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## **Federal Act on Copyright and Related Rights (Copyright Act, CopA)**

of 9 October 1992 (Status as of 1 January 2011)

**Please note:** this translation does not yet include the amendments of 1.1.2017

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*The Federal Assembly of the Swiss Confederation,*

on the basis of Articles 31<sup>bis</sup> paragraphs 2, 64 and 64<sup>bis</sup> of the Federal Constitution<sup>1,2</sup> and having considered the Dispatch of the Federal Council dated 19 June 1989<sup>3</sup>,

*decrees:*

### **Titel 1:       Subject-Matter**

#### **Art. 1**

<sup>1</sup> This Act regulates:

- a. the protection of authors of literary and artistic works;
- b. the protection of performers, producers of phonograms and audiovisual fixations and broadcasting organisations;
- c. the federal supervision of the collective rights management organisations.

<sup>2</sup> International treaties remain reserved.

### **Titel 2:       Copyright**

#### **Chapter 1: Works**

#### **Art. 2           Definition of works**

<sup>1</sup> Works are literary and artistic intellectual creations with an individual character, irrespective of their value or purpose.

<sup>2</sup> They include, in particular:

- a. literary, scientific and other linguistic works;

AS **1993** 1798

<sup>1</sup> [BS 1 3]. The provisions referred to now correspond to Art. 95, 122 and 123 of the Federal Constitution of 18 April 1999 (SR **101**).

<sup>2</sup> Amended by Annex No 9 of the Civil Jurisdiction Act of 24 March 2000, in force since 1 Jan. 2000 (AS **2000** 2355; BBl **1999** 2829).

<sup>3</sup> BBl **1989** III 477

- b. musical works and other acoustic works;
- c. works of art, in particular paintings, sculptures and graphic works;
- d. works with scientific or technical content such as drawings, plans, maps or three-dimensional representations;
- e. works of architecture;
- f. works of applied art;
- g. photographic, cinematographic and other visual or audiovisual works;
- h. choreographic works and works of mime.

<sup>3</sup> Computer programs are also works.

<sup>4</sup> Drafts, titles and parts of works, insofar as they are intellectual creations with an individual character, are also protected.

### **Art. 3** Derivative works

<sup>1</sup> Derivative works are intellectual creations with an individual character that are based upon pre-existing works, whereby the individual character of the latter remains identifiable.

<sup>2</sup> Such works include, in particular, translations as well as audiovisual and other adaptations.

<sup>3</sup> Derivative works are protected as works in their own right.

<sup>4</sup> The protection of the works used in the derivative work remains reserved.

### **Art. 4** Collected works

<sup>1</sup> Collections are protected as works in their own right insofar as they are intellectual creations with individual character with regard to their selection and arrangement.

<sup>2</sup> Works included in a collected work may be protected individually.

### **Art. 5** Works excluded from protection

<sup>1</sup> Copyright does not protect:

- a. acts, ordinances, international treaties and other official enactments;
- b. means of payment;
- c. decisions, minutes and reports issued by authorities and public administrations;
- d. patent specifications and published patent applications.

<sup>2</sup> Copyright also does not protect official or legally required collections and translations of the works referred to in paragraph 1.

## **Chapter 2: Author**

### **Art. 6** Definition

The author is the natural person who has created the work.

### **Art. 7** Joint authorship

<sup>1</sup> Where two or more persons have contributed as authors to the creation of a work, copyright belongs to all such persons jointly.

<sup>2</sup> Unless they have agreed otherwise, they may only use the work with the consent of all authors; consent may not be withheld for reasons contrary to the principles of good faith.

<sup>3</sup> Each joint author may independently bring an action for infringement, but may only ask for relief for the benefit of all.

<sup>4</sup> Where the individual contributions may be separated and there is no agreement to the contrary, each joint author may use his own contribution independently provided such use does not impair the exploitation of the joint work.

### **Art. 8** Presumption of authorship

<sup>1</sup> Unless proven otherwise, the author is the person whose name, pseudonym or distinctive sign appears on the copies or the publication of the work.

<sup>2</sup> As long as the author is not named or remains unknown in the case of a pseudonym or a distinctive sign, the person who is the editor of the work may exercise the copyright. Where such person is also not named, the person who has published the work may exercise the copyright.

## **Chapter 3: Scope of Copyright**

### **Section 1: Relationship of the Author to his Work**

#### **Art. 9** Recognition of authorship

<sup>1</sup> The author has the exclusive right to his own work and the right to recognition of his authorship.

<sup>2</sup> The author has the exclusive right to decide whether, when, how and under what author's designation his own work is published for the first time.

<sup>3</sup> A work is considered to be published when it has been made available for the first time by the author, or with his consent, to a large number of persons not constituting a private circle as defined in Article 19 paragraph 1 letter a.

**Art. 10** Use of the work

<sup>1</sup> The author has the exclusive right to decide whether, when and how his work is used.

<sup>2</sup> The author has the right, in particular:

- a. to produce copies of the work, such as printed matter, phonograms, audio-visual fixations or data carriers;
- b. to offer, transfer or otherwise distribute copies of the work;
- c.<sup>4</sup> to recite, perform or present a work, or make it perceptible somewhere else or make it available directly or through any kind of medium in such a way that persons may access it from a place and at a time individually chosen by them;
- d. to broadcast the work by radio, television or similar means, including by wire;
- e. to retransmit works by means of technical equipment, the provider of which is not the original broadcasting organisation, in particular including by wire;
- f.<sup>5</sup> to make works made available, broadcast and retransmitted perceptible.

