

## **COPYRIGHT ACT 1912**

### **CHAPTER I General provisions**

#### **§ 1 Nature of copyright**

##### **Article 1**

Copyright is the exclusive right of the author of a literary, scientific or artistic work or his successors in title to communicate that work to the public and to reproduce it, subject to the limitations laid down by law.

##### **Article 2**

1. Copyright passes by succession and is assignable wholly or in part.
2. The delivery required by whole or partial assignment shall be effected by means of a deed of assignment. The assignment shall comprise only such rights as are recorded in the deed or necessarily derive from the nature or purpose of the title.
3. The copyright belonging to the author of a work and, after his death, to the person having acquired any unpublished work as successor or legatee of the author, shall not be liable to seizure.

#### **§ 2 Author of the work**

##### **Article 3**

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##### **Article 4**

1. Unless there is proof to the contrary, the person who is named as author in or on the work or, where there is no such indication, the person who, when the work is communicated to the public, is named as the author by the party who communicates the work to the public, shall be deemed the author of the work.
2. If the author is not named, the person who delivers a recitation which has not appeared in print shall be deemed the author thereof, unless there is proof to the contrary.

##### **Article 5**

1. If a literary, scientific or artistic work consists of separate works by two or more persons, the person under whose guidance and supervision the work as a whole has been made or, if there is no such person, the compiler of the various works, shall be deemed the author of the whole work, without prejudice to the copyright in each of the works separately.
2. Where a separate work in which copyright subsists is incorporated in a whole work, the reproduction or communication to the public of each separate work by any person other than the author thereof or his successor in title shall be deemed an infringement of the copyright in the whole work.
3. Where such a separate work has not previously been communicated to the public, the reproduction or communication to the public of that separate work by the author thereof or his successors in title without mention of the whole work of which it is a part, shall be deemed an

infringement of the copyright in the whole work, unless otherwise agreed between the parties.

**Article 6**

If a work has been made according to the draft and under the guidance and supervision of another person, that person shall be deemed the author of the work.

**Article 7**

Where labour carried out by an employee consists in the making of certain literary, scientific or artistic works, the employer shall be deemed the author thereof, unless otherwise agreed between the parties.

**Article 8**

A public institution, association, foundation or company which communicates a work to the public as its own, without naming any natural person as the author thereof, shall be regarded as the author of that work, unless it is proved that the communication to the public in such manner was unlawful.

**Article 9**

If a specimen of the work appearing in print does not indicate the name of the author or does not indicate his true name, the person indicated in that specimen of the work as the publisher or, where there is no such indication, the person whose name appears as the printer thereof may, on behalf of the copyright owner, exercise the copyright in the specimen of the work against third parties.

**§ 3 Works protected by copyright**

**Article 10**

1. For the purposes of this Act, literary, scientific or artistic works include:
  - 1°. books, pamphlets, newspapers, periodicals and all other writings;
  - 2°. dramatic and dramatico-musical works;
  - 3°. recitations;
  - 4°. choreographic works and entertainments in dumb show;
  - 5°. musical works, with or without words;
  - 6°. drawings, paintings, works of architecture and sculpture, lithographs, engravings and the like;
  - 7°. geographical maps;
  - 8°. drafts, sketches and three-dimensional works relating to architecture, geography, topography or other sciences;
  - 9°. photographic works;
  - 10°. cinematographic works;
  - 11°. works of applied art and industrial designs and models;
  - 12°. computer programs and the preparatory material;
 

and generally any creation in the literary, scientific or artistic areas, whatever the mode or form of its expression.
2. Reproductions of a literary, scientific or artistic work in a modified form, such as translations, arrangements of music, cinematographic and other adaptations and collections of different works shall be protected as separate works, without prejudice to the copyright in the original work.

3. Collections of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means, shall be protected as a separate work, without prejudice to other rights to the collection and without prejudice to the copyright or other rights to the works, data or other materials included in the collection.
4. Collections of independent works, data or other materials as referred to in the third paragraph, for which the acquisition, control or presentation of the contents, evaluated qualitatively or quantitatively, bears witness to a substantial investment do not fall within the category of works referred to in the first paragraph, sub 1e.;
5. Computer programs do not fall within the category of works referred to in the first paragraph sub 1e.

### **Article 11**

No copyright subsists in laws, decrees or ordinances issued by public authorities, or in judicial or administrative decisions.

### **§ 4 Communication to the public**

### **Article 12**

1. The communication to the public of a literary, scientific or artistic work includes:
  - 1°. the communication to the public of a reproduction of the whole or part of a work;
  - 2°. the distribution of the whole or part of a work or of a reproduction thereof, as long as the work has not appeared in print;
  - 3°. the rental or lending of the whole or part of a specimen of the work, with the exception of works of architecture and works of applied art, or of a reproduction thereof which has been brought into circulation by or with the consent of the right-holder;
  - 4°. the recitation, performance or presentation in public of the whole or part of a work or a reproduction thereof;
  - 5°. the broadcasting of a work incorporated in a radio or television programme by satellite or other transmitter or by a closed-circuit system as referred to in article 1 sub g of the *Wet op de Telecommunicatievoorzieningen*.
2. Rental as referred to in paragraph 1 sub 3°. means making available for use for a limited period of time for direct or indirect economic or commercial advantage.
3. Lending as referred to in paragraph 1 sub 3°. means making available for use, for a limited period of time, by establishments accessible to the public, for no direct or indirect economic or commercial advantage.
4. A recitation, performance or presentation in public includes that in a restricted circle, except where this is limited to relatives or friends or equivalent persons and no form of payment whatsoever is made for admission to the recitation, performance or presentation. The same shall apply to exhibitions.
5. A recitation, performance or presentation which is exclusively for the purposes of education provided on behalf of the public authorities or a non-profit-making legal person, in so far as such a recitation, performance or presentation forms part of the school work plan or curriculum where applicable, or which exclusively serves a scientific purpose, shall not be deemed public.
6. The simultaneous broadcasting of a work incorporated in a radio or television programme by the organization making the original broadcast shall not be deemed a separate communication to

the public.

7. The broadcasting by satellite of a work incorporated in a radio or television programme means the act of introducing, under the control and responsibility of the broadcasting organization, the programme-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and back to earth. Where the programme-carrying signals are encrypted, this shall be deemed to constitute the broadcasting by satellite of a work incorporated in a radio or television programme if the means of decrypting the broadcast are provided to the public by or with the consent of the broadcasting organization.

#### **Article 12a**

1. If the author assigns the rental right referred to in article 12, paragraph 1, sub 3<sup>o</sup>., in respect of a literary, scientific or artistic work fixed on a phonogram to the producer thereof, the latter is indebted an equitable remuneration to the author for the rental.
2. The right to an equitable remuneration as referred to in paragraph 1 may not be waived.

#### **Article 12b**

If a specimen of a literary, scientific or artistic work, has been brought into circulation by means of transfer of ownership for the first time with the consent of the maker or his right-holders in one of the Member States of the European Union or in a state that is party to the Agreement on the European Economic Area, then the bringing of that specimen into circulation in any other way, with the exception of hiring and letting, shall not breach the copyright.

