designate to the German Patent and Trade Mark Office a joint receiving office. The German Patent and Trade Mark Office announces the joint receiving office in the Federal Gazette.
- (4) The German Patent and Trade Mark Office may publish specimen reports for the reports to be made pursuant to section 54b (3) no. 2 and section 54e in the Federal Gazette. If specimen reports are published, their use is compulsory.
- (5) The collecting societies and the receiving office may only use the information received pursuant to section 54b (3) no. 2 and sections 54e and 54f for the purpose of asserting claims under subsection (1).

Subdivision 3

Other uses permitted by law

Section 55

Reproduction by broadcasting organisations

- (1) A broadcasting organisation which is authorised to broadcast a work is permitted to transfer the work, by its own means, to video or audio recording mediums in order to use them once each for the purposes of broadcasting via each of its transmitters or relay stations. The video or audio recording mediums are to be deleted at the latest one month after the work is first broadcast.
- (2) Video or audio recordings of an exceptional documentary value need not be deleted if they are to be included in an official archive. The author must be notified immediately of their inclusion in the archive.

Section 55a

Use of database work

The adaptation or reproduction of a database work is permitted for the owner of a copy of the database work which was put into circulation by sale with the author's consent, that person who is otherwise authorised to use the database work or that person who is given access to the database work on the basis of a contract concluded with the author or, with the author's consent, with a third party if and insofar as the adaptation or reproduction is necessary to gain access to the elements of the database work and for its customary use. If, on the basis of the contract in accordance with sentence 1, access is given only to a part of the database work, only the adaptation and reproduction of that part is permitted. Any contractual agreements to the contrary are null and void.

Section 56

Reproduction and communication to public in commercial enterprises

- (1) In commercial enterprises which distribute appliances for the making or communication of video or audio recordings, for the reception of broadcasts, or for electronic data processing, or which repair them, works may be transferred onto video or audio mediums, or onto data carriers, may be made perceivable to the public using video or audio recordings, or data

carriers, broadcasts may be made perceivable to the public and works may be made available to the public where it is necessary to demonstrate such appliances to customers or to repair them.

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

Section 57 Incidental works

It is permitted to reproduce, distribute and communicate to the public works if they are deemed to be works incidental to the actual subject matter being reproduced, distributed or communicated to the public.

Section 58 Advertising exhibition and public sale of works

It is permitted for an organiser, for advertising purposes, to reproduce, distribute and make available to the public works as referred to in section 2 (1) nos. 4 to 6 which are exhibited in public or intended for public exhibition or public sale, to the extent necessary to promote the event.

Section 59 Works in public places

(1) It is permitted to reproduce, distribute and make available to the public works located permanently on public paths, roads or open spaces. In the case of buildings, this authorisation only extends to the façade.

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

Section 60 Portraits

(1) Reproduction and the distribution without payment and not for commercial purposes of a portrait by the commissioner of the portrait or his or her successor in title or, in the case of a portrait created on commission, by the person portrayed or, after his or her death, by that person's next of kin or a third party acting on behalf of one of those persons are permitted. If the portrait is an artistic work, exploitation is only permitted by photography.

(2) 'Next of kin' within the meaning of subsection (1) sentence 1 means the spouse or life partner and children or, if there is neither a spouse nor a life partner nor any children, the parents.

Subdivision 4 Uses permitted by law for teaching, science and institutions

Section 60a Teaching in educational establishments

(1) For the purpose of illustration in teaching in educational establishments, up to 15 per cent of a published work may be reproduced, distributed, made available to the public or otherwise communicated to the public on a non-commercial basis

1. for teachers and participants at the respective event,
2. for teachers and examiners at the same educational establishment and
3. for third persons insofar as this serves the presentation of lessons or lectures or the results of tuition or training or learning outcomes at the educational establishment.

(2) In derogation from subsection (1), full use may be made of illustrations, individual articles from the same professional or scientific journal, other small-scale works and out-of-commerce works.

(3) Subsections (1) and (2) do not authorise the following uses:

1. reproduction of a work by means of recording onto video or audio recording mediums or communication to the public of a work whilst it is being publicly recited, performed or presented,
2. reproduction, distribution and communication to the public of a work in schools which is exclusively suitable, intended and labelled for teaching in schools and
3. reproduction of graphic recordings of musical works to the extent that such reproduction is not required for making content available to the public in accordance with subsections (1) or (2).

Sentence 1 only applies where licences for such uses are easily available and traceable, they meet the needs and specificities of educational establishments and permit uses in accordance with sentence 1 nos. 1 to 3.

(3a) Where works are used in secure electronic environments for the purposes referred to in subsection (1) no. 1 and no. 2 and subsection (2) in Member States of the European Union and Contracting Parties of the Agreement on the European Economic Area, such use is deemed only to have been effected in the Member State or Contracting Party in which the educational establishment is domiciled.

(4) 'Educational establishment' means early childhood educational establishments, schools, universities, vocational schools, and other training and further education institutions.

Section 60b

Media collections for teaching

- (1) Producers of media collections for teaching may reproduce, distribute or make available to the public up to 10 per cent of a published work for such collections.
- (2) Section 60a (2) and (3) sentence 1 applies accordingly.
- (3) For the purposes of this Act, 'media collections for teaching' means collections which bring together a significant number of authors and which are suitable, intended and labelled accordingly for the exclusive purpose of non-commercial illustration in teaching in educational establishments (section 60a).

Section 60c

Scientific research

- (1) Up to 15 per cent of a work may be reproduced, distributed and made available to the public for the purpose of non-commercial scientific research
 1. for a specifically delimited circle of persons for their personal scientific research and
 2. for individual third persons insofar as this serves the monitoring of the quality of scientific research.
- (2) Up to 75 per cent of a work may be reproduced for personal scientific research.
- (3) In derogation from subsections (1) and (2), full use may be made of illustrations, individual articles from the same professional or scientific journal, other small-scale works and out-of-commerce works.
- (4) Subsections (1) to (3) do not authorise the recording of the public recitation, performance or presentation of a work onto a video or audio recording medium and the subsequent making available to the public of that recording.

Section 60d

Text and data mining for scientific research purposes

- (1) It is permitted to make reproductions to carry out text and data mining (section 44b (1) and (2) sentence 1) for scientific research purposes in accordance with the following provisions.

(2) Research organisations are authorised to make reproductions. 'Research organisations' means universities, research institutes and other establishments conducting scientific research if they

1. pursue non-commercial purposes,
2. reinvest all their profits in scientific research or
3. act in the public interest based on a state-approved mandate.

The authorisation under sentence 1 does not extend to research organisations cooperating with a private enterprise which exerts a certain degree of influence on the research organisation and has preferential access to the findings of its scientific research.

(3) The following are, further, authorised to make reproductions:

1. libraries and museums, insofar as they are accessible to the public, and archives or institutions in the field of cinematic or audio heritage (cultural heritage institutions),
2. individual researchers, insofar as they pursue non-commercial purposes.

(4) Those authorised in accordance with subsections (2) and (3) and pursuing non-commercial purposes may make reproductions made pursuant to subsection (1) available to the following persons:

1. a specifically delimited circle of persons for their joint scientific research and
2. individual third persons for the purpose of monitoring the quality of the scientific research.

The making available to the public must be terminated as soon as the joint scientific research or the monitoring of the quality of the scientific research has been concluded.

(5) Those authorised under subsections (2) and (3) no. 1 may retain reproductions made pursuant to subsection (1), thereby taking appropriate security measures to prevent unauthorised use, for as long as they are needed for the purposes of the scientific research or the monitoring of the quality of the scientific findings.

(6) Rightholders are authorised to take necessary measures to prevent the security and integrity of their networks and databases being put at risk on account of reproductions made in accordance with subsection (1).

Section 60e Libraries

(1) Publicly accessible libraries which neither directly nor indirectly pursue commercial purposes (libraries) may reproduce a work from their holdings or exhibitions, or have such a work reproduced, for the purpose of making available, indexing, cataloguing, preservation and restoration, including more than once and with technically necessary alterations.

(2) For restoration purposes, libraries may distribute reproductions of a work from their holdings to other libraries or to institutions as referred to in section 60f. They may lend restored works as well as copies of newspapers, out-of-commerce works or damaged works from their holdings.

(3) Libraries may distribute reproductions of a work as referred to in section 2 (1) nos. 4 to 7 insofar as this is done in connection with their public exhibitions or with the documentation of their holdings.

(4) Libraries may make a work from their holdings available to their users for personal research or private studies at terminals on their premises. They may enable users, for non-commercial purposes, to reproduce up to 10 per cent of a work per session and to make reproductions of individual illustrations, articles from the same professional or scientific journal, other small-scale works and out-of-commerce works.

(5) In response to individual orders, libraries may, for non-commercial purposes, transmit reproductions of up to 10 per cent of a published work to users, as well as reproductions of individual articles which have appeared in professional or scientific journals.

(6) Subsection (1) applies accordingly to publicly accessible libraries pursuing commercial purposes as regards reproductions made for the purpose of the preservation of a work.

Section 60f

Archives, museums and educational establishments

(1) Section 60e applies accordingly, with the exception of subsections (5) and (6), to archives, institutions in the field of cinematic and audio heritage, as well as to publicly accessible museums and educational establishments (section 60a (4)) which neither directly nor indirectly pursue commercial purposes.

(2) Archives which also act in the public interest may reproduce a work or have a work reproduced in order to include it as archival material in their holdings. The agency submitting the work must without delay delete any reproductions in its possession.

(3) Section 60e (1) applies accordingly to archives, institutions in the field of cinematic and audio heritage and publicly accessible museums pursuing commercial purposes as regards reproductions made for the purpose of the preservation of a work.

Section 60g

Use permitted by law and contractually authorised use

(1) Rightholders may not invoke agreements which restrict or prohibit uses permitted under sections 60a to 60f and such restriction or prohibition is to the detriment of the persons entitled to such use.

(2) In derogation from subsection (1), agreements which deal exclusively with the making available of content at terminals in accordance with section 60e (4) and section 60f (1) or with the transmission of reproductions in response to individual orders in accordance with section 60e (5) have priority over lawful permission.

Section 60h

Equitable remuneration for uses permitted by law

(1) Authors are entitled to equitable remuneration for uses in accordance with this Subdivision. Reproductions are to be remunerated in accordance with sections 54 to 54c.

(2) In derogation from subsection (1), the following uses are not subject to remuneration:

1. communication to the public for the benefit of members of educational establishments and their families in accordance with section 60a (1) nos. 1 and 3 and section 60a (2), with the exception of making the content available to the public,
2. reproductions for the purpose of preservation in accordance with section 60e (1) and (6) and section 60f (1) and (3), and for the purpose of indexing, cataloguing and restoration in accordance with section 60e (1) and section 60f (1).
3. reproductions made in the context of text and data mining for the purposes of scientific research in accordance with section 60d (1).

