

Copyright Act – *Auteurswet* Unofficial translation

*Mireille van Eechoud**

Translator's note

Translating is making choices. The objective of this translation is to render the official text of the Auteurswet into English as 'authentically' as is possible. This means the English text stays very close to the wording and structure of the Dutch text, even if that sometimes comes at the expense of readability. Where the Dutch legislator has used wording identical to the Dutch version of provisions of EU directives, the terms of the corresponding official English version of the relevant EU directives is used. Similarly, where it was the legislator's intention to mirror in Dutch the wording of international treaties (esp. Berne Convention), this translation follows the official English version. The use of synonyms in the original act is reflected in the translation.

Any translation of course involves making a choice between alternatives. For a number of key concepts the choice warrants some explanation.

Maker (n.): the Act consistently speaks of 'maker' in stead of 'auteur'. The reasons why the 1912 legislator opted for maker rather than author seem lost in time. Dutch lawyers generally regard them as synonyms, indeed Dutch lawyers normally speak of 'auteur' and not of 'maker'. In this translation the peculiar wording of the act is maintained by using the English 'maker' and not 'author'.

Openbaarmaken (v.): translated as 'making public', this term captures all forms of communicating a work to the public, including the public performance and making available on-line. Of note, the Dutch term 'openbaarmaken' also includes forms of communicating physical copies of a work, i.e. by displaying them or distributing them through sale, rental, or lending. Where the Act uses narrower terms, these are translated to the closest English synonym.

* M.M.M. van Eechoud is associate professor at the Institute for Information Law (IViR), University of Amsterdam.

Verveelvoudigen (v.), *verveelvoudiging* (n.): together with ‘openbaarmaken’, the verb ‘verveelvoudigen’ captures the author’s economic rights. It is translated as the act of ‘reproduction’ or ‘reproducing’, rather than the more literal ‘to multiply’ or ‘to copy’, for which the obvious Dutch equivalent is ‘kopiëren’. Also, historically the Dutch legal concept of ‘verveelvoudigen’ is close to the French concept of ‘le droit de reproduction’ (art. L-122-1 Code de la propriété intellectuelle). Importantly, the term ‘verveelvoudigen’ not only covers direct or indirect copying of the whole or parts of a work, but also the making of adaptations (translations, dramatizations, etc.). The noun ‘verveelvoudiging’ is used in the Dutch original to signify adaptations but also physical copies of a work. In keeping with this the noun ‘verveelvoudiging’ is translated as (a) reproduction. In some provisions, physical copies of a work are however denoted with the noun ‘exemplaar’. This term is translated as a ‘copy’, as generally that is the word used in the corresponding provisions of the relevant directives.

Billijke vergoeding (n.): Wherever the copyright act qualifies the nature of a compensation (‘vergoeding’) due for certain acts, it invariably employs the adjective ‘billijk’, even though the Directives use a variety of terms (e.g. ‘equitable remuneration’ for rental rights of film authors, ‘fair compensation’ for reprography and private copying, mere ‘remuneration’ for lending rights of authors). The term ‘billijke vergoeding’ is translated as ‘fair compensation’.

The translation is of the Auteurswet (Stb. 1912, 308) as in force on 1 January 2012 and as last revised by Collective Act Security and Justice (Verzamelwet Veiligheid en Justitie 2011) of 27 October 2011 (Stb. 2011, 500).

Copyright Act

Act of 23 September 1912, containing a new regulation of the law on copyright.

We WILHELMINA, by the Grace of God, Queen of the Netherlands, Prinsess of Oranje-Nassau, etc., etc., etc.

To all, whom shall see or hear this being read, greetings! Have it be known:

Thus we have considered it is desirable to enact a new regulation of the law on copyright;

Thus it is that We, having heard the Council of State, and in common consultation with the States General, having approved and understood, as We approve and understand thus:

Chapter I General provisions

Section 1 The nature of copyright

Article 1

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

Article 2

1. Copyright passes by succession and is transmissible by assignment in whole or in part.
2. The delivery required for whole or partial assignment shall be effected by means of an instrument of transfer. The assignment shall comprise only such rights as are named in the instrument or as necessarily derive from the nature or purpose of the title.
3. The copyright that rests with the maker of a work and, after his death, the copyright in any of his unpublished works transmitted to his heir or legatee, is not liable to seizure.

Section 2 Maker of the work

Article 3

(repealed as of 01-01-1957)

Article 4

1. In the absence of proof to the contrary it shall be presumed that the maker is the person whose name is indicated as maker in or on the work, or, where there is no such indication, the person who was made known as maker when the work was made public by whoever made it public.
2. If no maker is named in case of a recitation which has not been published in print, the person rendering it shall be presumed to be the maker until the contrary is proved.

Article 5

1. If a literary, scientific or artistic work consists of separate works by two or more persons, the person under whose direction and supervision the work as a whole was made or, if there is no such person, the compiler of the various

works, is taken to be the maker of the whole work, without prejudice to the copyright in each of the separate works.

2. Where a separate work in which copyright subsists is incorporated in a whole work, the reproduction or communication to the public of any such separate work by any person other than its maker or his successor in title is regarded as an infringement of the copyright in the whole work.
3. Unless otherwise agreed between the parties, if such a separate work has not previously been made public, the reproduction or making public of that separate work by its maker or his successors in title is regarded as an infringement of the copyright in the whole work if no mention is made of the whole work of which it is a part.

Article 6

If a work has been made after the design by and under the direction and supervision of another person, that person is taken to be the maker of the work.

Article 7

Where labour which is carried out in the service of another consists in the making of certain literary, scientific or artistic works, the person in whose service the works were created is taken to be the maker, unless the parties have agreed otherwise.

Article 8

A public institution, an association, a foundation or a company that makes a work public as its own, without naming any natural person as the maker, is taken to be the maker of that work, unless it is proved that in the circumstances the making public of the work was unlawful.

Article 9

If a work has appeared in print, and the maker is not named in or on any copy of it, or not with his true name, whoever is indicated in or on the copy as publisher, or failing that, as printer of the work, may assert the copyright against third parties on behalf of the copyright owner.

Section 3 Works in which copyright exists

Article 10

1. For the purposes of this Act, literary, scientific or artistic works are:
 - 1° books, brochures, 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 other graphic works;
 - 7° geographical maps;
 - 8° plans, sketches and three-dimensional works relating to architecture, geography, topography or other sciences;
 - 9° photographic works;
 - 10° film works;
 - 11° works of applied art and industrial designs and models;
 - 12° computer programs and preparatory materials; and generally any creation in the literary, scientific or artistic domain, regardless of the manner or form in which it has been expressed.
2. Reproductions of a literary, scientific or artistic work in a modified form, such as translations, arrangements of music, dramatizations and other adaptations, as well as collections of different works shall be protected as separate works, without prejudice to the copyright in the original work.
3. Collections of works, data or other independent materials arranged in a systematic or methodical way and individually accessible by electronic or other means, shall be protected as separate works, without prejudice to other rights in the collection and without prejudice to copyright or other rights in the works, data or other materials incorporated in the collection.
4. Collections of works, data or other independent materials within the meaning of the third paragraph, which show a substantial investment in the acquisition, control or presentation of the contents, evaluated qualitatively or quantitatively, are not writings as named in the first paragraph sub 1°;
5. Computer programs are not writings as named in the first paragraph sub 1°.

