

Copyright

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NATIONAL LEGISLATION

GERMANY (Federal Republic)

I

Act dealing with Copyright and Related Rights (Copyright Act)

(Of September 9, 1965)¹⁾

PART I

Copyright

SECTION I

General

Article 1. — Authors of literary, scientific and artistic works shall enjoy protection for their works in the manner prescribed by this Act.

SECTION II

The work

Protected works

Article 2. — (1) The literary, scientific and artistic works protected hereunder include, in particular:

1. literary works, such as writings and speeches;
2. musical works;
3. works of pantomime, including choreographic works;
4. artistic works, including architectural works and works of applied art and plans and sketches of such works;
5. photographic works, including works produced by processes analogous to photography;
6. cinematographic works, including works produced by processes analogous to cinematography;
7. illustrations of a scientific or technical nature, such as drawings, plans, maps, sketches, tables and plastic representations.

(2) "Works" within the meaning of this Act include only personal intellectual creations.

Adaptations

Article 3. — Translations and other adaptations of a work which constitute personal intellectual creations of the adapter shall be protected in the same manner as independent works, without prejudice to the copyright in the pre-existing work thus adapted.

Collections

Article 4. — Collections of works or of other contributions which, by virtue of the selection or arrangement thereof, constitute personal intellectual creations shall be protected in the same manner as independent works, without prejudice to the copyright in the works thus collected.

Official works

Article 5. — (1) Acts, regulations, official decrees and notices as well as decisions and officially drafted guidelines of decisions shall not enjoy copyright protection.

(2) The same shall apply to other official works published in the official interest for public information, provided that the provisions of Article 62, paragraphs (1) to (3), and Article 63, paragraphs (1) and (2), concerning prohibited alterations and indication of source shall apply as appropriate.

Disseminated works and published works

Article 6. — (1) A work has been disseminated if, with the consent of the copyright owner, it has been made accessible to the public.

(2) A work has been published if, with the consent of the copyright owner, copies of the work have been produced in sufficient quantity and have been publicly offered for sale or put into circulation. An artistic work shall also be regarded as having been published if, with the consent of the copyright owner, the original or a copy of the work is made permanently accessible to the public.

SECTION III

The author

Author

Article 7. — The author is the person who creates the work.

Co-authors

Article 8. — (1) If two or more persons have created a work in common, and their respective contributions cannot be separately exploited, such persons shall be co-authors of the work.

(2) The right of publication and of exploitation belongs jointly to the co-authors; alterations of the work shall be permissible only with the consent of the co-authors. Nevertheless, a co-author may not in bad faith refuse his consent to the publication, exploitation or alteration of the work. Each co-author shall be entitled to assert claims arising from infringements of the joint copyright; he may, however, demand payment only to all co-authors.

(3) In the absence of any contrary agreement between the co-authors, proceeds resulting from the utilization of the work shall accrue to the co-authors in proportion to the extent of their respective contributions to the work.

(4) A co-author may waive the right to his share of the exploitation rights (Article 15). The other co-authors shall be notified of the waiver. With the notification the share shall accrue to the other co-authors.

¹⁾ Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz), vom 9. September 1965, published in Bundesgesetzblatt, I, p. 1273, No. 51, of September 16, 1965.

Authors of composite works

Article 9. — If several authors have combined their works for exploitation in common, each of them may require from the other his consent to the publication, exploitation or alteration of the combined (composite) works, if such consent can in good faith be demanded.

Presumption of authorship

Article 10. — (1) A person who is designated in the customary manner as the author on copies of a work which has been published or on the original of an artistic work shall, in the absence of proof to the contrary, be regarded as the author of the work. The same shall apply to a designation which is known as the author's pseudonym or artist's mark.

(2) Where the author is not designated as provided in paragraph (1), it shall be presumed that the person designated as editor on the copies of the work is empowered to assert the author's rights. Where no editor is designated, it shall be presumed that the publisher is so empowered.

SECTION IV

Contents of copyright

1. General

Article 11. — Copyright shall protect the author with respect to his intellectual and personal relations to the work, and also with respect to the utilization of the work.

2. The moral rights of the author

The right of dissemination

Article 12. — (1) The author shall have the right to determine whether and how his work is to be disseminated.

(2) The right of publicly communicating the contents of his work or a description thereof is reserved to the author, provided that neither the work, nor its essence, nor a description thereof has previously been publicly disseminated with his consent.

Recognition of authorship

Article 13. — The author shall have the right of recognition of his authorship of the work. He can determine whether the work is to bear an author's designation and what designation is to be used.

Distortion of the work

Article 14. — The author shall have the right to prohibit any distortion or any other mutilation of his work which would prejudice his lawful intellectual or personal interests in the work.

3. Exploitation rights

General

Article 15. — (1) The author shall have the exclusive right to exploit his work in material form; the right shall comprise in particular:

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

(2) The author shall further have the exclusive right to publicly communicate his work in non-material form (right of publicly communicating); the right shall comprise in particular:

1. the right of recitation, performance, representation and presentation (Article 19);
2. the right of broadcasting (Article 20);
3. the right of communicating the work by means of sound or visual records;
4. the right of communicating broadcasts (Article 22).

(3) The communication of a work shall be public if it is intended for a number of persons, unless such persons form a clearly defined group and are inter-connected personally by mutual relations or by a relationship to the organizer.

Right of reproduction

Article 16. — (1) The right of reproduction shall be the right to make copies of the work, irrespective of method or number.

(2) The fixation of the work on devices which permit the repeated communication of a series of images or sounds (sound or visual records) shall also constitute a reproduction of the work, irrespective of whether the objective is to record a communication of the work in visual or audio form, or to transfer the work from one such sound or visual record to another.

Right of distribution

Article 17. — (1) The right of distribution shall be the right to offer to the public or to place in circulation the original work or copies thereof.

(2) If the original work or copies thereof have been distributed through sales thereof with the consent of the owner of the right of distributing the work for the area within the jurisdiction of this Act, their further distribution shall be permissible.

Right of exhibition

Article 18. — The right of exhibition shall be the right to place on public view the original work or copies of an unpublished artistic work or of an unpublished photographic work.

Right of recitation, performance, representation and presentation

Article 19. — (1) The right of recitation is the right of publicly presenting a literary work, by a personal rendition.

(2) The right of performance or representation is the right of publicly presenting a musical work, by a personal rendition, or to perform the work publicly on the stage.

(3) The rights of recitation, performance and representation include the right to engage in recitations, performances and representations perceptible to the public by screen, loud-speaker, or by analogous technical devices, in a place other than that in which the personal rendition takes place.

(4) The right of presentation is the right to make an artistic work, a photographic work, a cinematographic work, or illustrations of a scientific or technical character perceptible to the public by means of technical devices. The right of presentation does not include the right of publicly com-

municating the broadcast presentation of such works (Article 22).

Right of broadcasting

Article 20. — The right of broadcasting is the right to render the work accessible to the public by a wireless broadcast such as a radio or television transmission, or by wire, or by other analogous technical devices.

Right of communication by means of visual or sound records

Article 21. — The right of communication by visual or sound records is the right to make publicly perceptible recitations, representations, or performances, of the work fixed on visual or sound records. Article 19, paragraph (3), is applicable by analogy.

Right of communication of broadcasts

Article 22. — The right of communicating broadcasts is the right to make such broadcasts publicly perceptible either visually or audibly by means of a screen, loudspeaker or analogous technical devices.

Adaptations and transformations

Article 23. — Adaptations or other transformations of a work may be published or exploited only with the consent of the author of the adapted or transformed work. Furthermore, in the case of cinematographic adaptations of a work, or of the execution of plans and sketches of an artistic work, or of copies of an architectural work, the creation of such adaptation or transformation shall require the author's consent.

Fair use

Article 24. — (1) An independent work created by the fair use of the work of another person may be published and exploited without the consent of the author of the used work.

(2) Paragraph (1) shall not apply to the use of a musical work by which a melody has been recognizably borrowed from the work and used in a new work.

4. Other rights of the author

Access to copies of the work

Article 25. — (1) The author may demand of the possessor of the original or of a copy of his work that he be allowed access to the original or the copy, provided this is necessary for the making of reproductions or adaptations of the work and does not militate against lawful interests of the possessor.

(2) The possessor shall not be required to deliver up the original or the copy to the author.

Droit de suite

Article 26. — (1) Should the original of an artistic work be resold and should such resale involve an art dealer or an auctioneer as purchaser, vendor or agent, the vendor shall pay the author a participation at the rate of one per centum of the sale price. There shall be no such obligation if the sale price is less than five hundred German marks.

(2) The author may not in advance waive his right to the participation. The expectancy thereof shall not be subject to judicial execution; any disposition of the expectancy shall be without legal effect.

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

The lending of copies

Article 27. — (1) If copies of a work, the further distribution of which is permissible pursuant to Article 17, paragraph (2), are loaned, the lender shall pay to the author an equitable remuneration with respect thereto if the lending was executed for the financial gain of the lender.

(2) The provisions of paragraph (1) shall not be applicable to works which are published exclusively for lending purposes.

SECTION V

Succession. Granting of licences

1. Legal succession to copyright

Inheritance of copyright

Article 28. — (1) Copyright may be transmitted by inheritance.

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

Conveyance of copyright

Article 29. — Copyright may be conveyed pursuant to a testamentary disposition, or to co-heirs pursuant to the settlement of an estate. Otherwise, it may not be conveyed.

Author's legal successor

Article 30. — In the absence of any arrangement to the contrary, the author's legal successor shall have the rights enjoyed by the author under the present Act.

2. Copyright licences

The granting of licences

Article 31. — (1) The author may grant a licence to another to utilize the work in a particular manner or in any manner without limitation. A licence may be granted as a non-exclusive right or as an exclusive right.

(2) Non-exclusive licences shall entitle the licensee to use the work, concurrently with the author or with other rightful claimants, in the manner permitted to him.

(3) Exclusive licences shall entitle the licensee to use the work, to the exclusion of all other persons, including the author, in the manner permitted to him, and to grant non-exclusive licences. The foregoing is subject to the provisions of Article 35.

(4) A licence purporting to grant rights with respect to unknown means of utilization, and any obligations with respect thereto, shall have no legal effect.

(5) If the terms of the licence do not specifically enumerate ways in which the work may be used, the scope of the

grant of rights shall be determined in accordance with the purpose envisaged in making the grant.

Licence limitations

Article 32. — Licences may be limited as to place, time or purpose.

Continuing effect of non-exclusive licences

Article 33. — A non-exclusive licence which the author has granted prior to granting an exclusive licence shall remain effective vis-à-vis the exclusive licensee in the absence of any contrary agreement between the author and the non-exclusive licensee.

Assignment of a licence

Article 34. — (1) A licence may be assigned only with the author's consent. The author may not in bad faith refuse such consent.

(2) If licences of the individual works incorporated in a collection are assigned together with a licence of the collection (Article 4), the consent of the author of the collection shall be sufficient.

(3) A licence may be assigned without the author's consent if the assignment takes place as part of the total sale of a business enterprise, or the sale of parts of the enterprise.

(4) An author and a licensee may by express agreement vary the terms of a prior licence.

(5) If the assignment of a licence is permissible by agreement, or pursuant to the provisions of this Act without the author's consent, the assignee shall be responsible jointly and severally for the discharge of the assignor's obligations, under the licence with the author.

Grant of non-exclusive licences

Article 35. — (1) The possessor of an exclusive licence may grant non-exclusive licences only with the author's consent. No consent shall be required if an exclusive licence is granted purely to safeguard the author's interests.

(2) The provisions of Article 34, paragraph (1), sentence 2, paragraphs (2) and (4) shall apply accordingly.

Author's participation

Article 36. — (1) If the author has granted a licence to another party on conditions the effect of which is to cause the agreed consideration to be grossly disproportionate to the income from the use of the work, having regard to the whole of the relationship between the author and the other party, the latter shall, when so asked by the author, be required to assent to a variation of the agreement such as will secure for the author an equitable share of the income having regard to the circumstances.

(2) Such claim shall be barred two years from the time when the author receives knowledge of the circumstances which give rise to the claim, and the author may not claim to have received such knowledge after more than ten years.

(3) The claim may not be waived in advance. Expectancy of it shall not be subject to judicial execution; any disposition concerning the expectancy shall be without effect.

Agreements relating to the grant of licences

Article 37. — (1) If an author grants to another a licence to use the work, in case of doubt the author shall be deemed to have reserved the publication and exploitation rights in any adaptation of the work.

(2) If an author grants to another a licence to reproduce the work, in case of doubt the author shall be deemed to have reserved the right of recording the work on visual or sound fixations.

(3) If an author grants to another a licence to publicly communicate the work, in case of doubt the licensee will be deemed not to have acquired the right to use a screen, loud speaker or other analogous technical devices to make the communication perceptible to the public outside the event for which it is intended.

Contributions to collections

Article 38. — (1) If an author consents to his work being included in a collection which appears periodically, in case of doubt the publisher or editor shall be deemed to have acquired an exclusive licence with respect to reproduction and distribution of the work. In the absence of any contrary agreement, the author may, however, by other means reproduce and distribute the work after a lapse of one year from the date of its appearance.

(2) The second sentence of paragraph (1) shall also apply to a contribution to a collection which does not appear periodically, if the author had no right of remuneration for such contribution.

(3) If a contribution is made available to a newspaper, in the absence of any contrary agreement, the publisher or editor shall be deemed to have acquired a non-exclusive licence. Should the author grant an exclusive licence, the author shall have the right immediately after the appearance of the contribution, in the absence of any contrary agreement, to reproduce and distribute the work by other means.

Modifications of the work

Article 39. — (1) In the absence of any contrary agreement, a licensee may not alter the work, its title or the designation of the author (Article 10, paragraph 1).

(2) Modifications in the work and its title, which the author cannot in good faith refuse shall be permissible.

Agreements as to future works

Article 40. — (1) An agreement by which the author undertakes to grant a licence of future works, which are not specified in detail but only by reference to their nature, shall be in writing. It may be terminated by either party after a period of five years from conclusion of the agreement. Six months notice of termination shall be given, if no shorter period has been agreed.

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

(3) If a licence of future works has been granted in fulfilment of the agreement, on termination of the agreement

the provision concerning works which have not been supplied up to that date shall cease to have effect.

Right of revocation by reason of non-exercise

Article 41. — (1) Should an exclusive licensee not exercise his rights thereunder, or do so only inadequately, and if thereby serious injury is caused to the author's lawful interests, the latter may revoke the licence. This shall not apply if the non-exercise or inadequate exercise is primarily due to circumstances which the author can be expected to remedy.

(2) The right of revocation may not be exercised before the expiration of two years from the grant or assignment of the licence, or, if the work is supplied subsequently, from date of delivery. In the case of a contribution to a newspaper, the period shall be three months; for a periodical appearing at monthly intervals or less, six months; and for contributions to other periodicals, one year.

(3) The right of revocation may be exercised only after the author has granted to the licensee, upon notifying him of the proposed revocation, an extension of time suitable for adequately exercising the rights under the licence. No such extension shall be required if the exercise of rights under the licence by the licensee is impossible, or if he refuses to exercise such rights, or if such an extension would endanger the author's primary interests.

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

(5) A licence shall expire upon its revocation becoming effective.

(6) The author shall indemnify the person affected by the revocation to the extent fairness so requires.

(7) The rights and claims of the parties pursuant to other legal provisions shall not be affected.

Revocation by reason of changed conviction

Article 42. — (1) An author may revoke a licence if the work no longer reflects his views and he therefore can no longer be expected to agree to the exploitation of the work. The author's legal successor (*Article 30*) may exercise such right of revocation only if he proves that the author prior to his death would have been entitled to revoke and was prevented from so doing, or that he has done so by testamentary disposition.

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

(3) The author must equitably indemnify the licensee. Such indemnification must cover at least the costs which the licensee has incurred up to the declaration of revocation; however such computation shall not include costs attributable to profits which have theretofore been realized under the licence. Revocation shall become effective only if the author defrays such costs or provides security therefor. The licensee shall notify the author within three months after the declaration of revocation of the amount of his costs; if he fails so to do, the revocation shall become effective upon the expiration of this period.

(4) Should the author wish to resume exploitation of the work after revocation, he shall be required to offer to the previous licensee the same type of licence subject to reasonable conditions.

(5) The provisions of *Article 41*, paragraphs (5) and (7), shall apply accordingly.

Authors in service or on commission

Article 43. — The provisions of this sub-section shall also apply if the author has created the work pursuant to a contract of service or a contract commissioning his services, in the absence of anything to the contrary in the object or nature of the service or commission.

Alienation of the original of the work

Article 44. — (1) If the author alienates the original of the work, in case of doubt, he shall not be deemed, by so doing, to have granted a licence to the acquirer.

(2) The owner of the original of an artistic work or of a photograph shall be entitled to exhibit the work in public, even if it has not yet been published, unless the author has expressly excluded this in alienating the original.

SECTION VI

Limitations on copyright

Administration of justice and public safety

Article 45. — (1) It shall be permissible to make or cause to be made copies of a work for use in proceedings before a court, an arbitration tribunal, or a public authority.

(2) Courts, arbitration tribunals and public authorities may, for purposes of administration of justice and public safety, reproduce portraits, or cause portraits to be reproduced.

(3) The distribution, public exhibition and public communication of such works shall be permissible under the same conditions as for their reproduction.

Collections for religions, school or instructional use

Article 46. — (1) It shall be permissible to incorporate parts of works, literary and musical works of small extent, single artistic works, or single photographs, if they are already published in a collection which assembles the works of a considerable number of authors and is intended, by its nature, exclusively for religious, school, or instructional use. The purpose for which the collection is to be used shall be clearly stated upon the title page or some other appropriate place.