(3) Payment of flat-rate remuneration is sufficient, as is the usage-related calculation of the equitable remuneration based on a representative sample of usage. This does not apply to uses pursuant to sections 60b and 60e (5).

(4) Claims to equitable remuneration may only be asserted through a collecting society.

(5) If the user is acting on behalf of an institution, only the latter is subject to pay remuneration. As regards reproductions which, pursuant to subsection (1) sentence 2, are remunerated in accordance with sections 54 to 54c, only these provisions apply.

Subdivision 5

Special uses of orphan works permitted by law

Section 61

Orphan works

(1) It is permitted to reproduce and make available to the public orphan works in accordance with the provisions of subsections (3) to (5).

(2) For the purposes of this Act, 'orphan works' means

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

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

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

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

(5) Reproduction and making available to the public by the institutions as referred to in subsection (2) are permitted only if the institutions are acting to fulfil their tasks in the public interest, in particular if they preserve and restore holdings and make them accessible in their collections, insofar as this serves cultural and educational purposes. The institutions may charge a fee for providing access to the orphan works which covers the costs of the digitisation and making available to the public.

Section 61a

Diligent search and documentation obligations

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

(2) In the case of cinematographic works, as well as video mediums and audio and video mediums on which cinematographic works have been recorded, the diligent search is to be carried out in the Member State of the European Union in which the producer has a main establishment or habitual residence.

(3) In the case of the holdings referred to in section 61 (4), a diligent search is to be carried out in the Member State of the European Union in which the institution which made the item of the holdings available to the public with the rightholder's permission has its principal place of business.

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

1. the exact description of the item in the holdings which, based on the outcome of the diligent search, has been orphaned,

2. the type and nature of the institution's use of the orphan work,
3. any change in the status of a used orphan work pursuant to section 61b,
4. the institution's contact details, such as name, address, possibly telephone number, fax number and email address.

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

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

Section 61b

Termination of use and obligation to pay remuneration

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

Section 61c

Use of orphan works by public broadcasting organisations

The reproduction and making available to the public of

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

which were produced before 1 January 2003 by public broadcasting organisations and which are in their collection are also permitted by public broadcasting organisations under the conditions of section 61 (2) to (5). Sections 61a and 61b apply accordingly.

Subdivision 5a

Special uses of unavailable works permitted by law

Section 61d

Unavailable works

(1) Cultural heritage institutions (section 60d) are permitted to reproduce unavailable works (section 52b of the Collecting Societies Act) in their holdings, or to have such unavailable works reproduced, and to make them available to the public. This only applies in cases where there is no collecting society which is exercising these rights for the relevant types of works and which is thus representative (section 51b of the Collecting Societies Act). Uses in accordance with sentence 1 are only permitted for non-commercial purposes. The making available to the public is only permitted on non-commercial websites.

(2) Rightholder may object at any time vis-à-vis the European Union Intellectual Property Office to the use in accordance with sentence 1.

(3) Throughout the entire period of use, the cultural heritage institution provides information on the European Union Intellectual Property Office's online portal about the works concerned, their use and the right of objection. The making available to the public may only commence if the rightholder has not objected to the use within six months after the information referred to in sentence 1 is first published.

(4) Use in accordance with subsection (1) in Member States of the European Union and Contracting Parties of the Agreement on the European Economic Area is deemed only to be effected in the Member State or Contracting Party in which the cultural heritage institution is domiciled. Subsection (1) does not apply to series of works which predominantly contain works from third countries (section 52c of the Collecting Societies Act).

Section 61e

Authorisation to issue statutory instruments

The Federal Ministry of Justice and Consumer Protection is authorised to regulate, by statutory instrument not requiring the approval of the Bundesrat, further details concerning the following:

1. the exercise and legal consequences of the rightholder's right of objection (section 61d (2)),
2. information requirements (section 61d (3)).

Section 61f

Information about unavailable works

Collecting societies, cultural heritage institutions and the European Union Intellectual Property Office may reproduce works and make them available to the public insofar as this is necessary to be able to provide information on the Office's online portal about the fact that the collecting society grants rights in that work pursuant to section 52 of the Collecting Societies Act or a cultural heritage institution uses the work pursuant to section 61d.

Section 61g

Use permitted by law and contractually authorised use

The rightholder may not invoke agreements which restrict or prohibit uses permitted under sections 61d and 61f to the detriment of the persons entitled to such use.

Subdivision 6

Common provisions for uses permitted by law

Section 62

Prohibition of alteration

- (1) Where the use of a work is permitted under the provisions of this Division, alterations to the work are not permitted. Section 39 applies accordingly.
- (2) Where necessitated on account of the purpose of the use, translations and such alterations to the work are permitted as only constitute extracts or transpositions into another key or pitch.
- (3) In the case of artistic works and photographic works, such rendering of the work into another size and such alterations are permitted as result from the procedure used for its reproduction.
- (4) In the case of uses pursuant to sections 45a to 45c, those alterations are permitted as are necessary to be able to produce an accessible format.
- (4a) Amendments to the work are permitted to the extent necessary for the purpose of the use in accordance with section 51a.
- (5) In the case of collections for religious use (section 46), in the case of uses for the purpose of teaching in educational establishments (section 60a) and in the case of media collections for teaching (section 60b), such alterations of literary works are also permitted as are necessary for religious uses and for the purpose of illustration in teaching in educational establishments. However, these alterations require the author's consent, after his or her death the consent of the author's successor in title (section 30) if such person is the author's next of kin (section 60 (2)) or has acquired the copyright on account of the author's testamentary disposition. Consent is deemed to have been given if the author or the successor in title does not object within one month after being notified of the intended alteration and attention has been drawn in the notification of the alteration to this legal consequence. No consent is required in the case of uses for teaching in educational establishments (section 60a) and media collections for teaching (section 60b) if the alterations are clearly and visibly indicated.

Section 63

Acknowledgement of source

(1) If a work or part of a work is reproduced or distributed pursuant to section 45 (1), sections 45a to 48, 50, 51, 58, 59, sections 60a to 60c, 61, 61c, 61d and 61f, the source must in all cases be clearly indicated. In the case of the reproduction or distribution of entire literary works or entire musical works, the publishing house which released the work is to be indicated in addition to the author and it is also to be clearly indicated whether the work has been abridged or other alterations have been made. The obligation to indicate the source does not apply where the source is neither named on the work used or when the work used is communicated nor otherwise known to the person authorised to make the reproduction or distribution or, in the case of section 60a or of section 60b, the examination purposes necessitate dispensing with indicating the source.

(2) Where, under the provisions of this section, it is permitted to communicate a work to the public, the source is to be clearly indicated if and insofar as this is required by customary practice. In cases of communication to the public pursuant to sections 46, 48, 51, sections 60a to 60d, 61, 61c, 61d and 61f, as well as other digital uses pursuant to section 60a, the source, including the author's name, must in all cases be indicated, unless this is not possible.

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

Section 63a

Statutory remuneration rights

(1) Statutory remuneration rights as provided in this Division may not be waived by the author in advance. They may be assigned in advance only to a collecting society.

(2) If the author has granted a publisher a right in his or her work, then the publisher is entitled, in relation to that right, to the statutory remuneration rights as provided in this Division. In such cases, statutory remuneration rights may be asserted only by a joint collecting society of authors and publishers.

(3) Subsection (2) applies accordingly to the remuneration right under section 27 (2).

Division 7

Duration of copyright

Section 64

General

Copyright expires 70 years after the author's death.

Section 65

Joint authors, cinematographic works, musical compositions with text

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

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

(3) The term of protection of a musical composition with text expires 70 years after the death of the last surviving of the following persons: the author of the text, the composer of the musical composition, where both contributions were created specifically for the musical

composition with text concerned. This applies regardless of whether these persons are cited as joint authors.

Section 66

Anonymous and pseudonymous works

- (1) Copyright in anonymous and pseudonymous works expires 70 years after publication. However, it expires 70 years after the creation of the work if the work was not published within this period.
- (2) If the author reveals his or her identity within the period designated in subsection (1) sentence 1 or if the pseudonym adopted by the author leaves no doubt as to his or her identity, the term of protection is calculated in accordance with sections 64 and 65. The same applies if an application is made for the author's real name to be entered in the register of anonymous and pseudonymous works (section 138) within the period designated in subsection (1) sentence 1.
- (3) The author, after his or her death the author's successor in title (section 30) or the executor (section 28 (2)), is authorised to perform the acts as referred to in subsection (2).

Section 67

Serial works

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

Section 68

Reproductions of works of visual arts in public domain

Reproductions of works of visual arts in the public domain are not protected by related rights under Parts 2 and 3.

Section 69

Calculation of time limits

The periods specified in this Division begin to run at the end of that calendar year in which the event giving rise to them occurs.

Division 8

Special provisions on computer programs

Section 69a

Object of protection

- (1) For the purposes of this Act, 'computer programs' means programs of any form, including drafts and their preparatory design material.
- (2) The protection granted applies to the expression, in any form, of a computer program. Ideas and principles which underlie any element of a computer program, including the ideas and principles which underlie its interfaces, are not protected.
- (3) Computer programs are protected if they represent individual works in the sense that they are the result of the author's own intellectual creation. No other criteria, especially qualitative or aesthetic criteria, are to be applied when determining its eligibility for protection.
- (4) The provisions applicable to literary works apply to computer programs, unless otherwise provided in this Division.
- (5) Sections 32 to 32g, 36 to 36d, 40a and 41 do not apply to computer programs.

Section 69b

Authors in employment or service relationships

- (1) Where a computer program is created by an employee in the execution of his or her duties or following the instructions of his or her employer, the employer alone is entitled to exercise all economic rights in the computer program, unless otherwise agreed.
- (2) Subsection (1) applies accordingly to service relationships.

Section 69c Restricted acts

Rightholders have the exclusive right to perform or authorise the following acts:

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

Section 69d Exceptions to restricted acts

(1) Unless otherwise provided by special contractual provisions, the acts referred to in section 69c nos. 1 and 2 do not require authorisation by the rightholder if they are necessary for the use of the computer program in accordance with its intended purpose, including for the correction of errors, by any person authorised to use a copy of the program.

(2) The making of a back-up copy by a person having a right to use the computer program may not be prevented by contract if it is necessary to secure future use. Section 60e (1) and (6) and section 60f (1) and (3) apply to reproductions made for the purpose of preservation.

(3) The person having a right to use a copy of a computer program is entitled, without the rightholder's authorisation, to observe, study or test the functioning of that program in order to determine the ideas and principles which underlie any element of the program if this occurs whilst performing any acts of loading, displaying, running, transmitting or storing the program to which that person is entitled.