Article 11

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

Section 4 Making public

Article 12

1. The making public of a literary, scientific or artistic work includes:
 - 1° the making 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 an original work, works of architecture and works of applied art excepted, or of a reproduction thereof which has been put into circulation by or with the consent of the right owner;
 - 4° the recitation, playing, 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 a broadcasting network within the meaning of Article 1.1 of the Media Act 2008.¹
2. Rental as referred to in the first paragraph 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 the first paragraph sub 3° means making available for use by establishments which are accessible to the public, for a limited period of time and not for direct or indirect economic or commercial advantage.
4. The expression 'recitation, playing, performance or presentation in public' includes that in a closed 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, play, performance or presentation. The same applies to exhibitions.
5. The expression 'recitation, playing, performance or presentation in public' does not include those that take place 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 those that exclusively serve a scientific purpose.
6. The simultaneous broadcasting of a work incorporated in a radio or television programme by the organization making the original broadcast, is not regarded as a separate instance of making public.

¹ Mediawet 2008.

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 down towards the earth. Where the programme-carrying signals are encrypted, there is broadcasting by satellite of a work incorporated in a radio or television programme on condition that the means for decrypting the broadcast are provided to the public by or with the consent of the broadcasting organization.

Article 12a

1. If the maker has assigned to the producer the rental right meant in Article 12, first paragraph sub 3°, with respect to a literary, scientific or artistic work fixed in a phonogram, the producer owes the maker fair compensation for the rental.
2. The right to fair compensation as meant in the first paragraph cannot be waived.

Article 12b

If by means of transfer of ownership, an original or copy of a literary, scientific or artistic work has been put into circulation for the first time by or with the consent of the maker or his successor in title 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 putting that original or copy into circulation in any other way, except by rental and lending, does not infringe the copyright.

Section 5 Reproduction

Article 13

The reproduction of a literary, scientific or artistic work includes the translation, musical arrangement, film adaptation or dramatization and generally any partial or full 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 does not include the temporary reproduction that is transient or incidental and an integral and essential part of a technological process, the sole purpose of which is to enable:

- (a) a transmission in a network between third parties by an intermediary, or

- (b) a lawful use of a work to be made, and which has no independent economic significance

Article 14

The reproduction of a literary, scientific or artistic work includes the fixation of the whole or part of the work in any article intended for causing a work to be heard or seen.

Section 6 The limitations on copyright

Article 15

1. It shall not be regarded as an infringement of the copyright in a literary, scientific or artistic work to use news items, miscellaneous items or articles on current economic, political or religious topics or works of the same nature which have been published in a daily or weekly newspaper or weekly or other periodical, radio or television programme or other medium that has the same function, if:
 - 1° the use is made by a daily or weekly newspaper, a weekly or other periodical, a radio or television programme or other medium that has the same function;
 - 2° the provisions of Article 25 are observed;
 - 3° the source, including the name of the maker, is stated clearly; and
 - 4° the copyright is not expressly reserved.
2. The reservation meant in the first paragraph sub 4° cannot be made with respect to news items and miscellaneous items.
3. This Article shall also apply to use in a language other than the original.

Article 15a

1. It is not regarded as an infringement of the copyright in a literary, scientific or artistic work to quote from the work in an announcement, review, polemic or scientific treatise or a piece with a comparable purpose, provided that:
 - 1° the work quoted from has been lawfully made public;
 - 2° the quoting is in accordance with what social custom regards as reasonably acceptable and the number and size of the quoted parts are justified by the purpose to be achieved;
 - 3° the provisions of Article 25 are observed; and
 - 4° the source, including the maker's name, is clearly indicated, in so far as this is reasonably possible.

2. In this Article the term quotations also includes quotations in the form of press surveys of articles appearing in a daily or weekly newspaper or other periodical.
3. This Article also applies to quotations in a language other than the original.

Article 15b

The further making public or reproduction of a literary, scientific or artistic work made public by or on behalf of the public authorities is not regarded as 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 given when the work was made public. Even if no such reservation has been made, the maker retains the exclusive right to have appear a collection of his works which have been made public by or on behalf of the public authorities.

Article 15c

1. Provided the person doing or causing the lending pays a fair compensation, it is not regarded as an infringement of the copyright, to lend within the meaning of Article 12, first paragraph sub 3°, the whole or part of the work or a copy which has been put into circulation by or with the consent of the right owner. The first sentence shall not apply to a work as meant in Article 10, first paragraph sub 12°, unless that work is part of a data carrier that contains data and the work serves exclusively to make said data accessible.
2. Educational establishments and research institutes and their dependent libraries, and the Royal Library² are exempt from payment of a lending remuneration as meant in the first paragraph.
3. Libraries funded by the Foundation Fund for the Blind and Visually Impaired³ are exempt from payment of compensation as meant in the first paragraph, in respect of items lent for the benefit of blind and visually impaired persons registered with said libraries.
4. The compensation meant in the first paragraph is not owed if the person liable for payment can demonstrate that the maker or his successor in title has waived the right to fair compensation. The maker or his successor in title must notify the legal persons referred to in Articles 15d and 15f of the waiver in writing.

² Koninklijke Bibliotheek.

³ Stichting fonds voor het bibliotheekwerk voor blinden en slechtzienden.

Article 15d

The level of the compensation meant in Article 15c, first paragraph, 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 makers or their successors in title and the persons liable for payment pursuant to Article 15c, first paragraph. The chair of the board of this foundation will be appointed by Our Minister of Justice in agreement with Our Minister of Education, Culture and Science. The board must have an uneven number of members.

Article 15e

Disputes concerning the compensation meant in Article 15c, first paragraph, shall be decided in the first instance by the District Court at The Hague exclusively.

Article 15f

1. The compensation meant in Article 15c must be paid to a legal person, which is to be designated by Our Minister of Justice in agreement with Our Minister of Education, Culture and Science, and which they judge to be representative. The legal person shall be exclusively entrusted with the collection and distribution of these compensations. In matters relating to the level and collection of the compensation and the exercise of the exclusive right, the legal person referred to in the preceding sentence represents the right holders at law and otherwise.
2. The legal person meant in the first paragraph will be supervised by the Supervisory Board as meant in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights.⁴
3. Distribution of the compensation collected will take place on the basis of regulations drawn up by the legal person meant in the first paragraph and approved by the Supervisory Board meant in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights.

Article 15g

Unless another date is agreed, by 1 April of every calendar year whoever is required to pay the compensation meant in Article 15c, first paragraph, is obliged to submit a return of the number of legal acts performed as meant in Article 15c to the legal person referred to in Article 15f, first paragraph. He is further obliged to provide said legal person, on request, immediate access to

⁴ Wet toezicht collectieve beheersorganisaties auteurs- en naburige rechten.

any documents or other data carriers needed to establish liability and the level of the compensation.