<sup>3</sup> The author of a computer program also has the exclusive rental right.

**Art. 11** Integrity of the work

<sup>1</sup> The author has the exclusive right to decide:

- a. whether, when and how the work may be altered;
- b. whether, when and how the work may be used to create a derivative work or may be included in a collected work.

<sup>2</sup> Even where a third party is authorised by contract or law to alter the work or to use it to create a derivative work, the author may oppose any distortion of the work that is a violation of his personal rights.

<sup>3</sup> It is permissible to use existing works for the creation of parodies or other comparable variations on the work.

<sup>4</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>5</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

## **Section 2: Relationship between Authorship and Ownership of Copies of the Work**

### **Art. 12** Principle of exhaustion

<sup>1</sup> Where the author has transferred the rights to a copy of a work or has consented to such a transfer, these rights may subsequently be further transferred or the copy otherwise distributed.

<sup>1bis</sup> Copies of audiovisual works may not be further transferred or rented as long as the author is thereby impaired in exercising his right of performance (Art. 10 para. 2 let. c).<sup>6</sup>

<sup>2</sup> Where the author has transferred the rights to a computer program or has consented to such transfer, such a program may subsequently be used or further transferred.

<sup>3</sup> Works of architecture that have been constructed may be altered by the owner; Article 11 paragraph 2 remains reserved.

### **Art. 13** Rental of copies of works

<sup>1</sup> Any person who rents or otherwise makes available for a fee copies of literary or artistic works owes remuneration to the author.

<sup>2</sup> No obligation to pay remuneration exists for:

- a. works of architecture;
- b. copies of works of applied art;
- c. copies of works rented or lent for a contractually agreed use of copyright.

<sup>3</sup> Claims for remuneration may only be asserted by the approved collective rights management organisations (Art. 40 and seq.).

<sup>4</sup> This Article does not apply to computer programs. The exclusive right under Article 10 paragraph 3 remains reserved.

### **Art. 14** Author's right of access and exhibition

<sup>1</sup> Any person who owns or is in possession of a copy of a work must provide access thereto to the author to the extent necessary for the latter to exercise the copyright and insofar as no legitimate interest of the owner precludes such access.

<sup>2</sup> The author may require that a copy of the work be lent to him for an exhibition in Switzerland if an overriding interest can be proven.

<sup>3</sup> The loan may be subject to the provision of security for the intact return of the copy of the work. Where the copy of the work cannot be returned intact, the author is liable regardless of fault.

<sup>6</sup> Inserted by Art. 36 No 3 of the Film Act of 14 Dec. 2001 (AS **2002** 1904; BBI **2000** 5429). Amended by No II of the Federal Act of 20 June 2003, in force since 1 April 2004 (AS **2004** 1385; BBI **2002** 2022 5506).

**Art. 15** Protection against destruction

<sup>1</sup> Where the owner of an original work of which no further copies exist has reason to assume that the author of the work has a legitimate interest in its preservation, he may not destroy the work without first offering to return it to the author. The owner may not request more than the material value of the work.

<sup>2</sup> Where it is not possible to return the work, the owner must make it possible for the author to reproduce the original in an appropriate manner.

<sup>3</sup> For works of architecture, the author only has the right to photograph the work and to require that copies of the plans be handed to him at his own expense.

**Chapter 4: Assignment of Rights; Debt Enforcement****Art. 16** Assignment of rights

<sup>1</sup> Copyright is assignable or may be inherited.

<sup>2</sup> The assignment of a right subsisting in the copyright does not include the assignment of other partial rights, unless such was agreed.

<sup>3</sup> The assignment of the ownership of a copy of a work does not include the right to exploit the copyright, even in the case of an original work.

**Art. 17** Rights to computer programs

Where a computer program has been created under an employment contract in the course of discharging professional duties or fulfilling contractual obligations, the employer alone shall be entitled to exercise the exclusive rights of use.

**Art. 18** Debt enforcement

The rights referred to in Article 10 paragraphs 2 and 3 and in Article 11 are subject to debt enforcement insofar as the author has already exercised them and the work has already been published with the consent of the author.

**Chapter 5: Exceptions to Copyright****Art. 19** Private use

<sup>1</sup> Published works may be used for private use. Private use means:

- a. any personal use of a work or use within a circle of persons closely connected to each other, such as relatives or friends;
- b. any use of a work by a teacher and his class for educational purposes;
- c. the copying of a work in enterprises, public administrations, institutions, commissions and similar bodies for internal information or documentation.

<sup>2</sup> Persons entitled to make copies of a work for private use may also have them made by third parties subject to paragraph 3; libraries, other public institutions and businesses that make copying apparatus available to their users are also deemed third parties within the meaning of this paragraph.<sup>7</sup>

<sup>3</sup> The following are not permitted outside the private sphere defined in paragraph 1 letter a:<sup>8</sup>

- a. the complete or substantial copying of a work obtainable commercially;
- b. the copying of works of art;
- c. the copying of musical scores;
- d. the fixation of recitations, performances or presentations of a work on blank media.

<sup>3bis</sup> Copies which are made by accessing works that are lawfully made available are neither subject to the restriction of private use under this Article nor are they included in the claims for remuneration under Article 20.<sup>9</sup>

<sup>4</sup> This Article does not apply to computer programs.