(2) Paragraph (1) shall apply to musical works incorporated in a collection intended for musical instruction only if the collection is intended for musical instruction in schools, excluding schools of music.

(3) The reproduction may commence only if the intention to exercise the rights accorded under paragraph (1) has been communicated by registered letter to the author, or if his permanent or temporary residence is unknown, then to the exclusive licensee, and two weeks after despatch of the

letter have elapsed. If the permanent or temporary address of the exclusive licensee is also unknown, the communication can be made by publication in the *Bundesanzeiger* (Official Bulletin).

(4) An author may prohibit reproduction and distribution when he can no longer be expected to agree to the exploitation of the work because the work no longer reflects his views and he has for that reason revoked any licences to which he had theretofore consented (Article 42). The provisions of Article 136, paragraphs (1) and (2), shall be applicable.

School broadcasts

Article 47. — (1) Schools and institutions for teachers' training and advanced training may produce copies of single works which are included within a school broadcast by transferring the works to visual or sound records. The same shall apply to youth educational centres.

(2) The visual or sound records may be used only for instructional purposes. They must be destroyed not later than the end of the then current school year, unless an equitable remuneration has been paid to the author.

Public speeches

Article 48. — (1) It shall be permissible

1. to reproduce and distribute in newspapers, periodicals and other printed media of information which mainly record current events, speeches about questions of the day made at public meetings or in broadcasting and to communicate such speeches to the public;
2. to reproduce, distribute and communicate to the public speeches made at public discussions of State, communal or religious bodies.

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

Press articles and broadcast commentaries

Article 49. — (1) It shall be permissible to reproduce and distribute single broadcast commentaries and single articles from newspapers and other printed media of information of this kind, and publicly to communicate such commentaries and articles, if they concern political, economic or religious questions of the day, and if they do not contain a statement reserving rights. The author must be paid an equitable remuneration for the reproduction, distribution and public communication, unless short extracts from a number of commentaries or articles are reproduced, distributed or publicly communicated in the form of a survey.

(2) It shall be permissible, without limitation, to reproduce, distribute and publicly communicate miscellaneous information relating to facts or news of the day which have been publicly disseminated by the press or broadcast; this provision shall not affect any protection granted by other provisions of law.

Visual and sound reporting

Article 50. — For the purposes of visual and sound reporting on events of the day by broadcast, or film, and in newspapers or periodicals which mainly record current events, works which become perceptible in the course of the events which are being reported on may be reproduced, distributed and publicly communicated in so far as their inclusion is justified by the purpose of the report.

Quotations

Article 51. — To the extent required by the purpose, it shall be permissible to reproduce, distribute and publicly communicate

1. single works which have already been published, included in an independent scientific work in order to clarify its contents;
2. single passages from previously published works, quoted in an independent literary work;
3. single passages from a musical work which has already been published, quoted in an independent musical work.

Public communication

Article 52. — (1) The public communication of a work which has already been published, shall be permissible,

1. if the communication serves no gainful purpose on the part of the organizer, spectators are admitted free of charge and, in the case of the recitation, representation, or performance of the work, the performers (Article 73) are paid no special remuneration; if, however, the event serves the gainful purpose of a third party, the latter shall pay the author an equitable remuneration for the communication;
2. if the communication takes place at a religious service, a religious celebration or any other organized occasion of the churches or religious societies recognized in public law; the organizer shall, however, pay the author an equitable remuneration for the communication, unless the conditions of paragraph (1) are satisfied.

(2) Public stage performances, broadcasts, and public presentations of cinematographic works shall in all cases be permissible only with the consent of the copyright owner.

Reproduction for personal use

Article 53. — (1) It shall be permissible to make single copies of a work for personal use.

(2) A person authorized to make such copies may also cause such copies to be made by another person; however, this provision shall apply to the reproduction of a work on a visual or sound record and to the reproduction of artistic works only if no payment is received therefor.

(3) The copies may neither be distributed nor used for public communication.

(4) The recording of public recitations, representations or performances or presentations of a work by visual or sound fixations, the execution of plans or sketches intended for an artistic work and the copying of a work of architecture always require the consent of the copyright owner.

(5) If from the nature of the work it is to be expected that it will be reproduced for personal use by the fixation of broadcasts on visual or sound records, or by transferring from one visual or sound record to another, the author of the work shall have the right to demand from the manufacturer of equipment suitable for making such reproductions a remuneration for the opportunity provided to make such reproductions. Any person who for commercial purposes introduces or re-introduces such equipment within the jurisdiction of this Act shall be jointly responsible with the manufacturer. This right shall not exist if, from all of the circumstances, it appears probable that the equipment will not be used within the jurisdiction of this Act for the said purposes. This right may only be enforced through collecting societies. By way of remuneration, each copyright owner shall be entitled to an equitable participation in the proceeds realized by the manufacturer from the sale of such equipment; the total claims of all copyright owners, including those coming within Articles 84 and 85, paragraph (3), and Article 94, paragraph (4), shall not exceed five per cent of such proceeds.

Reproduction for other internal uses

Article 54. — (1) It shall be permissible to make or to cause to be made single copies of a work:

1. for ones own scientific use, if and to the extent that such reproduction is necessary for this purpose,
2. to be included in internal files, if and to the extent that reproduction for this purpose is necessary for this purpose, and if ones own copy of the work is used as a model for the reproduction,
3. for ones own information concerning current events, in the case of a broadcast work,
4. for other internal uses,
 - (a) with respect to small parts from published works or single articles which have been published in newspapers or periodicals,
 - (b) in the case of a work which is out of print and the copyright owner cannot be traced. If the copyright owner can be traced and the work has been out of print for more than three years, he may refuse his consent to such reproduction only for a valid reason.

(2) If the reproduction is for commercial purposes on the part of the person authorized to reproduce the work, he shall pay to the author an equitable remuneration.

(3) The provisions of Article 53, paragraphs (3) and (4), shall apply as applicable.

Reproduction by broadcasting organizations

Article 55. — (1) A broadcasting organization licensed to broadcast a work shall have the right to record the work by means of its own facilities on visual or sound fixations in order to use them once for broadcasting over its transmitters or beam senders. Such fixations must be destroyed not later than one month after the first broadcast of the work.

(2) Visual or sound records which are of exceptional documentary value need not be destroyed if they are placed in an official archive. The author shall be notified without delay of their deposit in such archive.

Reproduction and public communication by commercial enterprises

Article 56. — (1) Commercial enterprises which sell or repair visual or sound records, or equipment for their manufacture or communication, or for reception of broadcasts, may record works on visual or sound fixations and may publicly communicate such recorded or broadcast works, in so far as this may be necessary to exhibit such equipment and devices to the public or for the repair thereof.

(2) Visual or sound records produced pursuant to paragraph (1) must be destroyed immediately.

Accessory works of secondary importance

Article 57. — It shall be permissible to reproduce, distribute and publicly communicate works if they may be regarded as accessories of secondary importance with regard to the actual subject of the reproduction, distribution or public communication.

Illustrated catalogues

Article 58. — It shall be permissible to reproduce and distribute artistic works which are exhibited in public or intended for public exhibition or auction in catalogues which are issued by the organizer in order to conduct the exhibition or auction.

Works exhibited on public premises

Article 59. — (1) It shall be permissible to reproduce, by means of paintings, drawings, photographs or cinematography, works which are permanently placed on public ways, streets or places, and to distribute and publicly communicate such copies. With respect to works of architecture this provision shall be applicable only to the external view.

(2) It shall not be permissible to reproduce in one work of architecture a work incorporated in another work of architecture.

Portraits

Article 60. — (1) The person ordering a portrait or his legal successor may reproduce it or cause it to be reproduced by photograph. If the portrait is a photograph, reproduction otherwise than by photography shall be permissible. The copies may be distributed without payment.

(2) The same rights shall be enjoyed by the person portrayed, or after his death by his family, in the case of a portrait created on commission.

(3) Family in the sense of paragraph (2) shall mean the spouse and children, or, if there are neither spouse nor children, the parents.

Compulsory licence for the production of sound records

Article 61. — (1) If the author of a musical work has granted a licence to make sound records thereof for commercial purposes, and to reproduce and distribute the same, after publication of the work the author shall be required to grant a similar licence subject to reasonable conditions to any other producer of sound records whose head office or domicile is within the jurisdiction of this Act; this provision shall not apply if the right is lawfully administered by a col-

lecting society nor shall it be applicable in the event that the author cannot be expected to agree to the further exploitation of the work because it no longer reflects his views and for that reason he has revoked any existing licence which he had theretofore granted. The author shall not be required to licence the work for use in the production of a cinematographic work.

(2) With respect to a producer of sound records whose head office and domicile are not within the jurisdiction of this Act, the provisions of paragraph (1) shall be applicable only if, as is evidenced by a notification from the Federal Minister of Justice in the *Bundesgesetzblatt*, a corresponding right is granted by the State in which his head office or domicile is situated to producers of sound records whose head office or domicile is within the jurisdiction of this Act.

(3) The licence to be granted under the foregoing provisions shall be effective only within the jurisdiction of this Act and for exportation into countries in which the work is not protected against sound recording.

(4) If the author has granted to another person an exclusive licence to fix the work for commercial purposes on sound records and to reproduce and distribute such sound records, the foregoing provisions shall be applicable except that the exclusive licensee shall be required to grant the licence described in paragraph (1).

(5) The foregoing provisions shall be applicable by analogy to a literary work which is employed as the text of a musical work, if the author of the literary work has granted to a producer of sound records a licence to record the work in accompaniment with the musical work, and to reproduce and distribute such records.

(6) Courts sitting within the district in which the headquarters of the Patent Office is located shall have jurisdiction in matters relating to the granting of a licence if the author, or, in the case of paragraph (4), the exclusive licensee, has no legal domicile within the area covered by this Act. Temporary decisions may be issued, even if the conditions specified in Articles 935 and 940 of the Code of Civil Procedure are not fulfilled.

(7) The foregoing provisions shall not apply if the licence described in paragraph (1) has been granted only for the purpose of producing a cinematographic work.

Prohibition of modifications

Article 62. — (1) Insofar as the use of a work is permissible under the provisions of this Section, no modifications may be made in the work. Article 39 shall be applicable to the foregoing.

(2) Insofar as the purpose of the use may demand, it shall be permissible to make translations and such modifications to the work as amount merely to extracts or to transpositions into another key or pitch.

(3) With respect to artistic works and photographs, transpositions into a different scale and other modifications of the work shall be permissible to the extent required by the method of reproduction.

(4) In the case of collections for religious, school and instructional use (Article 46), in addition to the modifications permitted under (1) to (3), such modifications of literary works shall be permissible as are necessary for religious, school and instructional use. Such modifications, however, shall require the consent of the author, or after his death of his legal successor (Article 30), if the latter is of the author's family (Article 60, paragraph 3), or has acquired copyright by virtue of testamentary disposition. Consent shall be regarded as granted if the author or his successor does not raise objection within a month of notification of the proposed modification.

Indication of source

Article 63. — (1) If a work or part of a work is reproduced pursuant to Article 45, paragraph (1), Articles 46 to 48, 50, 51, 58, 59 and 61, the source must in all cases be clearly indicated. In reproducing complete literary works or complete musical works, the publishing house which published the work must be stated, in addition to the author, as well as any omissions or other modifications to the work. No obligation to indicate sources shall exist if no source is given either on the copy of the work used or with the communication of the work, and if no source is otherwise known to the person authorized to reproduce.

(2) Insofar as the provisions of this Section permit the public communication of a work, the source must be clearly stated if standard practice so requires.

(3) If pursuant to Article 49, paragraph (1), an article from a newspaper or other printed medium of information of this kind is reproduced in another newspaper or other such printed medium of information, or is broadcast, in addition to the author who is designated in the source material, mention must also in all cases be made of the newspaper or other printed source from which the article was extracted; if some other newspaper or other printed medium of information is mentioned there as the source, such other newspaper or other printed source must be mentioned. If pursuant to Article 49, paragraph (1), a broadcast commentary is reproduced in a newspaper or in another printed medium of information, or in broadcast, the broadcasting organization which transmitted the commentary, as well as the name of the author, shall always be mentioned.

SECTION VII

Duration of copyright

General

Article 64. — (1) Copyright shall expire seventy years after the author's death.

(2) If a posthumous work is first publicly disseminated more than sixty, but prior to seventy, years after the author's death, the copyright therein shall expire ten years after such first public dissemination.

Co-authors

Article 65. — If a copyright is owned by two or more co-authors (Article 8), it shall expire seventy years after the death of the last surviving author.

Anonymous and pseudonymous works

Article 66. — (1) If the author's true name or a known pseudonym has not been designated either as provided in Article 10, paragraph (1), or in connection with the public communication of the work, copyright shall expire seventy years after the publication of the work.

(2) The duration of copyright shall be calculated according to Articles 64 and 65 also in the case of paragraph (1), if

1. within the period specified in paragraph (1) the author's real name or known pseudonym is indicated in conformity with Article 10, paragraph (1), or the author otherwise becomes known as the creator of the work,
2. within the period specified in paragraph (1) the author's real name is submitted for registration in the Register of Authors (Article 138),
3. the work is publicly disseminated only after the author's death.

(3) A submission for registration pursuant to paragraph (2) may be made by the author, or after his death by his legal successors (Article 30) or by his executor (Article 28, paragraph 2).

(4) The foregoing provisions shall not apply to artistic works.

Serial works

Article 67. — In the case of works published in parts which are not self-contained (serials), pursuant to Article 64, paragraph (2), and Article 66, paragraph (1), the calculation of the term of protection shall be governed by the date of publication of the final instalment.

Photographic works

Article 68. — Copyright in photographic works shall expire twenty-five years after publication of the work; however, it shall expire twenty-five years after creation if the work has not previously been published.

Calculation of periods

Article 69. — The periods covered by this section shall commence as from the expiry of the calendar year in which the event which determines the beginning of the period has occurred.

PART II

Related Rights

SECTION I

Protection of certain editions

Scientific editions

Article 70. — (1) Editions which consist of non-copyrighted works or texts shall enjoy a protection analogous to that provided pursuant to the provisions of Part I if they represent the result of scientific analysis and differ in a significant manner from previously known works or texts.

(2) The right shall be enjoyed by the author of the edition.

(3) The right shall expire ten years after publication of the edition; however, it shall expire ten years after creation

thereof if no publication occurs prior thereto. The period shall be calculated in conformity with Article 69.

Publication of posthumous works

Article 71. — (1) Any person who causes a work which has not previously been published, to be published within the jurisdiction of this Act after the expiry of the copyright shall have the exclusive right to reproduce and distribute the work and to use copies of the work for public communication. The same shall apply to works which have not previously been published and which were never protected within the jurisdiction of this Act, but whose authors have been dead longer than seventy years. Articles 4, 15 to 24, 27 and 45 to 63 shall apply as appropriate.

(2) The right shall be transferable.

(3) The right shall expire ten years after the publication of the work. The period shall be calculated in conformity with Article 69.

SECTION II

Protection of photographs

Article 72. — (1) The provisions of Part I applicable to photographic works shall be applicable by analogy to photographs and to products created by a process analogous to photography.

(2) The right as stated in paragraph (1) shall be enjoyed by the photographer.

SECTION III

Protection of the performer

Performer

Article 73. — A performer within the meaning of this Act shall be a person who recites or performs a work or participates as performer in the recitation or performance of a work.

Transmission by screen or loudspeaker

Article 74. — A performance may be publicly communicated by screen, loudspeaker or similar technical devices outside the location where it takes place only with the consent of the performer.

Reproduction

Article 75. — A performance may be fixed on visual or sound records only with the consent of the performer. The visual or sound records may be reproduced only with his consent.

Broadcasting

Article 76. — (1) A performance may be broadcast only with the consent of the performer.

(2) A performance which has been lawfully fixed on visual or sound records may be broadcast without the consent of the performer if such records have previously been published; however, in such circumstances the performer shall be paid an equitable remuneration.

Public communication

Article 77. — If a performance is publicly communicated by means of visual or sound records or if a broadcast per-

formance is publicly communicated, the performer shall have the right to an equitable remuneration with respect thereto.

Assignment

Article 78. — The performer may assign to third parties the rights and privileges which are granted to him pursuant to Articles 74 to 77; however, he shall nevertheless also have the right to give the consents provided for in Articles 74, 75 and 76, paragraph (1).

Performers in service or on commission

Article 79. — If a performer has given a performance pursuant to his obligations under a contract of service, or contract commissioning his services, in the absence of any contrary agreement, the extent and conditions under which the employer or party commissioning the performance may use it, or authorize others so to do, shall be determined by reference to the nature of the service or commission.

Choral, orchestral and stage performances

Article 80. — (1) In the case of choral, orchestral and stage performances, pursuant to Articles 74, 75 and 76, paragraph (1), in addition to the consent of the soloists, conductor and producer the consent of the elected representatives of the participating performer groups, such as choir, orchestra, ballet and stage companies shall suffice. If any group has no such representative, the consent of the performers who are its members shall be replaced by the consent of the group leader.

(2) For the purpose of asserting the rights, with the exception of the right of consent, arising from Articles 74 to 77, in the case of choral, orchestral and stage performances the representative of the performer group committee or, if no representative exists, the leader of the group, alone shall be authorized to act in the name of the participating performer groups. This power may be transferred to an authors' collecting society.