### **§ 5 Reproduction**

#### **Article 13**

The reproduction of a literary, scientific or artistic work includes the translation, arrangement of music, cinematographic adaptation or dramatization and generally any partial or total adaptation or imitation in a modified form, which cannot be regarded as a new, original work.

#### **Article 13a**

The reproduction of a literary, scientific or artistic work will not include temporary reproduction of a passing or incidental nature and forming an essential part of a technical procedure whose sole purpose is to enable

- a) the passing on by an intermediary through a network between third parties, or
- b) a lawful use

and if it contains no independent economic value.

#### **Article 14**

The reproduction of a literary, scientific or artistic work includes the fixation of the whole or part of the work on an object, which is intended to play a work or to show it.

### **§ 6 Limitations on copyright**

**Article 15**

1. It shall not be regarded as an infringement of copyright in a literary, scientific or artistic work to adopt news reports, miscellaneous reports or articles concerning current economic, political or religious topics or works of the same nature that have been published in a daily or weekly newspaper or weekly or other periodical, radio or television program or other medium fulfilling the same purpose, if:
  - 1°. the adoption is made by a daily or weekly newspaper or weekly or other periodical in a radio or television program or other medium fulfilling the same purpose;
  - 2°. the provisions in Article 25 are observed;
  - 3°. the source, including the name of the author, is clearly indicated; and
  - 4°. copyright is not expressly reserved.
2. A reservation as specified in paragraph 1 at point 4° may not be made in relation to news reports and miscellaneous reports.
3. This Article shall also apply to adoption into a language other than the original.

**Article 15a**

1. Quotations from a literary, scientific or artistic work in an announcement, criticism or scientific treatise or publication for a comparable purpose shall not be regarded as an infringement of copyright, provided that:
  - 1°. the work quoted from has been published lawfully;
  - 2°. the quotation is commensurate with what might reasonably be accepted in accordance with social custom and the number and size of the quoted passages are justified by the purpose to be achieved;
  - 3°. the provisions of Article 25 are observed; and
  - 4°. so far as reasonably possible the source, including the author's name, is clearly indicated.
2. In this Article the term 'quotations' shall also include quotations in the form of press summaries from articles appearing in a daily or weekly newspaper or other periodical.
3. This Article shall also apply to quotations in a language other than the original.

**Article 15b**

The further communication to the public or reproduction of a literary, scientific or artistic work communicated to the public by or on behalf of the public authorities shall not be deemed an infringement of the copyright in such a work, unless the copyright has been explicitly reserved, either in a general manner by law, decree or ordinance, or in a specific case by a notice on the work itself or at the communication to the public. Even if no such reservation has been made, the author shall retain the exclusive right to have appear, in the form of a collection, his works which have been communicated to the public by or on behalf of the public authorities.

**Article 15c**

1. The lending as referred to in article 12, paragraph 1, sub 3°. , of the whole or part of a specimen of the work or a reproduction thereof brought into circulation by or with the consent of the

right-holder shall not be deemed an infringement of copyright, provided the person doing or arranging the lending pays an equitable remuneration. The first sentence shall not apply to a work referred to in article 10, paragraph 1, sub 12°, unless that work is part of a data carrier containing data and serves exclusively to make the said data accessible.

2. Educational establishments and research institutes, the libraries attached to them, and the *Koninklijke Bibliotheek* are exempt from payment of a lending remuneration as referred to in paragraph 1.
3. Libraries funded by the Libraries for the Blind and Visually Impaired Fund are exempt from payment of a remuneration as referred to in paragraph 1 in respect of items lent to blind and visually impaired persons registered with the libraries in question.
4. Payment of the remuneration referred to in paragraph 1 shall not be required if the person liable for payment can demonstrate that the author or his successor in title has waived the right to an equitable remuneration. The author or his successor in title should notify the legal persons referred to in articles 15d and 15f of the waiver in writing.

#### **Article 15d**

The level of the remuneration referred to in article 15c, paragraph 1, shall be determined by a foundation to be designated by Our Minister of Justice in agreement with Our Minister of Education, Culture and Science, the board of which shall be so composed as to represent in a balanced manner the interests of the authors or the successors in title and the persons liable for payment pursuant to article 15c, paragraph 1. The chair of the board of this foundation shall be appointed by Our Minister of Justice in agreement with Our Minister of Education, Culture and Science. The number of members of this board shall be uneven.

#### **Article 15e**

Disputes concerning the remuneration referred to in article 15c, paragraph 1, shall be exclusively decided at first instance by the *Arrondissementsrechtbank* at The Hague.

#### **Article 15f**

1. The remuneration referred to in article 15c should be paid to a legal person to be designated by Our Minister of Justice in agreement with Our Minister of Education, Culture and Science who is, in their opinion, representative and who shall be exclusively entrusted with the collection and distribution of such remunerations. The legal person referred to in the preceding sentence shall represent the right-holder at law and otherwise in matters relating to the level and collection of the remuneration and the exercise of the exclusive right.
2. The legal person referred to in paragraph 1 shall be supervised by the Supervisory Board specified in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights.
3. Distribution of the remuneration collected shall be made on the basis of a scheme prepared by the legal person specified in paragraph 1 and approved by the Supervisory Board specified in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights.

#### **Article 15g**

Persons required to pay the remuneration referred to in article 15c, paragraph 1, shall be obliged to

submit, by 1 April of every calendar year unless otherwise agreed, to the legal person referred to in article 15f, paragraph 1, the number of juristic acts as referred to in article 15c. They shall also be obliged to give the said legal person, on request, immediate access to the documents and other data carriers needed to establish liability and the level of the remuneration.

### **Article 15h**

Unless otherwise agreed, the provision of access to a literary, scientific or artistic work forming part of the collections of libraries accessible to the public, and museums or archives which are not attempting to achieve a direct or indirect economic or commercial benefit, by means of a closed network through dedicated terminals in the buildings of those institutions for individual members of the public, for purposes of research or private study, will not constitute an infringement of copyright.

### **Article 15i**

1. Reproduction and publication of a literary, scientific or artistic work exclusively intended for handicapped individuals, provided it is directly related to the handicap, is not of a commercial nature and is necessary because of the handicap, shall not be regarded as an infringement of copyright.
2. A fair payment will be due to the author or his right-holders for the reproduction or publication specified in paragraph 1.

### **Article 16**

1. Reproduction or publication of parts of a literary, scientific or artistic work exclusively for use as illustrations for teaching purposes, so far as justified by the intended and non-commercial purpose will not be regarded as an infringement of copyright, provided that:
  - 1°. the work from which the part is taken has been published lawfully;
  - 2°. the adoption is in accordance with what might reasonably be accepted under the rules of social custom;
  - 3°. the provisions of Article 25 have been observed;
  - 4°. so far as reasonably possible the source, including the author's name, has been clearly indicated; and
  - 5°. a fair payment is made to the author or his right-holders.
2. In the case of a short work or a work as referred to in article 10, paragraph 1, sub 6°. , 9°. or 11°. , the entire work may be taken over for the same purpose and subject to the same conditions.
3. Where the taking over in a compilation is concerned, only short works or short passages of works by one and the same author may be taken over and, in the case of works referred to in article 10, paragraph 1, sub 6°. , 9°. or 11°. , only a small number of those works and only if they are reproduced in such a way that they differ considerably in size or process of manufacture from the original work, with the proviso that where two or more such works were communicated to the public together, the reproduction of only one of them shall be permitted.
4. The provisions of this article shall also apply where the reproduction is in a language other than the original.