#### **Art. 20** Remuneration for private use

<sup>1</sup> The use of the work within a circle of persons under Article 19 paragraph 1 letter a does not give rise to a right of remuneration subject to paragraph 3.

<sup>2</sup> Any person who reproduces works in any manner for private use under Article 19 paragraph 1 letter b or letter c, or any person who does so as a third party under Article 19 paragraph 2 owes remuneration to the author.

<sup>3</sup> Any person who produces or imports blank media suitable for the fixation of works owes remuneration to the author for the use of the works under Article 19.

<sup>4</sup> Claims for remuneration may only be asserted by the authorised collective rights management organisations.

#### **Art. 21** Decoding of computer programs

<sup>1</sup> Any person who has the right to use a computer program may obtain, either personally or through a third party, necessary information on the interfaces by decoding the program code using independently developed programs.

<sup>2</sup> The interface information obtained by decoding the program code may only be used for the development, maintenance and use of interoperable computer programs insofar as neither the normal exploitation of the program nor the legitimate interests of the owner of the rights are unreasonably prejudiced.

<sup>7</sup> Amended by No I of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBI 2006 3389).

<sup>8</sup> Amended by No I of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBI 2006 3389).

<sup>9</sup> Inserted by No I of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBI 2006 3389).

**Art. 22** Dissemination of broadcast works

<sup>1</sup> The right to make broadcast works perceptible simultaneously and without alteration or to rebroadcast such works within the framework of the retransmission of a broadcast programme may only be asserted by the authorised collective rights management organisations.

<sup>2</sup> The retransmission of works by means of technical equipment that is intended to serve a small number of receivers, such as installations in a multiple-family dwelling or in a residential complex, is permitted.

<sup>3</sup> This Article does not apply to the rebroadcasting of subscription television programmes or of programmes that cannot be received in Switzerland.

**Art. 22a<sup>10</sup>** Use of broadcasting organisations' archived works

<sup>1</sup> The following rights to archived works of broadcasting organisations' under the Federal Act of 24 March 2006 on Radio and Television<sup>11</sup> may only be asserted by the authorised collective rights management organisations, subject to paragraph 3:

- a. the right to broadcast the unmodified complete archived work or an excerpt thereof;
- b. the right to make available the unmodified complete work, or an excerpt thereof, in such a way that persons may access it from a place or at a time individually chosen by them;
- c. the reproduction rights necessary to exercise the uses under letters a and b.

<sup>2</sup> A broadcasting organisations' archived work means a work fixed on a phonogram or audiovisual fixation which was created by a broadcasting organisation under its own editorial responsibility and at its own expense or by a third party at the sole request and expense of the broadcasting organisation and which was first broadcast at least ten years previously. In the event that other works or parts of works are integrated into an archived work, paragraph 1 also applies to the assertion of rights to this work or partial work insofar as these do not significantly determine the unique character of the archived works.

<sup>3</sup> To the extent that the rights under paragraph 1 and their remuneration are regulated in a contract prior to the first broadcast or within ten years thereafter, the contractual provisions apply exclusively. Paragraph 1 does not apply to the broadcasting organisations' rights under Article 37. The broadcasting organisations and the third parties involved must provide information regarding the contractual agreement to the collective rights management organisation upon request.

<sup>10</sup> Inserted by No 1 of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBl 2006 3389).

<sup>11</sup> SR 784.40

**Art. 22b<sup>12</sup>** Use of orphan works

<sup>1</sup> The rights required to exploit phonograms or audiovisual fixations may only be asserted by the authorised collective rights management organisations if:

- a. exploitation relates to publicly accessible archive collections or archived works of broadcasting organisations;
- b. the rights holders are unknown or cannot be found; and
- c. the phonograms or audiovisual fixations to be exploited were produced or reproduced in Switzerland at least ten years previously.

<sup>2</sup> The users are required to report the phonograms or audiovisual fixations containing orphan works to the collective rights management organisations.

**Art. 22c<sup>13</sup>** Making available broadcast musical works

<sup>1</sup> The right to make non-theatrical works of music contained in a broadcast available through a radio or television programme may only be asserted by the authorised collective rights management organisations if:

- a. the broadcast was primarily produced by the broadcasting organisation or at its request;
- b. the broadcast was dedicated to a non-musical topic which took precedence over the music and was announced prior to the broadcast in the usual manner;
- c. making it available does not impair the sale of music on phonograms or through online offers by third parties.

<sup>2</sup> Subject to the requirements of paragraph 1, the right of reproduction for the purpose of making available may only be asserted by the authorised collective rights management organisations.

**Art. 23** Compulsory licence for the manufacture of phonograms

<sup>1</sup> If a musical work, with or without lyrics, has been fixed on a phonogram in Switzerland or abroad and has been offered, transferred or otherwise distributed in this form with the permission of the author, all manufacturers of phonograms with a commercial establishment in Switzerland may also request permission from the copyright owner to do the same in Switzerland against remuneration.

<sup>2</sup> The Federal Council may waive the requirement of a commercial establishment in Switzerland in the case of nationals of countries granting reciprocity.

<sup>12</sup> Inserted by No 1 of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBl 2006 3389).

<sup>13</sup> Inserted by No 1 of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBl 2006 3389).