Protection of the organizer

Article 81. — If a performance is given under the auspices of an enterprise, then for the purposes of Articles 74, 75 and 76, paragraph (1), the consent of the proprietor of the enterprise shall be required in addition to the consent of the performer.

Duration of rights

Article 82. — If a performance is fixed on a visual or sound record, the rights of the performer and of the organizer shall expire twenty-five years after the publication of the record; however, such rights shall expire twenty-five years after the performance if the visual or sound record has not previously been published. The period shall be calculated in conformity with Article 62.

Protection against distortion

Article 83. — (1) The performer shall have the right to prohibit any distortion or other alteration of his performance of such nature as to injure his prestige or reputation as a performer.

(2) If a work is performed by a group of performers, each one in the exercise of this right must take into account the legitimate interests of the others.

(3) The right shall expire with the death of the performer; however, it shall expire twenty-five years after the performance if before that date the performer has died; the period shall be calculated in accordance with Article 69. After the performer's death the right shall be enjoyed by his next of kin (Article 60, paragraph 3).

Limitation of rights

Article 84. — The provisions of Section VI of Part I, with the exception of Article 61, shall apply as appropriate to the rights enjoyed by the performer and the organizer in conformity with this Section.

SECTION IV

Protection of the producer of sound records

Right of reproduction and distribution

Article 85. — (1) The producer of a sound record shall have the exclusive right to reproduce and distribute the sound record. If the sound record has been produced by an enterprise, the proprietor of the enterprise shall be regarded as the producer. The right shall not arise by reason of the reproduction of a sound record.

(2) The right shall expire twenty-five years after publication of the sound record; however, it shall expire twenty-five years after production if the sound record has not previously been published. The period shall be calculated in conformity with Article 69.

(3) The provisions of Section VI of Part I, with the exception of Article 61, shall apply as appropriate.

Right of participation

Article 86. — If a published sound record on which a performance has been fixed is used for public communication, the producer of the sound record shall have a right as against the performer to an equitable participation in the remuneration which the performer receives pursuant to Article 76, paragraph (2), and Article 77.

SECTION V

Protection of the broadcasting organization

Article 87. — (1) A broadcasting organization shall have the exclusive right,

1. to rebroadcast its broadcast,
2. to fix its broadcast on visual or sound records, make photographs of its broadcast, and reproduce such records or photographs,
3. to publicly communicate its television broadcast in places accessible to the public, against payment of an entrance fee.

(2) The right shall expire twenty-five years after the broadcast. The period shall be calculated in conformity with Article 69.

(3) The provisions of Section VI of Part I, with the exception of Article 47, paragraph (2), sentence 2, Article 53, paragraph (5), and Article 61, shall apply as appropriate.

PART III

Special Provisions relating to Cinematography

SECTION I

Cinematographic works

The right of cinematographic adaptation or reproduction

Article 88. — (1) If an author grants to another person the right to make a cinematographic adaptation or reproduction of his work, in case of doubt this grant shall constitute exclusive licences:

1. to use the work either in its original form, or an adaptation or transformation thereof made for the purpose of producing a cinematographic work;
2. to reproduce and distribute the cinematographic work;
3. to publicly present the cinematographic work if it is intended for such presentation;
4. to broadcast the cinematographic work by television if it is intended for such broadcast;
5. to exploit translations and other cinematographic adaptations or transformations of the cinematographic work to the same extent as may be done in the exploitation of the work itself.

(2) In case of doubt, the rights specified in paragraph (1) shall not be deemed to include the right to remake the cinematographic work. In case of doubt, the author shall be deemed to have the right after the expiration of ten years from the execution of the contract to utilize his work by other means for cinematographic purposes.

(3) The foregoing provisions shall apply as appropriate to the protective rights specified in Articles 70 and 71.

Rights in the cinematographic work

Article 89. — (1) Any person who undertakes to participate in the production of a cinematographic work and by so doing acquires a copyright in the cinematographic work, in case of doubt, shall be deemed to have granted to the producer the exclusive right to utilize the cinematographic work as well as the translations, and other adaptations or transformations thereof, in every known manner.

(2) If the author of the cinematographic work had in advance granted to a third party the rights specified in paragraph (1), he shall, notwithstanding, in all cases retain the power to grant these rights to the film producer with or without limitation.

(3) The copyright in the works used to produce the cinematographic work, such as the novel, the scenario and the music contained in the cinematographic work, shall remain unaffected.

Limitation of rights

Article 90. — The provisions concerning the need for the author's consent to the assignment of licences (Article 34) and to the grant of non-exclusive licences (Article 35), and also

the right of withdrawal by reason of non-exercise (Article 41) and changed conviction (Article 42) shall not apply to the rights specified in Article 88, paragraph (1), items 2 to 5, and Article 89, paragraph (1). The author of the cinematographic work (Article 89) shall have no claims by virtue of Article 36.

Rights in photographs

Article 91. — In relation to the exploitation of a cinematographic work, the producer thereof shall be deemed to have acquired the right to exploit photographs which were created in connection with the production of such cinematographic work. The photographer shall have no rights in this respect.

Performers

Article 92. — Performers who participate in the production of a cinematographic work or whose performances are lawfully used in the production of a cinematographic work shall, with respect to the exploitation of the cinematographic work, not be entitled to rights pursuant to Article 75, sentence 2, Articles 76 and 77.

Protection against distortion

Article 93. — The authors of a cinematographic work and of works used in its production, as well as owners of related rights who participate in the production of the cinematographic work or whose contributions are used in its production may, with respect to the production and exploitation of the cinematographic work, prohibit (pursuant to Articles 14 and 83) only gross distortions or other gross injuries of their works or of their contributions. In the exercise of this right they must take into account the respective legitimate interests of the other persons accorded this right as well as the legitimate interest of the producer of the cinematographic work.

Protection of the producer of cinematographic works

Article 94. — (1) The producer of a cinematographic work shall have the exclusive right to reproduce the visual record or the visual and sound record on which the cinematographic work is fixed, and to distribute it, and utilize it for public presentation, or for broadcast. Moreover, the producer shall have the right to prevent any distortion or shortening of the visual or visual and sound record which may prejudice his legitimate interests therein.

(2) The right shall be transferable.

(3) The right shall expire twenty-five years after the publication of the visual or visual and sound record; however, it shall expire twenty-five years after production of the visual or visual and sound record if it has not previously been published.

(4) The provisions of Section VI of Part I, with the exception of Article 61, shall apply as appropriate.

SECTION II

Cinematographic films

Article 95. — Articles 88, 90, 91, 93 and 94, shall apply as appropriate to sequences of images and to sequences of images and sound which are not protected as cinematographic works.

PART IV

Joint Provisions for Copyright and Related Rights

SECTION I

Prohibition of exploitation

Article 96. — (1) Unlawfully made copies may be neither distributed nor used for public communication.

(2) Unlawfully made broadcasts may not be fixed on visual or sound records or publicly communicated.

SECTION II

Infringement of rights

1. Civil law provisions; legal recourse

Actions for injunction and damages

Article 97. — (1) As against any person who infringes a copyright or any other right protected by this Act, the injured party may bring an action for injunctive relief requiring the wrongdoer to cease and desist if there is a danger of repetition of the acts of infringement, as well as an action for damages if the infringement was intentional or the result of negligence. In lieu of damages, the injured party may recover the profits derived by the infringer from the acts of infringement together with a detailed accounting reflecting such profits.

(2) Authors, persons having rights in scientific editions (Article 70), photographers (Article 72) and performers (Article 73), may, if the infringement was intentional or the result of negligence, recover, as justice may require, a monetary indemnity for the injury caused to them even if no pecuniary loss has occurred. This right is not assignable unless it has been acknowledged by contract or unless a legal action asserting the right has previously been commenced.

(3) Rights arising from other legal provisions shall not be affected.

Right of destruction and similar measures

Article 98. — (1) The injured party may require the destruction of all copies that have been unlawfully manufactured or unlawfully distributed or which are intended for unlawful distribution.

(2) The injured party may further require that the equipment such as moulds, plates, engraving stones, blocks, stencils and negatives which were destined exclusively for the unlawful production of copies be rendered unusable, or, if this is not practicable, destroyed.

(3) If the appearance of the copies or the equipment causing the infringement can be modified in some other fashion, in particular so as to establish by subsequent alterations that the work no longer constitutes an infringement of the rights of the injured party, in such case such injured party may only require that such measures be undertaken as to achieve this effect.

(4) The measures proposed in paragraphs (1) to (3) shall apply only to copies and equipment which are the property

of the parties concerned in the unlawful making or distribution of the copies, or their heirs. These measures may be executed only after ownership has been legally confirmed.

Right of delivery

Article 99. — (1) In lieu of the measures provided for in Article 98, the injured party may require that the copies and equipment be delivered to him, in whole or in part, for an equitable price which shall not exceed the production cost.

(2) The provisions of Article 98, paragraphs (3) and (4), shall apply as appropriate.

Responsibility of the proprietor of an enterprise

Article 100. — If a right protected under this Act has been infringed by an employee or agent of an enterprise in the course of his duties to such enterprise, the injured party may also assert the rights provided in Articles 97 to 99, with the exception of the right to damages, as against the proprietor of such enterprise. Further claims which may arise from other legal provisions shall not be affected.

Exceptions

Article 101. — (1) If, in the event of infringement of a right protected under this Act, the demands of the injured party for an injunction (Article 97), for destruction or rendering the work unusable (Article 98) or for delivery (Article 99) are asserted against a person whose acts of infringement were neither intentional nor negligent, such person may simply indemnify in money the injured party if execution of the aforesaid demands would produce for him a serious and disproportionate injury and if it may be assumed that the injured party could accept redress in cash. The damages payable as aforesaid shall be such an amount as would have constituted an equitable remuneration had the right been granted by contract. Payment of such damages shall constitute the injured party's consent to a utilization within customary limits.

(2) The provisions of Articles 98 and 99 shall not apply to:

1. works of architecture;
2. separable parts of copies and equipment whose reproduction or distribution is not unlawful.

Limitations

Article 102. — (1) The right to damages under Article 97 shall expire in three years from the point in time at which the injured party received knowledge of the damage and of the identity of the responsible party, and, irrespective of such knowledge, in thirty years from the commission of the act.

(2) Rights arising from Articles 98 and 99 shall not be subject to limitation.

Publication of the judgment

Article 103. — (1) If an action has been brought under this Act, the judgment may authorize the successful party to publish the judgment at the cost of the losing party, if the successful party can offer a legitimate reason so to do. Unless the court rules otherwise, the judgment may not be published until it becomes final.

(2) The nature and extent of the publication shall be determined in the judgment. The authority to publish the judgment shall expire if it is not published within six months after it becomes final.

(3) The party given authority to publish may request that the losing party defray in advance the cost of publication. This request shall be ruled upon by a competent court of first instance in a proceeding without oral argument. Prior to ruling upon this matter, the losing party shall be heard.

Legal recourse

Article 104. — For all litigation concerning the exercise of rights arising from the legal relationships regulated by this Act (copyright litigation) ordinary legal recourse shall be accorded. As to copyright litigation arising out of service or commission relationships where the claimant's only objective is the payment of an agreed upon compensation, recourse to labor courts and to administrative tribunals shall remain unaffected.

Courts for copyright litigation

Article 105. — (1) *Land* governments shall be empowered to assign by ordinance copyright litigation falling within the jurisdiction of the *Land* courts (*Landgerichte*) to one of several *Land* courts in the first instance or on appeal, if this is in the interests of justice.

(2) *Land* governments shall further be empowered to assign by ordinance copyright litigation falling within the jurisdiction of the lower courts (*Amtsgerichte*) to one of several lower courts for the districts, if this is in the interests of justice.

(3) The *Land* governments may transfer the powers covered by paragraphs (1) and (2) to the *Land* law authorities.

(4) In the case of a *Land* court, to which under paragraph (1) copyright litigation from the districts of several *Land* courts are assigned, the parties may also be represented by lawyers who are recognized by the *Land* court which would normally have jurisdiction. The same procedure shall apply in case where the higher *Land* court acts as an appeal court.

(5) The extra expense incurred by a party in arranging to be represented under paragraph (4) by a lawyer not recognized by the court hearing the case shall not be refunded.

2. Criminal law provisions

Unlawful exploitation of copyrighted works

Article 106. — Any person who, otherwise than in a manner allowed by law, with intent and without the copyright owner's consent reproduces, distributes or publicly communicates a work or an adaptation or transformation of a work shall be subject to a fine or imprisonment up to one year.

Unlawful designation of authorship

Article 107. — It shall be punishable by fine, or by imprisonment up to one year, insofar as the conduct may not warrant a more severe penalty pursuant to other provisions, for any person to:

1. affix a designation of authorship (Article 10, paragraph 1), intentionally and without the author's consent,

on the original of an artistic work, or to distribute an original bearing such a designation;

2. affix a designation of authorship (Article 10, paragraph 1) on a copy, adaptation or transformation of an artistic work in such manner as to give to the copy, adaptation or transformation the appearance of an original, or to distribute a copy, adaptation or transformation bearing such a designation.

Infringement of related rights

Article 108. — It shall be punishable by fine, or by imprisonment up to one year for any person, other than in a manner permitted by law, intentionally and without the consent of the possessor of the right, to:

1. reproduce, distribute or publicly communicate a scientific publication (Article 70), or an adaptation or transformation thereof;
2. exploit a posthumous work, or an adaptation or transformation thereof, contrary to the provisions of Article 71;
3. reproduce, distribute or publicly communicate a photograph (Article 72), or an adaptation or transformation thereof;
4. exploit a performance contrary to the provisions of Articles 74, 75 or 76, paragraph (1);
5. exploit a sound record contrary to the provisions of Article 85;
6. exploit a broadcast contrary to the provisions of Article 87;
7. exploit a visual or visual and sound record contrary to the provisions of Article 94, or Article 95 in relation to Article 94.

Complaint in a criminal prosecution

Article 109. — A criminal prosecution shall occur only upon a complaint. The complaint may be withdrawn.

Right of destruction and similar measures

Article 110. — In the case of offences under Articles 106, 107, item 2, and Article 108, the injured party may assert the rights specified in Articles 98 and 99 in accordance with the provisions of the Code of Criminal Procedure concerning compensation to the injured party (Articles 403 to 406 c)) by bringing the case before the *Amtsgericht*, irrespective of the value of the object in dispute. In such offences Article 40 of the Penal Code shall not apply to the objects mentioned in Articles 98 and 99.

Publication of the judgment

Article 111. — (1) If in cases covered by Articles 106 to 108, a penalty has been pronounced, the court may also, upon request, grant to the injured party the right to publish the judgment at the defendant's expense, if the injured party has a justifiable interest in so doing. A copy of the legally valid judgment shall be supplied to the injured party at the defendant's expense. The right to publish the judgment shall expire if it has not been made public within six months after notification.

(2) At the request of a defendant who has been acquitted, the court may order the publication of the judgment of acquittal. In the case of a prosecution arising from a private complaint, the expense shall be borne by the complainant; in a case of an official complaint the costs shall be borne by the national treasury unless under Article 469 of the Code of Criminal Procedure, the costs may be charged to the informer.

(3) The nature and extent of the publication shall be determined in the judgment.

SECTION III Judicial execution

1. General

Article 112. — Judicial execution with respect to the rights protected by this Act shall be in accordance with general provisions of law in the absence of anything to the contrary contained in Articles 113 to 119.

2. Judicial execution of claims against the author

The right of the author

Article 113. — With respect to claims against the author, judicial execution is permissible only with his consent, and only insofar as he has a right to grant licences to the work (Article 31). The consent may not be given through a legal representative.

Originals of works

Article 114. — (1) With respect to claims against the author, judicial execution as against originals of his works owned by him shall be permissible only with his consent. The consent may not be given through a legal representative.

(2) No such consent shall be required:

1. insofar as judicial execution upon the original of a work is necessary in order to effectuate judicial execution on a licence to the work;
2. with respect to judicial execution on the original of a work of architecture;
3. with respect to judicial execution on the original of another artistic work, if the work has been publicly disseminated.

In the situation covered by items 2 and 3, the original of the work may be distributed without the author's consent.

3. Judicial execution of claims against the author's legal successor

Copyright

Article 115. — A judicial execution on a copyright by reason of a claim against the legal successor of the author (Article 30) shall be permissible only with the consent of such legal successor, and only insofar as he has a right to grant licences to the work (Article 31). Such consent is not necessary if the work has been published.

Originals of works

Article 116. — (1) With respect to claims against the author's legal successor (Article 30), judicial execution on originals of works of the author owned by the legal successor shall be permissible only with his consent.

(2) No such consent shall be required:

1. in the situations covered by Article 114, paragraph (2), sentence 1;
2. for judicial execution on the original of a work which has been published.

Article 114, paragraph (2), sentence 2, shall apply as appropriate.

Executor

Article 117. — If, in accordance with Article 28, paragraph (2), it has been determined that the copyright may be exercised by an executor, the consent required in Articles 115 and 116 must be given by the executor.

4. Judicial execution of claims against the author of scientific editions and against a photographer

Article 118. — The provisions of Articles 113 to 117 shall apply as appropriate:

1. to judicial execution for claims against an author of a scientific edition (Article 70) and against his legal successor,
2. to judicial execution for claims against a photographer (Article 72) and against his legal successor.

5. Judicial execution for claims with respect to certain equipment

Article 119. — (1) Equipment intended exclusively for the reproduction or broadcasting of a work, such as moulds, plates, engraving stones, blocks, stencils and negatives, shall be subject to judicial execution for claims only insofar as the creditor is entitled to use the work by means of such equipment.