(4) Computer programs may also be used in accordance with section 69c no. 2 to carry out text and data mining pursuant to section 44b.

(5) Section 60a applies to computer programs with the following provisos:

1. Digital uses are permitted under the responsibility of an educational establishment on its premises, at other locations or in a secure electronic environment.
2. Computer programs may also be used pursuant to section 69c no. 2.
3. Computer programs may be used in their entirety.
4. The use must be justified for the purpose of illustration in teaching in educational establishments.

(6) Section 60d does not apply to computer programs.

(7) Sections 61d to 61f apply to computer programs, with the proviso that they may also be used pursuant to section 69c no. 2.

Section 69e Decompilation

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

1. the acts are performed by the licensee or by another person authorised to use a copy of a program or on their behalf by a person empowered to do so;
2. the information necessary to achieve interoperability has not previously been made readily available to the persons referred to in no. 1;
3. the acts are confined to those parts of the original program which are necessary to achieve interoperability.

(2) Information obtained through acts as referred to in subsection (1) may not be

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

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

Section 69f

Infringement of rights; supplementary protective provisions

(1) The rightholder may require of the owner or proprietor that all unlawfully produced or distributed copies or all copies intended for unlawful distribution be destroyed. Section 98 (3) and (4) applies accordingly.

(2) Subsection (1) applies accordingly to means the sole purpose of which is to facilitate the unauthorised removal or circumvention of any technical device which may have been applied to protect the computer program. Sentence 1 does not apply to means which the cultural heritage institution uses to avail itself of the statutory permission under section 61d, including in conjunction with section 69d (7).

(3) In the cases referred to in section 44b, including in conjunction with section 69d (4), in section 60a, including in conjunction with section 69d (5), in section 60e (1) or (6) and section 60f (1) or (3), only section 95b applies accordingly as regards technical mechanisms for protecting programs.

Section 69g

Application of other legal provisions; law of contract

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

(2) Contractual provisions which are contrary to section 69d (2), (3), (5) or (7) or section 69e are null and void.

Part 2

Related rights

Division 1
Protection of certain editions

Section 70
Scientific editions

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

Section 71
Posthumous works

- (1) Anyone who has a previously unreleased work released legally for the first time after the expiry of the copyright or communicates it to the public has the exclusive right to exploit the work. The same applies to unreleased works which were never protected within the territory to which this Act applies but whose author has been dead for more than 70 years. Sections 5 and 10 (1) and sections 15 to 23, 26, 27, 44a to 63 and 88 apply analogously.
- (2) The right is transferrable.
- (3) The right expires 25 years after the work was released or, if its first communication to the public occurred earlier, 25 years thereafter. The period is to be calculated in accordance with section 69.

Division 2
Protection of photographs

Section 72
Photographs

- (1) The provisions of Part 1 applicable to photographic works apply accordingly to photographs and products manufactured in a similar manner to photographs.
- (2) The photographer is entitled to exercise the right under subsection (1).
- (3) The right under subsection (1) expires 50 years after the photograph was released or, if its communication to the public occurred earlier, 50 years thereafter, although the right already expires 50 years after production if the photograph was not released or legally communicated to the public within this period. The period is to be calculated in accordance with section 69.

Division 3
Protection of performers

Section 73
Performers

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

Section 74
Recognition as performer

- (1) The performer has the right to be recognised as such in relation to his or her performance. The performer may thereby determine whether and with which name he or she is to be identified.
- (2) If a work is performed by several performers together and if identifying each of them individually involves a disproportionate amount of effort, they can only ask to be named as a group of artists. If the group of artists has an elected representative, the latter is the sole representative in respect of third parties. If a group has no such representative, the right may

only be asserted by the leader of the group and, if there is none, only by a representative to be elected by the group. The right of a participating performer to be individually named remains unaffected in the case of a special interest.
(3) Section 10 (1) applies accordingly.

Section 75

Derogatory treatment of performance

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

Section 76

Duration of moral rights

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

Section 77

Recording, reproduction and distribution

- (1) Performers have the exclusive right to fix their performance on a video or audio recording medium.
(2) Performers have the exclusive right to reproduce and distribute the video or audio recording medium on which their performance has been fixed. Section 27 applies accordingly.

Section 78

Communication to public

- (1) Performers have the exclusive right to
1. make their performance available to the public (section 19a),
 2. broadcast their performance, unless it has been legally fixed on video or audio recording mediums which have been released or legally made available to the public,
 3. make their performance perceivable to the public by screen, loudspeaker or similar technical devices in a place other than that in which it takes place.
- (2) Equitable remuneration is to be paid to performers if
1. their performance is legally broadcast pursuant to subsection (1) no. 2,
 2. their performance is communicated to the public by means of video or audio recording mediums, or
 3. the broadcast or the communication of their performance which is based on the making available to the public is made perceivable to the public.
- (3) Performers may not waive the claims to remuneration under subsection (2) in advance. They may only be assigned in advance to a collecting society.
(4) Section 20b applies accordingly.

Section 79

Rights of use

- (1) Performers may transfer their rights and claims under sections 77 and 78. Section 78 (3) and (4) remains unaffected.

(2) Performers may grant to another a right to use their performance in a particular manner or in any manner of use to which they are entitled.

(2a) Sections 31, 32 to 32b, 32d to 40, 41, 42 and 43 apply accordingly to transfers of rights and claims under subsection (1) and to transfers of rights under subsection (2).

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

1. after a period of 50 years following publication of the audio medium or 50 years following the first authorised use of the audio medium for communication to the public if the audio medium was not published and

2. if, within one year of being notified by the performer of his or her wish to terminate the transfer agreement, the producer of the audio medium does not carry out the two acts of use referred to in sentence 1.

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

Section 79a

Performers' entitlement to remuneration

(1) Where a performer has granted or transferred rights in a performance to a producer of an audio medium against payment of a one-time fee, the producer of the audio medium is required to pay the performer additional remuneration in the amount of 20 per cent of the income which the producer of the audio medium earns from the reproduction, the sale and the making available to the public of the audio medium containing the performance. Where an audio medium contains the recording of performances by several performers, the amount of the remuneration likewise amounts to a total of 20 per cent of the income. 'Income' means the income generated by the producer of the audio medium minus expenses.

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

(3) Performers may not waive the entitlement to remuneration under subsection (1). The right to remuneration may only be asserted by a collecting society. It may only be assigned in advance to a collecting society.

(4) The producer of the audio medium is obliged, upon request, to provide a performer with information concerning the income generated and other information required to quantify the entitlement to remuneration under subsection (1).

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

1. 50 years after release of the audio medium containing the performance or

2. 50 years after the first legal use of the audio medium containing the performance for communication to the public if the audio medium was not released.

Section 79b

Performers' remuneration for types of use which become subsequently known

(1) Performers have a right to separate equitable remuneration if their contracting party commences a new type of use of their performance which was agreed but not known at the time the contract was concluded.

- (2) Where a performer's contracting party has transferred the right of use to a third party, that third party is liable for the remuneration upon commencing the new type of use. The contracting party is no longer liable.
- (3) There can be no advance waiver of the rights under subsections (1) and (2).

Section 80

Work performed jointly by several performers

- (1) If several performers perform a work jointly and their respective contributions cannot be separately exploited, they have the joint right of exploitation. None of the participating performers may unreasonably refuse consent to exploitation of the work. Section 8 (2) sentence 3 and (3) and (4) applies accordingly.
- (2) For the purpose of asserting rights and claims under sections 77, 78 and 79 (3), section 74 (2) sentence 2 and 3 applies accordingly.

Section 81

Protection of organisers

If a performer's performance is organised by an enterprise, the rights under section 77 (1) and (2) sentence 1 and section 78 (1) are enjoyed by the performer as well as by the owner of the enterprise. Section 10 (1), section 31, and sections 33 and 38 apply accordingly.

Section 82

Duration of exploitation rights

- (1) Where a performance has been recorded on an audio medium, the performer's rights of as referred to in sections 77 and 78 expire 70 years after the release of the audio recording or, if its first legal use for communication to the public took place earlier, 70 years after the latter. Where the performance was not recorded on an audio medium, the rights of the performer as referred to in sections 77 and 78 expire 50 years after the release of the recording or, if its first legal use for communication to the public occurred earlier, 50 years thereafter. However, the performer's rights already expire 50 years after the performance if a recording has not been released or not legally used for communication to the public within that period.
- (2) The organiser's rights as referred to in section 81 expire 25 years after the release of a recording of the performance or, if the first legal use for communication to the public occurred earlier, 25 years thereafter. The rights already expire 25 years after the performance if a recording has not been released or not legally used for communication to the public within that period.
- (3) The periods are to be calculated in accordance with section 69.

Section 83

Limitations of exploitation rights

The provisions of Part 1 Division 6 apply accordingly to the rights afforded to the performer under sections 77 and 78 and to the organiser under section 81.

Section 84

(repealed)

Division 4

Protection of producers of audio recordings

Section 85

Exploitation rights

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

(2) The right is transferable. The producer of an audio recording may grant to another the right to use the audio recording in a particular manner or in any manner of use to which the producer is entitled. Section 31 and sections 33 and 38 apply accordingly.

(3) The right expires 70 years after the release of the audio recording. If the audio recording was not released within 70 years after production but was used legally for communication to the public, the right expires 50 years after the latter. If the audio recording has not been released or legally used for communication to the public during that period, the right expires 50 years after the production of the audio recording. The period is to be calculated in accordance with section 69.

(4) Section 10 (1) and sections 23 and 27 (2) and (3), as well as the provisions of Part 1 Division 6 apply accordingly.

Section 86

Right of participation

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

Division 5

Protection of broadcasting organisations

Section 87

Broadcasting organisations

(1) Broadcasting organisations have the exclusive right to

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

(2) The right is transferable. Broadcasting organisations may grant to another the right to use the broadcast in a particular manner or in any manner of use to which they are entitled. Section 31 and sections 33 and 38 apply accordingly.

(3) The right expires 50 years after the first broadcast. The period is to be calculated in accordance with section 69.

(4) Section 10 (1) and the provisions of Part 1 Division 6, with the exception of section 47 (2) sentence 2 and section 54 (1), apply accordingly.

(5) Broadcasting organisations and retransmission services are mutually obliged to conclude a contract on reasonable conditions concerning retransmission within the meaning of section 20b (1) sentence 1 by means of cable systems or microwave systems, unless there is objectively justifiable reason to refuse to conclude such a contract; the broadcasting organisation's obligation also applies in respect of the broadcasting rights granted or transferred to it in regard to its own broadcast. Upon the request of the retransmission service or of the broadcasting organisation, the contract is to be concluded with those collecting societies which are entitled to assert a claim in relation to retransmission by means of cable systems or microwave systems, insofar as there is no objective reason to justify the refusal of joint conclusion of the contract. Broadcasting organisations and retransmission services conduct the negotiations they commence regarding other forms of retransmission in good faith.