**Art. 24** Archive and backup copies

<sup>1</sup> One copy of a work may be made in order to ensure its preservation. The original or the copy must be stored in an archive not accessible to the general public and be marked as the archive copy.

<sup>1bis</sup> Public libraries, educational institutions, museums and archives accessible to the public may make those copies of the works required to secure and preserve their collections insofar as these copies are not made for financial or commercial gain.<sup>14</sup>

<sup>2</sup> Any person entitled to use a computer program may make one backup copy thereof; this right may not be waived by contract.

**Art. 24a**<sup>15</sup> Temporary copies

The making of temporary copies of a work is permitted if:

- a. they are transient or incidental;
- b. they represent an integral and essential part of a technological process;
- c. their sole purpose is to enable a transmission of the work in a network between third parties by an intermediary or a lawful use of the work;
- d. they have no independent economic significance.

**Art. 24b**<sup>16</sup> Copies for broadcasting purposes

<sup>1</sup> If commercially available phonograms or audiovisual fixations are used for broadcasting purposes by broadcasting organisations subject to the Federal Act of 24 March 2006<sup>17</sup> on Radio and Television, the rights of reproduction of non-theatrical musical works may only be asserted by an authorised collective rights management organisation.

<sup>2</sup> Copies produced in accordance with paragraph 1 may neither be transferred nor otherwise distributed; they must be produced by the broadcasting organisation by means of their own facilities. They must be destroyed after they have fulfilled their purpose. Article 11 remains reserved.

**Art. 24c**<sup>18</sup> Use of works by people with disabilities

<sup>1</sup> A work may be reproduced in a form which is accessible to people with disabilities insofar as the work cannot be perceived by the senses, or can only be perceived by the senses with difficulty, in its already published form.

<sup>14</sup> Inserted by No 1 of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBl 2006 3389).

<sup>15</sup> Inserted by No 1 of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBl 2006 3389).

<sup>16</sup> Inserted by No 1 of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBl 2006 3389).

<sup>17</sup> SR 784.40

<sup>18</sup> Inserted by No 1 of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBl 2006 3389).

<sup>2</sup> Such copies of the work may only be produced and placed on the market for non-commercial purposes, and only for the use of people with disabilities.

<sup>3</sup> The author has the right to remuneration for the reproduction and distribution of his work in a form accessible to people with disabilities other than in the case of the production of individual copies of the work.

<sup>4</sup> Claims for remuneration may only be asserted by the authorised collective rights management organisations.

**Art. 25** Quotations

<sup>1</sup> Published works may be quoted if the quotation serves as an explanation, a reference or an illustration, and the extent of the quotation is justified for such purpose.

<sup>2</sup> The quotation must be designated as such and the source given. Where the source indicates the name of the author, the name must also be cited.

**Art. 26** Museum, exhibition and auction catalogues

A work forming part of a collection accessible to the public may be reproduced in a catalogue issued by the administrators of the collection; the same rule applies to the publication of exhibition and auction catalogues.

**Art. 27** Works on premises open to the public

<sup>1</sup> A work permanently situated in a place accessible to the public may be depicted; the depiction may be offered, transferred, broadcast or otherwise distributed.

<sup>2</sup> The depiction may not be three-dimensional and it may not serve the same purpose as the original.

**Art. 28** Reporting current events

<sup>1</sup> Where it is necessary for reporting current events, the works perceived in doing so may be fixed, reproduced, presented, broadcast, distributed or otherwise made perceptible.

<sup>2</sup> For the purposes of information about current affairs, short excerpts from press articles or from radio and television reports may be reproduced, distributed, broadcast or retransmitted; full reference must be made to the relevant excerpt as well as the source. Where the source refers to the name of the author, the name must also be cited.

## **Chapter 6: Term of Protection**

**Art. 29** In general

<sup>1</sup> A work is protected by copyright as soon as it is created, irrespective of whether it has been fixed on a physical medium.

<sup>2</sup> Protection expires:

- a. in the case of computer programs, 50 years after the death of the author;
- b. in the case of all other works, 70 years after the death of the author.

<sup>3</sup> Where it is has to be assumed that the author has been dead for more than 50 or 70 years<sup>19</sup> respectively, protection no longer applies.

### **Art. 30** Joint authorship

<sup>1</sup> Where two or more persons have participated in the creation of a work (Art. 7), protection expires:

- a. in the case of computer programs, 50 years after the death of the last surviving joint author<sup>20</sup>;
- b. in the case of all other works, 70 years after the death of the last surviving joint author<sup>21</sup>.

<sup>2</sup> Where the individual contributions may be separated, protection for each contribution expires 50 or 70 years<sup>22</sup> respectively after the death of the respective author.

<sup>3</sup> In the case of films and other audiovisual works, the calculation of the term of protection is based solely on the date of the death of the director.

### **Art. 31** Unknown authorship

<sup>1</sup> Where the author of a work is unknown, protection for that work expires 70 years after it has been published or, if it has been published in instalments, 70 years after the final instalment.

<sup>2</sup> If the identity of the person<sup>23</sup> who has created the work becomes publicly known before the expiry of the aforementioned term, protection for the work expires:

- a. in the case of computer programs, 50 years after the death of the author<sup>24</sup>;
- b. in the case of all other works, 70 years after the death of the author<sup>25</sup>.

### **Art. 32** Calculation

The term of protection is calculated from 31 December of the year in which the event determining the calculation occurred.