**Article 16a**

It shall not be regarded as an infringement of the copyright in a literary, scientific or artistic work to make a short recording, showing or announcement thereof in public in a photographic, film, radio or television report, provided that this is justified for giving a proper account of the current event that is the subject of the report and provided that the source, including the author's name, is clearly indicated as far as reasonably possible.

**Article 16b**

1. Reproduction shall not be regarded as an infringement of the copyright in a literary, scientific or artistic work if it is restricted to a few specimens intended exclusively for personal exercise, study or use by the natural person who has carried out the reproduction without any direct or indirect commercial motivation or has caused it to be carried out exclusively for his own benefit.
2. In the case of a work as referred to in article 10, paragraph 1, sub 1<sup>o</sup>., including the score or parts of a musical work, the reproduction shall furthermore be limited to a small portion of the work, except in the case of:
  - a. works of which it may reasonably assumed that no new copies will be made available to third parties for payment of any kind;
  - b. short articles, news items or other texts, which have appeared in a daily or weekly newspaper or weekly or other periodical.
3. In the case of a work as referred to in article 10, paragraph 1, sub 6<sup>o</sup>., the reproduction must differ considerably in size or process of manufacture from the original work.
4. If reproduction permitted under this Article has taken place, the copies may not be issued to any third parties without the consent of the author or his right-holders, unless that issue takes place because of any judicial or administrative proceedings.
5. Government orders may specify that a fair payment should be made to the author or his right-holders for the reproduction specified in paragraph 1. The orders may issue more detailed rules and impose more detailed conditions.
6. This Article shall not apply to reproduction as specified in Article 16c, or to the imitation of works of architecture.

**Article 16c**

1. Reproduction of the work or any part thereof shall not be regarded as an infringement of the copyright in a literary, scientific or artistic work provided that the reproduction is carried out without any direct or indirect commercial motivation and is intended exclusively for personal exercise, study or use by the natural person who made the reproduction.
2. The manufacturer or the importer of any object intended to allow a work such as specified in paragraph 1 to be heard, to show it or to relate it will be due to make a fair payment to the author or his successor in title.
3. The manufacturer's obligation to make the payment will arise at the point when the manufactured object is ready to be put into circulation. The importer will become subject to this obligation at the time of importing.
4. The obligation to pay shall lapse if the person obliged to make the payment under paragraph 3 exports the object as specified in paragraph 1.
5. The payment shall be due only one time per object.

6. Government orders may prescribe more detailed regulations in relation to the objects giving rise to the obligation for payment as specified in paragraph 2. Government orders may also provide more detailed regulations and impose more detailed conditions as regards the implementation of this Article in relation to the level, indebtedness and format of the fair payment.
7. If a reproduction permitted by this Article has taken place, objects as defined in paragraph 1 may not be issued to third parties without consent from the author or his successors in title unless the issuance occurs for judicial or administrative proceedings.
8. This Article shall not apply to reproduction of a collection accessible by electronic means, as specified in Article 10, paragraph 3.

#### **Article 16d**

1. The payment referred to in Article 16c shall be made to a legal person appointed and considered to be representative by Our Minister of Justice, who will be charged with collection and distribution of this payment in accordance with a scheme prepared by that legal person and approved by the Supervisory Board as specified in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights. This legal person shall represent the authors or their successors in title in matters pertaining to the collection and distribution of payments, both at law and otherwise.
2. The legal person specified in paragraph 1 will be supervised by the Supervisory Board specified in Act on Supervision of Collective Management Organizations for Copyright and Related Rights.
3. Further regulations regarding the exercise of supervision over the legal person referred to in paragraph 1 may be laid down by order in council.

#### **Article 16e**

1. The level of the remuneration referred to in article 16c shall be determined by a foundation to be designated by Our Minister of Justice, the board of which shall be so composed as to represent in an balanced manner the interests of the authors or their successors in title and the persons liable for payment pursuant to article 16c, paragraph 2. The chair of the board of the said foundation shall be appointed by Our Minister of Justice.

#### **Article 16f**

Persons required to pay the remuneration referred to in article 16c shall be obliged to submit to the legal person referred to in article 16d, paragraph 1, either immediately or within a period agreed with the said legal person, the number of the objects imported or manufactured by him as referred to in article 16c, paragraph 1. They shall also be obliged to give the said legal person, at the latter's request, immediate access to the documents needed to establish indebtedness and the level of the remuneration.

#### **Article 16g**

Disputes in relation to the payment specified in Articles 15i, paragraph 2, 16b and 16c shall be determined in the first instance exclusively by the District Court in The Hague.

#### **Article 16ga**

1. Whoever sells the objects specified in Article 16c, paragraph 2, shall be obliged to furnish to the

legal person specified in Article 16d, first paragraph, immediately on request, the documents necessary to establish whether the payment specified in Article 16c, paragraph 1 has been paid by the manufacturer or importer.

2. If the seller cannot demonstrate that the payment has been paid by the manufacturer or the importer, he will be obliged to make the payment to the legal person specified in Article 16d, paragraph 1, unless the documents mentioned in paragraph 1, above, show who the manufacturer or importer is.

#### **Article 16h**

1. A reprographic reproduction of an article in a daily or weekly newspaper or weekly or other periodical, or of a small part of a book and other works incorporated into such a work will not constitute an infringement of copyright, provided that a payment is made for this reproduction.
2. A reprographic reproduction of the whole work will not constitute an infringement of copyright if it may reasonably be assumed of a book that no new specimens are being made available to third parties for payment in any format whatever, provided that a payment is made for this reproduction.
3. Government orders may prescribe that, in relation to the reproduction of works as specified in Article 10, paragraph 1, at 1<sup>o</sup>, exemptions may be granted from the provisions of one or more of the foregoing paragraphs for purposes of public policy and for carrying out the work of institutions concerned with public policy. Such orders may specify more detailed rules and impose more detailed conditions.

#### **Article 16i**

The payment specified in Article 16h will be calculated for each page of a work that has been reprographically reproduced as specified in the first and second paragraphs of that Article. Government orders may prescribe the level of the payment and may make more detailed rules and impose more detailed conditions.

#### **Article 16j**

A reprographic reproduction, falling within the provisions of Article 16h, may only be issued to individuals employed in the same business, organization or institution without the author or his successor in title having given consent, unless the issuance occurs for the sake of legal or administrative proceedings.

#### **Article 16k**

The obligation to make payment, as specified in Article 16h, shall lapse after the expiry of three years from the time when the reproduction is made.

The payment will not be due if the person obliged to make that payment demonstrates that the author or his right-holder has waived the right to payment.