Article 15h

Unless otherwise agreed, not regarded as an infringement of copyright is the provision of access to a literary, scientific or artistic work that forms part of the collections of libraries accessible to the public and of museums or archives which are not seeking a direct or indirect economic or commercial benefit, by means of a closed network through dedicated terminals on the premises of said establishments, to individual members of the public, for purposes of research or private study.

Article 15i

1. Not regarded as an infringement of copyright is the reproduction or making public of a literary, scientific or artistic work where such is exclusively intended for disabled individuals, provided it is directly related to the disability, is not of a commercial nature and is required by the disability.
2. Fair compensation is due to the maker or his successor in title for the act of reproduction or making public within the meaning of the first paragraph.

Article 16

1. Not regarded as an infringement of copyright is the reproduction or making public of parts of a literary, scientific or artistic work for the sole purpose of illustration for teaching, to the extent justified by the intended and non-commercial purpose, provided that:
 - 1° the work from which the part is taken has been lawfully made public;
 - 2° it is in accordance with what social custom regards as reasonably acceptable use
 - 3° the provisions of Article 25 have been observed;
 - 4° so far as reasonably possible the source, including the maker's name, has been clearly indicated; and
 - 5° fair compensation is paid to the maker or his successors in title.
2. For the same purpose and subject to the same conditions, use of the whole work is allowed if it concerns a short work or a work as meant in Article 10, first paragraph sub 6°, 9° or sub 11°.
3. Where the use is for a compilation, the use of works by the same maker must be limited to only short works or short passages of works. Where it concerns works meant in Article 10, first paragraph sub 6°, 9° or 11°, only a few of said works may be used and only if the reproductions differ appreciably from the

original work, in size or as a result of the manner in which they are made, in the understanding 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 also apply where the use is in a language other than the original.

Article 16a

Not regarded as an infringement of the copyright in a literary, scientific or artistic work is the short recording, showing or presentation 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 maker's name, is stated clearly as far as is reasonably possible.

Article 16b

1. Not regarded as an infringement of the copyright in a literary, scientific or artistic work is the reproduction that is limited to a few copies intended exclusively for personal practice, study or use by the natural person who, without any direct or indirect commercial objective, made the reproduction or ordered it exclusively for his own benefit.
2. it concerns a daily or weekly newspaper or weekly or other periodical, or a book or the score or parts of a musical work, and of works incorporated in said works, the reproduction shall furthermore be limited to a small part of the work, except in the case of:
 - a. works of which it may reasonably be 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. Where it concerns a work within the meaning of Article 10, first paragraph, sub 6°, the reproduction must differ appreciably from the original work, in size or as a result of the manner in which it was made.
4. If reproduction permitted under this Article has taken place, the copies may not be handed to any third parties without the consent of the maker or his successors in title, unless it is for judicial or administrative proceedings.
5. By Order in Council it may be provided that fair compensation is due to the maker or his successors in title for the reproduction meant in the first paragraph. Further terms and conditions may be specified by Order in Council.
6. This Article does not apply to acts of reproduction within the meaning of Article 16c, or to the imitation of works of architecture.

Article 16c

1. It is not regarded as an infringement of the copyright in a literary, scientific or artistic work to reproduce the work or part of it on an article intended for causing a work to be heard or seen, provided that the reproduction is carried out without any direct or indirect commercial objective and is intended exclusively for personal practice, study or use by the natural person who made the reproduction.
2. For the reproduction within the meaning of the first paragraph, fair compensation is owed for the benefit of the maker or his successor in title. The obligation to pay the compensation rests with the manufacturer or the importer of articles as meant in the first paragraph.
3. The manufacturer's obligation to pay compensation arises at the time when the articles manufactured by him are ready to be put into circulation. For the importer said obligation arises at the time of import.
4. The obligation to pay compensation lapses if the person so obliged under the third paragraph exports the article meant in the first paragraph.
5. Only a single payment is due per article.
6. By Order in Council, it may be specified for which articles compensation as meant in the second paragraph is due. Equally by Order in Council, for the implementation of this Article, further rules may be given and conditions set with respect to the level and form of fair compensation and liability for payment.
7. If reproduction permitted under this Article has taken place, articles as meant in the first paragraph may not be handed to any third parties without the consent of the maker or his successors in title, unless it is for judicial or administrative proceedings.
8. This Article does not apply to the reproduction of a collection accessible by electronic means within the meaning of Article 10, third paragraph.

Article 16d

1. The compensation meant in Article 16c must be paid to a legal person that is to be designated and judged representative by Our Minister of Justice, and entrusted with the collection and distribution of said compensation in accordance with regulations it has drawn up and which have been approved by the Supervisory Board as specified in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights. In matters relating to the level and collection of the compensation, said legal person represents the right holders at law and otherwise.
2. The legal person meant in the first paragraph shall be supervised by

the Supervisory Board as meant in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights⁵.

Article 16e

The level of the compensation meant in Article 16c, first paragraph, 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 a balanced manner the interests of the makers or their successors in title and the persons liable for payment pursuant to Article 16c, second paragraph. The chair of the board of the said foundation will be appointed by Our Minister of Justice.

Article 16f

Whoever is required to pay the compensation meant in Article 16c is obliged to submit a return of the number of the articles as meant in Article 16c, first paragraph that were imported or manufactured by him, to the legal person meant in Article 16d, first paragraph, either immediately or within a period agreed with the said legal person. Further, this person is obliged to provide said legal person, on request, immediate access to such documents as needed to establish liability and the level of compensation.

Article 16g

Disputes in relation to the compensation as meant in in Articles 15i, second paragraph, 16b and 16c shall be decided in first instance by the District Court of The Hague exclusively.

Article 16ga

1. On request of the legal person meant in Article 16d, first paragraph, the seller of articles as meant in Article 16c, first paragraph, is obliged to immediately provide access to such documents as are needed to establish whether the payment specified in Article 16c, second paragraph, has been paid by the manufacturer or importer.
2. If the seller cannot demonstrate that the compensation has been paid by the manufacturer or the importer, he is obliged to make the payment to the legal person specified in Article 16d, first paragraph, unless the documents mentioned in the first paragraph above, show who the manufacturer or importer is.

⁵ Wet toezicht collectieve beheersorganisaties auteurs- en naburige rechten.

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 it contains is not regarded as an infringement of copyright, provided that compensation is made.
2. The reprographic reproduction of the whole work is not regarded as an infringement of the copyright if it may reasonably be assumed that no new copies of the book will be made available to third parties for payment of any kind, provided that compensation is paid for this reproduction.
3. By Order in Council it may be provided that, in relation to the reproduction of works within the meaning of Article 10, first paragraph at 1°, derogation may be made from the provisions of one or more of the foregoing paragraphs for the benefit of public administration as well as for the performance of tasks entrusted to establishments operating in the public interest. Further terms and conditions may be specified by Order in Council.

Article 16i

The compensation meant in Article 16h is calculated on the basis of each page on which a reprographic reproduction is made of a work as meant in the first and second paragraphs of said Article. By Order in Council the level of compensation will be specified; further terms and conditions may be provided.

Article 16j

Without the consent of the maker or his successor in title, a reprographic reproduction made under the provisions of Article 16h, may only be handed to individuals working in the same company, organization or institution, unless it is for judicial or administrative proceedings.