<sup>19</sup> Revised by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR **171.10**).

<sup>20</sup> Revised by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR **171.10**).

<sup>21</sup> Revised by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR **171.10**).

<sup>22</sup> Revised by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR **171.10**).

<sup>23</sup> Revised by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR **171.10**).

<sup>24</sup> Revised by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR **171.10**).

<sup>25</sup> Revised by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR **171.10**).

### **Title 3:        Related Rights**

#### **Art. 33**        Rights of performers

<sup>1</sup> A performer is any natural person who performs a work or an expression of folklore or who participates artistically in the performance of such a work.<sup>26</sup>

<sup>2</sup> Performers have the following exclusive right in respect of their performance or its fixation:<sup>27</sup>

- a. <sup>28</sup> to make their performance perceptible in some place other than that in which it was performed, either directly or through any kind of medium, in such a way that persons may access it from a place and at a time individually chosen by them.
- b. to broadcast their performance by radio, television or similar method, including by wire, as well as to retransmit the broadcast performance by means of technical equipment, the provider of which is not the original broadcasting organisation;
- c. to fix their performance on blank media and to reproduce such fixations;
- d. to offer, transfer or otherwise distribute copies of their performance;
- e. <sup>29</sup> to make their performance perceptible when they are broadcast, retransmitted or made available to the public.

#### **Art. 33a**<sup>30</sup>        Moral rights of performers

<sup>1</sup> Performers have the right to be recognised as such when they perform a work.

<sup>2</sup> The protection of performers from derogatory treatment of their performances is subject to Articles 28-28I of the Swiss Civil Code<sup>31</sup>.

#### **Art. 34**<sup>32</sup>        Collective performance

<sup>1</sup> Where two or more persons have participated artistically in a performance, they are jointly entitled to the related rights under Article 7.

<sup>2</sup> Where performers appear as a group under a common name, the representative named by the performing group shall have the authority to assert the rights of the

<sup>26</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>27</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>28</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>29</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>30</sup> Inserted by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>31</sup> SR 210

<sup>32</sup> Amended by No I of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBl 2006 3389).

members. Insofar as the group does not name a representative, the person who produces the performance or fixes it on blank media, or who broadcasts it has the authority to assert the rights.

<sup>3</sup> In the case of a choral, orchestral or stage performance, use of the performance under Article 33 requires the consent of the following persons:

- a. the soloists;
- b. the conductor;
- c. the director;
- d. the representative of the performing group under paragraph 2.

<sup>4</sup> Any person who has the right to exploit a performance on an audiovisual fixation is considered to be authorised to permit third parties to make the fixed performance available in such a way that persons may have access to it from a place and at a time individually chosen by them.

<sup>5</sup> In the absence of the corresponding statutory or contractual provisions, the relationship between the authorised persons under paragraphs 2 and 4 and the performers whom they represent is governed by the provisions on agency without authority.

**Art. 35** Right to remuneration for the use of phonograms and audiovisual fixations

<sup>1</sup> If commercially available phonograms or audiovisual fixations are used for the purpose of broadcasting, retransmission, public reception (Article 33 para. 2 let. e) or performance, the performers have a right to remuneration.

<sup>2</sup> The producer of the medium thus used is entitled to an equitable share of the remuneration of the performers.

<sup>3</sup> Claims for remuneration may only be asserted by the authorised collective rights management organisations.

<sup>4</sup> Foreign performers who are not habitually resident in Switzerland only have a right to remuneration if the state of which they are a national affords a corresponding right to Swiss nationals.

**Art. 36<sup>33</sup>** Rights of phonogram and audiovisual fixation producers

A producer of phonograms and audiovisual fixations has the exclusive right:

- a. to reproduce the fixations and to offer, transfer or otherwise distribute the reproductions;
- b. to make the fixations available through any kind of medium in such a way that persons may access them from a place and at a time individually chosen by them.

<sup>33</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

**Art. 37** Rights of broadcasting organisations

A broadcasting organisation has the exclusive right:

- a. to retransmit its broadcasts;
- b. to make its broadcasts perceptible;
- c. to fix its broadcasts on blank media and to reproduce such fixations;
- d. to offer, transfer or otherwise distribute copies of the fixations of its broadcast;
- e.<sup>34</sup> to make its broadcasts available through any kind of medium in such a way that persons may access them from a place and at a time individually chosen by them.

**Art. 38** Assignment of rights, enforcement, and exceptions and limitations to protection

The provisions under Article 12 paragraph 1 and Article 13 as well as Chapters 4 and 5 of the Second Title of this Act apply *mutatis mutandis* to the rights to which the performers, phonogram and audiovisual fixation producers and broadcasting organisations are entitled.

**Art. 39** Term of protection

<sup>1</sup> Protection begins with the performance of the work or of the expression of folklore by the performers, with the publication of the phonogram or audiovisual fixation, or with its production if it is not published, or with the transmission of the broadcast; it ends after 50 years.<sup>35</sup>

<sup>1bis</sup> The right to recognition as a performer under Article 33a paragraph 1 expires on the death of the performer, but not before the term of protection under paragraph 1 expires.<sup>36</sup>

<sup>2</sup> The term of protection is calculated from 31 December of the year in which the event determining the calculation occurred.