#### **Article 16l**

1. The payment specified in Article 16h should be made to a legal person appointed and considered to be representative by Our Minister of Justice, who will be charged to the exclusion of others with collection and distribution of this payment

2. The legal person specified in paragraph 1 hereof shall represent the authors or their right-holders in all matters pertaining to the collection and distribution of the payments.
3. The legal person specified in paragraph 1 hereof shall use a scheme for the collected payments. The scheme shall require the approval of the Supervisory Board specified in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights.
4. The legal person specified in paragraph 1 hereof shall be supervised by the Supervisory Board specified in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights.
5. Paragraphs 1 and 2 hereof shall not apply to the extent that those who are under an obligation to make payment can demonstrate that they have agreed with the author or his right-holders to make the payment directly to him or them.

#### **Article 16m**

Whoever is obliged to make the payment specified in Article 16 h to the legal person specified in Article 16l, paragraph 1, shall be obliged to submit a return to the legal person of the total number of reprographic reproductions he has made per year.

The return specified in paragraph 1 will not require to be submitted if the number of reprographic reproductions made each year is less than such number as may be fixed by government order.

#### **Article 16n**

1. Reproduction by libraries, museums or archives accessible to the public whose purpose does not include the attainment of a direct or indirect economic or commercial benefit will not be regarded as an infringement of copyright in a literary, scientific or artistic work, provided that the sole purpose of the reproduction is:
  - 1°. the restoration of the specimen of the work;
  - 2°. retention of a reproduction of the work for the institution if the specimen is threatening to fall into disrepair;
  - 3°. to keep the work in a condition in which it can be consulted if there is no technology available to render it accessible.
2. Reproduction as specified in paragraph 1 shall only be authorized if:
  - 1°. the specimen of the work forms part of the collection held by the library, museum or archive accessible to the public relying on this limitation; and
  - 2°. the provisions in Article 25 are taken into account.

#### **Article 17**

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#### **Article 17a**

Government orders may prescribe rules concerning the rights of an author of a work or his successors in title in relation to the publication of a work by means of radio or television program broadcast by means of radio, television or some other medium fulfilling the same purpose. The government orders, specified in the first sentence hereof, may provide that such a work may be published in the Netherlands without

prior consent from the author or his successors in title if the broadcast is made from the Netherlands or from a State that is not party to the Treaty signed in Oporto on 2 May 1992 concerning the European Economic Area (Treaties Series 1992,132). Whoever is entitled to publish a work without prior consent shall nonetheless be obliged to honor the author's rights as specified in Article 25, and to make a fair payment to the author or his right-holders, with this amount being settled, in the absence of agreement, by the Court on the application of either party taking the initiative. The Court may also order the lodgment of security. The foregoing provisions shall not apply to the broadcast by means of satellite of a work incorporated into a radio or television program.

#### **Article 17b**

- 1 Unless otherwise agreed, authority to publish by broadcasting a radio or television program by means of radio, television or some other medium fulfilling the same function does not include authorization to record the work.
- 2 The broadcasting organization authorized to publish, as specified in paragraph 1, shall however be entitled to record the work temporarily with its own equipment and exclusively for broadcasting its own radio or television programs. The broadcasting organization with this recording authority is nonetheless obliged to honour the rights of the author of the work as specified in Article 25.
- 3 Recordings that are made subject to the provisions of paragraph 2, above, and containing a separate documentary value may be kept in an official archive.

#### **Article 17c**

Congregational singing and the instrumental accompaniment thereof during a religious service shall not be deemed an infringement of the copyright in a literary or artistic work.

#### **Article 17d**

Any government order established in accordance with Articles 16b.5, 16c.7, 16h.3, 16m.2, 17a or 29a.4, or any amendment thereof shall not come into effect any earlier than eight weeks after the date of publication of the State Gazette in which it is published. Notice of such publication shall be given immediately to both Houses of the States General.

#### **Article 18**

Reproduction or publication of pictures made in order to be put on permanent display in public places, of a work such as is normally found in such places, will not be regarded as an infringement of the copyright of the author in a work as specified in Article 10, paragraph 1, at point 6<sup>o</sup>, or a work relating to architecture as specified in Article 10, paragraph 1, at point 8<sup>o</sup>. Where incorporation into a compilation work is involved, no more than a few works by the same author may be incorporated.

#### **Article 18a**

Incidental processing of a literary, scientific or artistic work as a component of subordinate significance in another work will not be regarded as an infringement of copyright.

#### **Article 18b**

Publication or reproduction of a literary, scientific or artistic work in the context of a caricature, parody

or pastiche will not be regarded as an infringement of copyright in that work, provided the use is in accordance with what would normally be sanctioned under the rules of social custom.

#### **Article 19**

1. The reproduction of a portrait by or on behalf of the person portrayed or, after his death, by or on behalf of his relatives, shall not be deemed an infringement of copyright.
2. If the portrait is of two or more persons, reproductions thereof by or on behalf of one of the persons portrayed shall not be lawful without the consent of the other persons or, during the ten years after their death, without the consent of their relatives.
3. Furthermore it shall not be deemed an infringement of copyright to communicate to the public a photographic portrait in a newspaper or periodical by or with the consent of one of the persons referred to in paragraph 1, provided the name of the author is indicated if it appears on the portrait.
4. This article shall apply only to portraits, which the author was commissioned to make by or on behalf of the persons portrayed.

#### **Article 20**

1. Unless otherwise agreed, the owner of the copyright in a portrait shall not be entitled to communicate such a portrait to the public without the consent of the person portrayed or, during the ten years after his death, without the consent of his relatives.
2. If an image contains the portrait of two or more persons, the consent of all the persons portrayed is needed, or, during the ten years following their death, the consent of their relatives.
3. The last paragraph of the preceding article shall apply.

#### **Article 21**

If a portrait is made without having been commissioned by or on behalf of the persons portrayed, the copyright owner shall not be allowed to communicate it to the public, in so far as the person portrayed or, after his death, his relatives have a reasonable interest in opposing its communication to the public.

#### **Article 22**

1. In the interests of public security as well as the detection of criminal activity, pictures of any nature whatever may be reproduced or published by or on behalf of the judicial authorities.
2. Adoption of a literary or scientific work in the context of public security, or to safeguard the proper progression of administrative, parliamentary or judicial proceedings or media coverage thereof will not be regarded as an infringement of copyright in that work.

#### **Article 23**

Unless otherwise agreed, the owner, possessor or holder of a drawn, painted, built or sculpted work or a work of applied art shall be authorized to reproduce or publish that work so far as necessary for

public exhibition or public sale of that work, all subject to the exclusion of any other commercial use.

#### **Article 24**

Unless otherwise agreed, the author of a painting continues, notwithstanding the assignment of his copyright, to be entitled to make similar paintings.

#### **Article 24a**

1. It shall not be deemed an infringement of copyright to the collection referred to in article 10, paragraph 3, for the lawful user of the collection to carry out a reproduction, which is necessary to gain access to and make normal use of the collection.
2. Where the lawful user is only entitled to use part of the collection, paragraph 1 shall only apply for the access to and normal use of that part.
3. By agreement no exception may be made to the paragraph 1 and 2 to the detriment of the lawful user.