Article 16k

The obligation to pay compensation, as meant in Article 16h, lapses after the expiry of three years from the time when the reproduction was made. The compensation is not owed if the person liable for payment can demonstrate that the maker or his successor in title has waived the right to compensation.

Article 16l

1. The compensation meant in Article 16h must be made to a legal person which is to be designated and judged representative by Our Minister of Justice and which will be entrusted with the collection and distribution of said compensation to the exclusion of others.

2. In matters relating to the collection of the compensation, the legal person meant in the first paragraph represents the makers or their right-holders at law and otherwise.
3. The legal person meant in the first paragraph will distribute the collected payments on the basis of regulations. The regulations require the approval of the Supervisory Board meant in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights.⁶
4. The legal person meant in the first paragraph will be supervised by the Supervisory Board specified in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights.
5. The first and second paragraphs shall not apply to the extent that those who are under an obligation to pay compensation can demonstrate that they have agreed with the maker or his successor in title that payment will be made directly to him.

Article 16m

Whoever is obliged to pay the compensation meant in Article 16 h to the legal person meant in Article 16l, first paragraph, is obliged to submit a return to the legal person of the total number of reprographic reproductions he makes each year. The return meant in the first paragraph is not due if the number of annual reprographic reproductions is smaller than such number as will be specified by Order in Council.

Article 16n

1. Not regarded as an infringement of the copyright in a literary, scientific or artistic work is the reproduction made by libraries, museums or archives accessible to the public which are not seeking a direct or indirect economic or commercial benefit, provided that the sole purpose of making the reproduction is:
 - 1° to restore the original or a copy of the work;
 - 2° in case the original or copy of the work is threatened by decay, to preserve a copy for the institution;
 - 3° to preserve access to the work if the technology available to render it accessible becomes obsolete.

6 Wet toezicht collectieve beheersorganisaties auteurs- en naburige rechten.

2. The acts of reproduction as specified in the first paragraph are only permitted if:
 - 1° the work or copies form part of the collection held by the publicly accessible libraries, museums or archives that rely on this limitation; and
 - 2° the provisions of Article 25 are observed.

Article 17

[Repealed]

Article 17a

In the public interest, by Order in Council rules may be prescribed with respect to the exercise of the rights of a maker of a work or his successors in title in relation to the making public of a work by means of radio or television programme broadcast by radio or television, or some other medium fulfilling the same purpose. The Order in Council meant in the first sentence, may provide that such a work may be communicated to the public in the Netherlands without prior consent from the maker 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 (Treaty Gazette⁷ 1992,132). Whoever is entitled to make a work public without prior consent are nonetheless obliged to observe the maker's rights as meant in Article 25, and to pay the maker or his successors in title fair compensation; in the absence of agreement, on application of either party, the Court will determine the amount and may also order the lodgement of security. The foregoing provisions do not apply to the broadcast by satellite of a work incorporated in a radio or television programme.

Article 17b

1. Unless otherwise agreed, having the authority to make public a radio or television programme by means of broadcasting by radio or television or by another medium fulfilling the same function, does not include an authorization to record the work.
2. The broadcasting organization that is authorized to do an act of making public as meant in the first paragraph, is however entitled to record the work destined for broadcasting temporarily, with its own equipment and exclusively for the purposes of broadcasting its own radio or television programmes. The broadcasting organization thus entitled to record is nonetheless obliged to observe the rights of the maker of the work as meant in Article 25.

⁷ Tractatenblad.

3. Recordings made under the provisions of the second paragraph, and which have exceptional documentary value may be kept in official archives.

Article 17c

Not regarded as an infringement of the copyright in a literary or artistic work is congregational singing and the instrumental accompaniment thereof during a service.

Article 17d

Any Order in Council given under Articles 16b fifth paragraph, 16c seventh paragraph, 16h third paragraph, 16m second paragraph, 17a or 29a fourth paragraph, or any amendment thereof will not come into effect any earlier than eight weeks after the date of issue of the Official Gazette⁸ in which it is published. Both Houses of the States General will be notified of such publication without delay.

Article 18

Not regarded as an infringement of the copyright in a work within the meaning of Article 10, first paragraph sub 6°, or a work relating to architecture as meant in Article 10, first paragraph, sub 8° and which has been made to be permanently situated in public places, is the reproduction or making public of images of the work as it is situated there. Where it concerns incorporation into a compilation work, no more than a few works by the same maker may be incorporated.

Article 18a

Not regarded as an infringement of the copyright in a literary, scientific or artistic work is the incidental processing of it as a component of minor significance in another work.

Article 18b

Not regarded as an infringement of the copyright in a literary, scientific or artistic work, is the making public or reproduction of it in the context of a caricature, parody or pastiche, provided the use is in accordance with what social custom regards as reasonably acceptable.

8 Staatsblad.

Article 19

1. Not regarded as an infringement of the copyright in a portrait is the reproduction of it by or on behalf of the person portrayed or after his death, of his relatives.
2. If the same portrait represents two or more persons, for each of them the entitlement to reproduce the other persons portraits requires their permission, or, in the ten years after their death, the permission of their relatives.
3. Where it concerns a photographic portrait, it is not regarded as an infringement of the copyright if the portrait is made public in a newspaper or periodical by or with the consent of one of the persons referred to in the first paragraph, provided the name of the maker is stated if the name is indicated on or with the portrait.
4. This Article only applies to portraits made on commission by or on behalf of the persons portrayed, or made on commission for their benefit.

Article 20

1. Unless otherwise agreed, the owner of the copyright in a portrait is entitled to make it 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 required, or, during the ten years following their death, the consent of their relatives.
3. The last paragraph of the preceding Article applies.

Article 21

If a portrait is made without the maker having been commissioned by or on behalf of the persons portrayed, or having been commissioned for their benefit, the copyright owner is not permitted to make the portrait public if there is a reasonable interest against publication on the part of the person portrayed or, after his death, of one of his relatives.

Article 22

1. In the interests of public safety as well as criminal investigation, images of any kind may be reproduced or made public by or on behalf of the judicial authorities.
2. Not regarded as an infringement of copyright in a literary, scientific, or artistic work is the use of it for purposes of public safety, or to safeguard the proper course of administrative, parliamentary or judicial proceedings or the reporting of them.

Article 23

Unless otherwise agreed, whoever owns, possesses or holds a work of drawing, painting, sculpture or architecture, or a work of applied art, is permitted to reproduce and make public that work so far as necessary for the public exhibition or public sale of that work, all subject to the exclusion of any other commercial use.

Article 24

Unless otherwise agreed, notwithstanding the assignment of copyright in a painting, its maker remains entitled to make similar paintings.

Article 24a

1. Not regarded as an infringement of the copyright in a collection as meant in Article 10, third paragraph, is the reproduction made by the lawful user of the collection, 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, the first paragraph only applies for the access to and normal use of that part.
3. No agreement shall deviate from the provisions of the first and second paragraphs to the detriment of the lawful user.