(2) The same shall apply to equipment intended exclusively for presenting a cinematographic work, such as reels of film and the like.

(3) Paragraphs (1) and (2) shall apply as appropriate to publications protected under Articles 70 and 71, to photographs protected under Article 72, and to visual and sound records protected under Article 75, sentence 2, and Articles 85, 87, 94 and 95.

PART V

Application of Transitional and Permanent Provisions

SECTION I

Application of the Act

1. Copyright

German nationals

Article 120. — (1) German nationals shall enjoy copyright protection with respect to all of their works, regardless of the date and place of publication. In the case of a work created by co-authors (Article 8), it shall be sufficient if one of the co-authors is a German national.

(2) German subjects within the meaning of Article 116, paragraph (1), of the Foundation Act (*Grundgesetz*), who do not possess German nationality, shall have equal status with German nationals.

Foreign nationals

Article 121. — (1) Foreign nationals shall enjoy copyright protection with respect to their works published within the jurisdiction of this Act, unless the work or a translation thereof has been published outside of such jurisdiction more than thirty days prior to its publication within such jurisdiction. Subject to the same limitation, foreign nationals shall enjoy protection with respect to their works published within the jurisdiction of this Act only in translation.

(2) Artistic works which are an integral part of real property located within the jurisdiction of this Act shall be assimilated to works published within such jurisdiction for the purposes of paragraph (1).

(3) The protection granted, pursuant to paragraph (1), to works whose authors are foreign nationals may be limited by decree of the Federal Minister of Justice, if the author is not a national of any of the Member States of the Berne Convention for the Protection of Literary and Artistic Works, and if at the time of publication of the work he is neither a domiciliary within the jurisdiction of this Act, nor within one of the Member States of the Berne Union, and if the State of which he is a national does not adequately protect the works of German nationals.

(4) In any case, foreign nationals shall enjoy copyright protection as provided by international treaty. In the absence of such treaties, such works will be protected by copyright if, according to a notice by the Federal Minister for Justice appearing in the *Bundesgesetzblatt*, German nationals enjoy in the State of which the author is a national a protection corresponding to that granted to their own works.

(5) Droit de suite (Article 26) shall be available to foreign nationals only if the State of which they are nationals grant, according to a notice by the Federal Minister for Justice in the *Bundesgesetzblatt*, German nationals a corresponding right.

(6) Protection pursuant to Articles 12 to 14 shall be enjoyed by foreign nationals with respect to all of their works, even if the conditions contained in paragraphs (1) to (5) hereof are not fulfilled.

Stateless persons

Article 122. — (1) Stateless persons who permanently reside within the jurisdiction of this Act shall enjoy with respect to their works the same copyright protection as German nationals.

(2) Stateless persons who do not permanently reside within the jurisdiction of this Act shall enjoy with respect to their works the same copyright protection as the nationals of the foreign State in which they permanently reside.

Foreign refugees

Article 123. — Foreigners who are refugees within the meaning of treaties or other legal provisions shall be covered by the provisions of Article 122. This shall not preclude protection under Article 121.

2. Related rights

Scientific editions and photographs

Article 124. — In respect of the protection of scientific editions (Article 70) and the protection of photographs (Article 72), Articles 120 to 123 shall apply as appropriate.

Protection of the performer

Article 125. — (1) The protection granted under Articles 73 to 84 shall be enjoyed by German nationals with respect to all their performances, irrespective of the place where they take place. Article 120, paragraph (2), shall apply.

(2) Foreign nationals shall enjoy protection with respect to all of their performances within the jurisdiction of this Act, subject to the provisions of paragraphs (3) and (4).

(3) If performances by foreign nationals are lawfully fixed on visual or sound records, and if such records have been published, such foreign nationals, with respect to such visual or sound records, shall enjoy protection pursuant to the provisions of Article 75, sentence 2, Article 76, paragraph (2), and Article 77 if the visual or sound records have been published within the jurisdiction of this Act, unless such records have been published outside of the jurisdiction of this Act more than thirty days before their publication within such jurisdiction.

(4) If performances of foreign nationals are lawfully broadcast and the broadcast was transmitted from within the jurisdiction of this Act, the foreign nationals shall enjoy protection against the recording of the broadcast on visual or sound fixations (Article 75, sentence 1) and against the re-broadcasting of the broadcast (Article 76, paragraph 1) as well as the protection provided in Article 77.

(5) In any case, foreign nationals shall enjoy protection as provided by international treaty. Article 121, paragraph (4), sentence 2, as well as Articles 122 and 123 shall apply as appropriate.

(6) Protection pursuant to Articles 74, 75 and 83, sentence 1, shall be enjoyed by foreign nationals with respect to their performances, even if the conditions of paragraphs (2) to (5) hereof are not fulfilled. The same shall apply to the protection pursuant to Article 76, paragraph (1), insofar as a direct broadcast of the performance is concerned.

Protection of the producer of sound records

Article 126. — (1) The protection granted in Articles 85 and 86 shall be enjoyed by German nationals and German enterprises which have their headquarters within the jurisdiction of this Act with respect to all of their sound records, irrespective of whether and where they have been published. Article 120, paragraph (2), shall apply.

(2) Foreign nationals and foreign enterprises which do not have their headquarters within the jurisdiction of this Act shall enjoy protection for their sound records published within such jurisdiction unless the record was published outside of the jurisdiction of this Act more than thirty days before it was published within such jurisdiction.

(3) In any case, foreign nationals and foreign enterprises which do not have their headquarters within the jurisdiction

of this Act, shall enjoy protection as provided by international treaty. Article 121, paragraph (4), sentence 2, as well as Articles 122 and 123 shall apply as appropriate.

Protection of the broadcasting organization

Article 127. — (1) Broadcasting organizations which have their headquarters within the jurisdiction of this Act shall enjoy the protection provided by Article 87 with respect to all of their broadcasts, irrespective of where they emanate.

(2) Broadcasting organizations which do not have their headquarters within the jurisdiction of this Act shall enjoy protection for all of their broadcasts which emanate from such area of jurisdiction.

(3) In any case, broadcasting organizations which do not have their headquarters within the jurisdiction of this Act shall enjoy protection as provided by international treaty. Article 121, paragraph (4), sentence 2, shall apply as appropriate.

Protection of the film producer

Article 128. — (1) German nationals and German enterprises which have their headquarters within the jurisdiction of this Act shall enjoy protection pursuant to Articles 94 and 95 with respect to their visual or visual and sound records, irrespective of whether and where they have been published. Article 120, paragraph (2), shall apply.

(2) The provisions of Article 126, paragraphs (2) and (3), shall apply as appropriate to foreign nationals and foreign enterprises which do not have their headquarters within the jurisdiction of this Act.

SECTION II

Transitional provisions

Works

Article 129. — (1) The provisions of this Act shall apply as well to works created before the date upon which this Act became effective, unless such works at that time were not protected by copyright, or unless some provision to the contrary is contained in this Act. The foregoing shall also apply to related rights.

(2) The term of copyright with respect to works which have been publicly disseminated after the expiration of fifty years from the author's death, but prior to the effective date of this Act shall be determined in accordance with previously existing legal provisions.

Translations

Article 130. — Nothing herein contained shall affect the rights of an author of a translation which was legally published prior to January 1, 1902, without the consent of the author of the work which was thus translated.

Literary works set to music

Article 131. — Literary works set to music which, pursuant to Article 20 of the Literary and Musical Copyright Act of June 19, 1901 (*Reichsgesetzblatt*, p. 227) in the version of the Act of May 22, 1910, concerning the execution of the Revised Berne Convention for the Protection of Literary and Artistic Works (*Reichsgesetzblatt*, p. 793), could be repro-

duced, distributed and publicly communicated without the consent of their author, may continue in the future to be reproduced, distributed and publicly communicated to the same extent, if the musical version of the work has been published prior to the effective date of this Act.

Contracts

Article 132. — (1) The provisions of this Act, with the exception of Articles 42, 43 and 79, shall not apply to contracts entered into prior to the effective date of this Act. Articles 40 and 41 shall apply to such contracts, except that the periods mentioned in Article 40, paragraph (1), sentence 2, shall begin not earlier than the effective date of this Act.

(2) Activities occurring prior to the effective date of this Act shall remain valid.

Sound records

Article 133. — (1) With respect to musical works which, pursuant to the provisions of Article 63 a, paragraph (1), of the Literary and Musical Copyright Act of June 19, 1901, in the version of the Act of May 22, 1910, concerning the execution of the Revised Berne Convention for the Protection of Literary and Artistic Works, could be freely recorded on instruments for mechanical reproduction, it shall continue to be permissible to fix same on sound records, and to reproduce and distribute such records.

(2) The provisions of paragraph (1) shall not apply to sound films.

Authors

Article 134. — Any person who, at the time of the effective date of this Act, would have constituted an author under prior legal provisions, but not under the provisions of this Act, shall continue to be deemed an author except for the purposes of Article 135. If under such prior provisions a corporate body would be regarded as the author of a work, such prior provisions shall be applicable in calculating the duration of copyright.

Owners of related rights

Article 135. — Any person who at the time of the effective date of this Act would be considered, under prior legal provisions, as the author of a photograph or of the recording of a work on instruments for mechanical reproduction, shall be the owner of the corresponding related rights granted by this Act.

Reproduction and distribution

Article 136. — (1) With respect to a reproduction permissible under prior legal provisions but illegal under this Act, the making of copies of such reproduction commenced prior to the effective date of this Act may be completed.

(2) Any copies made pursuant to the provisions of paragraph (1), or the making of which was completed prior to the effective date of this Act, may be distributed.

(3) If under this Act an equitable remuneration is to be paid to the owner of the rights with respect to a reproduction, which under prior legal provisions would have been free, the copies designated in paragraph (2) may be distributed without payment of a remuneration.

Assignment of rights

Article 137. — (1) If a copyright has been assigned prior to the effective date of this Act, the assignee shall enjoy the corresponding rights of a licensee (Article 31). However, in case of doubt, the assignment shall not be deemed to extend to rights which are established only under this Act.

(2) If the copyright has been assigned in whole or in part to another prior to the effective date of this Act, in case of doubt the assignment shall also be applicable for the duration of copyright as extended pursuant to Articles 64 to 66. The same shall be true if prior to the effective date of this Act a third party has been authorized to exercise one of the rights granted to the author.

(3) In the situations envisaged under paragraph (2), the assignee or the holder of the authorization shall pay to the assignor or grantor an equitable compensation if it appears that the latter would have been paid greater compensation for the assignment or authorization if the extended term of protection had been determined at the time of the original assignment or grant.

(4) The right to such remuneration shall not subsist if as soon as a claim therefor is asserted the assignee or holder of the authorization grants to the claimant the rights in the work for the period following the expiration of the former term of protection, or if the assignee or holder waives such rights for the period during the extended term of protection. If the assignee or holder of the authorization has resold the rights prior to the effective date of this Act, he shall not be required to pay the aforesaid compensation if, under the circumstances of the resale, it would constitute an undue burden for him.

(5) Paragraph (1) shall apply as appropriate to related rights.

SECTION III

Permanent provisions

Register of Authors

Article 138. — (1) The Register of Authors for the registrations specified in Article 66, paragraph (2), item 2, shall be kept at the Patent Office (*Patentamt*). The Patent Office shall effect the registrations, without verifying the applicant's credentials or the accuracy of the information submitted for registration.

(2) Should registration be declined, the applicant may petition for a decision by the courts. The decision on the application shall be made by the *Oberlandesgericht*, competent for the district in which the Patent Office is situated, and its decision shall be reasoned. The application shall be made to the *Oberlandesgericht* in writing. The court's decision shall be final. Otherwise, the legal procedure shall be governed by the provisions of the Act on matters of voluntary arbitration (*freiwillige Gerichtsbarkeit*). The official scale of costs shall apply to the court costs, and the fees shall be determined by Article 131 of the scale of costs.

(3) The registrations shall be published in the *Bundesanzeiger*. The costs of publication shall be paid in advance by the applicant.

(4) Inspection of the Register of Authors shall be open to the public. Extracts from the Register shall be issued on request; when required, they shall be certified.

(5) The Federal Minister of Justice shall be authorized to issue by way of an ordinance regulations as to the form of application, the conduct of the Register of Authors and the charging of costs.

(6) Registrations which have been performed at the City Council (*Stadtrat*) of Leipzig in conformity with Article 56 of the Literary and Musical Copyright Act of June 19, 1901, shall remain effective.

Modification of the Code of Criminal Procedure

Article 139. — Article 374, paragraph (1), item 8, of the Code of Criminal Procedure shall read as follows:

“8. Any infringements of patent, registered design, trademark and design patent law, insofar as they are punishable as offences, as well as offences under Articles 106 to 108 of the Copyright Act.”

Modification of the Act concerning the Universal Copyright Convention, signed September 6, 1952

Article 140. — In the Act of February 24, 1955, concerning the Universal Copyright Convention signed September 6, 1952 (*Bundesgesetzblatt*, II, p. 101), the following Article 2 a) shall be inserted following Article 2:

“Article 2 a)

The provisions of Article IV, Nos. 4 to 6, of the Convention shall be applicable within the jurisdiction of this Act for the purpose of calculating the term of protection to be accorded under the Convention to foreign nationals with respect to their works.”

Abrogation of provisions

Article 141. — Upon the effective date of this Act, the following provisions shall be abrogated:

1. Articles 57 to 60 of the Act concerning Copyright in Literary Works, Illustrations, Musical Compositions and Dramatic Works of June 11, 1870 (*Bundesgesetzblatt* of the North German Confederation, p. 339);
2. Articles 17 to 19 of the Act concerning Copyright in Artistic Works of January 9, 1876 (*Reichsgesetzblatt*, p. 4);
3. the Act concerning Copyright in Literary and Musical Works of June 19, 1901, in the version of the Act of May 22, 1910, concerning the execution of the Revised Berne Convention for the Protection of Literary and Artistic Works and of the Act extending the terms of copyright protection of December 13, 1934 (*Reichsgesetzblatt*, II, p. 1395);
4. Articles 3, 13 and 42 of the Publishing Rights Act of June 19, 1901 (*Reichsgesetzblatt*, p. 217) in the version of the Act of May 22, 1910, concerning the execution of the Revised Berne Convention for the Protection of Literary and Artistic Works;
5. the Act concerning Copyright in Artistic Works and Photography of January 9, 1907 (*Reichsgesetzblatt*, p. 7) in the version of the Act of May 22, 1910, concerning the

execution of the Revised Berne Convention for the Protection of Literary and Artistic Works, of the Act extending the terms of copyright protection of December 13, 1934, and of the Act extending the terms of copyright protection in photographs of May 12, 1940 (*Reichsgesetzblatt*, I, p. 758) insofar as it does not concern the protection of portraits;

6. Articles I, III and IV of the Act of May 22, 1910, concerning the execution of the Revised Berne Convention for the Protection of Literary and Artistic Works;
7. the Act to facilitate film reporting of April 30, 1936 (*Reichsgesetzblatt*, I, p. 404);
8. Article 10 of the Act concerning the Legal Status of Stateless (*heimatlos*) Foreigners in the Federal Territory of April 25, 1951 (*Bundesgesetzblatt*, I, p. 269).

Application in Land Berlin

Article 142. — In accordance with Article 13, paragraph (1), of the Third Transitional Act of January 4, 1952 (*Bundesgesetzblatt*, I, p. 1), this Act shall also apply in *Land Berlin*. Ordinances issued pursuant to this Act shall also apply in *Land Berlin* in accordance with Article 14 of the Third Transitional Act.

Article 143. — (1) Articles 64 to 67, 69, 105, paragraphs (1) to (3), and Article 138, paragraph (5), shall come into effect on the day following promulgation¹⁾ of this Act.

(2) Otherwise, this Act shall come into effect on January 1, 1966.

¹⁾ Promulgated September 16, 1965.

II

Act dealing with the Administration of Copyright and Related Rights

(Of September 9, 1965)¹⁾

SECTION I

Authorization to conduct business

The authorization requirement

Article 1. — (1) Any person who manages the collective exploitation rights, licence rights or authorization rights where such rights give rise to a right of remuneration pursuant to the Copyright Act of September 9, 1965 (*Bundesgesetzblatt*, I, p. 1273), on behalf of a number of authors or owners of related rights, must obtain an authorization to the effect that such administration is firmly authorized by such author or owner in his own name or under the name of another.

(2) Paragraph (1) shall not apply to occasional or short term administration of specified rights and privileges.

(3) Any person who conducts business without the authorization required in paragraph (1) cannot assert the rights or privileges entrusted to him for administration. He shall not have standing to file a complaint pursuant to Article 109 of the Copyright Act.

(4) If the activity specified in paragraph (1) is exercised by a corporate body or a community of persons, either of the latter shall be a collecting society within the meaning of this Act. If the activity specified in paragraph (1) is exercised by an individual natural person, the provisions laid down in this Act in respect of collecting societies shall apply accordingly.

Grant of authorization

Article 2. — Authorization shall be granted on receipt of written application by the supervising authority (Article 18, paragraph 1). The application shall be accompanied by:

1. the society's articles of association;
2. a list of the names, addresses and nationality of the persons who may lawfully represent the society, according to law or to the articles;
3. a declaration stating the number of persons who have nominated the collecting society to administer their right of use, rights of assent or claims to remuneration, as well as the number and material importance of the rights and claims entrusted for administering to the society.