(6) Subsection (5) applies accordingly to direct injection pursuant to section 20d (1).

Division 6
Protection of makers of database

Section 87a
Definitions

- (1) For the purposes of this Act, 'database' means a collection of works, data or other independent elements arranged in a systematic or methodical way and individually accessible by electronic or other means and whose obtaining, verification or presentation requires a substantial qualitative or quantitative investment. A database whose content has been changed in a qualitatively or quantitatively substantial manner is deemed to be a new database insofar as the change requires a substantial qualitative or quantitative investment.
- (2) For the purposes of this Act, 'producer of a database' means whoever has made the investment within the meaning of subsection (1).

Section 87b
Rights of makers of database

- (1) The producer of the database has the exclusive right to reproduce and distribute the database as a whole or a qualitatively or quantitatively substantial part of the database and to make it available to the public. The reproduction, distribution or communication to the public of a qualitatively or quantitatively substantial part of the database is equivalent to the repeated and systematic reproduction, distribution or communication to the public of qualitatively or quantitatively insubstantial parts of the database insofar as these actions run contrary to a normal utilisation of the database or unreasonably impair the legitimate interests of the producer of the database.
- (2) Section 10 (1), section 17 (2) and section 27 (2) and (3) apply accordingly.

Section 87c
Limitations on rights of makers of database

- (1) The reproduction of a qualitatively or quantitatively substantial part of a database is permitted
1. for private use; this does not apply to a database whose elements are accessible individually by electronic means,
 2. for the purposes of scientific research pursuant to section 60c,
 3. for the purpose of illustration in teaching in educational establishments pursuant to sections 60a and 60b,
 4. for the purposes of text and data mining pursuant to section 44b,
 5. for the purposes of text and data mining for scientific research purposes pursuant to section 60d,
 6. for the purposes of the preservation of a database pursuant to section 60e (1) and (6) and section 60f (1) and (3).
- (2) The reproduction, distribution and communication to the public of a qualitatively or quantitatively substantial part of a database is permitted for use in proceedings before a court, an arbitration tribunal or authority, as well as for the purposes of public security.
- (3) Sections 45b to 45d and 61d to 61g apply accordingly.
- (4) The digital distribution and digital communication to the public of a part of a database which is essential in terms of its nature or extent is permitted for the purposes of illustration in teaching in educational establishments in accordance with section 60a.
- (5) Section 62 applies accordingly to the acknowledgement of source.
- (6) In the cases referred to in subsection (1) nos. 2, 3, 5 and 6 and subsection (4), section 60g (1) applies accordingly.

Section 87d **Duration of rights**

The rights of the producer of a database expire 15 years after the publication of the database, but already 15 years after its production if the database was not published within that period. The period is to be calculated in accordance with section 69.

Section 87e **Contracts concerning use of database**

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

Division 7 **Protection of publishers of press publications**

Section 87f **Definitions**

(1) 'Press publication' means any collection comprising mainly written works of a journalistic nature which may also contain other works or other subject matter protected under this Act and which

1. constitutes an individual item within a periodical or regularly updated publication under a single title, such as a newspaper or a general or special interest magazine,
2. has the purpose of providing the general public with information related to news or other topics and
3. is published in any media under the initiative, editorial responsibility and control of a publisher of press publications within the meaning of subsection (2).

Periodicals which are published for scientific or academic purposes are not press publications.

(2) 'Publisher of press publications' means any person who produces a press publication. If the press publication was produced by an enterprise, the owner of the enterprise is deemed to be the producer.

(3) For the purposes of this Division, 'information society service' means services within the meaning of Article 1 (1) (b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

Section 87g **Rights of publishers of press publications**

(1) Publishers of press publications have the exclusive right to make their press publications available to the public and to reproduce them, in full or in part, for online use by the providers of information society services.

(2) The rights of publishers of press publications do not encompass

1. the use of the facts contained in the press publication,
2. the private or non-commercial use of a press publication by individual users,

3. the creation of hyperlinks to a press publication and
 4. the use of individual words in or very short extracts from a press publication.
- (3) The rights of publishers of press publications are transferrable. Sections 31 and 33 apply accordingly.

Section 87h

Exercise of rights of publishers of press publications

- (1) The rights of publishers of press publications may not be asserted to the detriment of the author or related rightholder whose work or other subject matter protected under this Act is contained in the press publication.
- (2) The rights of publishers of press publications may not be asserted for the purpose of
1. prohibiting third parties the authorised use of such works or such other subject matter protected under this Act which were included in the press publication based on a non-exclusive right of use or
 2. prohibiting third parties the use of works or other subject matter which are no longer protected under this Act which were included in the press publication.

Section 87i

Presumption of ownership; uses permitted by law

Section 10 (1) and the provisions of Part 1 Division 6 apply accordingly.

Section 87j

Duration of rights of publishers of press publications

The rights of publishers of press publications lapse two years after a press publication is first published. The period is to be calculated in accordance with section 69.

Section 87k

Right of participation

- (1) Authors and the holders of rights in other subject matter protected under this Act are entitled to an equitable share of the income which publishers of press publications generate from the use of their rights under section 87g (1), at a minimum a share of one third of that income. Derogations from sentence 1 to the detriment of authors and the holders of rights in other subject matter protected under this Act are permitted only by an agreement which is based on a joint remuneration agreement (section 36) or collective agreement.
- (2) The claim under subsection (1) may only be asserted by a collecting society.

Part 3

Special provisions on films

Division 1

Cinematographic works

Section 88

Right to make film

- (1) If the author permits another person to make a film of his or her work, then, in cases of doubt, this is deemed to involve the granting of the exclusive right to use the work in unaltered form or following adaptation or transformation in the production of a cinematographic work and to use the cinematographic work, as well as translations and other cinematographic adaptations in all manner of uses. Section 31a (1) sentence 3 and 4, and (2) to (4) does not apply.
- (2) The entitlements designated in subsection (1) do not entitle the work to be re-filmed. The author is authorised to exploit his or her work cinematically in another manner after the expiry of 10 years following the conclusion of the contract. Derogation from sentence 2 to the

detriment of the author is possible only by an agreement which is based on a joint remuneration agreement (section 36) or collective agreement.

(3) (repealed)

Section 89

Rights in cinematographic works

(1) In cases of doubt, anyone who undertakes to participate in the production of a film, in the event that they acquire a copyright in the cinematographic work, grants the producer of the film the exclusive right to use the cinematographic work, as well as translations and other cinematographic adaptations or transformations of the cinematographic work in all manner of uses. Section 31a (1) sentence 3 and 4, and (2) to (4) does not apply.

(2) Where the author of the cinematographic work grants the right of use designated in subsection (1) in advance to a third party, the author nevertheless always retains the right to grant this right to the producer of the film, either in limited or unlimited form.

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

(4) Subsections (1) and (2) apply accordingly in relation to the rights of cinematographic exploitation in photographs and photographic works produced in connection with the creation of a cinematographic work.

Section 90

Limitation of rights

(1) The provisions on

1. the transfer of rights of use (section 34),
2. the grant of further rights of use (section 35) and
3. the rights of revocation (sections 41 and 42)

do not apply to the rights under section 88 (1) and section 89 (1). Sentence 1 does not apply to the right to make a film until filming commences. Agreement may be reached with the author in advance to rule out the right of revocation for non-exercise (section 41) up until filming commences for a period of up to five years.

(2) The provision on the right to other exploitation after 10 years in the case of flat-rate remuneration (section 40a) does not apply to the rights under section 88 and section 89 (1).

Section 91

(repealed)

Section 92

Performers

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

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

(3) Section 90 applies accordingly.

Section 93

Protection against distortion; claim to identification

(1) The authors of a cinematographic work and of works used in its production, as well as the holders of related rights who participate in the production of the cinematographic work or whose contributions are used in its production may, in accordance with sections 14 and 75,

only prohibit gross distortions or other gross derogatory treatment of their works or their contributions with respect to the production and exploitation of the cinematographic work. Each author or rightholder takes the others and the producer of the film into due account when exercising the right.

(2) It is not necessary to name each individual performer participating in a film if this involves disproportionate effort.

Section 94

Protection of producers of films

(1) The producer of a film has the exclusive right to reproduce, distribute, use for public presentation, broadcasting or making available to the public the video recording or combined video and audio recording. Further, the producer of a film has the right to prohibit any distortion or abridging of the video recording or combined video and audio recording which is capable of prejudicing his or her legitimate interests therein.

(2) The right is transferable. The producer of the film may grant to another the right to use the video recording or combined video and audio recording in a particular manner or in any manner of use to which he or she is entitled. Section 31 and sections 33 and 38 apply accordingly.

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

(4) Section 10 (1) and sections 20b and 27 (2) and (3), as well as the provisions of Part 1 Division 6 apply accordingly.

Division 2

Moving pictures

Section 95

Moving pictures

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

Part 4

Common provisions on copyright and related rights

Division 1

Supplementary protective provisions

Section 95a

Protection of technical measures

(1) Effective technical measures to protect a work protected under this Act or other subject matter protected under this Act may not be circumvented without the rightholder's consent where the person knows or must have reasonable grounds to know that circumvention is taking place in order to facilitate access to such a work or protected subject matter or its use.

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

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

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

(4) The tasks and powers of public agencies for the purposes of protecting public security or the administration of criminal justice remain unaffected by the prohibitions under subsections (1) and (3) as well as the powers of cultural heritage institutions referred to in section 61d.

Section 95b **Measures in respect of limitations**

(1) Where a rightholder applies the technical measures in accordance with this Act, that rightholder is obliged to provide to the beneficiaries of the provisions below, if they have legal access to the work or the protected subject matter concerned, the means of benefiting from these provisions to the necessary extent:

1. section 44 (Text and data mining),
- 1a. section 45 (Administration of justice and public security),
2. section 45a (Persons with disabilities),
3. section 45b (Persons with visual impairment or reading disability),
4. section 45c (Authorised entities; remuneration; authorisation to issue statutory instruments),
5. section 47 (School broadcasts),
6. section 53 (Reproduction for private and other personal uses)
 - a) subsection (1) insofar as copies on paper or a similar medium which have been affected by the use of any kind of photographic technique or by some other process having similar effects are concerned,
 - b) (repealed)
 - c) subsection (2) sentence 1 no. 2 read in conjunction with sentence 2 no. 1,
 - d) subsection (2) sentence 1 nos. 3 and 4, in each case read in conjunction with sentence 2 no. 1,
7. section 55 (Reproduction by broadcasting organisations),
8. section 60a (Teaching in educational establishments),
9. section 60b (Media collections for teaching),
10. section 60c (Scientific research),
11. section 60d (Text and data mining for scientific research purposes),
12. section 60e (Libraries)
 - a) subsection (1),

- b) subsection (2),
- c) subsection (3),
- d) subsection (5),

13. section 60f (Archives, museums and educational establishments).