<sup>34</sup> Inserted by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>35</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>36</sup> Inserted by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

**Title 3a:**<sup>37</sup>**Protection of Technological Measures and Rights Management Information****Art. 39a** Protection of technological measures

<sup>1</sup> Effective technological measures for the protection of works and other protected subject-matter may not be circumvented.

<sup>2</sup> Effective technological measures in accordance with paragraph 1 means technologies and devices such as access control, copy control, encryption, scrambling and other modification mechanisms that are intended and suitable for preventing or limiting the unauthorised use of works and other subject-matter.

<sup>3</sup> It is unlawful to manufacture, import, offer, transfer or otherwise distribute, rent, give for use, and advertise or possess for commercial purposes devices, products or components, or provide services which:

- a. are the subject-matter of sales promotion, advertising or marketing with the goal of circumventing effective technological measures;
- b. have only a limited commercially significant purpose or use other than the circumvention of effective technological measures;
- c. are primarily designed, manufactured, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological measures.

<sup>4</sup> The ban on circumvention may not be enforced against those persons who undertake the circumvention exclusively for legally permitted uses.

**Art. 39b** Monitoring office for technological measures

<sup>1</sup> The Federal Council shall establish a monitoring office for technological measures which:

- a. monitors and reports on the effects of technological measures in accordance with Article 39a paragraph 2 on the exceptions and limitations regulated by Articles 19 – 28;
- b. acts as a liaison between user and consumer groups and the users of technological measures, and encourages cooperative solutions.

<sup>2</sup> The Federal Council regulates the tasks and organisation of the monitoring office. It may provide that measures by the monitoring office be taken if public interests protected by the exceptions and limitations of copyright so require.

**Art. 39c** Protection of rights management information

<sup>1</sup> Rights management information on copyright and related rights may not be removed or altered.

<sup>37</sup> Inserted by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>2</sup> Electronic information that identifies works and other subject-matter or information about the terms and conditions of use as well as any numbers or codes that represent such information are protected when such information:

- a. is affixed to a phonogram, audiovisual fixation or data carrier; or
- b. appears in conjunction with the communication of a work or other subject-matter without tangible medium.

<sup>3</sup> Works or other subject-matter from which the rights management information concerning copyright and related rights has been removed or altered may not be copied, imported, offered, transferred or otherwise distributed or broadcast, made perceptible or made available in this form.

## **Title 4: Collective Rights Management Organisations**

### **Chapter 1: Areas Subject to Federal Supervision**

#### **Art. 40**

<sup>1</sup> The following are subject to federal supervision:

- a. the management of exclusive rights for the performance and broadcasting of non-theatrical works of music and the production of phonograms and audiovisual fixations of such works.  
a<sup>bis</sup>,<sup>38</sup> the assertion of exclusive rights under Articles 22, 22a-22c and 24b;
- b.<sup>39</sup> the assertion of rights to remuneration provided for in this Act under Articles 13, 20, 24c and 35.

<sup>2</sup> The Federal Council may subject other areas of collective rights management to federal supervision if public interest so requires.

<sup>3</sup> The personal exploitation of exclusive rights under paragraph 1 letter a by the author or his heirs is not subject to federal supervision.

### **Chapter 2: Authorisation**

#### **Art. 41 Principle**

Any person who exploits rights which are subject to federal supervision requires authorisation from the Swiss Federal Institute of Intellectual Property<sup>40</sup>.

<sup>38</sup> Inserted by No I of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBl 2006 3389).

<sup>39</sup> Amended by No I of the Federal Act of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2421; BBl 2006 3389).

<sup>40</sup> The designation of the administrative unit was modified in conformity with Art. 16 para. 3 of the Publications Ordinance of 17 Nov. 2004 (SR 170.512.1). This modification has been made throughout the text.

**Art. 42** Requirements

- <sup>1</sup> Authorisation is only given to collective rights management organisations which:
- a. have been founded under Swiss law, are domiciled in Switzerland and conduct their business from Switzerland;
  - b. have the management of copyright or related rights as their primary purpose;
  - c. are open to all holders of rights;
  - d. grant an appropriate right of participation in the decisions of the society to authors and performers;
  - e. guarantee compliance with the statutory provisions, in particular in terms of their articles of association;
  - f. give rise to the expectation of the effective and economic exploitation of rights.
- <sup>2</sup> In general, authorisation is only granted to a single collective rights management organisation per category of work and to a single collective rights management organisation for related rights.

**Art. 43** Term; publication

- <sup>1</sup> Authorisation is granted for five years; on expiry, it may be renewed for the same term.
- <sup>2</sup> Notice of the granting, renewal, modification, withdrawal and non-renewal of such authorisation shall be published.

**Chapter 3:  
Obligations of the Collective Rights Management Organisations****Art. 44** Obligation to administer rights

The collective rights management organisations have an obligation to the holders of rights to assert those rights that fall within their field of activity.

**Art. 45** Principles of the conduct of business

- <sup>1</sup> The collective rights management organisations are required to conduct their business in accordance with proper business management principles.
- <sup>2</sup> They administer the rights in accordance with set rules and with the principle of equal treatment.
- <sup>3</sup> They may not aim to make a profit.
- <sup>4</sup> They shall conclude, wherever possible, reciprocal agreements with foreign collective rights management organisations.

**Art. 46** Tariffs

<sup>1</sup> The collective rights management organisations shall draw up tariffs for the remuneration that they collect.