Withholding of authorization

Article 3. — (1) Authorization may be withheld only if:

1. the articles of the collecting society do not conform to the provisions of this Act;
2. there is factual evidence for assuming that a person who may lawfully represent the collecting society, according to law or to the articles, does not possess the reliability needed for the exercise of its activity, or
3. the economic basis of the collecting society does not warrant the belief that the rights entrusted to it will be effectively administered.

(2) The reasons for withholding authorization shall be stated and the collecting society shall be so notified.

Revocation of authorization

Article 4. — (1) Authorization shall be revoked if:

1. one of the reasons for withholding mentioned in Article 3, paragraph (1), was not known to the supervising author-

¹⁾ *Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten, vom 9. September 1965*, published in *Bundesgesetzblatt*, I, p. 1294, No. 51, of September 16, 1965.

ity at the time of granting authorization or came to light later, and the deficiency has not been remedied within a period to be fixed by the supervising authority, or

2. despite a warning by the supervising authority, the collecting society repeatedly infringes one of the obligations incumbent on it under this Act.

(2) The reasons for the revocation of authorization shall be stated and the collecting society shall be so notified. Revocation shall become effective three months after it has become absolute, provided no later date is fixed therein.

Publication

Article 5. — The grant of authorization and any revocation which has become effective pursuant to Article 4, paragraph (2), shall be published in the *Bundesanzeiger*.

SECTION II

Rights and duties of a collecting society

Duty to administer

Article 6. — (1) The collecting society shall be required upon request of the owners of the rights, to administer on equitable terms the rights and privileges relevant to its sphere of activity if the owners of the rights are German nationals within the meaning of the Foundation Act (*Grundgesetz*) or are domiciled within the jurisdiction of this Act and if effective administration of their rights and privileges is not otherwise possible.

(2) An agency representing common interests shall be formed to adequately safeguard the interests of owners of rights who have not been accepted as members of the collecting society. The articles of the collecting society must contain provisions as to the selection of members of the agency by owners of rights, and as to the powers of the agency.

Apportionment of income

Article 7. — The collecting society shall apportion the income resulting from its activity according to definite rules (apportionment plan), which will prevent any arbitrary system of apportionment. The apportionment plan shall conform to the principle that culturally important works and performances are to be promoted. The principles of the apportionment plan shall be incorporated in the collecting society's articles.

Welfare and assistance facilities

Article 8. — The collecting society shall arrange welfare and assistance facilities for the owners of the rights or privileges administered by it.

Accountability and inspection

Article 9. — (1) Immediately on completion of the financial year the collecting society shall prepare the balance sheet and profit and loss account for the past year, and also an annual report.

(2) The balance sheet shall conform to the principles of good accounting. It shall be clear and intelligible.

(3) The annual report shall represent the course of operations and the position of the company and shall elucidate

the balance sheet. The annual report shall conform to the principles of conscientious and loyal stewardship.

(4) The balance sheet, together with the accounting and the annual report shall be examined by one or more auditors. Only chartered accountants or chartered accountant companies may be auditors.

(5) The auditors shall report in writing on the result of their inspection. Should no objections be raised after the final inspection, they shall confirm this by appending the following attestation to the balance sheet:

“After making my/our regular inspection, I/we find that the accounting, the balance sheet and the annual report are in conformity with the law and with the company's articles.”

Should objections be raised, the auditors shall qualify their confirmation or refuse it. The auditors shall sign the attestation, stating place and date.

(6) The collecting society shall publish the balance sheet in the *Bundesanzeiger* not later than eight months after the close of the financial year, giving the full text of the attestation. Should the auditors have withheld their confirmation, attention shall be drawn to the fact in a special notation on the balance sheet.

Duty to furnish information

Article 10. — The collecting society shall be required, upon written request, to inform any person as to whether it administers on behalf of an author or owner of related rights, rights to use with respect to a particular work, or authorization rights therein, or certain rights to remuneration in connection therewith.

The obligation to contract

Article 11. — (1) The collecting society shall be required, with respect to the rights administered by it, to agree with any person so requesting to equitable terms for the granting of a licence or other authorization.

(2) Should no agreement be reached with respect to the amount of remuneration to be paid for the grant of a licence, or for an authorization, the licence or authorization shall be deemed to have been granted if the remuneration demanded by the collecting society has been paid without prejudice, or if such remuneration is deposited in favour of the collecting society.

Inclusive contracts

Article 12. — A collecting society shall be required to conclude inclusive contracts on equitable terms with associations whose members exploit works or performances protected pursuant to the Copyright Act or which require compensation pursuant to the provisions of the Copyright Act, with respect to the rights and privileges administered by the society, unless the society may not be expected to conclude such a contract because the number of members of the association is insufficient.

Schedule of charges

Article 13. — (1) The collecting society shall establish a schedule of charges covering the remuneration it demands

for the rights and privileges administered by it. If inclusive contracts have been executed, the agreed upon rate of remuneration contained in such contracts shall constitute such charges.

(2) The collecting society shall be required immediately to publish the charges and any amendment thereto in the *Bundesanzeiger*.

(3) In establishing such charges and in collecting the remuneration the collecting society shall pay due regard to the religious, cultural and social interests of the persons liable to pay remuneration, including youth welfare interests.

Arbitration Commission

Article 14. — (1) Should the parties not agree on the conclusion or modification of an inclusive contract, in accordance with the provisions of Article 12, or a contract between the collecting society and a broadcasting organization with respect to the rights and privileges administered by the society, each party concerned may appeal to the Arbitration Commission. There shall be no resort to action in the courts. The conclusion of an arbitration agreement shall be permissible; however, arbitration agreements with respect to future disputes shall be void unless they accord to each interested party the right to demand, in each case, that the decision be rendered by the Arbitration Commission rather than by an arbitration tribunal.

(2) The Arbitration Commission shall be constituted near to the supervisory authority (Article 18, paragraph 1). It shall consist of a chairman or his deputy and two associate judges. The Chairman and his deputy must be competent to act as judges, in conformity with the German Justices Act. They shall be appointed by the supervising authority for two years; they may be reappointed. The associate judges shall be nominated by the parties concerned in every case where the Arbitration Commission is resorted to.

(3) Recourse to the Arbitration Commission may be obtained by written application to the supervising authority. The applicant shall nominate an associate judge in his application. The supervising authority shall communicate the application to the defendant, requesting him likewise to nominate an associate judge within a term of one month. Should the request not be complied with before expiry, this associate judge shall be nominated by the supervising authority.

(4) The Arbitration Commission shall determine the terms of the contract referred to in paragraph (1), particularly the nature and rate of remuneration. This determination shall replace relevant agreements made by the parties. It shall be binding when it has become absolute.

(5) The decisions of the Arbitration Commission shall be determined by majority vote. The decisions shall give reasons and the parties shall be so notified. They may be contested by any party within a month of such notification by a request for judicial decision.

(6) The Arbitration Commission shall inform the *Bundeskartellamt* of any such proceedings. The provisions of Article 90, paragraph (1), sentence 2, of the Act of July 27, 1957, against restrictions on competition (*Bundesgesetzblatt*,

I, p. 1081) shall be applicable as appropriate subject to the limitation that the chairman of the *Bundeskartellamt* may not appoint as a representative any member of the supervising authority.

(7) The Federal Minister of Justice shall have the power to determine by ordinance the procedure to be followed before the Arbitration Commission, and particularly to decree the detailed regulations concerning the compensation to be paid to the members of the Commission for their activities as well as those concerning the legal costs of the proceedings.

Judicial procedure

Article 15. — (1) The decision as to the application for judicial decision in conformity with Article 14, paragraph (5), shall be taken by the *Oberlandesgericht* which has competence for the area where the Arbitration Commission is situated. That court's decision shall be final.

(2) The judicial procedure shall be governed by the provisions of the Act on matters of voluntary jurisdiction (*freiwillige Gerichtsbarkeit*), provided nothing to the contrary is contained in this Act. The court shall arrange oral arguments when so requested by one of the parties. The terms of Article 14, paragraph (6), shall apply accordingly.

(3) For the purpose of judicial procedure, the parties shall arrange to be represented by attorneys authorized to appear in courts within the jurisdiction of this Act.

(4) Application for judicial decision shall be lodged in writing with the *Oberlandesgericht*. The application shall be accompanied by documents which are relevant for the purpose of reaching a decision. If the purpose of the application is to oppose the determination of the terms of the agreement by the Arbitration Commission, the applicant shall specify what form of determination he considers equitable; further, he shall mention any circumstances which may be relevant to the determination.

(5) The court's judgment shall state the reasons for the decision. If the effect of the decision is to re-determine the terms of the agreement, it shall replace the relevant arrangements made by the parties.

(6) Subject to anything to the contrary contained in this Act, the judicial costs shall be governed by the provisions of the official costs schedule. The fee charged for the procedure shall be double the full fee. It shall be reduced to the full fee if the application is withdrawn before any judicial decision is made. The court may at its discretion charge the court costs, in whole or in part, to one of the parties.

Duties of the organizer

Article 16. — (1) Organizers of public communications of copyrighted works shall before the event obtain the authorization of the collecting society which administers the licences for such works.

(2) After the event the organizer shall send the collecting society a list of the works used at the event. This shall not apply to the presentation of a work by sound record, or to communication of broadcasts of a work.

(3) Insofar as information for the apportionment of income from administering rights to communicate broadcasts is needed from the broadcasting organizations which have organized the broadcasts, such organizations are required to provide the collecting societies with such information against payment of their expenses.

Exclusive jurisdiction

Article 17. — (1) Exclusive jurisdiction for litigation concerning claims by a collecting society for infringement of a right to licence or grant an authorization administered by it shall reside with the court in whose area the action for infringement is brought, or in which the infringer has his legal domicile. Article 105 of the Copyright Act shall remain unaffected.

(2) If, in conformity with clause 1 of paragraph (1), more than one court has jurisdiction to decide a series of actions against the same infringer, the collecting society may bring all its claims before one of these courts.

SECTION III

Supervision of the collecting society

Supervising authority

Article 18. — (1) The supervising authority shall be the Patent Office (*Patentamt*).

(2) Any supervision of the collecting society under any other legal provisions shall be exercised in conjunction with the Patent Office.

(3) Decisions made on applications for authorization to carry on business (Article 2) and on revocation of authorization (Article 4) shall be made by the Patent Office, in agreement with the *Bundeskartellamt*. If no such agreement is possible, the Patent Office shall submit the case to the Federal Minister of Justice, whose directives, made after consultation with the Federal Minister of Economy, shall replace such agreement.

The purpose of supervision

Article 19. — (1) The supervising authority shall ensure that the collecting society faithfully discharges its obligations under this Act.

(2) The supervising authority may at all times demand from the collecting society information on any matters concerning the conduct of the business, and require to see the society's books or other evidence relevant to the business.

(3) The supervising authority is authorized to attend by proxy the society's general meeting, and also any meetings of any supervisory board or any advisory board which may exist.

(4) Should evidence indicate that a person empowered to represent the collecting society either by law or under the society's articles lacks the reliability needed for the exercise of this activity, in order to avoid revocation of authorization the supervising authority shall, under Article 4, paragraph (1), item 1, set a date for his recall. The supervising authority may forbid him to exercise his activity further pending expiry of the date, should this be necessary for the purpose of preventing serious detriment.

Duty to notify

Article 20. — The collecting society shall be required to inform the supervising authority of any change concerning the persons empowered by law or by article to represent them. It shall immediately furnish the supervising authority with copies of:

1. any amendment to the articles;
2. the schedule of charges and any alteration thereof;
3. the inclusive contracts;
4. agreements with foreign collecting societies;
5. the resolutions of the annual meeting, of any supervisory board or advisory board and of all committees;
6. the balance sheet, annual report and auditors' report;
7. any decisions in judicial or official proceedings to which it is a party, insofar as the supervising authority may demand.

SECTION IV

Transitional and permanent provisions

Monetary penalties

Article 21. — The Administrative Execution Act of April 27, 1953 (*Bundesgesetzblatt*, I, p. 157), shall apply to the execution of administrative acts issued in pursuance of this Act, provided that the penalty may not exceed 10,000 German marks.

Violation of secrecy

Article 22. — (1) Any person who unlawfully discloses a third-party secret, especially an industrial or commercial secret, which has become known to him in his capacity as member or official of the supervising authority (Article 18, paragraph 1), shall be liable to up to one year imprisonment and a fine, or to one of these penalties.

(2) If the person who commits the act does so for the sake of a reward or with intent to enrich himself or another person, or to cause harm to another person, the penalty shall be up to two years imprisonment; in addition, a fine may be imposed. Any person who unlawfully makes use of a secret, especially an industrial or commercial secret, which has become known to him under paragraph (1) shall also be punished.

(3) Prosecution shall take place only upon complaint of the injured party.

Existing collecting societies

Article 23. — (1) Collecting societies already existing when this Act comes into force may continue their activities at existing levels up to one year after the effective date of this Act without the authorization required under it.

(2) The supervising authority may, on request, exempt such a collecting society during a period up to one year after the effective date of this Act from individual obligations incumbent on it under this Act.

(3) The supervising authority may, on request, appropriately extend the periods mentioned in paragraphs (1) and (2) once or several times in favour of a collecting society, but in any case not beyond December 31, 1969.

Amendments to the Act against restrictions on competition

Article 24. — The Act against restrictions on competition shall be amended as follows:

1. in Article 91, paragraph (1), sentence 1, there shall be inserted following “Articles 100, 102”: “, 102 a)”. The following paragraph (3) shall also be added to Article 91:

“ (3) The provisions of Article 14, paragraph (1), sentence 3, of the Act of September 9, 1965, dealing with the Administration of Copyright and Related Rights (*Bundesgesetzblatt*, I, p. 1294) shall remain unaffected”;

2. after Article 102 the following Article 102 a) shall be added:

“ Article 102 a)

(1) Articles 1 and 15 shall not apply to the formation of collecting societies which are subject to supervision pursuant to the Act dealing with the Administration of Copyright and Related Rights, nor to agreements or resolutions to limit competition on the part of such collecting societies, if and to the extent such agreements or resolutions relate to activity for which authorization is required under Article 1 of the Act dealing with the Administration of Copyright and Related Rights, and have been reported to the supervising authority. The supervising authority shall determine further details of the contents of the report. It shall forward the reports to the *Bundeskartellamt*.

(2) The supervising authority may forbid collecting societies from undertaking certain measures, and may declare inoperative contracts and decisions which constitute an abuse of the market position obtained by reason of the exemption from Articles 1 to 15. If the contents of an exclusive contract or a contract concluded with a broadcasting organization has been determined in the manner required by the supervising authority pursuant to Article 14 of the Act dealing with the Administration of Copyright and Related Rights, the *Bundeskartellamt* shall have powers under this Act only to the extent that the performance of the contract constitutes an abuse.

(3) Dispositions in conformity with this Act which concern the activity of collecting societies shall be made by the *Bundeskartellamt* after consultation with the supervising authority”;

3. in Article 105, following “Articles 100, 102” there shall be inserted: “, 102 a)”.

Amendment to the Federal Fee Act for Lawyers

Article 25. — The following Article 65 shall be inserted in the Federal Fee Act for Lawyers of July 26, 1957 (*Bundesgesetzblatt*, I, pp. 861, 907) following Article 65 b):

“ Article 65 b)

Procedure under the Act dealing with the Administration of Copyright and Related Rights

In the procedure before the *Oberlandesgericht* pursuant to Article 15 of the Act dealing with the Administration of Copyright and Related Rights of September 9, 1965 (*Bundesgesetzblatt*, I, p. 1294), the provisions of this section shall apply as appropriate. The fees shall be determined according to Article 11, paragraph (1), sentence 2.”

Abrogation of provisions

Article 26. — Upon the effective date of this Act, the following legal provisions shall be abrogated, insofar as they have not already become inoperative:

1. the Musical Performance Rights Mediation Act of July 4, 1933 (*Reichsgesetzblatt*, I, p. 452);
2. the decree of February 15, 1934, regulating the application of the Musical Performance Rights Mediation Act (*Reichsgesetzblatt*, I, p. 100).

Application in Land Berlin

Article 27. — In conformity with Article 13, paragraph (1), of the Third Transitional Act of January 4, 1952 (*Bundesgesetzblatt*, I, p. 1), this Act shall also apply in *Land Berlin*. Ordinances issued pursuant to this Act shall also apply in *Land Berlin* in accordance with Article 14 of the Third Transitional Act.

Effective date of this Act

Article 28. — (1) Article 14, paragraph (7), shall become effective on the day following the promulgation¹⁾ of this Act.

(2) The remainder of this Act shall become effective on January 1, 1966.

¹⁾ Promulgated September 16, 1965.

III

**Act concerning the Text, adopted at Brussels on June 26, 1948,
of the Berne Convention of September 9, 1886, for the Protection of Literary and Artistic Works**
(Of September 15, 1965)¹⁾

Article 1. — The accession of the Federal Republic of Germany to the text, adopted at Brussels on June 26, 1948, of the Berne Convention of September 9, 1886, for the Protection of Literary and Artistic Works is hereby ratified (prior text: *Reichsgesetzblatt*, 1933, II, p. 890). The text of this Convention is published hereafter.

Article 2. — This Act shall be equally valid in *Land Berlin*, insofar as the latter shall decide to apply it.

Article 3. — (1) This Act shall come into effect on January 1, 1966.

(2) The date upon which the Convention, pursuant to Article 27, paragraph (3), in conjunction with Article 25, paragraph (3), thereof, shall become effective with respect to the Federal Republic of Germany, will be published in the *Bundesgesetzblatt*.