Article 25

1. Even after assignment of his copyright, the maker of a work has the following rights:
 - a. the right to oppose the making public of the work without mention of his name or other indication as maker, unless such opposition would be unreasonable;
 - b. the right to oppose the making public of the work under a name other than his own, as well as any alteration in the name of the work or the indication of the maker, in so far as these appear on or in the work or have been made public in connection with the work;
 - c. the right to oppose any other alteration made to 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 reputation or name of the maker or to his dignity as maker.
2. After the death of the maker and until the copyright expires, the rights meant in the first paragraph rest with the person that the maker has designated by testamentary disposition.

3. The right referred to in the first paragraph 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 maker of the work has assigned his copyright, he remains 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 that the maker has designated by testamentary disposition, if it may reasonably be assumed that the maker would have approved such alterations.

Article 25a

For the purposes of this section, ‘relatives’ means the parents, spouse or registered partner and the children. The rights of the relatives may be exercised by each of them individually. 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 two or more persons own the joint copyright in one and the same work, any one of them may enforce the right, unless otherwise agreed.

Article 26a

1. The right to authorize the simultaneous, unaltered and unabridged broadcasting of a work incorporated in a radio or television programme in a broadcasting network within the meaning of Article 1.1 of the Media Act 2008 can only be exercised by legal persons which according to their bylaws aim to represent right owners through the exercise of their rights meant above.
2. Where it concerns the exercise of the same rights as stated in their bylaws, the legal persons meant in the first paragraph are also entitled to represent right owners who have not instructed them to do so. If according to their respective bylaws, several legal persons aim to represent the same category of right owners, the right owner may designate one of them as authorised to represent his interests. The rights and obligations arising from an agreement concluded in respect of the broadcast referred to in the first paragraph by a legal person entitled to exercise the same rights apply fully to right owners

who have not issued instructions as meant in the second sentence.

3. Claims against the legal person meant in the first paragraph for sums collected shall lapse 3 years from the day following that on which the broadcast meant in the first paragraph took place.
4. This Article does not apply to rights meant in the first paragraph where these rest with a broadcasting organization in respect of its own broadcasts.

Article 26b

Parties are obliged to conduct in good faith the negotiations on the consent for the simultaneous, unaltered and unabridged broadcasting as meant in Article 26a, first paragraph, and must not prevent or hinder negotiations without valid reason.

Article 26c

1. If no agreement can be reached on the simultaneous, unaltered and unabridged broadcasting of a work as meant in Article 26a, first paragraph, each party may call upon the assistance of one or more mediators. The mediators are selected in such a way that no doubt can reasonably exist as to their independence and impartiality.
2. The mediators assist in the conducting of the negotiations and are entitled to serve parties notice of proposals. Each party may serve the other party notice of its objections to these proposals within three months of the date of receipt of the proposals. The mediators' proposals are binding on the parties unless one of them has served notice of its objections within the time limit meant 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 6 of the Code of Civil Procedure.⁹

Article 26d

On application by the maker, the Court may order an intermediary whose services are used by a third party to infringe copyright, to desist the services that are used for that infringement of copyright.

Article 26e

On application by the maker or his successor in title the interim relief judge may allow temporary continuance of the infringement on the condition that security is given to ensure compensation for the prejudice suffered by the maker or his

⁹ Wetboek van Burgerlijke Rechtsvordering.

successor in title. Under the same terms, the Court may allow the continued provision of services by the intermediary as meant in article 26d.

Article 27

1. Notwithstanding the assignment of his copyright in whole or in part, the maker retains the right to bring an action for damages against the person who has infringed the copyright.
2. In appropriate cases, the Court can set the damages as a lump sum.
3. After the death of the maker, the right to bring an action for damages as meant in the first paragraph rests with his heirs or legatees until the copyright expires.

Article 27a

1. In addition to damages, the maker or his successor in title can claim that whoever has infringed his copyright is ordered to surrender profits accruing to him by reason of the infringement, and to render account thereof.
2. The maker or his successor in title can also bring one or both of the claims meant in the first paragraph on behalf of a licensee, without prejudice to the latter's right to intervene in proceedings whether or not these were partly of wholly instituted on his behalf by the maker 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 can bring both or either claims as meant in the first paragraph only if he has obtained the authority to do so from the maker or his successor in title.

Article 28

1. The copyright entitles the right owner to claim property in, or claim the removal from circulation, the destruction or rendering unusable of, any moveable goods that are not property subject to public registration and which have been made public in violation of said right or are unauthorized reproductions, or of materials and implements principally used in the creation or manufacture of these goods. The right owner may bring a claim for the delivery up of the said goods so that they can be destroyed or rendered unusable.
2. The same right to claim exists:
 - a. with respect to the sum of entrance fees paid for attendance at a recitation, playing, performance, presentation or exhibition in public, 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 provisions of the Code of Civil Procedure¹⁰ concerning seizure and delivery up of movable goods that are not property subject to public registration apply. In the event of concurring seizures the person seizing pursuant to this Article has precedence.
4. The measures meant in the first paragraph are carried out at the expense of the defendant, unless particular reasons are invoked for not doing so.
5. With respect to immovable property, ships or aircraft which infringe copyright, the Court may order, on the claim of the right owner, that the defendant make such alterations as are necessary to end the infringement.
6. Unless otherwise agreed, the licensee has the right to exercise the powers flowing from paragraphs 1 through 5 in so far as their purpose is to protect the rights he is entitled to exercise.
7. The same entitlement as meant in the first paragraph exists with respect to devices, products and components as meant in article 29a, and with respect to copies of works as meant in article 29b which are not property subject to registration.
8. When assessing the measures that the right owner or his licensee are entitled to claim under the first, second and seventh paragraphs, the Court takes account of the necessary proportionality of the measures claimed, the seriousness of the infringement and the interests of third parties.
9. Upon application by the right holder, the Court may order the person who has infringed the rights to disclose to the rightholder all he knows about the origin and distribution networks of the infringing goods or services and supply him with all the relevant information. On the same conditions such an order can be made against a third party who is found in possession of, or using, the infringing goods on a commercial scale, who is found to be providing on a commercial scale services used in infringing activities, or who was indicated by one said third parties as being involved in the production, manufacture or distribution of the goods or the provision of the services. This third party may refuse to provide information that could serve as evidence of his participation in an infringement of an intellectual property right committed by him or by other persons within the meaning of Article 165, third paragraph Civil Code of Procedure.¹¹
10. Upon application by the right owner, the Court may order appropriate measures for the dissemination of information on the decision.

¹⁰ Wetboek van Burgerlijke Rechtsvordering.

¹¹ Wetboek van Burgerlijke Rechtsvordering.

Article 29

1. The right meant in Article 28, first paragraph, can not be exercised in respect of goods in the possession of persons who do not trade in similar goods and who have obtained them exclusively for their own use, unless they have themselves infringed the copyright.
2. The claim meant in Article 28, sixth paragraph 6, can only be made against the owner or holder of the goods if that person is guilty of the infringement of the copyright concerned.