#### **Article 25**

1. Even after assignment of his copyright, the author of a work has the following rights:
  - a.* the right to oppose the communication to the public of the work without acknowledgement of his name or other indication as author, unless such opposition would be unreasonable;
  - b.* the right to oppose the communication to the public of the work under a name other than his own, and any alteration in the name of the work or the indication of the author, in so far as it appears on or in the work or has been communicated to the public in connection with the work;
  - c.* the right to oppose any other alteration of the work, unless the nature of the alteration is such that opposition would be unreasonable;
  - d.* the right to oppose any distortion, mutilation or other impairment of the work that could be prejudicial to the name or reputation of the author or to his dignity as such.
2. Upon the death of the author, the rights referred to in paragraph 1 shall belong, until the expiry of the copyright, to the person designated by the author in his last will and testament or in a codicil thereto.
3. The right referred to in paragraph 1, sub *a*, may be waived. The rights referred to sub *b* and *c* may be waived in so far as alterations to the work or its title are concerned.
4. If the author of the work has assigned his copyright, he shall continue to be entitled to make such alterations to the work as he may make in good faith in accordance with social custom. As long as copyright subsists, the same right shall belong to the person designated by the author in his last will and testament or in a codicil thereto, if it may reasonably be assumed that the author would have approved such alterations.

#### **Article 25a**

For the purposes of this division relatives means a person's parents, spouse or registered partner and children. Each of the relatives may exercise individually the rights belonging to him or her. In the event of a dispute, the court may render a decision, which shall be binding on them.

### **CHAPTER II The exercise and enforcement of copyright and criminal law provisions**

**Article 26**

Where the copyright in a work belongs jointly to two or more persons, it may be enforced by any one of them, unless otherwise agreed.

**Article 26a**

1. The right to authorize the simultaneous, unaltered and unabridged broadcasting by a closed-circuit system, as referred to in article 1 sub g of the *Wet op de Telecommunicatievoorzieningen*, of a work incorporated in a radio or television program may be exercised exclusively by legal persons whose aim in accordance with their bylaws is to protect the interests of right-holders through the exercise of the right belonging to them as referred to above.
2. The legal persons referred to in paragraph 1 shall also be entitled to protect the interests of right-holders who have not instructed them to do so, where they are exercising the rights defined in their bylaws. Where there is more than one legal person whose aim according to their bylaws is to protect the interests of the same category of right-holders, the right-holder may designate one of them as being authorised to protect his interests. In the case of right-holders who have not issued instructions as referred to in the second sentence, the rights and obligations arising from an agreement concluded in respect of the broadcast referred to in paragraph 1 by a legal person entitled to exercise the same rights shall fully apply.
3. Claims against the legal person referred to in paragraph 1 in respect of the remunerations it has collected shall lapse 3 years after the beginning of the day following that on which the broadcast referred to in paragraph 1 took place.
4. This article shall not apply to rights as referred to in paragraph 1 belonging to a broadcasting organization in respect of its own broadcasts.

**Article 26b**

Parties shall be obliged to conduct negotiations regarding consent for the simultaneous, unaltered and unabridged broadcasting, referred to in article 26a, paragraph 1, in good faith and shall not prevent or hinder negotiations without valid justification.

**Article 26c**

1. If agreement cannot be reached on the simultaneous, unaltered and unabridged broadcasting of a work as referred to in article 26a, paragraph 1, each party may call upon the assistance of one or more mediators. The mediators shall be selected in such a way that their independence and impartiality are beyond reasonable doubt.
2. The mediators shall assist in the conducting of the negotiations and shall be entitled to serve notice of the proposals to the parties. Each party may serve notice to the other party of its objections to such proposals within three months of the date of receipt of the proposals. The mediators' proposals shall be binding on the parties unless one of them has served notice of its objections within the time limit referred to in the previous sentence. Notice of the proposals and the objections shall be served on the parties in accordance with the provisions of Book 1, Title 1, Part 1 of the Code of Civil Procedure.

**Article 27**

1. Notwithstanding the assignment of his copyright wholly or in part, the author shall retain the right to bring an action for damages against persons who infringe the copyright.
2. After the death of the author, the right to bring actions for damages as referred to in paragraph 1 shall belong to his successors or legatees until the copyright expires.

#### **Article 27a**

1. In addition to claiming damages, the author or his successor in title may request the court to order anyone who has infringed the copyright to hand over the profits originating from the infringement and to render account therefore.
2. The author or his successor in title may also file one or both of the claims referred to in paragraph 1 partly or wholly on behalf of a licensee without prejudice to the latter's right to intervene in proceedings instituted independently or partly or wholly on his behalf by the author or his successor in title in order to directly obtain compensation for the damage he has suffered or to obtain a proportionate share of the profits to be surrendered by the defendant. A licensee may file one or both of the claims referred to in paragraph 1 only if he has obtained the authority to do so from the author or his right-holder.

#### **Article 28**

1. Copyright shall entitle the right-holder to claim as his property any goods that are not filed in the public records and which have been communicated to the public in violation of copyright or are unauthorized reproductions, or to apply for them to be destroyed or rendered useless. The right-holder may bring a claim for the handing over of the said goods so that they can be destroyed or rendered useless.
2. The same right to claim goods exists:
  - a. with respect to entrance money paid by persons attending a recitation, performance, exhibition or presentation, which infringes copyright;
  - b. with respect to other monies that may be assumed to have been obtained by or as a result of an infringement of copyright.
3. The same right to apply for the destruction or rendering unusable of goods shall apply to goods that are not filed in the public records and which have been used to effect an infringement of copyright. The right-holder may apply for the handing over of the said goods so that they can be destroyed or rendered unusable.
4. The provisions of the Code of Civil Procedure concerning seizure and execution for the purposes of handing over goods that are not filed in the public records shall apply. In the event of accumulation of seizures the person seizing pursuant to this article shall take precedence.
5. The court may order that the handing over be conditional on payment by the plaintiff of a compensation to be determined by the court.
6. In the case of immovable property, ships or aircraft which infringe copyright, the court may order, on the claim of the right-holder, that the defendant make such alterations as are necessary to end the infringement.
7. Unless otherwise agreed, the licensee shall have the right to exercise the rights referred to in paragraphs 1 up and to included 6 in so far as their purpose is to protect the rights he is entitled to exercise.
8. The same right to apply for the destruction or rendering unusable of goods, and to have those goods surrendered for destruction or to be rendered unusable, shall apply to the equipment,

products and components as specified in Article 29a, and to the reproductions of works as specified in Article 29b, not being property subject to registration.

### **Article 29**

1. The right referred to in article 28, paragraph 1, may not be exercised in respect of goods in the possession of persons who do not trade in such goods and who have obtained them exclusively for private use, unless they have infringed upon the copyright themselves.
2. The claim referred to in article 28, paragraph 6, may be made against the owner or holder of the goods that are guilty for the infringement of copyright concerned.