¹⁾ *Bundesgesetzblatt*, II, p. 1213, No. 36, of September 23, 1965.

IV

**Act concerning the European Agreement of June 22, 1960,
on the Protection of Television Broadcasts**
(Of September 15, 1965)¹⁾

Article 1. — Subject to the reservations contained in Article 2, paragraph (1), hereof, the European Agreement of June 22, 1960, on the Protection of Television Broadcasts, signed by the Federal Republic of Germany at Strasbourg on July 11, 1960, is hereby ratified. The text of this Agreement is published hereafter.

Article 2. — (1) The Federal Republic of Germany, at the time it deposits the instrument of ratification, will avail itself, pursuant to Article 10 of the Agreement, of the options contained in Article 3, paragraph (1), letters (b), (c) and (e) thereof; as a result of which it will not accord the protection specified therein.

(2) Articles 50 and 55 of the Copyright Act of September 9, 1965 (*Bundesgesetzblatt*, I, p. 1273), shall apply as applicable to television broadcasts which are the subject of the Agreement.

Article 3. — (1) Television broadcasts by television organizations located within the national territory of another Party to the Agreement, which conform to the legal requirements of such other Party, or which are broadcast within such territory, shall not enjoy within the jurisdiction of this

Act a period of protection longer than that granted by such other Party.

(2) With respect to still photographs or the reproduction thereof, made from television broadcasts of a television organization located within the national territory of another Party to the Agreement, which conform to the legal requirements of such other Party, or which are broadcast within such territory, protection shall not be accorded within the jurisdiction of this Act if such other Party has availed itself of the reservation permitted under Article 3, paragraph (1), letter (d), of the Agreement.

Article 4. — This Act shall be equally valid in *Land Berlin*, insofar as the latter shall decide to apply it.

Article 5. — (1) This Act shall come into effect on January 1, 1966.

(2) The date upon which the Agreement pursuant to Article 8, paragraph (2), thereof, shall become effective with respect to the Federal Republic of Germany, will be published in the *Bundesgesetzblatt*.

¹⁾ *Bundesgesetzblatt*, II, p. 1234, No. 36, of September 23, 1965.

V

**Act concerning the International Convention of October 26, 1961,
for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations**

(Of September 15, 1965) ¹⁾

Article 1. — Subject to the reservations contained in Article 2 hereof, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, signed by the Federal Republic of Germany at Rome on October 26, 1961, is hereby ratified. The text of this Convention is published hereafter.

Article 2. — The Federal Republic of Germany, at the time it deposits the instrument of ratification, will avail itself of the following reservations to Article 5, paragraph (3), and to Article 16, paragraph (1), letter (a) (iv), of the Convention:

1. it will not apply, with respect to the protection of producers of phonograms, the criterion of fixation as defined in Article 5, paragraph (1), letter (b), of the Convention;
2. it will limit, with respect to phonograms the producers of which are nationals of another contracting State, the extent and duration of protection pursuant to Article 12 of the Convention to that protection which such contracting State accords to phonograms initially fixed by a German national.

Article 3. — The protection against the communication to the public of television broadcasts, pursuant to Article 13, letter (d), of the Convention, shall not be accorded to television broadcasts of a broadcasting organization having its headquarters in the territory of another State which has availed itself of a reservation pursuant to Article 16, paragraph (1), letter (b), of the Convention.

Article 4. — The provisions of the Convention shall not be applicable to performances or to broadcasts which have occurred prior to the effective date of the Convention with respect to the Federal Republic of Germany, nor to phonograms which have been fixed prior to such date.

Article 5. — This Act shall be equally valid in *Land Berlin*, insofar as the latter shall decide to apply it.

Article 6. — (1) This Act shall come into effect on January 1, 1966.

(2) The date upon which the Convention, in accordance with Article 25, paragraph (2), thereof, shall become effective with respect to the Federal Republic of Germany, will be published in the *Bundesgesetzblatt*.

¹⁾ *Bundesgesetzblatt*, II, p. 1243, No. 36, of September 23, 1965.

experience has shown that technical development may not only create new forms of reproduction or communication of works but may, as the cinema has shown, also lead to the creation of new types of works.

2. The demarcation of unprotected works is determined by the axiom that only personal intellectual creations are works within the meaning of the Act. The necessary margin is left for case-law interpretation. It may seem tempting not to set the limits too low, and to reserve copyright protection for works which, as individual creations, bear the imprint of the author's personality. Experience has shown, however, that, particularly in the field of literature, we cannot avoid granting protection in law also to the "small change" of copyright, and protecting equally such writings as formulae, model contracts, catalogues, prospectuses, etc., provided some intellectual effort, however small, has gone into their production. By contrast, we habitually make higher demands in the case of works of applied art. An important factor in this context is that for creations of lower degree protection of designs is already at hand by virtue of the 1876 Law concerning copyright in designs, and may be claimed provided the design is registered with the district court (*Amtsgericht*). For this reason — and also as the new Act leads one to assume, in conformity with the hitherto existing interpretation — copyright protection remains reserved to creations which may be said to have an artistic level.

3. In any case, however, the new Copyright Act too adheres to the idea of copyright protection for works of applied art, though there has been no lack of comment — especially from industrial quarters — urging that protection of craft and industrial forms be left entirely to design law, and that copyright and design law be separated by a method similar to that adopted in the 1956 British Copyright Act. Such an arrangement would admittedly avoid the demarcation, difficult in individual cases, between creations which are eligible only for design protection and those which qualify for the more comprehensive copyright protection, but this could be done only if design law were revised. In its present form, especially in view of the limitation of the term of protection to a maximum of fifteen years, design law cannot ensure adequate protection for creations of an artistic level.

II

The author

1. Copyright belongs to the person who is the creator of the work. This principle was already recognized in previous legislation, although the Acts of 1901 and 1907 did not clearly enunciate it and qualified it by provisions that in certain cases corporate bodies in public law, who issue a work as editors, are to be regarded as the authors. By contrast, the new Act states categorically: "The author is the person who creates the work". From the nature of the case, only natural persons are concerned; hence, there is no further substance in the theory that an original copyright of corporate bodies also exists.

2. It did not follow that this principle would be carried to its logical conclusion. In the field of cinematography the

Referentenentwurf of the Copyright Act had made a notable exception: copyright in a cinematographic work was to be awarded to the maker by resort to a fiction. The rights of authors of works used in the production — including the libretto and the musical composition — were indeed to be preserved; but otherwise the dispute about the definition of film authors was to be settled, as in the British Copyright Act, by a clear-cut decision in favour of the maker. Such a provision would, however, as emerged soon after the *Referentenentwurf* was published, have provided a dangerous opening for the demands of all those interested in the possibility of the original copyright arising in certain cases in the person of the exhibitor. The outcome of the criticism of the proposal contained in the *Referentenentwurf* was that the grant of copyright to the maker was avoided in cinematographic law too. The rule remains that copyright belongs to the person of the intellectual creator. The legitimate interests of the maker are covered by presumptions that he will obtain the necessary rights to use the work by his agreements with the authors. There are, of course, differences from case to case. In case of doubt, the authors of the works used for the film allow the maker only such rights as are necessary for the proposed use of the cinematographic work; if the film is intended for exhibition in cinemas, the presumption is that only the right of representation will be transferred; for broadcasts it is assumed that only the broadcasting right will be assigned. In case of doubt, on the other hand, authors who cooperate in the making of the film, especially the director, will concede exploitation rights without such limitation.

3. In contrast to Anglo-American law, the principle that copyright belongs to the person of the creator applies also if it is an employee who creates the work in the course of his employment. The employer too must derive the rights which he needs from the employee by means of an agreement. In actual fact, such agreements may also be concluded tacitly, since in German law they are not tied to any particular form. For instance, if a certain firm produces sketches for works of applied art, picture advertisements, etc., by employing artists, in case of doubt the employment contract will contain the necessary assignment of title. The rule that copyright belongs to the person of the employee remains valid, however, not only for calculating the period of protection and for establishing the author's moral right; it may be assumed that exploitation rights too will only be assigned having regard to use categories for which services have been rendered on the basis of the employment contract.

III

The rights of authors

The Act divides authors' rights into moral right, exploitation rights and other rights.

1. First, the *author's moral right* is defined. It serves, as the Act states, to protect the author with respect to his intellectual and personal relations to the work.

The definition signifies a consolidation of legal development. Hitherto, the copyright Acts have contained only few

individual rules to protect the author's moral interests. From the precepts contained therein, however, jurisdiction, under the guidance of the *Reichsgericht* and *Bundesgerichtshof*, has developed an all-embracing protection of the moral rights of authors. Hence, without any formal change in legislation, German law remained in harmony with the provisions of Article 6^{bis} of the Berne Convention (Brussels text), which states: "Independently of the author's copyright, and even after the transfer of the said copyright, the author shall have the right, during his lifetime, to claim authorship of the work, and to object to any distortion, mutilation or other alteration thereof, or any other action in relation to the said work which would be prejudicial to his honour or reputation."

In accordance with Article 6^{bis} of the Berne Convention (Brussels text), the new Act, under the title of "author's moral rights", secures for the author the right to recognition of his authorship, as well as protection from distortions of his work or other actions in relation to the said work. Protection from modification, however, goes beyond that provided in Article 6^{bis} of the Berne Convention in as much as the Act considers the danger not only to the personal, but also the intellectual, interests of the author: a poet, a writer or an artist may not only forbid the distortion of his work because he fears for his reputation or honour; he can also prohibit it because he is concerned for the permanence and the effect of his work, even if his reputation and honour remain untouched.

The Act also includes, along with moral right, the right of dissemination in the sense of first communication. It is true that the author's right to decide whether and how the work shall be disseminated does indeed constitute one of his principal rights. From the point of view of the systematic arrangement, however, it should have been realized that the right is also closely related to exploitation rights: in the process of assigning exploitation rights and permitting the reproduction, distribution, broadcasting or public performance of his work, the author also assents to its dissemination. In theory, therefore, it seems to me more correct to consider the right of dissemination as a fundamental right of the author, depending as well from the moral right as from exploitation rights.

Other important prerogatives deriving from the moral right are the rights of revocation, which the Act defines in detail. One possibility is revocation by reason of non-exercise; if the author has granted the user an exclusive right of exploitation, there is a danger of the author's moral interests being prejudiced by failure to exercise this right. In such cases, the author can indeed take action against the user if the latter had undertaken to exercise the right, as required by law in the case of a publishing contract. There are, however, also assignments of rights which do not involve the duty to exercise the right. In general, therefore, the Act makes provision for the author, should his right not have been suitably exercised within two years, to fix an extension and, if this too is not kept, to revoke his right; in so doing he must indemnify his contract partner, if and to the extent to which fairness so requires. So much for the author's interests in the work's dissemination. The opposite case is revocation

by reason of changed conviction. This may arise where the author, having arranged for edition or otherwise assigned his rights, subsequently recognizes that he cannot undertake the responsibility of edition; if, for instance, the scientific work he has written is overtaken by more recent research. In such cases, too, provided the author can no longer be expected to agree to the exploitation of the work, the Act allows him the right of revocation. It is true that the revocation shall become effective only when the author has defrayed his contract partner's costs, or has at least provided security for such defrayment.

2. The provisions concerning *exploitation rights* aim at securing for the author the fullest possible use of his work.

From the legislative aspect the problem was to include all forms of reproducing and communicating a work which technical progress has provided, or may in future provide. Previous Acts had enumerated rights individually. The defect of this method had become apparent after the arrival of broadcasting, when the problem was to obtain recognition of the broadcasting rights of authors: here was a gap in the Acts, which could only be closed by resort to an analogy. The new Act, therefore, assigns to the author, in addition to the right to use his work in its material form — in particular the right of reproduction and distribution — a comprehensive right to communicate to the public the work in immaterial form. By way of examples, the right of broadcasting, the right of communicating by visual or sound record and the right of communicating broadcasts are enumerated, in addition to the right of recitation, performance, representation and presentation already covered by previous Acts. Otherwise, exploitation rights relate, as hitherto, to reproducing and communicating the work not only in its original form, but also in an adaptation or other transformations, with the result that adaptation rights (translation right, cinematographic adaptation right, etc.) must be added to exploitation rights.

All this together represents a more concise legislative synthesis of the rights already recognized. There are however two new features: the right of public recitation enjoyed by the author in respect of literary works no longer expires at the moment of the publication of the work; in accordance with the Brussels text of the Berne Convention it is now reserved to the author until the copyright period expires. This revision of the existing right was long overdue. Less obvious, on the other hand, even from the point of view of comparative law, was the fact that the Act has also included the right of exhibition among authors' rights. The earlier view was that rules of material law were the deciding factor: as long as the author was the owner of the original, he could as such make the decision concerning exhibition. If, however, he had alienated the original, in future the decision lay with the purchaser or his legal successor. This has been changed. In future the owner of the original will still, as a rule, be entitled to exhibit the work publicly. When alienating the work, however, the author may reserve for himself the right to exhibit, thus ensuring that he may prevent not only the purchaser, but also third parties who acquire it, from exhibiting. It must, nevertheless, be assumed, even though the Act does not specifically say so, that the right of exhibition can-

not go beyond its prohibitive attribute: an author who has reserved for himself the right of exhibition may forbid the possessor of the original to exhibit. He may not, however, require that the original be delivered to him in order to exhibit it himself. To this extent priority is given to the interests of the possessor and owner; any other arrangement could be made effective only by resort to the law of contract.

3. In addition to the author's moral right and exploitation rights, the Act grants to the author further rights under the title "*other rights*".

These relate not merely to the right of access to copies of the work (e. g. the right of an architect to access to the building in order to take photographs), which previous law had already allowed the author, but also to two new rights: the *droit de suite* and the right to remuneration if copies are loaned.

The introduction of the *droit de suite* makes special concession to the need of creative artists to share in the price obtained by the owner of the original in the event of a sale to another. In order to protect the interests of art dealers, however, the legislator has proceeded with caution: the author's share remains confined to 1% of the sale price. Further, no claim lies if the realized price is less than 500 DM, or in cases where no art dealer or auctioneer is involved as a seller, a purchaser or an agent. The question whether the sale produced a profit is not mentioned. The justification is not, therefore — as in Italian law — the idea that the artist shall participate in the increased value due to the reputation he has acquired over the years. Rather, as in Belgian and French law, the artist shall participate in the proceedings of the sale on the ground that enjoyment of the original of the work is now shared by a new section of the public. For the first time there is recognition of the special value represented by the original in the field of creative art, and a certain measure of compensation is provided for the fact that the profit derived from the use of reproduction and public communication in creative art lags behind that of other categories of protected works. The share allowed to the creative artists is admittedly only modest; it is to be hoped that the experience gained with the new measure will eventually provide an incentive to raise it.

A further innovation is the right to equitable remuneration granted by the Act to the author in the case of lending copies for profit. In view of the most frequent application — hiring through lending libraries — it is customary to speak of a library royalty (*Büchereitantieme*); but the lending of periodicals, musical scores and gramophone records must also be considered. The idea of granting to the author compensation for the fact that the work is made accessible by libraries to a series of users without a corresponding rise in sales was first considered in Scandinavian countries. Whereas, however, in Scandinavia, compensation is obtained by means of payments made into a writers' fund by the State, or with State subsidies, the German Act provides for a claim by authors based on copyright: authors are to participate in the profit made by lenders. Non-profit making libraries, especially public libraries, are thus exempt from the charge. In practice, it

will be the concern of the collecting societies to establish claims.

IV

The limits of exploitation rights

1. Exploitation rights grant to authors the material gain from their works. This granting is subject to certain limitations which are important from the practical standpoint: the needs of cultural life are served by freedom of quotation and borrowing. In the interests of public information limits are placed on copyright in favour of press, radio and film reporting. Musical performances within a certain category are privileged. Works of creative art, especially buildings in public ways, streets or places, may be reproduced on photographs, paintings and drawings, and by film or broadcast, without the author's consent.

The dividing line between the interests of authors and those of the public was drawn by the German Acts of 1901 and 1907 in a series of regulations limiting exploitation rights of authors. Judged by present-day standards of justice, however, the limits permissible in relation to the legitimate interests of authors were sometimes exceeded. Hence the new Act has been more careful than earlier ones in defining the limits, thus deferring to strong desiderata on the part of authors.

2. This is specially true of *musical events*. The barriers hitherto placed in the way of the performing right of composers for the benefit of public performances at popular festivals, charity events and certain association events have fallen. Musical events in public are now exempt from the need for permission only if the performance is not for profit, if spectators are admitted free of charge and if the performers who participate receive no special remuneration.

3. *Freedom of quotation and borrowing*, as required by existing Acts in the interests of cultural life, has also been re-defined.

The right of quotation explicitly lays down that musical quotation, too, is permitted. In the case of borrowing, in principle, collections remain privileged if intended for religious, school or instructional use. Such collections, especially of text-books for schools, may, if they comprise the works of a fairly large number of authors, include parts of works, as well as literary and musical works of small extent, and single artistic works and photographs, even without the author's consent. The details of the provision caused some controversy. For the benefit of authors, and correcting the legal position existing hitherto, the Government bill had provided that authors be notified before the reproduction commenced and be paid an equitable remuneration. The final enactment certainly left intact the obligation to notify. By contrast, the obligation to pay remuneration, which met with resistance not only from publishers of text-books, but also from the educational authorities of the *Länder*, who feared that books would cost more, was omitted as a result of the doubts expressed by the *Bundesrat*. Such a result may be regretted. If publishers, printers and all others concerned make a profit from school-books, it is not apparent why authors should be deprived of the reward of their intellectual

work. It appears probable that the solution reached on this question will be submitted to the Federal Constitutional Court for decision whether this is not a case of unlawful expropriation from the authors.