Article 29a

1. For the purposes of this Article, 'technological measures' means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts in respect of works which are not authorised by maker or his successors in title. Technological measures shall be deemed "effective" where the use of a protected work is managed by the maker or his successors in title through access control or a protection process, such as encryption, scrambling or other transformation of the work or a copy control mechanism, which achieves the protection objective.
2. The person who circumvents any effective technological measures knowingly, or with reasonable grounds to know he is doing so, acts unlawfully.
3. Those who provide services or manufacture, import, distribute, sell, rent out, advertise devices, products or components or are in the possession of these for commercial purposes act unlawfully if such:
 - a) are offered, advertised or marketed for the purpose of circumventing the protective operation of effective technological measures, or
 - b) have only a limited commercial significant purpose or use other than to circumvent the circumvention of the protective operation of effective technological measures, or
 - c) are particularly designed, manufactured or adapted for the purpose of enabling or facilitating the circumvention of the protective operation of effective technological measures.
4. By Order in Council rules may be given that oblige the maker or his successors in title to provide the user of a literary, scientific or artistic work with the means necessary to benefit from the limitations specified in Articles 15j, 16, 16b, 16c, 16h, 16n, 17b and 22 of this Act, provided that the user has lawful access to the work protected by technological measures. The provisions in the previous sentence do not apply when under contractual terms, works are made available to users from a place and at a time individually chosen by them.

Article 29b

1. He who intentionally and without being entitled to do so removes or alters electronic rights management information, or distributes, imports for distribution, broadcasts or otherwise makes public literary, scientific or artistic works from which electronic rights management information has been removed or altered without authority, and knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright, acts unlawfully.
2. For the purposes of this Article, the expression “rights-management information” means any information provided by the maker or his successors in title that is associated with a reproduction of a work, or that appears in connection with the communication to the public of a work, or which identifies the work or its maker or successors in title, or information about the terms and conditions of use of the work and any numbers or codes that represent such information.

Article 30

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

Article 30a

1. The business of agency with respect to copyright in musical works, whether for profit or not, in matters of copyright in musical works requires permission of Our Minister of Justice.
2. Acts of agency are taken to mean the conclusion or execution of agreements, whether or not in the name of the agent, for the public performance or broadcasting in a radio or television programme through signs, sounds or images of musical works or reproductions thereof, wholly or in part, to the benefit of the makers of musical works or their successors in title.
3. Equated to the performance or broadcasting in a radio or television programme of musical works is the performance or broadcasting in a radio or television programme of dramatico-musical works, choreographic works and entertainments in dumb show, and reproductions thereof, where such works are played without being shown.
4. Agreements as meant in the second paragraph which are entered into without the permission of Our Minister pursuant to the first paragraph having been obtained, are null and void.

5. Further regulations concerning the permission meant in the first paragraph are given by Order in Council.
6. The Supervisory Board specified in the Act on Supervision of Collective Management Organizations for Copyright and Related Rights¹² supervises those who have obtained ministerial permission.

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, and which are legal persons with full legal capacity and whose aim is to protect the interests of persons who import into the Netherlands, make public or reproduce literary, scientific or artistic works on a professional or commercial basis, said Ministers may jointly provide that designated members of the profession or industry concerned, are obliged to keep their records in a certain specified manner .
2. He who fails to comply with the obligation meant in the preceding paragraph is punishable by a fine of the second category. Such failure constitutes an offence.

Article 31

He who intentionally infringes another person's copyright is punishable by imprisonment for not more than six months or by a fine of the fourth category.

Article 31a

He who intentionally:

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

an article that embodies a work infringing another person's copyright is punishable by imprisonment for a term of not more than one year or by a fine of the fifth category.

Article 31b

He who makes it his profession or business to commit the crimes meant in Articles 31 and 31a is punishable by imprisonment for a term of not more than four years or by a fine of the fifth category.

12 Wet Toezicht collectieve beheersorganisaties auteurs- en naburige rechten.

Article 32

He who:

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

an article of which he has reasonable grounds to know that it embodies a work that infringes another person's copyright, is punishable by a fine of the third category.

Article 32a

He who intentionally:

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

any means the sole intended purpose of which is to facilitate the removal or circumvention of any technical device applied to protect a work as meant in Article 10, first paragraph, sub 12°, without the consent of the maker or his successor in title, is punishable by imprisonment for a term of not more than six months or by a fine of the fourth category.

Article 33

The punishable acts of Articles 31, 31a, 31b, 32 and 32a are crimes.

Article 34

1. He who intentionally makes with respect to a literary, scientific or artistic work protected by copyright, any unlawful alterations of its title or the indication of the maker, or impairs such a work in any other way that could be prejudicial to the reputation or name of the maker or to his dignity as maker is punishable by imprisonment for a term of not more than six months or by a fine of the fourth category.
2. The act is a crime.

Article 35

1. He who exhibits a portrait in public or makes it public in any other manner, without being authorised to do so, is punishable by a fine of the fourth category.
2. The act is an offence.

Article 35a

1. He who performs acts of agency business as meant in Article 30a , without having obtained the necessary permission from Our Minister of Justice, is punishable by a fine of the fourth category.
2. The act is an offence.

Article 35b

1. He who intentionally gives false or incomplete information in a written application or submission on the basis of which the agency business acting in matters of music copyright with the permission of Our Minister of Justice determines the compensation due for copyright, is punishable by detention for a term of not more than three months or by a fine of the third category.
2. The act is an offence.

Article 35c

He who intentionally fails to submit a written return or intentionally provides false or incomplete information in such a return to the legal person meant in Article 16d, first paragraph, on the basis of which the amounts due pursuant to Article 16c are determined, is punishable by detention for a term of not more than three months or by a fine of the third category. The act is regarded as an offence.

Article 35d

He who intentionally fails to submit a return as meant in Article 15g or intentionally provides false information in such a return, is punishable by detention for a term of not more than three months or by a fine of the third category. The act is regarded as an offence.

Article 36

1. Reproductions declared forfeit by the criminal Court will be destroyed; the Court may, however, make provision in its judgment that they be delivered to the person owning the copyright if the latter applies to the office of the Clerk within one month of the judgment having become final.
2. By delivery, the reproductions become the property of the right owner. The Court may order that delivery is conditional on payment by the right owner of a certain 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 all documents or other data carriers

that are in the possession of persons who in the exercise of their profession or business import, convey in transit, export, make public or reproduce literary, scientific or artistic works, where inspection of such documents or data carriers is reasonably necessary for the fulfilment of their duty.

Article 36b

1. Investigating officers have authority, 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 entry, they may effect it 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 by or in the presence of a public prosecutor or an assistant public prosecutor. Within twenty-four hours of such entry they shall make a report.

Article 36c

(repealed as of 01-01-1994)

Chapter III

Duration of copyright

Article 37

1. Copyright expires 70 years, counting from the first of January of the year following the year in which the maker died.
2. The duration of the copyright that belongs jointly to two or more persons in their capacity as co-makers of one and the same work, is calculated from the first of January of the year in which the last surviving co-maker died.

Article 38

1. The copyright in a work of which the maker has not been indicated or not in such a way that his identity is beyond doubt, expires 70 years counted from the first of January of the year following that in which the work was first lawfully made public.
2. The same applies to works of which a public institution, an association, a foundation or a company is taken to be the maker, unless the natural person who created the work is indicated as the maker on or in copies of the work which have made public.