<sup>2</sup> They negotiate the terms of each tariff with the relevant associations of users.

<sup>3</sup> They shall submit the tariffs to the Federal Arbitration Commission (Art. 55) for approval and shall publish the approved tariffs.

**Art. 47** Joint tariff

<sup>1</sup> Where more than one collective rights management organisation operates in the same field of use, they shall draw up a joint tariff applying uniform principles for use of the same works or performances and shall designate one of their number as the joint office for payment.

<sup>2</sup> The Federal Council may enact further provisions concerning their collaboration.

**Art. 48** Principles of distribution

<sup>1</sup> The collective rights management organisations are required to draw up distribution regulations and to submit them to the supervisory authority (Art. 52 para. 1) for approval.

<sup>2</sup> With the approval of the supreme organ of the rights management organisation, a portion of the proceeds may be used for social welfare purposes and for the appropriate promotion of culture.

**Art. 49** Distribution of the proceeds

<sup>1</sup> The collective rights management organisations must distribute the exploitation proceeds in proportion to the revenue derived from the individual works and performances. They must make all reasonable efforts to identify those who are entitled to a share of the proceeds.

<sup>2</sup> If a distribution entails unreasonable expense, the collective rights management organisations may estimate the extent of revenue; the estimates are based on factors that are capable of verification and are appropriate.

<sup>3</sup> The proceeds are divided between the original holders of rights and other entitled persons in such a way that an equitable share goes to the author and the performer. A different distribution is permissible where the expense would be unreasonable.

<sup>4</sup> Contractual agreements made by the original holders of rights with third parties take precedence over the rules of distribution.

**Art. 50** Obligation to provide information and render account

The collective rights management organisations must provide the supervisory authority with all the information and documents necessary for carrying out its supervisory duties, and also provide account of its activities in an annual report.

## **Chapter 4: Obligation to Provide Information to Collective Rights Management Organisations**

### **Art. 51**

<sup>1</sup> Where it may reasonably be expected, the users of works must provide the collective rights management organisations with all the necessary information for the determination and application of the tariffs and for distributing the proceeds.

<sup>2</sup> The collective rights management organisations are obliged to preserve trade secrets.

## **Chapter 5: Supervision of the Collective Rights Management Organisations**

### **Section 1: Supervision of the Conduct of Business**

#### **Art. 52** Supervisory authority

<sup>1</sup> The Swiss Federal Institute of Intellectual Property (supervisory authority) supervises the collective rights management organisations.

<sup>2</sup> ...<sup>41</sup>

#### **Art. 53** Extent of supervision

<sup>1</sup> The supervisory authority supervises the conduct of business of the collective rights management organisations and ensures that they comply with their obligations. It examines and approves their annual reports.

<sup>2</sup> It may issue directives concerning the obligation to provide information (Art. 50).

<sup>3</sup> It may also call on agents not belonging to the Federal Administration to exercise its powers; such agents are bound by a duty of confidentiality.

#### **Art. 54** Measures in cases of failure to comply with obligations

<sup>1</sup> If a collective rights management organisation fails to comply with its obligations, the supervisory authority shall set an appropriate time limit in which the situation must be remedied; if the time limit is not complied with, the supervisory authority shall take necessary measures.

<sup>2</sup> In the event of refusal to comply with its decisions, the supervisory authority may, after issuing a warning, restrict or withdraw authorisation.

<sup>3</sup> The supervisory authority may publish final decisions at the expense of the collective rights management organisation.

<sup>41</sup> Repealed by No 1 of the Federal Act of 5 Oct. 2007, with effect from 1 July 2008 (AS 2008 2421; BBl 2006 3389).

## Section 2: Supervision of Tariffs

### Art. 55 Federal Arbitration Commission for the Exploitation of Copyrights and Related Rights

<sup>1</sup> The Federal Arbitration Commission for the Exploitation of Copyrights and Related Rights (Arbitration Commission) is responsible for approving the tariffs of the collective rights management organisations (Art. 46).

<sup>2</sup> Its members are appointed by the Federal Council. It regulates the organisation and procedures of the Arbitration Commission in accordance with the Administrative Procedure Act of 20 December 196842.

<sup>3</sup> The Arbitration Commission accepts no directives in taking its decisions; the staff of the Secretariat of the Commission are answerable for such activity to the Chairman of the Commission.

### Art. 56 Composition of the Arbitration Commission

<sup>1</sup> The Arbitration Commission consists of a chairman, two co-arbitrators, two deputies as well as additional arbitrators.

<sup>2</sup> The additional arbitrators are nominated by the collective rights management organisations and the relevant associations of users of works and performances.

### Art. 57 Quorum for taking decisions

<sup>1</sup> The Arbitration Commission takes its decisions with a quorum of five members: the chairman, two co-arbitrators and two additional arbitrators.

<sup>2</sup> The chairman designates the two additional arbitrators for each item of business, who must be competent in the matter at hand. One of the additional arbitrators is designated on a nomination by the collective rights management organisations and one on a nomination by the users' associations.

<sup>3</sup> The fact that a technically competent member belongs to a collective rights management organisation or to a users' association does not in itself constitute grounds for his recusal.

### Art. 58 Administrative supervision

<sup>1</sup> The Federal Department of Justice and Police is the administrative supervisory authority for the Arbitration Commission.

<sup>2</sup> The Arbitration Commission shall submit an annual report to the Department on its activities.