On the other hand, it was right that the hitherto existing freedom to borrow enjoyed by song collections and anthologies should have been removed. The so-called freedom of song recording, which the Government bill had wished to retain, was also abolished. It had allowed the interests of script-writers to be subordinated to those of composers, who were allowed to produce and publicly perform along with the composition, without seeking the script-writer's consent, scripts which they made the basis of a musical work. This regulation, once issued to promote freedom of musical creation, had proved to be out of date; the composers' representatives had themselves pointed out that they did not regard the retention of the regulation as justified.

4. Of special practical importance are the detailed rules made concerning *reproduction for personal use*.

The underlying basis is that it is permissible to make single copies for personal use. In particular, transcripts from protected works for personal use may be made or caused to be made, by hand or on the typewriter. The point at issue, however, is how far this rule also applies to modern forms of mechanical reproduction. May photo-copies, xero-copies, etc. of protected works be produced, or caused to be produced, for personal use without restriction? And what is to be said of the possibility of using equipment to tape-record broadcasts, or to re-record sound recordings, for personal use, or of using the more recent equipment to make fixations of images or of images and sounds on appropriate records?

Important case-law precedents which the legislators had before them in deciding this question were the two Federal Court of Justice decisions of 1955 on photographic reproduction and tape-recordings²⁾.

(a) The decision on the photographic reproduction (BGHZ 18, p. 44) concerned photo-copies of articles from scientific journals, which had been made by an industrial firm for the use of its experts. In determining the legal position, the Federal Court of Justice based its considerations on the fact that this making for the experts served the objects of the firm, and hence did not constitute reproduction for personal use; it accordingly found an infringement of copyright. This decision led to the conclusion of a skeleton agreement between the Federation of German Industry (*Bundesverband der deutschen Industrie*) and the Exchange Association of the German Book Trade (*Börsenverein des deutschen Buchhandels*) on the photographic reproduction from periodicals carried out for the internal use of firms. The publishers who are parties to the agreement permit, on their own behalf and on that of the authors, industrial firms to reproduce photographically for their internal use articles published in their periodicals. In return, the firms undertake to pay remuneration in the case of publications during the last three years.

The new Act follows up this legal development. It distinguishes between reproduction for personal use and reproduc-

tion for other internal uses. Reproduction for commercial purposes is not reproduction for personal use. It can, however, be reproduction for internal use. This applies especially to photo-copies and xero-copies made for uses by employees within a firm. The Act makes special provision for copies of small parts of a published work, and of articles which have been published in newspapers or periodicals. Subject to such limitation, the reproduction of single copies of a work is permitted, provided the author is paid an equitable remuneration as compensation for use for commercial purposes. In other cases reproduction is permitted only with the author's consent.

On the other hand, it is permitted to reproduce for personal use single copies without payment of remuneration, even in cases where not merely parts of a work, or articles from newspapers or periodicals, are concerned, but also complete books. No distinction is drawn between the reproduction processes concerned: irrespective of the process, the traditional rule remains that the reproduction of single copies for personal use is permitted. Authors and publishers had, however, made representations, pointing out that the sale of books was endangered if a reader were able to borrow copies, instead of buying them, and to have photo-copies or xero-copies made. The legislators felt, however, that, in view of the cost of producing single copies, this danger was not serious. In view of more recent technical developments, however, notably in the field of xero-copying, it seems not improbable that in certain cases self-production is cheaper than purchase. Should experience show that this constitutes a serious loss to normal book sales, sooner or later a change in the provision embodied in the Act will be needed.

(b) Particular controversy centred round the question of how to deal with cases involving the performance of protected works fixed on visual or sound records.

No problem appeared to arise from the position in regard to the recording of public lectures, performances or presentations: any person taking equipment into a lecture-hall, concert-hall or cinema and recording sounds or images on a tape in order to obtain later enjoyment in his own home always acts unlawfully, if he makes the recording without the author's consent.

What is the position, however, if the owner of equipment fixes broadcasts on sound or visual records, or fixes commercial records or films on sound or visual records, with the intention of making use thereof within his own four walls?

On this question a much-discussed judgment had been awarded by the Federal Court of Justice on May 18, 1955 (BGHZ 17, p. 266) concerning the fixation on sound records, but logically also the essentially similar fixation on visual records. In the literal sense of the word, the decision said, a tape-recording intended for playing at home certainly did constitute a reproduction for personal use. But by fixing not only the work itself, but also its performance, and making possible the production of copies, which competed seriously with those produced for profit, it intruded more forcibly into the author's interests than did the hitherto known methods of reproduction intended only for personal use. This new conflict of interests, unknown to the legislators of 1901, must,

²⁾ Cf. my report on these decisions in *Le Droit d'Auteur*, 1956, p. 183 et seq.

said the judgment, having regard to the basic concepts governing protection of intellectual property, be decided in favour of authors.

This decision, to which the Federal Court of Justice has also adhered in subsequent judgments, met with both approval and censure in written works. Attempts to carry it out in practice proved particularly difficult. A public exhortation to pay a monthly lump sum to the collecting society, and a subsequent reminder by dealers that the use of equipment to record protected works required the permission of the collecting society met with only limited success. The large majority of owners of equipment paid no heed to the exhortation and in practice could not be traced.

This difficulty in execution appeared to support the argument of those who urged that the private sphere should be left unchanged. The *Bundesrat*, too, had declared itself opposed to the obligation on owners of equipment to make payments.

In these circumstances, it was especially noteworthy that both in the committees and in the plenary meeting of the *Bundestag* the desire to meet the interests of authors, which were acknowledged to be justified, prevailed. It was realized, however, that a solution in favour of authors made sense only if its practical realization is assured, and for this reason a standpoint was adopted to which the Federal Court of Justice had drawn attention in a decision awarded on May 29, 1954: that, in view of the fact that the makers place the equipment on the market although they know that in most cases it is used, without the authors' consent, to reproduce protected works, there is a just case for the makers being made responsible for payment of compensation to cover the potential danger created by them. The final version of the Act requires, therefore, instead of a claim for payment on owners of equipment proposed in the Government bill, a claim to be made on the makers, who in turn can pass on the increased charge to purchasers of the equipment. If the equipment is imported, the claim may be made on the importer. The collection of the fees is a matter for the collecting societies.

In the field of copyright this is unexplored ground as far as legislators are concerned. The constructive solution achieved is the result of careful considerations. Account was taken of the fact that the rule must not lead to an increase in the cost of equipment which the purchaser intends to use, not to record protected works, but for dictation purposes, or to test his own voice, etc. Dictation equipment pure and simple is excluded from the start by the fact that the rule is confined to equipment suitable for fixing broadcasts or for re-recording visual or sound fixations. Even with equipment of the latter kind, the claim may be met with the objection that from the facts of the case it is not to be expected that it will be used for reproducing protected works.

V

Legal licences?

1. Legislation existing hitherto requires a compulsory licence in favour of the gramophone industry. If the author of a musical work permits another person to reproduce the

work on sound records, he is under an obligation, on publication of the work, to grant a licence to third parties also, subject to equitable remuneration. The object of this provision is to prevent the formation of monopolies by individual firms and to ensure freedom of competition in the gramophone industry.

In this context the compulsory licence corresponds to the legal licence provided for by the Copyright Acts in Great Britain and the United States. From the author's point of view, however, it is a much less drastic intrusion: the producers of phonograms have no legal right to reproduce protected works subject to payment of remuneration. They are merely entitled to claim that the author conclude an agreement with them on equitable terms. In practice it has not proved necessary to assert this claim by resort to law: as a rule, the gramophone industry can obtain the repertoire it desires by virtue of its agreements with the collecting societies. In cases where the rights are not controlled by a collecting society, the mere existence of the compulsory licence has proved useful: reference to it has usually paved the way to contractual agreements.

2. By contrast, the 1954 draft had proposed more drastic intrusions into authors' rights: to benefit the gramophone industry a legal licence was to be introduced to replace the hitherto existing compulsory licence on the British and American pattern. Further, a legal licence was proposed in favour of broadcasting organizations: if the author has assigned the exclusive right of broadcasting to another person, e. g. a collecting society, the broadcasting organizations were to be empowered to broadcast, without the beneficiary's consent, against payment of equitable remuneration.

These proposals rightly encountered strong criticism. A legal licence, it was for instance argued, would mean that the broadcasting organizations or producers of phonograms would be able to determine unilaterally the payment to be made to the author, and its fairness could subsequently only be tested by resort to law. Broadcasting can, of course, rightly claim that the discharge of its cultural mission involves the need to acquire broadcasting rights in a large number of works. But the rational means of avoiding the troublesome conclusion of numerous individual agreements is not the legal licence, but the conclusion of inclusive contracts with the collecting societies which safeguard authors' rights. An important factor is that the Act dealing with the Administration of Copyright and Related Rights, which comes into force concurrently with the new Copyright Act, contains special rules for concluding inclusive contracts: the collecting societies are required to make such contracts, particularly in relation to broadcasting organizations and the federations of the gramophone industry. Should no contract be reached between the parties, an appeal may be made to an Arbitration Commission to be instituted at the Patent Office (*Patentamt*), with powers to determine the conditions of the contract, especially the nature and rate of remuneration.

3. The Government bill entertained these objections to the extent of excluding legal licences in cases where broadcasting rights or mechanical reproduction rights are controlled by collecting societies.

Even this compromise solution meant in most cases a turning away from the system of legal licences. Logically, however, the committees and plenary meeting of the *Bundestag* went one step further: the legal licence in favour of broadcasting was removed, in the realization that even in cases where rights were not administered by collecting societies, it is not difficult in the light of experience for broadcasting organizations to secure by contract permission to broadcast. As regards the gramophone industry, the *Bundestag* has cut down the request for a legal licence in favour of a compulsory licence, thus in principle maintaining the hitherto existing system. The system was, none the less, improved to the extent of excluding the compulsory licence if the mechanical rights are administered by a collecting society. In accordance with practice hitherto, it is to be assumed that producers of phonograms will not need to apply the weapon of the compulsory licence, and that the ability to invoke it is in itself sufficient to come to contractual agreements with authors.

Thus in the final analysis a rational solution has been found and the one-time threat of drastic intrusions into authors' rights has been avoided.

VI

Succession; granting of licences

1. According to the text of the hitherto existing Acts, copyright is not only inheritable, but also transferable *inter vivos*.

Both in precept and in law, however, the rule has undergone an important limitation. It is true that the moral right of the author passes, in the same way as exploitation rights, to the heirs on the death of the author. It is not, however, transferable *inter vivos*. In German law we do of course accept as a basis that, in the case of moral right also, not every disposition can be rejected; in particular, without prejudice to the author's right to assert his personal rights himself, he must be able to leave their exercise to others. In essence, however, moral right remains with the author.

Furthermore, there are also limits to the disposition of exploitation rights. In particular, both in jurisprudence and in written works the theory of the transfer for a specified purpose (*Zweckübertragung*) has prevailed: in case of doubt, exploitation rights are transferred to the acquirer only to the extent that the object of the contract demands. Rights which were not known at the time the contract was concluded remain with the author.

The new Act specifically takes into account these experiences derived from precept and jurisprudence. One point to consider is the legal construction; another concerns a series of individual provisions which are significant in terms of legal conduct and reflect the underlying principle of securing for the author the widest possible exploitation of his work from the standpoint of ownership.

2. In legal construction the basis of the Act is that copyright is indeed inheritable and may be transferred by way of succession to co-heirs and legatees. Otherwise, however, transfer of copyright is excluded. The only legal possibility

is the granting of licences (*Einräumung von Nutzungsrechten*).

In adopting this construction the Act follows the Austrian Copyright Act, which goes back to Lissbauer. It may be summarized thus: the author may certainly dispose of his exploitation rights. Such disposition, however, is in essence not a translative transfer (alienation or assignment) but purely a constitutive one (granting, licence). This is shown particularly when the derived rights expire: in that case a reversion takes place in favour of the author. If, for instance, the right of reproduction granted to the publisher lapses, the powers revert to the author *in toto*.

Whether it was necessary to enshrine this construction in the Act itself, or whether it would have been better to leave the interpretation to jurisprudence is an open question. In my view, it would have sufficed to say that the author may dispose of his exploitation rights, but that there are definite limits to such disposition, and that, when the transferred rights expire, a reversion to the author takes place.

In any case, however, in view of international relationships it must be emphasized that the "*Einräumung von Nutzungsrechten*" mentioned in the Act corresponds logically to the "*cession des droits d'exploitation*" as understood in French law, and to the "assignment (transfer) of copyright" as understood in Anglo-American law. In these systems of law too, it is a familiar concept that, in cases where a time limit is placed on transfer, a reversion of the transferred right to the author occurs. It would therefore be wrong to deny legal validity in Germany to an agreement concluded in the U. S. A., in which the author transfers the copyright to an assignee, for use both at home and abroad, on the ground that, according to German law, the copyright might not be conveyed. Transfer of copyright is to be interpreted in German law rather as the granting of a licence. In Germany itself such an interpretation will be necessary in the undoubtedly numerous cases in which the contracting parties refer also in future to the transfer of rights (*Uebertragung*).

3. More significant in practice are the limitations which the Act places on the extent of the conveyance of right.

Even the Government bill contained the rule that the granting of licence does not refer to types of exploitation which were unknown at the time the contract was concluded. This follows on from the experiences of the past, when the advance of technical development opened up for authors new possibilities of use, for instance, cinematographic adaptation and broadcasting. The courts already worked on the assumption that even in cases where a comprehensive transfer of rights had been agreed upon, in case of doubt such possibilities of exploitation, which were unknown when the contract was entered into, remained with the author. This admittedly was only a rule of interpretation, which is now replaced by a compulsory rule of law.

A further important provision has resulted from deliberations in the Copyright Committee of the *Bundestag*: if the agreement by which the author disposes of his rights does not specify individually the types of exploitation which the acquirer is to enjoy, the extent of the disposition shall be determined according to the object envisaged in the agreement. This is important, for instance, in deciding to what

extent the publisher is also awarded other rights by virtue of the publishing agreement: it cannot be agreed that, in addition to the right of reproduction and distribution, all other exploitation rights of the work shall also be transferred to the publisher. Rather must such rights, for instance the rights of translation, cinematographic adaptation and broadcasting, be specifically stated in the agreement as the object of the transfer, if the relevant disposition is to be effective.

4. In principle, the determination of the author's remuneration for granting of licence is the subject of free negotiation. A participation in the income derived from the exploitation of the work may be agreed upon; or possibly the arrangement may take the form of a lump-sum payment.

The lump-sum arrangement is particularly liable to the risk that the author does not participate adequately in the profit derived from the use of the work. This is especially true in cases where the success of the work considerably exceeds expectation. The legislator was therefore faced with the question whether, in the interests of securing fair remuneration for intellectual work, a limit should be placed on freedom of contract. The solution adopted in the French Law on Literary and Artistic Property, which makes it mandatory for the author to receive a participation in the income, was, therefore, noted with interest in Germany also. In the French Law this rule is admittedly breached by a series of exceptions, causing difficulties in demarcation, which in our view give rise to some apprehension.

In the course of German copyright reform, therefore, the idea prevailed not to exclude the possibility of lump sum settlement, but to give the author the right to request an adjustment of the agreement should the arrangement concerning remuneration be demonstrably unfair. The proposal met with severe censure, mainly from the publishers' associations, who resisted the limitation of freedom of contract, especially on the ground that it tended to endanger publishing calculations.

Precisely in this context, however, the difference between agreements on intellectual works and contracts on material goods should not be overlooked. If, for instance, a piece of land is sold, which soon afterwards appreciates markedly in value, there can be no question of the seller later asking for a higher price. On the other hand, if a publisher arranges for the publishing right in a literary work to be granted to him against payment of a lump sum, and in respect of all editions, in accordance with the standard formula, and if this work later proves to be a best-seller running to a series of editions, it would be unreasonable to refuse the author any additional remuneration. Here our legal instinct is influenced by the social consideration that a remuneration appropriate to the success of his intellectual effort is due to the author. With some regrettable exceptions publishers too usually defer to this viewpoint and meet the author in such special cases. The object therefore is purely to make what was hitherto felt to be a matter of decency in future an obligation in law.

It is to be welcomed, therefore, that the *Bundestag* has supported the proposal. To avoid abuses, special care has been taken in the drafting: a necessary condition of the author's power to request an adjustment of the agreement is

that the remuneration stipulated is unduly disproportionate to the income from the exploitation of the work, and consideration must be given to the whole of the relationship between the parties. If, for instance, several works by the same author appear under one publisher's mark, one of them having realized a large profit and others a loss, an appreciation of the overall relationship may lead to the conclusion that, despite the modest payment made for the successful work, no flagrant disproportion is to be assumed.

VII

The term of protection

1. The extension of the term to seventy years *post mortem auctoris*, which represents an especially important innovation and is also significant in its international aspect, was not one of the original aims of German copyright reform.

This is understandable in view of the historical background. Germany maintained the thirty years term of protection for nearly a century. It was first introduced in the Prussian Copyright Act of 1837 and had been incorporated, in the eighteen-seventies, into the federal Acts and finally into the Acts of 1901 and 1907. Attempts to extend the term from thirty to fifty years, following the example of French law and of international legal development, had long met with strong resistance. It was customary to uphold the interests of the public, as against those of the author's heirs. The controversy, widely shared by sections of the public, especially in the nineteen-twenties, showed the importance of this question in the intellectual life of the nation. Even Ernst Heymann, who examined the question in detail in a paper published in 1927 by the Prussian Academy of Sciences, declared himself opposed to an extension. He proved, for instance, by reference to significant antecedents (including the works of Heinrich Heine and Gottfried Keller), that withdrawal of copyright after thirty years and the resultant marked lowering of costs had led to works obtaining the widest distribution. In view, however, of the risk of obsolescence, this culturally desirable development would cease if the works were withheld too long from general use.