3. If the maker discloses his identity before the term meant in the first paragraph ends, the duration of the copyright in the work concerned is calculated in accordance with the provisions of Article 37.

Article 39

The copyright expires in works for which the duration of copyright is not calculated in accordance with Article 37 and which have not been lawfully made public within 70 years of their creation .

Article 40

The copyright in a film work expires 70 years after the first of January of the year following the year in which the last of the following persons to survive died: the principal director, the author of the screenplay, the author of the dialogue and he who created the music for the film work.

Article 41

For the purposes of Article 38, where a work is published in volumes, parts, issues or episodes, each volume, part, issue or episode shall be regarded as a separate work.

Article 42

Notwithstanding the provisions of this chapter, no copyright can be invoked in The Netherlands in cases where the duration has already expired in the country of origin of the work. What is stipuled in the first sentence does not apply to works whose maker is a national of a Member State of the European Union or of a State party to the Agreement on the European Economic Area of 2 May 1992.

Chapter IV

Special provisions concerning the resale right

Article 43

In this chapter and the provisions pertaining to it:

- a. Originals of work of art means:
 - 1^o a work of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, in as far as it is made by the artist himself or under his authority.

2^o copies of works as meant under 1^o which have been made in limited numbers by the maker himself or under his authority.

- b. professional art dealer: the natural or legal person who makes it his profession or business to buy or sell original works of art, or to act as intermediary for the conclusion of agreements on the sale of original works of art.

Article 43a

1. The resale right is the right of the maker and his hereditary successors in title to receive compensation for each sale of an original work of art which involves an art market professional, with the exception of the first transfer by the maker.
2. The resale right cannot be transferred, except by bequest.
3. The resale right cannot be waived.
4. The compensation meant in the first paragraph is due from the time that the price of the sale of the original work is due, but at the latest three months from the conclusion of the sales agreement.

Article 43b

By Order in Council the level of compensation meant in article 43a will be specified and rules may be given as to liability for payment.

Article 43c

1. The obligation to pay the compensation meant in Article 43a, first paragraph, rests with the professional art dealer involved in the sale. If more than one professional art dealer is involved in a sale, each is severally liable for said compensation.
2. The limitation period for the action for payment of compensation, meant in Article 43a, first paragraph, is three years following the day when the owner acquired knowledge of both the claimable compensation and of the person owing the compensation. In any case the limitation period is twenty years from the time the compensation became due.

Article 43d

The owner of the resale right may, within three years from the time when the compensation meant in Article 43a has become due, request from he who is liable for compensation all information necessary to safeguard payment of the compensation.

Article 43e

1. The resale right expires at the time when the copyright expires.
2. As a deviation from the first paragraph, no compensation as meant in Article 43a, first paragraph, is due to the heirs or legatees of the maker for a sale of an original work of art made before 1 January 2010.
3. By Order in Council the period meant in the second paragraph may be extended to 1 January 2012 at the latest.

Article 43f

Without prejudice to the provisions of Article 43g, this Chapter applies to originals of works of art that on 1 January 2006 were protected under national law in the field of copyright of at least one Member State of the European Union or of a State party to the Agreement on the European Economic Area of 2 May 1992.

Article 43g

1. This Chapter applies to makers of originals of works of art who:
 - a. are a national of a Member State of the European Union and their successors in title;
 - b. are a national of a State party to the Agreement on the European Economic Area of 2 May 1992, and their successors in title;
 - c. have their habitual residence in The Netherlands, and their successors in title.
2. This Chapter further applies to makers of originals of works of art and their successors in title who are national of a State other than a Member State of the European Union or of a State party to the Agreement on the European Economic Area of 2 May 1992, for the duration and to the extent that said State permits resale right protection for makers of originals of works of art from the Member States of the European Union and of States party to the Agreement on the European Economic Area of 2 May 1992, and for their successors in title.

Article 44

[repealed as of 01-04-2006]

Article 45

[repealed as of 07-01-1973]

Chapter V

Special provisions concerning film works

Article 45a

1. Film work means a work that consists 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 makers of a film work are taken to be the natural persons who have made a contribution of a creative nature directed at the making of the film work
3. The producer of a film work is the natural or legal person responsible for the making of the film work with a view to its exploitation.

Article 45b

Where one of the makers is unwilling or unable to complete his contribution to the film work, he cannot prevent the producer from using the contribution as created for the purposes of completing the film work, unless otherwise agreed in writing. With respect to the contributed he created, he is deemed to be its maker as meant in Article 45a.

Article 45c

The film work is deemed completed once it is ready for showing. Unless otherwise agreed in writing, the producer decides when the film work is ready for showing.

Article 45d

Unless the makers and the producer have agreed otherwise in writing, the makers are deemed to have assigned to the producer, as from the time meant in Article 45c, the right to make the work public, to reproduce it within the meaning of Article 14, to subtitle it and to dub the dialogue. The above shall not apply to whoever created the music for the film work and to whoever wrote the lyrics to the music. The producer owes the makers or their successors in title fair compensation for each form of exploitation of the film work. The producer equally owes the makers or their successors in title fair compensation when he engages in a form of exploitation that did not exist or was not reasonably foreseeable at the time meant in Article 45c, or if he authorizes a third party to exploit the work in said form. The compensation meant in this Article shall be agreed in writing. The right to fair compensation for rental cannot be waived by the maker.

Article 45e

With respect to the film work, in addition to the rights meant in Article 25, first paragraph, sub *b*, *c* and *d*, each maker has the right to:

- a. have his name mentioned on the film work in the usual manner, with mention of his capacity or the nature of his contribution to the film work;
- b. claim that the part of the film meant sub *b* is also shown;
- c. oppose the mentioning of his name on the film work, unless such opposition would be unreasonable.

Article 45f

Unless otherwise agreed in writing, the maker is assumed to have waived the right to oppose alterations to his contribution as meant in Article 25, first paragraph, sub *c*, to the benefit of the producer.

Article 45g

Unless otherwise agreed in writing, each maker retains the copyright in his contribution if it constitutes a work that can be separated from the film work. Unless otherwise agreed in writing, from the time meant in Article 45c each maker may separately make his contribution public and reproduce it, provided that he does not thereby prejudice the exploitation of the film work.

Chapter VI

Special provisions concerning computer programs

Article 45h

The making public by rental of the whole or part of a work as meant in Article 10, first paragraph, sub 12°, or of a copy put into circulation by or with the consent of the right owner, is subject to authorisation by the maker or his successor in title.

Article 45i

Without prejudice to the provisions of Article 13, the act of reproduction of a work as meant in Article 10, first paragraph, sub 12°, includes the loading, displaying, running, transmission or storage, in so far as these acts necessitate the reproduction of that work.

Article 45j

Not regarded as an infringement of the copyright in a work meant in Article 10, first paragraph, sub 12° is the reproduction of a work by the lawful acquirer of a

copy of said work, where this is necessary for the intended use of the work, unless otherwise agreed. The reproduction as meant in the first sentence when made in connection with loading, displaying or error correction cannot be prohibited by contract.

Article 45k

Not regarded as an infringement of the copyright in a work meant in Article 10, first paragraph, sub 12° is the reproduction of a work by the lawful user of said work which serves as a back-up copy, where this is necessary for the intended use of the work.