Agreements which rule out the obligations under sentence 1 are invalid.

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

(3) Where works and other protected subject matter are made available to the public by virtue of section 19a on the basis of a contractual agreement, subsections (1) and (2) only apply to lawfully permitted uses pursuant to the following provisions:

1. section 44 (Text and data mining),
2. section 45b (Persons with visual impairment or reading disability),
3. section 45c (Authorised entities; remuneration; authorisation to issue statutory instruments),
4. section 60a (Teaching in educational establishments), insofar as digital uses under the responsibility of an educational establishment are permitted on its premises or at another location or in a secure electronic environment,
5. section 60d (Text and data mining for scientific research purposes), insofar as research organisations and cultural heritage institutions are permitted to make reproductions,
6. section 60e (Libraries), insofar as reproductions are permitted for the purpose of preservation,
7. section 60f (Archives, museums and educational establishments), insofar as reproductions are permitted for the purpose of preservation.

(4) Technical measures applied to meet the obligations under subsection (1), including measures applied to implement voluntary agreements, enjoy the legal protection under section 95a.

Section 95c

Protection of rights management information

(1) Information from rightholders for the management of rights (rights management information) may not be removed or altered if any of the information concerned is affixed to a copy of a work or of other protected subject matter or in the context of communication to the public of such a work or protected subject matter is published and if removal or alteration has been knowingly undertaken without authorisation, and those acting know or must have reasonable grounds to know that by doing so they are inducing, enabling, facilitating or concealing an infringement of copyright or related rights.

(2) For the purposes of this Act, 'rights management information' means electronic information which identifies the works or other protected subject matter, the author or any other rightholder, information on the terms and conditions relating to the use of the works or protected subject matter, and any numbers and codes which represent such information.

(3) Works or other protected subject matter from which rights management information has been removed or altered without authorisation may not be knowingly distributed, imported for distribution, broadcast, communicated to the public or made available to the public without

authorisation if the person knows or must have reasonable grounds to know that they have induced, enabled, facilitated or concealed an infringement of copyright or related rights.

Section 95d

Labelling obligations

- (1) Works and other protected subject matter which are protected by technical measures are to be clearly labelled with information on the characteristics of the technical measures.
- (2) Any person who protects works and other protected subject matter by technical measures is required to label these in order to facilitate rights management as per section 95b (2) with their name or the name of the enterprise and the address to which documents are to be delivered.

Section 96

Prohibition of exploitation

- (1) Illegally produced copies may neither be distributed nor used for the purposes of communication to the public.
- (2) Illegally made broadcasts may not be fixed on video or audio recording mediums or communicated to the public.

Division 2

Infringements

Subdivision 1

Civil law provisions; legal recourse

Section 97

Right to require cessation of infringement and to damages

- (1) Any person who infringes copyright or another right protected under this Act may be required by the injured party to eliminate the infringement or, where there is a risk of repeated infringement, may be required by the injured party to cease and desist. The right to require the cessation also exists where the risk of infringement exists for the first time.
- (2) Any person who acts intentionally or negligently is obliged to pay the injured party damages for the prejudice suffered as a result of the infringement. When setting the damages any profit obtained by the infringer as a result of the infringement of the right may also be taken into account. Entitlement to damages may also be assessed on the basis of the amount the infringer would have had to pay in equitable remuneration if the infringer had requested authorisation to use the right infringed. Authors, writers of scientific editions (section 70), photographers (section 72) and performers (section 73) may also demand pecuniary compensation for damage which is non-pecuniary in nature provided and to the extent that this is equitable.

Section 97a

Notification

- (1) The injured party is, as a rule, to notify the infringer before instituting proceedings in court to desist from infringement and to give the infringer the opportunity to settle the dispute by entering into an obligation to desist from infringement accompanied by an equitable contractual penalty.
- (2) The notification must clearly and comprehensibly
 1. state the name or company of the injured party if it is not the injured party but a representative who gives notification,
 2. provide a precise description of the infringement,
 3. break down claims to payment asserted into claims for damages and claims for compensation, and

4. if the notification contains a request to enter into an obligation to desist from infringement, to state to whether the proposed obligation to desist from infringement goes substantially beyond the infringement notified.

A notification which does not meet the conditions of sentence 1 is not effective.

(3) Where the notification is justified and meets the conditions of subsection (2) sentence 1 nos. 1 to 4, reimbursement of expenses necessarily incurred may be demanded. Where legal services have been used, the reimbursement of expenses necessarily incurred is limited, as regards statutory fees, to fees based on a value of the object of the claim to desist and the claim for removal of 1,000 euros if the person notified

1. is a natural person who does not use the works protected under this Act or other subject matter protected under this Act for his or her commercial or self-employed business activity and

2. is not already obliged to desist from infringement on the basis of a claim of the notifying party by contract, a legally binding decision or a temporary injunction.

The value referred to in sentence 2 is also decisive where a claim to desist and a claim for removal are asserted in parallel. Sentence 2 does not apply where the value referred to is unreasonable based on the specific circumstances of the individual case.

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

Section 98

Claim to destruction, recall and release of copies

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

(2) Any person who infringes copyright or another right protected under this Act may be required by the injured party to recall unlawfully produced or distributed copies or copies intended for unlawful distribution or to definitively remove them from the channels of commerce.

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

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

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

Section 99

Liability of owner of enterprise

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

Section 100

Pecuniary compensation

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

Section 101 **Right of information**

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

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

1. was in possession of infringing copies,
2. was using infringing services,
3. was rendering services used in infringing activities or
4. was indicated by the person referred to in no. 1, 2 or 3 as being involved in the production, manufacture or distribution of such copies, other products or services,

unless the person concerned would, under sections 383 to 385 of the Code of Civil Procedure, be entitled to refuse testimony as a witness in the proceedings against the infringer. In the event of a claim under sentence 1 being brought before a court, the court may, upon application, suspend the litigation pending against the infringer until disposal of any litigation being conducted in respect of a right to information. The person obliged to provide information may demand reimbursement from the injured party of the expenses necessarily incurred in providing the information.

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

1. the name and address of the producers, suppliers and other previous holders of the copies or other products, the users of the services, as well as the intended wholesalers and retailers, and
2. the quantities of produced, delivered, received or ordered copies or other products, as well as the prices paid for the copies or other products in question.

(4) The claims under subsections (1) and (2) are precluded where their assertion is disproportionate in the individual case.

(5) Where the person obliged to provide information intentionally or gross negligently provides incorrect or incomplete information, that person is obliged to reimburse the injured party for the resulting damage.

(6) Any person who provides truthful information without having been obliged to do so in accordance with subsection (1) or (2) is only held liable against third parties if they knew that they were not obliged to provide the information.

(7) In the event of an obvious infringement, the obligation to provide information may be issued by way of a temporary injunction pursuant to sections 935 to 945 of the Code of Civil Procedure.

(8) The findings may be used in criminal proceedings or in proceedings based on the Act on Regulatory Offences (*Ordnungswidrigkeitengesetz*) in respect of an act committed before the information was provided against the person obliged to provide information or against a

relative designated in section 52 (1) of the Code of Criminal Procedure (*Strafprozeßordnung*) only with the consent of the person obliged to provide information.

(9) Where the information can be provided only by using traffic data (section 3 no. 70 of the Telecommunications Act (*Telekommunikationsgesetz*)), a prior judicial order, which must be applied for by the injured party as to the admissibility of use of the traffic data, is required for the provision of such information. Sole jurisdiction for issuing any such order, regardless of the value of the claim, lies with the regional court in whose district the person obliged to provide information has his or her domicile, principal place of business or a place of business. The decision is rendered by the civil division. The provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) apply accordingly to the proceedings. The costs of the judicial order are borne by the injured party. The remedy of a complaint (*Beschwerde*) is admissible in respect of the regional court's decision. It must be filed within a period of two weeks. The provisions on the protection of personal data otherwise remain unaffected.

(10) The fundamental right to privacy of telecommunications (Article 10 of the Basic Law (*Grundgesetz*)) is restricted on account of subsection (2) read in conjunction with subsection (9).

Section 101a

Entitlement to presentation and inspection

(1) Any person who has with sufficient probability infringed copyright or another right protected under this Act may be required by the injured party to present a document or to permit the inspection of an object in their possession if this is necessary in order to substantiate any claims. Where an infringement has with sufficient probability occurred on a commercial scale, the entitlement also extends to the presentation of banking, financial or commercial documents. Where the supposed infringer asserts that this information is confidential, the court takes the measures necessary to guarantee the level of protection required in the individual case.

(2) The claim under subsection (1) is precluded if its assertion is disproportionate in the individual case.

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

(4) Section 811 of the Civil Code and section 101 (8) of this Act apply accordingly.

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

Section 101b

Securing claims for damages

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

(2) The claim under subsection (1) is precluded if its assertion is disproportionate in the individual case.

(3) The obligation to present the documents designated in subsection (1) may be ordered by way of a temporary injunction pursuant to sections 935 to 945 of the Code of Civil Procedure if the entitlement to damages obviously exists. The court takes the measures necessary to

guarantee the protection of confidential information. This in particular applies in cases in which the temporary injunction is issued without the opposing party having been heard.

(4) Section 811 of the Civil Code and section 101 (8) of this Act apply accordingly.

Section 102

Limitation period

The provisions of Book 1 Division 5 of the Civil Code apply accordingly in respect of the limitation period regarding claims on account of an infringement of copyright or another right protected under this Act. Where the obligated party obtained something on account of the infringement at the rightholder's expense, section 852 of the Civil Code applies accordingly.

Section 102a

Entitlements resulting from other statutory provisions

Entitlements resulting from other statutory provisions remain unaffected.

Section 103

Publication of judgment

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

Section 104

Legal recourse

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

Section 104a

Place of jurisdiction

(1) As regards actions brought on account of copyright litigation matters against a natural person who does not use works protected under this Act or other subject matter protected under this Act for his or her commercial or self-employed business activity, that court has exclusive jurisdiction in whose district that person has his or her domicile at the time when the action is brought, for want of such domicile his or her habitual residence. If the defendant has neither his or her domicile nor habitual residence in Germany, that court has jurisdiction in whose district the act was carried out.

(2) Section 105 remains unaffected.

Section 105

Courts for copyright litigation

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

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

(3) The *Land* governments may transfer the authorisations referred to in subsections (1) and (2) to the *Land* departments of justice.