If, nevertheless, the period was extended from thirty to fifty years by the Act of December 13, 1934, this was mainly due to international legal development, behind which Germany could not permanently remain. It may also be noted that this was a Government sponsored bill. From a parliamentary point of view it may be assumed that, as in Switzerland and Sweden, where it took place only in 1955 or 1961, the extension could not have been passed at that time.

2. In these circumstances, it seemed probable that with the extension to fifty years a temporary stage had been reached, and that Germany would in any case not anticipate a possible further development on an international basis. Hence, despite more ambitious demands, especially on the part of the associations of authors and music publishers, the Government bill too, like the earlier drafts, had maintained the fifty-year period.

On the other hand, the Government bill had supported the idea of introducing the institution of the "*domaine public*

payant” under the title of *Urhebernachfolgevergütung*, with the object of caring for the needs of authors and their dependants. It was proposed that an authors’ fund should be set up in the form of a civil rights foundation, to which a payment was to be made to cover the commercial distribution and public performance of works which had become public property. The payment was to be 1% of the shop price in the case of the sale of copies, otherwise 10% of the remuneration which would be regarded as appropriate if copyright existed. The net proceeds were to be used to grant honorary pay to authors, to support needy survivors of related authors and to assist gifted authors.

3. The draft legislation was substantially modified as a result of the discussion in the Copyright Committee of the *Bundestag*.

The proposed arrangement for the *domaine public payant* was not found convincing. As the payments into the authors’ fund were to consist of a multitude of small amounts, it was problematical whether the system would be economic in view of the cost of collection. The main point at issue, however, was that the distribution of the revenue, the choice of authors meriting assistance and of their survivors must lead to serious difficulties and could involve the danger of a state-controlled culture.

The introduction of the *domaine public payant* was therefore abandoned. Instead, the idea gained ground of extending the term of protection. It was of course realized that the social aims envisaged with the *domaine public payant* cannot be achieved, or if so only to a very limited extent, by extending the term of protection. Only very few works exist which still retain their vitality fifty years after the author’s death. Apart, therefore, from the interests of users, the benefit of extending the term is limited to the heirs of these authors. In view of these admittedly not very numerous cases, however, the extension seemed appropriate. Special attention was drawn to the expectation of life, which on average had risen. “Recently”, the report of the Copyright Committee said, “there has been a rise in the number of cases in which at the end of fifty years from the author’s death near relatives of the author are still alive, who should not be deprived of the income from the exploitation of his work”.

The decision so reached had not, as in other questions, been preceded by years, indeed decades, of preliminary work. Within the publishing trade it had certainly been supported by the music firms, whereas most book publishers would have preferred to retain the fifty years period. The wider public had not discussed the question. Nor did the plenary meeting of the *Bundestag* discuss either the pros or the cons. After the experience of the twenties this was surprising and showed a marked change in the emphasis on values. The interests of the public, which formerly had found such eloquent defenders, no longer seemed of such weight as to hold the scale against those of heirs of authors. It was the determination to strengthen the protection of creators of intellectual works and to extent it to their survivors which won the day in the deliberations of the *Bundestag*.

4. The extension of the term of protection is without retroactive effect. Works which had already fallen into the

public domain at the end of 1964 remain unrestricted. On the other hand, works whose term of protection would, according to the old regulation, expire at the end of 1965, do benefit from the extension. Legislatively this was achieved by providing that the duration rule should come into force, not, like the other provisions of the Act, only on January 1, 1966, but on the day after promulgation of the Act.

5. From the international aspect, in conformity with the Berne Union the basis must be Article 7, paragraph (2) of the Berne Convention revised at Brussels on comparative terms of protection: works of foreign origin may claim no longer period than that existing in the country of origin. Works which originate in a Unionist country with a fifty-year term of protection will, therefore, also in future be protected in Germany only up to the expiry of fifty years *post mortem auctoris*. The position is different in the case of works which originate, for instance, in Spain (eighty years protection), or Portugal (perpetual protection). They are protected, unless they have fallen into the public domain by reason of the hitherto existing rule, up to the expiry of seventy years from the author’s death, in the same way as works of German origin.

Article IV, items 4 to 6, of the Universal Copyright Convention makes provision for comparative terms of protection. Whether these provisions are directly applicable in Germany, or whether application would be subject to a special statutory regulation, had hitherto been a matter of dispute³). Now the applicability has been placed beyond doubt by an explicit statutory enactment. Works which originate in a State party to the Universal Copyright Convention, for instance in the United States of America, can consequently claim only the term of protection ruling in their country of origin.

6. A special question arises from the war-time extensions enacted in a number of countries of the Berne Union. In Austria for instance, the fifty year period for works created before January 1, 1949, and not yet fallen into the public domain when the Act came into force, was extended under the Federal Act of July 8, 1953, by seven years. In Belgium there was an extension of ten years, in Italy of six years. After both world wars France, in view of the war-time interruption in the exploitation of works, effected extensions constituting jointly an increase of fourteen and a half years.

The question whether foreigners too can claim this benefit is determined primarily by the rule prevailing in the country in which the war-time extension was made. Austria has given a categorical ruling on the question: authors whose works have not been published in Austria may claim the benefit only if the author’s country of origin grants to works of Austrian nationals a term of protection exceeding fifty years. Other countries too tend in practice to stipulate reciprocal treatment.

In order therefore to secure for German authors the future enjoyment of war-time extensions in the States concerned, it seems necessary to clarify the reciprocal relationship by an

³) Cf. my article “*Der Vergleich der Schutzfristen im Welturheberrechtsabkommen*” (The comparison of terms of protection in the Universal Copyright Convention), *Gewerblicher Rechtsschutz und Urheberrecht, Auslandsteil*, 1960, p. 57 *et seq.*

exchange of notes or by concluding an *ad hoc* agreement. For instance, it might be arranged with Austria that in future Austrian nationals in Germany shall enjoy the extension existing in their country of origin and vice versa that German nationals in Austria may claim the benefits of war-time extensions prevailing there.

7. The rules on the term of protection do not apply only to the author's pecuniary rights but also to his moral right.

Unlike, for instance, French and Italian legislation, the moral right is not a perpetual right. The idea of securing protection of intellectual works from distortions by means of a perpetual moral right has, it is true, found adherents in Germany too, but the legislator has not deferred to this request. With the expiry of the seventy years term of protection there also expires the safeguarding of the work, which is assigned to the heirs. If, in addition, the object was to secure works of general literary or artistic merit from distortion, the protection would have to be entrusted to special agencies; such protection, however, remains limited in German law to the preservation of buildings of artistic merit and is classified as protection of monuments.

VIII

Related rights. Photographic rights

1. In addition to coordinating copyright, the German legislator has also made it his aim to coordinate in detail related rights. This finds expression in both the title and the arrangement of the Act: the first part called "Copyright" is followed by the second part headed "Related rights".

Related rights are not merely what are known in international terminology as "*droits voisins*": rights of performers, producers of phonograms and broadcasting organizations, which were coordinated at international level in the Rome Convention of October 26, 1961. The German Act grants to the film maker as well a right in respect of the visual record or the visual and sound record on which the film is fixed. This right is of particular importance also for so-called cinematographic films (*Laufbilder*), that is to say films which are not cinematographic works within the meaning of the Act: it secures for the film maker, in addition to the rights available to him in respect of single photographs, a right in respect of the visual and sound strip as a unit.

Moreover, related rights also include the right in certain editions. These concern, first, the edition which represents the result of scientific analysis of non-copyrighted works and texts. Such editions — both the original edition as well as later ones, which differ in a significant manner from the previously known editions as a result of recent critical examination of the text — are, apart from the accompanying scientific apparatus, not copyrighted, as they are merely reproductions of an old text and not creations of a new work. Nevertheless, there does exist a need to protect output of scientific criticism. This is met by granting the author of the edition a related right. In substance it corresponds to copyright; in particular, it secures for the author not only the exclusive right to reproduction and distribution, but also the right of publicly communicating, which is of particular im-

portance in musical editions. Its term is, however, considerably reduced: the right expires ten years after the edition has been published, or alternatively — if the edition has not been published within ten years of its creation — ten years after creation.

A further object is to protect editions of posthumous works. If life reminiscences, diary notes or other writings which are posthumous are disseminated during the term of the protection, the copyright remains as it is. Copyright expires, however, if dissemination takes place after a lapse of sixty, but before a lapse of seventy years after the author's death, only ten years after dissemination. Existing law had provided, in addition, that also in the case of works disseminated after the expiration of protection, copyright expires only ten years after dissemination. The purpose of this provision was to safeguard the editor of posthumous works, but its effects went further and led ultimately to perpetual protection of unpublished works. This consequence is now avoided and the object in view is adequately met by the editor being granted a related right of protection: a person who causes to be published within the country after the expiration of the term of protection a work previously not published has for a term of ten years the exclusive right to reproduce and distribute the work and to use the copies for public communication. Unlike the previous Act, the new regulation also benefits editions of works created at a time when there was as yet no copyright, for instance in the case of popular songs and dances: the original edition of such works, even if it is not an edition which represents the result of a scientific analysis, is protected as a publication of a posthumous work.

2. The inclusion of related rights in the copyright codification has also occurred, although with differences in the determination of the relevant rights, in the more recent copyright legislation of a number of other States, for example Austria, Great Britain, Italy and the Scandinavian States. By contrast, the new French Law on Literary and Artistic Property is confined to determining the rights of authors and does not establish rules on neighbouring rights.

In Germany too it has sometimes been suggested that copyright legislation be confined to the protection of authors as a *magna carta* of rights in intellectual works. The inclusion of related rights, however, seemed advisable, if only because existing legislation already contained provisions for the protection of phonograms, which could not be cancelled without providing a substitute. Further, it may be noted that the legislator has set himself the task of drawing a clear distinction between authors' rights and related rights. With the aim of protecting producers of phonograms against unauthorized reproduction, especially against imitation of sound records, the hitherto existing Act had protected rights affecting phonograms according to copyright principles: the fixation of literary or musical works on to records was placed on a par with the adaptation of a work, copyright being granted to the performers whose performance was fixed on the sound record, in the expectation that they would assign their right by contract to the producer of phonograms. This method was unsatisfactory. A distinction must be drawn between the crea-

tion and the reproduction of a work. Performers and producers of phonograms are not entitled to copyright, but are entitled to protection of a particular kind designed to safeguard their lawful interests. Accordingly, from the nineteenth-twenties onwards German jurisprudence had been concerned to define with particular clarity the difference between creation and performance, and consequently between copyright and related rights (*Leistungsschutzrechte*). This distinction has been taken over by the legislator. It signifies a clarification which is welcome from the author's viewpoint as well: the concept of copyright remains confined to rights arising from intellectual creation. Related rights are intended to meet further lawful needs for protection which have arisen in the field of literature and art, more especially as a result of developments in technique. These, however, are of special design and in general, as the enactment shows, are inferior to copyright in both content and duration.

3. As concerns more particularly the *protection of performers, producers of phonograms and broadcasting organizations*, the enactment enables the Federal Republic to ratify the Rome Convention.

The German enactment accords not only with the provisions of the Rome Convention; in granting rights it goes well beyond the minimum envisaged by this Convention: performers are granted, in addition to protection against the broadcasting, public communication and recording of their performances, the exclusive right of reproducing visual or sound records, not only in the specific cases covered by Article 7, paragraph (1), of the Rome Convention, but indeed generally; they are also granted protection against distortion or other modifications which would be prejudicial to their honour or reputation. Producers of phonograms enjoy, in addition to the right of reproduction, also the right of distribution. Broadcasting organizations receive, in addition to the right to permit rebroadcasting and fixation of their broadcasts, the right of reproducing recordings carried out, without subjection to the restrictions mentioned in Article 13 of the Rome Convention. No use has been made of the possibility of excluding the application of Article 13 (*d*) by declaring a reservation; instead, broadcasting organizations have the right provided for in Article 13 (*d*) to publicly communicate their television broadcasts, in places accessible to the public against payment of an entrance fee. Instead of the minimum term of twenty years laid down in the Rome Convention, a period of twenty-five years is fixed for all relevant rights.

Especially noteworthy is the method adopted in German law in regard to the rights of performers and producers of phonograms in the event of secondary use. Under Article 12 of the Rome Convention, if a phonogram published for commercial purposes, or a reproduction of such a phonogram, is used directly for a broadcast or otherwise for public communication, the user has to pay the performers or the producers of phonograms, or both, a single equitable remuneration. Accordingly, unless they exclude the application of Article 12 by declaring a reservation, Contracting States have the choice of granting remuneration to the performers or the producers, or to both. German law decides that the right lies with the performers, but that the latter are required to grant

the producers an equitable share in the remuneration. The onus was thus deliberately placed on the performers, whose services are primarily those which justify the claim to remuneration. Moreover, the performers' claim is not confined to cases in which phonograms published for commercial purposes, or copies thereof, are used directly for broadcasts or for public communication. The performers may assert their claim to remuneration also in cases where other phonograms, as well as visual or sound records, are used for broadcasts or for public communication, as also in cases where broadcasts are publicly communicated. Thus the claim to remuneration provided by the German Act in favour of performers in cases of secondary use is an all-embracing one.

4. In differentiating between copyright and related rights the question at issue is to decide how *rights in photographs* should properly be classified.

Undoubtedly there are photographs which are the result of an artistic creation. These include in particular artistic photographs, in which, as a result of choice of position and lighting, and because of the particular slant obtained, the photographer works creatively. But as is rightly assumed in German jurisprudence protection of photographs does not depend on such creative action. Even routine pictures, such as passport photographs, are protected. Such protection is indispensable if the needs of the photographic profession are to be satisfied.

Consequently, in the writings of reformers of the thirties, in Italy and Austria as well as in Germany, the idea prevailed that rights in photographs are to be included among related rights. Accordingly, both the Austrian Copyright Act of 1936 and the Italian Copyright Act of 1941 officially classified them among related rights (*diritti connessi*).

This classification did not, however, go unchallenged. Its opponents, especially the photographers' federations, were able to point to the fact that Article 2, paragraph (1), of the Berne Convention, as revised at Brussels, included photographic works and works produced by a process analogous to photography among literary and artistic works. For this reason the provisions of the Austrian Copyright Act were amended by the Act of July 8, 1953: the Austrian Act now distinguishes between a right in works of photographic art, which is genuine copyright protected for a term of fifty years from the author's death, and rights in other photographs, which are regarded as related rights, and for which a protective term of twenty years from date of publication is provided.

We for our part feel that the rules of the Brussels text of the Berne Convention, while certainly binding as regards the content of protection to be granted to photographs, are not so as regards the qualification we make in our domestic law. The fact that photographs occupy a certain special position is also reflected in the fact that Article 7, paragraph (3), of the Berne Convention (Brussels text) allows a free hand to Unionist countries in fixing the term of protection. Consequently, a system which assigns to rights in photographs a place among related rights, but as regards substance — with the exception of duration — provides protection corresponding to copyright, would in our opinion not contradict the Berne Convention.

On the other hand, on re-examination of the question, the argument was adduced that there are in fact photographs which cannot be denied the character of a work. For the photographers it was both a question of prestige and a practical demand for rights in photographs to be placed on a par with copyright also as regards term of protection. Theoretical considerations appeared to favour the Austrian solution. But there were also practical arguments against: for related rights a term of twenty-five years is envisaged, to run from date of first publication. On the expiry of these twenty-five years, the question whether photographs may now be used without the consent of the photographer or his legal successors would depend on whether a photographic work or a simple photograph was concerned. Obviously, a demarcation of this kind is difficult and must in many cases lead to legal uncertainty.

The new German Act has therefore chosen a different solution: it does indeed differentiate between photographic works, which attract copyright, and other photographs, which qualify only for related rights. There is no difference, however, in the legal effects. In the case of photographic works too a period of protection of twenty-five years only is fixed, dating from first publication; other photographs are subject to the application by analogy of the copyright rules to photographic works.

In the final analysis this represents a practical solution. Whether it is satisfactory in theory is another question. Law is a normative order of things. To make notional distinctions, therefore, is fundamentally of value only if the legal consequences are different, but not when they are the same. It

will be the task of legal doctrine to classify suitably the right in photographs, which rationally is uniform. In my view, it will be necessary to start from the idea that the right in photographs does indeed rank higher than do related rights, but ranks lower than genuine copyright in its assumptions and in the duration of protection. The best solution therefore will be to designate it as copyright of a special kind, similar to copyright in respect of designs and models.

* * *

This concludes our survey of the new German Copyright Act. It is incomplete. We must, for instance, forgo any consideration of the detailed provisions concerning the effects on the rights of authors, in both civil and criminal law, resulting from infringement of copyright and from judicial execution. The survey will no doubt show, however, that the Act is one which has been drafted with particular care. The desire to find an equitable solution to the many questions arising from more recent developments, especially in the technical field, has made the Act a very voluminous one; more space could perhaps have been devoted to individual aspects of jurisprudence. Nevertheless, the main principles of the enactment are clearly discernible and have been applied consistently, with the aim of ensuring that both the moral and material interests of creators of intellectual works are fully protected.

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