### **Article 29a**

1. Where the phrase ‘technical provisions’ appears in this Article, it will be taken to mean technology, equipment or components whose normal use would include the prevention or limitation of actions in relation to works and that have not been permitted by the author or his right-holders. Technical provisions will be deemed to be ‘purposive’ if the use of a work protected by the author or his successors in title is managed by means of control of access or by application of a protective procedure such as encryption, encoding or some other transformation of the work or a copy protection that achieves the intended protection.
2. Those who circumvent purposive technical provisions knowingly, or who should reasonably know they are doing so, shall be acting unlawfully.
3. Those who provide services or make, import, distribute, sell, hire out, advertise or possess equipment, products or components for commercial purposes will be acting unlawfully if those items are:
  - a) offered, recommended, or traded with the intention of circumventing the protected operation of purposive technical provisions, or
  - b) of only limited commercial purpose or use, apart from the circumvention of the protected operation of purposive technical provisions, or
  - c) primarily designed, manufactured or adapted with the purpose of circumventing the protected operation of purposive technical provisions.
4. Government orders may establish rules obliging the author or his successor in title to provide the user of a literary, scientific or artistic work for purposes specified in Articles 15i, 16, 16b, 16c, 16h, 16n, 17b and 22 of this Act with the means necessary to profit from those limitations, provided that the user has lawful access to the work protected by the technical provisions. The provisions in the previous sentence will not apply to works made available to users under contractual conditions at a time and a place selected by the users individually.

**Article 29b**

- 1 Those who intentionally and without being entitled to do so remove or amend electronic information relating to the management of rights or who distribute, import for distribution, issue or otherwise publish literary, scientific or artistic works from which such information has been removed or in which such information has been altered without authorization, and who know or ought to know that in so doing they are inciting infringement of the copyright or are enabling, facilitating or concealing such an infringement of the copyright will be acting unlawfully.
- 2 The phrase ‘information relating to the management of rights’ in this Article means all information supplied by the author or his successors in title connected with reproduction of a work or made known when a work is published and serving to identify the work, the author or his successors in title, or information concerning conditions for the use of the work as well as the numbers or codes containing that information.

**Article 30**

If a person communicates a portrait to the public without being authorised to do so, the provisions of articles 28 and 29 on copyright shall apply with respect to the right of the person portrayed.

**Article 30a**

1. Acting as a commercial agent, for profit or otherwise, in matters of copyright in musical works shall be subject to the permission of Our Minister of Justice.
2. Acting as a commercial agent in matters of copyright in musical works shall include: the conclusion or carrying out, in the name of the agent or otherwise, on behalf of the authors of musical works or their successors in title, of agreements concerning the public performance or the broadcasting in a radio or television program by signs, sounds or images of such works or reproductions thereof, wholly or in part.
3. The performance or broadcasting in a radio or television program of dramatico-musical works, choreographic works and entertainments in dumb show, and reproductions thereof, where such works are played without being shown, shall be equated to the performance or broadcasting in a radio or television program of musical works.
4. Agreements as referred to in paragraph 2 which are entered into without the permission of Our Minister required pursuant to paragraph 1 shall be null and void.
5. Government orders will set out more detailed conditions concerning the consent specified in paragraph 1.
6. Supervision over those who have obtained ministerial consent shall be in the hands of the Supervisory Board specified in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights.

**Article 30b**

1. Upon the request of one or more commercial or professional organizations which Our Minister of Justice and Our Minister of Economic Affairs deem representative, which are legal persons with full legal capacity and whose aim is to protect the interests of persons who import into the Netherlands, communicate to the public or reproduce literary, scientific or artistic works on a professional or commercial basis, said Ministers may jointly provide that members of the profession or industry concerned, designated by them, are obliged to keep their records in a manner to be indicated by them.
2. A person who fails to fulfil the obligation referred to in the preceding paragraph is liable to a fine of the second category. Such failure shall constitute a lesser offence.

**Article 31**

A person who intentionally infringes another person's copyright is liable to a term of imprisonment of not more than six months or a fine of the fourth category.

**Article 31a**

A person who intentionally:

- a. publicly offers for distribution;
- b. has in his possession for the purpose of reproduction or distribution;
- c. imports, conveys in transit or exports, or
- d. keeps for profit

an object containing a work infringing another person's copyright is liable to a term of imprisonment of not more than one year or a fine of the fifth category.

**Article 31b**

A person who commits the criminal offences referred to in articles 31 and 31a as his profession or business is liable to a term of imprisonment of not more than four years or a fine of the fifth category.

**Article 32**

A person who:

- a. offers for public distribution;
- b. has in his possession for the purpose of reproduction or distribution;
- c. imports, conveys in transit or exports, or
- d. keeps for profit

an object having reasonable grounds to know that it contains a work, which infringes another person's copyright, is liable to a fine of the third category.

**Article 32a**

A person who intentionally:

- a. offers for public distribution;
- b. has in his possession for the purpose of reproduction or distribution;
- c. imports, conveys in transit or exports, or
- d. keeps for profit

any means designed exclusively to facilitate the removal or overriding, without the consent of the author

or his successor in title, of a technical device for the protection of a work as referred to in article 10, paragraph 1, sub 12°, is liable to a term of imprisonment of not more than six months or a fine of the fourth category.

**Article 33**

Acts defined in articles 31, 31*a*, 31*b*, 32 and 32*a* shall constitute serious offences.

**Article 34**

1. A person who intentionally makes any unlawful alterations in a literary, scientific or artistic work protected by copyright, or in its title or the indication of the author or impairs such a work in any other way that could be prejudicial to the name or reputation of the author or his dignity as such is liable to a term of imprisonment of not more than six months or a fine of the fourth category.
2. Such an act shall constitute a serious offence.

**Article 35**

1. A person who, without being authorised to do so, publicly exhibits a portrait or communicates it to the public in any other manner is liable to a fine of the fourth category.
2. Such an act shall constitute a lesser offence.

**Article 35a**

1. A person who, without having obtained the necessary permission from Our Minister of Justice, performs acts amounting to acting as a commercial agent as referred to in article 30*a* is liable to a fine of the fourth category.
2. Such an act shall constitute a lesser offence.

**Article 35b**

1. A person who intentionally furnishes false or incomplete information in a written application or submission on the basis of which the amounts due are determined by the person who, with the permission of Our Minister of Justice, acts as a commercial agent in matters of copyright on musical works, is liable to a term of detention of not more than three months or a fine of the third category.
2. Such an act shall constitute a lesser offence.

**Article 35c**

A person who intentionally omits a submission in writing to the legal person referred to in article 16*d*, paragraph 1, on the basis of which the amounts due pursuant to article 16*c* are determined or intentionally provides false or incomplete information in such a submission is liable to a term of detention of not more than three months or a fine of the third category. Such an act shall be deemed to constitute a lesser offence.

**Article 35d**

A person who intentionally omits a submission as referred to in article 15*g* or intentionally provides false information in such a submission shall be liable to a term of detention of not more than three months or a fine of the third category. Such an act shall be deemed to constitute a lesser offence.

**Article 36**

1. Reproductions declared forfeit by the criminal court shall be destroyed; the court may, however, provide in its judgment that they be handed over to the copyright owner if the latter applies to the office of the Clerk within one month of the judgment becoming final and conclusive.
2. Upon such handing over, ownership of the reproductions shall be assigned to the right-holder. The court may order that handing over be conditional on payment by the right-holder of a compensation that shall accrue to the State.

**Article 36a**

Investigating officers may at any time, for the purposes of investigating offences punishable under this Act, require access to any documents or other data carriers in the possession of persons who in the exercise of their profession or business import, convey in transit, export, communicate to the public or reproduce literary, scientific or artistic works, where inspection of such documents or data carriers may reasonably be deemed necessary for the performance of their duties.