(4) and (5) (repealed)

Subdivision 2
Criminal and regulatory fine provisions

Section 106
Unlawful exploitation of copyrighted works

(1) Any person who, without the rightholder's consent, reproduces, distributes or communicates to the public a work or an adaptation or transformation of a work in manners other than those permitted by law incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(2) The attempt is punishable.

Section 107
Unlawful affixing of designation of authorship

(1) Any person who

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

incurs a penalty of imprisonment for a term not exceeding three years or a fine, unless other provisions impose a more severe penalty.

(2) The attempt is punishable.

Section 108
Infringement of related rights

(1) Any person who, without the rightholder's consent,

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

in manners other than those permitted by law incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(2) The attempt is punishable.

Section 108a
Commercial unlawful exploitation

(1) Where the offender in the cases referred to in sections 106 to 108 acts on a commercial basis, the penalty is imprisonment for a term not exceeding five years or a fine.

(2) The attempt is punishable.

Section 108b

Infringement of technical measures and rights management information

(1) Any person who,

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

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

then, if the offence was not committed exclusively for the personal private use of the offender or of persons personally associated with the offender or does not relate to such use, that person incurs a penalty of imprisonment for a term not exceeding one year or a fine.

(2) A penalty is also imposed on any person who, contrary to section 95a (3), produces, imports, distributes, sells or rents a device, a product or component for commercial purposes.

(3) If, in cases referred to in subsection (1), the offender acts on a commercial scale, the penalty is imprisonment for a term not exceeding three years or a fine.

Section 109

Application for criminal prosecution

In the cases referred to in sections 106 to 108 and in section 108b, the act is only prosecuted upon application, unless the criminal prosecution authority regards ex-officio action to be necessary on account of the particular public interest in the criminal prosecution.

Section 110

Confiscation

Articles which are the object of a criminal offence pursuant to sections 106, 107 (1) no. 2 and sections 108 to 108b may be confiscated. Section 74a of the Criminal Code (*Strafgesetzbuch*) applies. Where the claims designated in section 98 are upheld in proceedings under the provisions of the Code of Criminal Procedure concerning compensation of the injured party (sections 403 to 406c of the Code of Criminal Procedure), the provisions concerning confiscation do not apply.

Section 111

Publication of judgement

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

Section 111a

Regulatory fine provisions

(1) Any person who

1. contrary to section 95a (3)
 - a) sells, rents out or distributes a device, product or component outside the circle of people with whom the offender is personally associated or
 - b) for commercial purposes possesses, advertises for sale or rental, or renders a service in respect of a device, product or component,
 2. contrary to section 95b (1) sentence 1 does not provide necessary means or
 3. contrary to section 95d (2) does not or does not fully label works or other protected subject matter
- is deemed to have committed a regulatory offence.
- (2) In the cases referred to in subsection (1) nos. 1 and 2, the regulatory offence may be sanctioned with a regulatory fine of no more than 50,000 euros and in other cases with a regulatory fine of no more than 10,000 euros.

Subdivision 3

Provisions on measures by customs authorities

Section 111b

Proceedings under German law

- (1) If the production or distribution of copies infringes copyright or another right protected under this Act, then unless Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29.6.2013, p. 15), as amended, is applicable, the copies are, upon application and against payment of a security by the rightholder, following their import or export subject to confiscation by the customs authority insofar as the infringement is obvious. This applies to dealings with other Member States of the European Union and with other Contracting Parties of the Agreement on the European Economic Area only insofar as the customs authorities are responsible for controls.
- (2) If the customs authority orders the confiscation, it informs the person authorised to dispose of the articles and the applicant thereof without delay. The applicant is to be informed of the origin, quantity and whereabouts of the copies, as well as of the name and address of the person authorised to dispose of the articles; the privacy of correspondence and posts (Article 10 of the Basic Law) are thereby restricted. The applicant is given the opportunity to inspect the copies insofar as this does not interfere with business or trade secrets.
- (3) If no objection is raised to the seizure within two weeks following service of the notification in accordance with subsection (2) sentence 1, the customs authority orders confiscation of the seized copies.
- (4) If the person authorised to dispose of the articles objects to the seizure, the customs authority informs the applicant thereof without delay. The applicant must declare to the customs authority without delay whether he or she will uphold the application in accordance with subsection (1) in respect of the seized copies.

1. If the applicant withdraws the application, the customs authority revokes the seizure without delay.
2. If the applicant upholds the application and submits an executable court decision ordering the storage of the seized copies or a limitation on the right of disposal, the customs authority takes the necessary measures.

Where the cases referred to in no. 1 or no. 2 do not exist, the customs authority revokes the seizure following the expiry of two weeks after service of the notification on the applicant in accordance with sentence 1; if the applicant can furnish proof that an application for the

court decision in accordance with no. 2 has been made but has not yet been served, the seizure is maintained for no longer than a further two weeks.

(5) If the seizure proves to have been unjustified from the outset and the applicant has upheld the application referred to in subsection (1) in respect of the seized copies or did not make a declaration without delay (subsection (4) sentence 2), then the applicant is obliged to reimburse the person authorised to dispose of the articles the damage arising on account of the seizure.

(6) The application referred to in subsection (1) is to be made to the Central Customs Authority and is effective for one year, unless a shorter period is applied for; a renewed application is possible. The applicant is asked to pay costs in accordance with section 178 of the Fiscal Code (*Abgabenordnung*) for official acts performed in connection with the application.

(7) The seizure and the confiscation may be contested by means of the legal remedies permitted against seizure and confiscation in regulatory fine proceedings under the Act on Regulatory Offences. The applicant is to be heard in the appeal proceedings. An immediate appeal (*sofortige Beschwerde*) is admissible against the decision of the local court; the higher regional court decides in the matter.

(8) (repealed)

Section 111c

Proceedings pursuant to Regulation (EU) No 608/2013

Section 111b (5) and (6) applies accordingly to proceedings pursuant to Regulation (EU) No 608/2013, unless that Regulation contains provisions which preclude this.

Division 3

Compulsory enforcement

Subdivision 1

General

Section 112

General

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

Subdivision 2

Compulsory enforcement for pecuniary claims against author

Section 113

Copyright

Execution on copyright for pecuniary claims against the author is admissible only with his or her consent and only to the extent that the author may grant rights of use (section 31). The consent may not be given through a legal representative.

Section 114

Originals of works

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

(2) No consent is required

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

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

Subdivision 3

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

Section 115

Copyright

Execution on copyright for pecuniary claims against the author's successor in title (section 30) is admissible only with his or her consent and only to the extent that the author's successor in title may grant rights of use (section 31). No consent is required if the work has been released.

Section 116

Originals of works

(1) Execution for pecuniary claims against the author's successor in title (section 30) on originals of the author's work which he or she owns is admissible only with successor in title's consent.

(2) No consent is required

1. in the cases referred to in section 114 (2) sentence 1,
2. for execution on the original of a work if the work has been released.

Section 114 (2) sentence 2 applies accordingly.

Section 117

Executor

Where, in accordance with section 28 (2), the exercise of copyright by an executor has been ordered, the consent required in accordance with sections 115 and 116 is to be given by the executor.

Subdivision 4

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

Section 118

Analogous application

Sections 113 to 117 apply analogously

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

Subdivision 5

Compulsory enforcement for pecuniary claims in respect of certain devices

Section 119

Compulsory enforcement in respect of certain devices

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

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

(3) Subsections (1) and (2) apply accordingly to editions protected under sections 70 and 71, to photographs protected under section 72, to video and audio recordings protected under

section 77 (2) sentence 1, sections 85, 87, 94 and 95, and to databases protected under section 87b (1).

Part 5

Scope of application, transitional and final provisions

Division 1

Scope of Act

Subdivision 1

Copyright

Section 120

German nationals and nationals of other EU Member States or Contracting Parties of Agreement on EEA

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

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

1. Germans within the meaning of Article 116 (1) of the Basic Law who do not hold German nationality and
2. nationals of another Member State of the European Union (EU) or of another Contracting Party of the Agreement on the European Economic Area (EEA).

Section 121

Foreign nationals

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

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

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

(4) In all other cases, foreign nationals enjoy copyright protection under international treaties. Where no international treaties exist, copyright protection exists for such works insofar as, in accordance with notification published by the Federal Minister of Justice and Consumer Protection in the Federal Law Gazette, German nationals enjoy corresponding protection of their works in the state of which the author is a national.

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

(6) Foreign nationals enjoy the protection granted under sections 12 to 14 for all their works even if the conditions of subsections (1) to (5) are not met.

Section 122

Stateless persons

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

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

Section 123 **Foreign refugees**

The provisions of section 122 apply accordingly to foreigners who are refugees within the meaning of international treaties or other statutory provisions. This does not preclude protection under section 121.

Subdivision 2 **Related rights**

Section 124 **Scientific editions and photographs**

Sections 120 to 123 apply analogously in respect of the protection of scientific editions (section 70) and the protection of photographs (section 72).

Section 125 **Protection of performers**

(1) German nationals enjoy the protection granted under sections 73 to 83 for all their performances, regardless of where they take place. Section 120 (2) applies.

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

(3) Where performances by foreign nationals are lawfully fixed on video or audio recording mediums and these are released, foreign nationals enjoy the protection granted under section 77 (2) sentence 1, section 78 (1) no. 1 and (2) in respect of these video or audio recordings if the video or audio recordings were released within the territory to which this Act applies, unless the video or audio recordings were released outside the territory to which this Act applies more than 30 days before they were released within the territory to which this Act applies.

(4) Where performances by foreign nationals are lawfully broadcast, the foreign nationals enjoy protection against the fixing of the broadcast on video or audio recording mediums (section 77 (1)) and rebroadcasting of the broadcast (section 78 (1) no. 2), as well as the protection granted under section 78 if the broadcast was transmitted within the territory to which this Act applies.

(5) In all other cases, foreign nationals enjoy protection under international treaties. Section 121 (4) sentence 2 and sections 122 and 123 apply accordingly.

(6) Foreign nationals enjoy the protection granted under sections 74 and 75, section 77 (1) and section 78 (1) no. 3 for all their performances, even if the conditions of subsections (2) to (5) are not met. The same applies in respect of the protection granted under section 78 (1) no. 2 where a direct broadcast of the performance is concerned.

(7) Where protection is granted under subsections (2) to (4) or (6), it expires at the latest upon the expiry of the term of protection in that state of which the performer is a national, without exceeding the term of protection under section 82.