Article 45l

He who is entitled to perform the acts meant in Article 45j is also entitled, while performing them, to observe, study or test the functioning of the work concerned in order to determine the ideas and principles which underlie it.

Article 45m

1. Not regarded as an infringement of the copyright in a work as meant in Article 10, first paragraph, sub 12°, is the making of a copy and the translation of the form of its code if these acts are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that:
 - a. those 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;
 - b. the information necessary to achieve interoperability has not previously been readily available to the persons meant sub a; and
 - c. those acts are confined to the parts of the original program which are necessary in order to achieve interoperability.
2. The information obtained pursuant to first paragraph may not:
 - a. be used for any other purpose than to achieve the interoperability of the independently created computer program;
 - b. be given to others 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 any other act which infringes copyright.

Article 45n

Articles 16b and 16c do not apply to works meant in Article 10, first paragraph, 12^o.

Chapter VII

Protection of works made public after expiry of the term of protection

Article 45o

1. He who, for the first time lawfully makes public a previously unpublished work after the the term of copyright protection has expired, enjoys the exclusive right referred to in Article 1.
2. The right referred to in the first paragraph expires after 25 years, calculated from 1 January of the year following that in which the work was first lawfully made public.
3. The provisions of paragraphs 1 and 2 also apply to previously unpublished works that have never been protected by copyright, the maker 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 on the regulation of copyright of 28 June 1881 (Official Gazette¹³ 124) is repealed.
2. However, Article 11 of the latter Act remains in force in respect of works and translations deposited prior to said date.

Article 47

1. This Act applies to all literary, scientific or artistic works which have been first published in the Netherlands or have been published within 30 days of its first publication in another country, either before or after this Act's entry into force, and also to all such works not published, or not thus published, the makers of which are Dutch nationals.
2. For the purposes of the application of the preceding paragraph, makers who are not Dutch nationals but who are habitually resident in the Netherlands

¹³ Staatsblad.

shall be equated with Dutch nationals in respect of unpublished works or works published after the maker has become habitually resident in the Netherlands.

3. A work is published within the meaning of this Article when it has appeared in print with the consent of the maker or, in general, when the number of copies, of whatever kind, made available with the consent of the maker satisfy the reasonable requirements of the public, having regard to the nature of the work.
4. The performance of a dramatic, dramatico-musical or musical work, the showing of a film work, the recitation or broadcasting in a radio or television programme of a work and the exhibition of a work of art is not regarded as a publication.
5. With regard to works of architecture and works of visual arts constituting an integral part thereof, the construction of the work of architecture or the installation of the work of visual art is regarded as publication.
6. Without prejudice to the provisions of the preceding paragraphs, this Act applies to film works the producer of which has his seat or habitual residence in the Netherlands.

Article 47a

This Act remains in force for all works of literature, science or art that have been published for the first time by or on behalf of the maker in the Dutch East Indies prior to 27 December 1949, or in Dutch New Guinea prior to 1 October 1962.

Article 47b

1. This Act applies to the broadcasting by satellite of a work incorporated in a radio or television programme if the act meant in Article 12, paragraph 7, takes place in the Netherlands.
2. This Act also applies to the broadcasting by satellite of a work incorporated in a radio or television programme 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, does not provide the level of protection provided for under chapter II of Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ EC L 248); and

- c. either the program-carrying signals are transmitted to the satellite from an uplink station situated in the Netherlands, or a broadcasting organization which has its principal establishment in the Netherlands has commissioned the broadcast 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 recognise copyright in works in which, at the time of its entry into force, copyright had expired under Articles 13 or 14 of the Act on the regulation of copyright of 28 June 1881 (Official Gazette 124¹⁴) or in works in which, on said date, copyright had expired under Article 3 of the Act of 25 January 1817 on the rights exercisable in the Netherlands in respect of the printing and publication of literary and artistic works (Official Gazette 5).

Article 49

Copyright acquired under the Act on the regulation of copyright of 28 June 1881 (Official Gazette¹⁵ 124) and the right to copy¹⁶ or any right of such nature acquired under earlier legislation and maintained by the said Act shall persist after the entry into force of this Act.

Article 50

(repealed as of 07-01-1973)

Article 50a

(repealed as of 07-01-1973)

Article 50b

(repealed as of 01-08-1985)

Article 50c

1. He who prior to 1 September 1912 has published in the Netherlands or in the Dutch East Indies a reproduction of a literary, scientific or artistic work, not being a reprint of the whole or part of a work as meant in Article 10, first paragraph sub 1°, 2°, 5° or 7°, without contravening the provisions of the Act

¹⁴ Staatsblad.

¹⁵ Staatsblad

¹⁶ 'Kopijrecht'

on the regulation of copyright of 28 June 1881 (Official Gazette 124^v) or of any treaty, does 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 succession and is transmissible by assignment in whole or in part. Article 47, second paragraph, equally applies.

2. Nevertheless, upon a written application by the person who owns the copyright in the original work, the Court may either abolish in whole or in part the right provided for in the first paragraph, or award the applicant compensation for the exercise of said right, all in accordance with the provisions of the following two Articles.

Article 50d

1. An application for the abolishment of the whole or part of the right meant in Article 50c can only be made if a new edition of the reproduction was published after 1 November 1915. Article 47, second paragraph, equally applies.
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 an expedient time, to be determined by the Court. The case 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 distribution and sale of the reproduction harm the moral interests of the applicant. If the application has not been made by the maker of the original work, the Court shall dismiss it if it judges it likely that the maker would have approved 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 compared to the applicant's interest to be protected, the person exercising the right would be disproportionately injured by its abolishment. If the Court abolishes the said right, in whole or in part, it shall specify the time from which the abolition has effect.
4. In its decision the Court makes whatever provisions it deems fair in the light of the interests of both parties and third parties. The Court estimates the costs to both parties and stipulates how the costs shall be borne by them. Any Court decisions made pursuant to this Article are not subject to appeal. No Court fees are due in matters where this Article applies.

17 Staatsblad.

Article 50e

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

Article 50f

(repealed as op 07-01-1973)

Article 51

1. From the date on which this Article enters into force, the terms of protection provided for in this Act apply to works which were protected pursuant to national provisions 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 does not have the effect of shortening the term of protection that already runs on the day before the date of entry into force of this Article.
3. This Act is without prejudice to any lawful acts of exploitation performed, and any rights acquired, before the date of entry into force of this Article.
4. He who, prior to 24 November 1993, performed 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, is 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 belong to the person who would have been the last right owner if the said rights had not been revived or extended, unless otherwise agreed.

Article 52

This Act may be cited as the Copyright Act¹⁸.

Article 53

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

¹⁸ Auteurswet.

Mandate and order that it shall be printed in the Official Gazette¹⁹ and that all ministerial departments, authorities, councils and civil servants whom it concerns shall see to its precise administration.

Done at Soestdijk, the 23rd of September 1912, Wilhelmina.

The Minister of Justice, E.R.H. Regout.

The Minister of Colonies, De Waal Malefijt.

Printed the fifth of October 1912, The Minister of Justice, E.R.H. Regout.

¹⁹ Staatsblad.