**Article 36b**

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

**Article 36c**

(deleted)

**CHAPTER III Duration of copyright****Article 37**

1. Copyright shall expire 70 years after 1 January of the year following the year of the death of the author.
2. The duration of the copyright belonging jointly to two or more persons in their capacity as co-authors of a work shall be calculated from 1 January of the year following the year of the death of the last surviving co-author.

**Article 38**

1. The copyright in a work of which the author has not been indicated or has not been indicated in such a way that his identity is beyond doubt shall expire 70 years after 1 January of the year following that in which the work was first lawfully communicated to the public.
2. The same shall apply to works of which a public institution, association, foundation or company is deemed the author, unless the natural person who created the work is indicated as the author on or in copies of the work which have been communicated to the public.
3. If the author discloses his identity prior to the end of the term referred to in paragraph 1, the duration of the copyright in the work concerned shall be calculated in accordance with the provisions of article 37.

**Article 39**

Copyright in works for which the duration of copyright is not calculated in accordance with article 37 and which have not been lawfully communicated to the public within 70 years from their creation shall expire.

**Article 40**

The copyright in a cinematographic work shall expire 70 years after 1 January of the year following the year of death of the last of the following persons to survive: the principal director, the author of the screenplay, the author of the dialogue and the composer of the music created for use in the work.

**Article 41**

For the purposes of article 38, where a work is published in volumes, parts, instalments, issues or episodes, each volume, part, instalment, issue or episode shall be deemed a separate work.

**Article 42**

Notwithstanding the provisions of this chapter, the term of copyright, which has already expired in the country of origin of the work, may not be invoked in the Netherlands. The first sentence shall not apply to works whose author is a national of a Member State of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992.

**CHAPTER IV****Articles 43-45**

(deleted)

**CHAPTER V Special provisions concerning cinematographic works****Article 45a**

1. Cinematographic work means a work consisting of a sequence of images, with or without sound, irrespective of the manner of fixation, if it is fixed.
2. Without prejudice to the provisions of articles 7 and 8, the natural persons who have made a contribution of a creative nature to the making of a cinematographic work shall be considered the authors of said work.
3. The natural or legal person responsible for the making of a cinematographic work with a view to its exploitation shall be considered the producer of the said work.

**Article 45b**

Where one of the authors is unwilling or unable to complete his contribution to the cinematographic work, he may not oppose the use by the producer of that contribution, in so far as it has already been created, for the purposes of completing the cinematographic work, unless otherwise agreed in writing. He shall be considered the author as meant in article 45a of the contribution that he has made.

**Article 45c**

A cinematographic work shall be deemed completed once it is ready for showing. Unless otherwise

agreed in writing, the producer shall decide when the cinematographic work is ready for showing.

**Article 45d**

Unless otherwise agreed in writing by the authors and the producer, the authors shall be deemed to have assigned to the producer as from the time referred to in article 45c the right to communicate the work to the public, to reproduce it as meant in article 14, to add subtitles to it and to dub the dialogue. The above shall not apply to those who have composed music for use in the cinematographic work or those who have written the lyrics belonging to the music. The producer is indebted an equitable remuneration to the authors or their successors in title for all forms of exploitation of the cinematographic work. The producer is also indebted an equitable remuneration to the authors or their successors in title if he effects exploitation in a form that did not exist or was not reasonably foreseeable at the time referred to in article 45c or if he gives the right to effect such exploitation to a third party. The remunerations referred to in this article shall be agreed in writing. The right to an equitable remuneration for rental cannot be waived by the author.

**Article 45e**

In addition to the rights referred to in article 25, paragraph 1, sub *b*, *c* and *d*, each author shall be entitled, in relation to a cinematographic work to:

- a.* have his name appear in the usual place in the work in question, together with his capacity or the nature of his contribution to the cinematographic work;
- b.* require that the part of the film referred to sub *b* is shown;
- c.* oppose to indication of his name in the cinematographic work, unless such objection would be unreasonable.

**Article 45f**

The author shall be assumed to have waived the right to oppose alterations as referred to in article 25, paragraph 1, sub *c*, to his contribution vis-à-vis the producer, unless otherwise agreed in writing.

**Article 45g**

Each author shall, unless otherwise agreed in writing, retain copyright in his contribution where the latter constitutes a work that can be separated from the cinematographic work. After the moment referred to in article 45c, each author may, unless otherwise agreed in writing, communicate his contribution to the public and reproduce it separately, provided that he does not thereby prejudice the exploitation of the cinematographic work.

**CHAPTER VI Special provisions concerning computer programs**

**Article 45h**

The communication to the public by renting the whole or part of a work as referred to in article 10, paragraph 1, sub 12°, or a reproduction thereof brought into circulation by or with the consent of the right-holder shall be subject to the consent of the author or his successor in title.

**Article 45i**

Without prejudice to the provisions of article 13, the reproduction of a work as referred to in article 10,

paragraph 1, sub 12°, shall include the loading, displaying, running, transmission and storage, in so far as these acts are necessary for the reproduction of the said work.

**Article 45j**

Unless otherwise agreed, the reproduction of a work as referred to in article 10, paragraph 1, sub 12°, by the lawful acquirer of a copy of said work, where this is necessary for the use of the work for its intended purpose, shall not be deemed an infringement of copyright. Reproduction, as referred to in the first sentence, in connection with loading, displaying or correcting errors cannot be prohibited by contract.

**Article 45k**

The reproduction of a work as referred to in article 10, paragraph 1, sub 12°, by the lawful user of said work serving as a back-up copy, where this is necessary for the use of the work for its intended purpose, shall not be deemed an infringement of copyright.

**Article 45l**

A person who is entitled to perform the acts referred to in article 45i shall also be entitled, while performing them, to observe, study or test the functioning of the work concerned in order to determine the ideas and principles underlying it.

**Article 45m**

1. The making of a copy of a work as referred to in article 10, paragraph 1, sub 12°, and the translation of the form of its code shall not be deemed an infringement of copyright if these acts are indispensable for obtaining information necessary to achieve the interoperability of an independently created computer program with other programs, provided that:
  - a. these acts are carried out by a person who has lawfully obtained a copy of the computer program or by a third party authorised by him to carry them out;
  - b. the information necessary to achieve interoperability is not already readily available to the persons referred to sub a.; and
  - c. these acts are limited to the parts of the original program, which are necessary to achieve interoperability.
2. The information obtained pursuant to paragraph 1 may not:
  - a. be used for any other purpose than to achieve the interoperability of the independently created computer program;
  - b. be given to third parties except where necessary for the interoperability of the independently created computer program;
  - c. be used for the development, production or marketing of a computer program that cannot be regarded as a new, original work or for other acts which infringe copyright.

**Article 45n**

Articles 16b and 16c shall not apply to works specified in Article 10, paragraph 1, 12°.

## **CHAPTER VII Protection of works communicated to the public after expiry of the term of protection**

### **Article 45o**

1. Any person who, after the expiry of the term of copyright protection, for the first time lawfully communicates to the public a previously unpublished work shall enjoy the exclusive right referred to in article 1.
2. The right referred to in paragraph 1 shall expire 25 years after 1 January of the year following that in which the work concerned was lawfully communicated to the public for the first time.
3. The provisions of paragraphs 1 and 2 shall also apply to previously unpublished works, which have never been protected by copyright, the author of which died more than 70 years ago.