Section 126 **Protection of producers of audio recordings**

(1) German nationals or enterprises whose principal place of business is located within the territory to which this Act applies enjoy the protection granted under sections 85 and 86 for all their audio recordings, regardless of whether and where they were released. Section 120 (2) applies. Enterprises whose principal place of business is located in another Member State of the European Union or in another Contracting Party of the Agreement on the

European Economic Area are deemed equivalent to enterprises whose principal place of business is located within the territory to which this Act applies.

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

(3) In all other cases, foreign nationals or enterprises whose principal place of business is not located within the territory to which this Act applies enjoy protection under international treaties. Section 121 (4) sentence 2 and sections 122 and 123 apply accordingly.

Section 127

Protection of broadcasting organisations

(1) Broadcasting organisations whose principal place of business is located within the territory to which this Act applies enjoy the protection granted under section 87 for all broadcasts, regardless of where they are transmitted. Section 126 (1) sentence 3 applies.

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

(3) In all other cases, broadcasting organisations with no principal place of business within the territory to which this Act applies enjoy protection in accordance with the content of international treaties. Section 121 (4) sentence 2 applies accordingly.

Section 127a

Protection of makers of database

(1) German nationals and legal entities whose principal place of business is located within the territory to which this Act applies enjoy the protection granted under section 87b. Section 120 (2) applies.

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

1. their head office or main establishment is located within the territory of one of the states designated in section 120 (2) no. 2 or
2. their registered office is located within the territory of one of these states and there is an actual link between their activities and the German economy or the economy of one of these states.

(3) In all other cases, foreign nationals and legal entities enjoy the protection granted under international treaties, as well as agreements which the European Community concludes with third-party states; the Federal Ministry of Justice and Consumer Protection gives notification of these agreements by publication in the Federal Law Gazette.

Section 127b

Protection of publishers of press publications

(1) German nationals or enterprises whose principal place of business is located within the territory to which this Act applies enjoy the protection granted under section 87g. Section 120 (2) and section 126 (1) sentence 3 apply.

(2) Enterprises which have no principal place of business within the territory to which this Act applies enjoy the protection granted under section 87g if their head office or main establishment is located within the territory to which this Act applies or within the territory of

another Member State of the European Union or of another Contracting Party of the Agreement on the European Economic Area.

Section 128

Protection of producers of films

(1) German nationals or enterprises whose principal place of business is located within the territory to which this Act applies enjoy the protection granted under section 94 and 95 for all their video recordings or video and audio recordings, regardless of whether and where they were released. Section 120 (2) and section 126 (1) sentence 3 apply.

(2) The provisions of section 126 (2) and (3) apply accordingly to foreign nationals or enterprises with no principal place of business within the territory to which this Act applies.

Division 2

Transitional provisions

Section 129

Works

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

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

Section 130

Translations

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

Section 131

Literary works set to music

Literary works set to music whose reproduction, distribution and communication to the public was permitted without the author's consent in accordance with section 20 of the Act on Copyright in Works of Literature and of Musical Art (*Gesetz betreffend das Urheberrecht an Werken der Literatur und der Tonkunst*) of 19 June 1901 (Reich Law Gazette, p. 227), as amended by the Act Implementing the revised Berne Convention for the Protection of Literary and Artistic Works (*Gesetz zur Ausführung der revidierten Berner Übereinkunft zum Schutze von Werken der Literatur und Kunst*) of 22 May 1910 (Reich Law Gazette, p. 793), may continue to be reproduced, distributed and communicated to the public in the same measure if the setting to music of the work was released before the entry into force of this Act.

Section 132

Contracts

(1) The provisions of this Act, with the exception of sections 42 and 43, do not apply to contracts concluded before 1 January 1966. Section 43 applies accordingly to performers. Sections 40 and 41 apply to such contracts, with the proviso that the terms designated in section 40 (1) sentence 2 and in section 41 (2) are to be calculated from 1 January 1966 at the earliest.

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

(3) The provisions of this Act in the version applicable on 28 March 2002 continue to apply to contracts concluded, or other facts which occurred, before 1 July 2002, subject to sentences 2 and 3 and section 133 (2) to (4). Section 32a applies to facts which occurred after 28 March 2002. Section 32 applies to contracts concluded between 1 June 2001 and 30 June 2002 if the right granted or the permission is used after 30 June 2002.

- (3a) The provisions of this Act, subject to section 133 (2) to (4), in the version applicable up to and including 28 February 2017 continue to apply to contracts concluded or other facts which occurred as from 1 July 2002 and before 1 March 2017.
- (4) Subsections (3) and (3a) apply accordingly to performers.

Section 133

Transitional provision in implementation of contract law provisions in Directive (EU) 2019/790

- (1) Subject to subsections (2) to (4), the provisions of Part 1 Division 5 Subdivision 2 in the version applicable on 1 March 2017 continue to apply to contracts concluded or other facts which occurred as from 1 March 2017 and before 7 June 2021.
- (2) As from 7 June 2021, the provisions on the author's further participation (section 32a) and on the right of revocation for non-exercise (section 41) in the version applicable on 7 June 2021 even apply to contracts concluded before that date.
- (3) As from 7 June 2022, the provisions on the provision of information by and accountability of a contracting party (section 32d) and on the provision of information by and accountability of third parties in the licence chain (section 32e), in the version applicable on 7 June 2021, also apply to contracts concluded before 7 June 2021. In derogation from sentence 1, in the case of contracts concluded before 1 January 2008, information about the use of film works or moving pictures and the filmic use of the works used in their production is only to be provided at the author's request.
- (4) Subsections (1) to (3) apply accordingly to performers.

Section 134

Authors

Any person who is regarded as the author of a work in accordance with previously applicable provisions but, upon the entry into force of this Act, is no longer regarded as the author of a work in accordance with the provisions of this Act is still deemed to be the author, regardless of the cases referred to in section 135. Where, in accordance with previously applicable provisions, a legal entity is regarded as the author of a work, the previously applicable provisions apply in respect of the calculation of the term of protection.

Section 135

Holders of related rights

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

Section 135a

Calculation of term of protection

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

Section 136

Reproduction and distribution

- (1) If a reproduction which is prohibited under this Act was previously permitted, the production of copies which began prior to the entry into force of this Act may be completed.
- (2) The copies produced in accordance with subsection (1) or prior to the entry into force of this Act may be distributed.

(3) If, under this Act, equitable remuneration is to be paid to the rightholder for a reproduction which was freely permitted in accordance with previous provisions, the copies designated in subsection (2) may be distributed without payment of remuneration.

Section 137 **Transfer of rights**

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

(2) If the copyright was transferred, in whole or in part, to another prior to the entry into force of this Act, then, in cases of doubt, the transfer also extends to the period by which the term of protection was extended in accordance with sections 64 to 66. The same applies accordingly if, prior to the entry into force of this Act, another person was authorised to exercise a right to which the author was entitled.

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

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

(5) Subsection (1) applies accordingly to related rights.

Section 137a **Photographic works**

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

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

Section 137b **Certain editions**

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

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

(3) The provisions of section 137 (3) and (4) apply accordingly.

Section 137c **Performers**

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

- (2) Where a right of use in a performance was granted or transferred to another before 1 July 1990, then, in cases of doubt, the grant or transfer also extends to the period by which the term of protection was extended.
- (3) The provisions of section 137 (3) and (4) apply accordingly.

Section 137d
Computer programs

- (1) The provisions of Part 1 Division 8 also apply to computer programs created before 24 June 1993. However, the exclusive rental right (section 69c no. 3) does not extend to copies of a program which a third party acquired before 1 January 1993 for rental purposes.
- (2) Section 69g (2) also applies to contracts concluded before 24 June 1993.
- (3) Section 69a (5), in the version applicable on 7 June 2021, only applies to contracts concluded and facts which occur as from that date.

Section 137e
Transitional provisions in implementation of Council Directive 92/100/EEC

- (1) The provisions of this Act which entered into force on 30 June 1995 also apply to works, performances, audio recordings, broadcasts and films created before that date, unless they were no longer protected on that date.
- (2) Where an original or a copy of a work or of a video or audio recording was acquired before 30 June 1995 or a third person was given permission to use it for rental purposes, the consent of the holder of the rental right (sections 17, 77 (2) sentence 1 and sections 85 and 94) required for rental after this date is deemed to have been given. The lessor must pay each of these rightholders equitable remuneration; section 27 (1) sentence 2 and 3 in respect of the claims of authors and performers and section 27 (3) applies accordingly. Section 137d remains unaffected.
- (3) Where a video or audio recording which was acquired or entrusted to a third person for rental purposes before 30 June 1995 was rented out between 1 July 1994 and 30 June 1995, then, applying subsection (2) sentence 2 accordingly, a right to remuneration exists to this rental.
- (4) Where an author granted an exclusive right of distribution before 30 June 1995, the grant also applies to the rental right. Where a performer participated in the production of a cinematographic work prior to this date or consented to the use of a performance in the production of a cinematographic work, his or her exclusive rights are deemed to have been transferred to the producer of the film. If the performer consented to the fixing of his or her performance on audio recording mediums or to the reproduction prior to this date, the grant is also considered as constituting a transferral of the right of distribution, including rental.

Section 137f
Transitional provisions in implementation of Council Directive 93/98/EEC

- (1) If, by application of this Act in the version applicable as from 1 July 1995, the term of protection of a previously accruing right is curtailed, the protection expires upon the expiry of the term of protection in accordance with the provisions applicable up until 30 June 1995. In all other cases, the provisions of this Act concerning the term of protection in the version applicable as from 1 July 1995 also apply to works and related rights whose protection had not yet expired on 1 July 1995.
- (2) The provisions of this Act in the version applicable as from 1 July 1995 also apply to works whose protection under this Act expired before 1 July 1995 but which continues to exist under the law of another Member State of the European Union or of a Contracting Party of the Agreement on the European Economic Area at that point in time. Sentence 1 applies accordingly to the related rights of the editor of posthumous works (section 71), the performer (section 73), the producers of audio recordings (section 85), of broadcasting organisations (section 87) and producers of films (sections 94 and 95).
- (3) Where, under subsection (2), the protection of a work is revived within the territory to which this Act applies, the author is entitled to the revived rights. An act of use begun before

1 July 1995 may, however, be continued to the extent provided for. Equitable remuneration is to be paid for the use from 1 July 1995 onwards. Sentences 1 to 3 apply accordingly to related rights.

(4) Where a right of use in a performance which is still protected under this Act is granted or transferred to another before 1 July 1995, then, in cases of doubt, the grant or transfer also extends to the period by which the term of protection was extended. In the case referred to in sentence 1, equitable remuneration is to be paid.

Section 137g

Transitional provisions in implementation of Directive 96/9/EC

(1) Section 23 (2), section 53 (5), section 55a and section 63 (1) sentence 2 also apply to database works created before 1 January 1998.