## **CHAPTER VIII Transitional and final provisions**

### **Article 46**

1. With the entry into force of this Act, the act of 28 June 1881 on copyright (Statute Book 124) is repealed.
2. However, article 11 of the latter Act remains in force in respect of works and translations deposited prior to the date of entry into force.

### **Article 47**

1. This Act shall apply to all literary, scientific or artistic works published in the Netherlands for the first time or during the 30 days following first publication in another country, either before or after its entry into force, and to all such works not published, or not thus published, of which the authors are Dutch nationals.
2. For the purposes of the application of the preceding paragraph, authors who are not Dutch nationals but are normally resident in the Netherlands shall be equated with Dutch nationals in respect of unpublished works or works that have been published after the author has taken up residence in the Netherlands.
3. A work shall be deemed to have been published within the meaning of this article when it has appeared in print with the consent of the author or, in general, when a sufficient number of copies thereof, of whatever kind, have been made available with the consent of the author, to meet the reasonable needs of the public, given the nature of the work.
4. The performance of a dramatic, dramatico-musical or musical work, the showing of a cinematographic work, the recitation or broadcasting in a radio or television program of a work and the exhibition of a work of art shall not be deemed a publication.
5. With regard to works of architecture and works of art constituting an integral part thereof, the construction of the work of architecture or the incorporation of the work of art shall be deemed a publication.
6. Without prejudice to the provisions of the preceding paragraphs, this Act shall apply to cinematographic works if the producer thereof has his registered office or normal place of residence in the Netherlands.

### **Article 47a**

This Act shall remain in force in respect of all literary, scientific or artistic works published for the first

time by or on behalf of the author prior to 27 December 1949 in the Dutch East Indies or prior to 1 October 1962 in Dutch New Guinea.

**Article 47b**

1. This Act shall apply to the broadcasting by satellite of a work incorporated in a radio or television program if the act referred to in article 12, paragraph 7, takes place in the Netherlands.
2. This Act shall also apply to the broadcasting by satellite of a work incorporated in a radio or television program if:
  - a. the act referred to in article 12, paragraph 7, takes place in a country that is not a Member State of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992;
  - b. the country where the act referred to in article 12, paragraph 7, takes place does not offer the level of protection provided for in chapter II of directive no. 93/83/EEC of the Council of the European Communities of 27 September 1993 on the coordination of certain rules concerning copyright and related rights applicable to satellite broadcasting and cable retransmission (OJ EC L248); and
  - c. either the program-carrying signals are transmitted to the satellite from an uplink station in the Netherlands or a broadcasting organization with its principal establishment in the Netherlands has commissioned the broadcasting and no use is made of an uplink station situated in a Member State of the European Union or a State party to the Agreement on the European Economic Area of 2 May 1992.

**Article 48**

This Act does not recognize copyright in works in which, at the time of its entry into force, copyright had expired under articles 13 or 14 of the Act of 28 June 1881 on copyright (Statute Book, 124) or in works in respect of which, on the said date, copyright had expired under article 3 of the Act of 25 January 1817 (Statute Book, 5) relating to the rights exercisable in the Netherlands in respect of the printing and publication of literary and artistic works.

**Article 49**

Copyright acquired under the Act of 28 June 1881 on copyright (Statute Book, 124) and *kopijrecht* or any right of this nature acquired under earlier legislation and maintained by the said Act shall continue after the entry into force of this Act.

**Articles 50-50b**

(deleted)

**Article 50c**

1. Anyone who, prior to 1 September 1912, without contravening the provisions of the Act of 28 June 1881 governing copyright (Statute Book, 124) or of any treaty, published in the Netherlands or in the Dutch East Indies a reproduction of a literary, scientific or artistic work, which did not constitute a reprinting of the whole or part of a work as referred to in article 10, paragraph 1 sub 1<sup>o</sup>., 2<sup>o</sup>., 5<sup>o</sup>. or 7<sup>o</sup>., shall not, as a result of the entry into force of this Act, lose the right to distribute and sell a reproduction published before that date and any copies

subsequently made. This right passes by inheritance and shall be assignable wholly or in part. Article 47, paragraph 2, shall apply *mutatis mutandis*.

2. The court may, however, in response to a written application by the owner of the copyright in the original work, either abolish wholly or in part the right provided for in paragraph 1 or award the applicant compensation for the exercise of said right, in both cases in accordance with the provisions of the following two articles.

#### **Article 50d**

1. An application for the abolishment wholly or in part of the right referred to in article 50c may be made only if a new edition of the reproduction was published after 1 November 1915. Article 47, paragraph 2, shall apply *mutatis mutandis*.
2. The application shall be filed with the District Court in Amsterdam before the end of the calendar year following that in which publication took place. The Clerk shall summon the parties to appear at a time to be determined by the court. The matter shall be heard in chambers.
3. The application for abolishment of this right shall only be granted if and in so far as the court is of the opinion that the moral interests of the applicant are being harmed by the distribution and sale of the reproduction. If the application has not been lodged by the author of the original work, the court shall refuse to grant it if it is satisfied that the author approved the said publication of the reproduction. The court shall also dismiss the application if the applicant has attempted to obtain compensation from the person exercising the right in question. The court may dismiss the application if abolishment of the right would excessively injure the person exercising it in proportion to the interests of the applicant, which should be protected. If the court abolishes the said right wholly or in part, it shall specify the date on which the abolition shall enter into force.
4. In its decision the court shall make whatever provisions it deems fair in the light of the interests of both parties and third parties. The court shall estimate the costs to both parties and stipulate how the costs shall be borne by them. Decisions made by the court pursuant to this article shall not be open to appeal. No court fees shall be charged in respect of the application of this article.

#### **Article 50e**

1. Compensation may be awarded for the exercise of the right referred to in article 50c only if a new edition of the reproduction was published after 1 May 1915. Article 47, paragraph 2, applies *mutatis mutandis*.
2. Paragraphs 2 and 4 of the preceding article apply.

#### **Article 50e**

(deleted)

#### **Article 51**

1. The terms of protection provided for in this Act shall apply, from the date on which this article enters into force, to works which were protected by national legislation on copyright on 1 July 1995 in at least one Member State of the European Union or one State party to the Agreement on the European Economic Area of 2 May 1992.
2. This Act cannot reduce a term of protection already in existence on the day before the date of

- entry into force of this article.
3. This Act does not affect lawful acts of exploitation carried out or rights acquired before the date of entry into force of this article.
  4. Anyone who, prior to 24 November 1993, carried out lawful acts of exploitation in relation to a work, the term of protection for which had expired before the entry into force of this article and to which this Act again applies with the entry into force of this article, shall be entitled to continue such acts of exploitation with effect from the date of entry into force of this article.
  5. Until they expire, rights which are revived or extended with the entry into force of this article shall be held by the person who would have been the last right-holder if the said rights had not been revived or extended, unless otherwise agreed.

**Article 52**

This Act may be cited as the Copyright Act 1912.

**Article 53**

This Act shall enter into force in the Kingdom in Europe on the first day of the month following that in which it is promulgated.