(2) The provisions of Part 2 Division 6 also apply to databases produced between 1 January 1983 and 31 December 1997. In these cases, the term of protection commences on 1 January 1998.

(3) Sections 55a and 87e do not apply to contracts concluded before 1 January 1998.

Section 137h

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

(1) Section 20a only applies to contracts concluded before 1 June 1998 as from 1 January 2000, insofar as they expire after that date.

(2) Where a contract on the joint production of a video or audio recording concluded before 1 June 1998 between several producers at least one of whom is a national of a Member State of the European Union or a Contracting Party of the Agreement on the European Economic Area provides for the geographical division of the broadcasting right amongst the producers without differentiating between satellite broadcast and other types of broadcast and if the satellite broadcast by one producer of the jointly produced production would prejudice the exploitation of the exclusive rights of another producer limited in respect of place or language, the satellite broadcast is permitted only if the holder of these exclusive rights has consented thereto.

(3) Section 20b (2) applies only insofar as the contract on the granting of the cable retransmission right was concluded after 1 June 1998.

Section 137i

Transitional provisions regarding Act to Modernise the Law of Obligations (*Gesetz zur Modernisierung des Schuldrechts*)

Article 229 section 6 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) applies, with the proviso that section 26 (7), section 36 (2) and section 102 in the version applicable until 1 January 2002 are equivalent to the provisions of the Civil Code on the limitation period in the version applicable until 1 January 2002.

Section 137j

Transitional provisions occasioned by implementation of Directive 2001/29/EC

(1) Section 95d (1) applies to all works and other protected subject matter put into circulation for the first time as from 1 December 2003.

(2) The provision in this Act on the term of protection for producers of audio recordings in the version applicable as from 13 September 2003 also applies to related rights the protection of which has not yet expired on 22 December 2002.

(3) If, under subsection (2), the protection of an audio medium is revived, the producer of the audio recording is entitled to the revived rights.

(4) If, before 13 September 2003, a right of use in an audio recording still protected under this Act had been granted or transferred to another, then, in cases of doubt, the grant or transfer, in the event of an extension of the term of protection provided under section 85 (3), also applies to this period. In the case referred to in sentence 1, equitable remuneration is to be paid.

**Section 137k
(repealed)**

Section 137l

Transitional provisions for new types of use

(1) Where, between 1 January 1966 and 1 January 2008, the author has granted to another all essential rights of use, exclusively as well as without limitation of place and time, the rights of use which were not known at the time the contract was concluded are deemed also to have been granted to the other person, insofar as the author does not indicate to the other person that he or she objects to such use. In respect of types of use which were already known on 1 January 2008, the objection may be made only within one year. In all other cases, the right of objection expires after three months have elapsed since the other person sent the author, at the address last known to the sender, notification concerning the intended commencement of the new type of use of the author's work. Sentences 1 to 3 do not apply to rights of use which have become known in the meantime and which the author has already granted to a third person.

(2) Where the other person has granted a third person all the rights of use which they themselves were originally granted, subsection (1) applies accordingly to such third person. Where the author objects vis-à-vis the contracting party with whom he or she originally contracted a contract, such contracting party is to give the author, without delay, all the information required about the third person.

(3) The right of objection under subsections (1) and (2) does not apply where the parties have reached an express agreement regarding a type of use which has become known in the meantime.

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

(5) The author is entitled to separate equitable remuneration where the other person commences a new type of use pursuant to subsection (1) which was still unknown at the time the contract was concluded. Section 32 (2) and (4) applies accordingly. Claims may be asserted only through a collecting society. Where the other contracting party has transferred the right of use to a third person, the third person is liable for remuneration upon commencement of the new type of use of the author's work. The liability of the other person does not apply.

Section 137m

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

(1) The provisions concerning the term of protection under sections 82 and 85 (3) and concerning the rights and claims of the performer under section 79 (3) and section 79a apply to recordings of performances and audio mediums whose term of protection for the performer and producer of the audio medium had not yet expired on 1 November 2013 in accordance with the provisions of this Act in the version applicable up until 6 July 2013 and to recordings of performances and audio mediums created after 1 November 2013.

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

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

Section 137n

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

Section 61 (4) applies only to holdings bequeathed to the institution using them before 29 October 2014.

Section 137o

Transitional provision regarding Act to Align Copyright Law with the Current Demands of the Knowledge-based Society (*Urheberrechts-Wissensgesellschafts-Gesetz*)

Section 60g does not apply to contracts concluded before 1 March 2018.

Section 137p

Transitional provision occasioned by implementation of Directive (EU) 2019/789

(1) Section 20b only applies to contracts relating to retransmissions which are not effected by means of cable systems or microwave systems if the contract was concluded as from 7 June 2021.

(2) Section 20c applies as from 7 June 2023 to contracts relating to additional online services concluded before 7 June 2021.

(3) Section 20d applies as from 7 June 2025 to contracts relating to direct injection concluded before 7 June 2021.

Section 137q

Transitional provision on publishers' participation

Section 63a (2) and (3) applies to income which collecting societies receive as from 7 June 2021.

Section 137r

Transitional provision on protection of publishers of press publications

The provisions of this Act relating to the protection of publishers of press publications (sections 87f to 87k and section 127b) do not apply to press publications which were first published before 6 June 2019.

Division 3

Final provisions

Section 138

Register of anonymous and pseudonymous works

(1) The Patent Office is responsible for keeping the register of anonymous and pseudonymous works in respect of the entries to be made in accordance with section 66 (2) sentence 2. The Patent Office effects the entries without examining the applicant's authorisation or the correctness of the facts registered for entry.

(2) If the entry is refused, the applicant may apply for a court decision. The decision is taken by reasoned order to be issued by the higher regional court in whose jurisdiction the Patent Office is located. The application must be made in writing to the higher regional court. The decision of the higher regional court is final. In all other cases, the provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction apply accordingly in respect of the court proceedings.

(3) The entries are published in the Federal Gazette. The applicant is required to pay the costs of the publication in advance.

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

(5) The Federal Minister of Justice and Consumer Protection is authorised, by statutory instrument, to

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

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

(6) Entries made with Leipzig City Council in accordance with section 56 of the Act on Copyright in Works of Literature and of Musical Art of 19 June 1901 remain effective.

Section 138a **Data protection**

Insofar as the register of anonymous and pseudonymous works contains personal data, the following does not apply:

1. the right of access pursuant to Article 15 (1) (c) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1; L 314, 22.11.2016, p. 72),
2. the notification obligation pursuant to Article 19 sentence 2 of Regulation (EU) 2016/679 and
3. the right to object pursuant to Article 21 (1) of Regulation (EU) 2016/679.

The right to obtain a copy pursuant to Article 15 (3) of Regulation (EU) 2016/679 is deemed to be satisfied where the data subject has been granted inspection of the register of anonymous and pseudonymous works of the German Patent and Trade Mark Office.

Section 139 **Amendment to Code of Criminal Procedure**

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Section 140 **Amendment to Act concerning Universal Copyright Convention of 6 September 1952** **(Gesetz über das am 6. September 1952 unterzeichnete Welturheberrechtsabkommen)**

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Section 141 **Repealed provisions**

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Section 142 **Evaluation**

Four years after the entry into force of the Act to Align Copyright Law with the Current Demands of the Knowledge-based Society, the Federal Government is to submit a report to the Bundestag on the effects of Part 1 Division 6 Subdivision 4.

Section 143 **Entry into force**

- (1) Sections 64 to 67, 69, 105 (1) to (3) und section 138 (5) enter into force on the day following promulgation of this Act.
- (2) In all other respects, this Act enters into force on 1 January 1966.

Annex (to section 61a) **Sources for diligent search**

1. For published books:

- a) the catalogue of the German National Library and the library catalogues and key word lists kept by libraries and other institutions;
- b) information supplied by publishers' and authors' associations, in particular the Register of Books in Print (VLB);
- c) existing databases and registers, Writers, Artists and their Copyright Holders (WATCH) and the ISBN (International Standard Book Number);
- d) the databases of the relevant collecting societies, in particular those collecting societies entrusted with asserting rights of reproduction, such as VG Wort's database;
- e) sources bringing together several databases and registers, including the Joint Authority File (GND), Virtual International Authority Files (VIAF) and Accessible Registries of Rights Information and Orphan Works (ARROW);

2. For newspapers, magazines, trade journals and periodicals:

- a) the German ISSN (International Standard Serial Number) – Centre for Regular Publications;
- b) indexes and catalogues of library holdings and collections, in particular the catalogue of the German National Library and the Newspaper Database (ZDB);
- c) depositories of officially deposited obligatory copies;
- d) publishers' associations and authors' and journalists' associations, in particular the Register of Newspapers in Print (VLZ), the Register of Books in Print (VLB), Banger Online, STAMM and pressekatalog.de;
- e) the databases of the relevant collecting societies, including those collecting societies entrusted with asserting rights of reproduction, in particular VG Wort's database;

3. For visual works, including artistic works, photographic works, illustrations, design and architectural works, as well as their drafts and other such works contained in books, magazines, newspapers or other works:

- a) the sources referred to in nos. 1 and 2;
- b) the databases of the relevant collecting societies, in particular of the collecting societies for artistic works, including the collecting societies entrusted with asserting rights of reproduction, such as VG BildKunst's database;
- c) the databases of photographic agencies;

4. For cinematographic works, as well as for visual mediums and audio and visual mediums on which cinematographic works have been recorded, and for audio mediums:

- a) the depositories of officially deposited obligatory copies, in particular the catalogue of the German National Library;
- b) information provided by producers' associations;
- c) information provided by the film boards of the Federation and *Länder*;
- d) the databases of institutions and national libraries active in the field of cinematographic and audio heritage, in particular the Association of Film Archives, the Federal Archive, the Foundation of German Film Archives, the German Film Institute (www.filmportal.de database and catalogue), the DEFA

Foundation and the Friedrich Wilhelm Murnau Foundation, and the catalogues of the State Libraries in Berlin and Munich;

e) databases with relevant standards and identifiers such as the ISAN (International Standard Audiovisual Number) for audio-visual material, the ISWC (International Standard Music Work Code) for musical works and the ISRC (International Standard Recording Code) for audio mediums;

f) the databases of the relevant collecting societies, in particular for authors, performers and producers of audio mediums and cinematographic works;

g) the performance of co-authors and other information on the work's packaging or in its opening or closing credits;

h) the databases of other relevant associations representing certain categories of rightholders, such as associations of film directors, screenwriters, film music composers, composers, theatre publishing houses, theatre and opera associations;

5. For holdings which have not been published or broadcast:

a) current and original owners of the work piece;

b) national registers of estates (Central Database of Estates and Kalliope);

c) finding aids in the national archives;

d) museum inventory lists;

e) credit agencies and telephone books.