**Art. 59** Approval of the tariffs

<sup>1</sup> The Arbitration Commission shall approve the tariff submitted to it if its structure and individual provisions are fair and reasonable.

<sup>2</sup> It may make modifications after hearing the collective rights management organisation and the users' associations (Art. 46 para. 2) involved in the procedure.

<sup>3</sup> Finally approved tariffs are binding on the courts.

**Art. 60** Principle of equitableness

<sup>1</sup> When determining remuneration, account is taken of:

- a. the proceeds obtained from the use of the work, performance, phonogram or audiovisual fixation or broadcast, or alternatively the costs incurred in such use;
- b. the nature and quantity of the works, performances, phonograms or audiovisual fixations or broadcasts used;
- c. the ratio of protected to unprotected works, performances, phonograms or audiovisual fixations or broadcasts as well as to other services.

<sup>2</sup> Remuneration normally amounts to a maximum of ten per cent of the proceeds or costs incurred from the use of the copyright and a maximum of three per cent for related rights; however, it is determined in such a way that entitled persons receive equitable remuneration conditioned upon sound financial management for the administration of rights.

<sup>3</sup> The use of the work under Article 19 paragraph 1 letter b is subject to preferential tariffs.

**Title 5: Legal Protection****Chapter 1: Protection under Civil Law****Art. 61** Action for declaratory judgment

Any person who can demonstrate a legal interest may bring an action for a declaratory judgment on whether or not a right or legal relationship exists under this Act.

**Art. 62** Actions for performance

<sup>1</sup> Any person whose copyright or related right is infringed or threatened may request the court:

- a. to prohibit an imminent infringement;
- b. to remedy an existing infringement;

c.<sup>43</sup> to require the defendant to provide information on the origin and quantity of items in his possession that have been unlawfully manufactured or placed on the market and to name the recipients and disclose the extent of any distribution to commercial and industrial customers.

<sup>1bis</sup> A threat to copyright or related rights is in particular present in acts mentioned in Article 39a paragraphs 1 and 3 and Article 39c paragraphs 1 and 3.<sup>44</sup>

<sup>2</sup> Actions brought under the Code of Obligations<sup>45</sup> for damages, satisfaction and handing over of profits in accordance with the provisions concerning agency without authority remain reserved.

<sup>3</sup> Any person who holds an exclusive licence is entitled to bring a separate action unless this is expressly excluded in the licence agreement. Any licensees may join an infringement action in order to claim for their own losses.<sup>46</sup>

### **Art. 63** Forfeiture in civil proceedings

<sup>1</sup> The court may order the forfeiture and sale or destruction of the unlawfully manufactured items or equipment, devices and other means that primarily serve their manufacture.<sup>47</sup>

<sup>2</sup> The above does not apply to works of architecture that have been constructed.

### **Art. 64**<sup>48</sup>

### **Art. 65**<sup>49</sup> Preliminary measures

<sup>1</sup> Any person requesting preliminary measures may, in particular, request that the court orders measures to:

- a. secure evidence;
- b. establish the origin of items unlawfully manufactured or placed on the market;
- c. preserve the existing state of affairs;
- d. provisionally enforce claims for injunctive relief and remedy infringement.

<sup>43</sup> Amended by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

<sup>44</sup> Inserted by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS **2008** 2497; BBl **2006** 3389).

<sup>45</sup> SR **220**

<sup>46</sup> Inserted by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

<sup>47</sup> Amended by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

<sup>48</sup> Repealed by Annex I No II 9 of the Civil Procedure Code of 19 Dec. 2008, in force since 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>49</sup> Amended by Annex I No II 9 of the Civil Procedure Code of 19 Dec. 2008, in force since 1 Jan. 2011 (AS **2010** 1739; BBl **2006** 7221).

**Art. 66** Publication of the judgment

The court may order, at the request of the successful party, that the judgment be published at the expense of the other party. The court determines the form and extent of the publication.

**Art. 66a<sup>50</sup>** Notification of judgments

The courts shall provide the Institute with full official copies of the final judgments free of charge.

**Chapter 2: Criminal Provisions****Art. 67** Copyright infringement

<sup>1</sup> On the complaint of the person whose rights have been infringed, any person who wilfully and unlawfully commits any of the following acts is liable to a custodial sentence not exceeding one year or a monetary penalty:<sup>51</sup>

- a. uses a work under a false designation or a designation that differs from that decided by the author;
- b. publishes a work;
- c. modifies a work;
- d. uses a work to create a derivative work;
- e. produces copies of a work in any manner;
- f. offers, transfers or otherwise distributes copies of a work;
- g. recites, performs or presents a work or makes a work perceptible somewhere else either directly or with the help of any kind of medium;
- g<sup>bis</sup>.<sup>52</sup> makes a work available through any kind of medium in such a way that persons may access it from a place and at a time individually chosen by them;
- h. broadcasts a work by radio, television or similar means, including by wire, or retransmits a broadcast work by means of technical equipment, the operator of which is not the original broadcasting organisation;
- i.<sup>53</sup> makes a work made available, a broadcast work or a retransmitted work perceptible;

<sup>50</sup> Inserted by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

<sup>51</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS **2008** 2497; BBl **2006** 3389).

<sup>52</sup> Inserted by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS **2008** 2497; BBl **2006** 3389).

<sup>53</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS **2008** 2497; BBl **2006** 3389).

k.<sup>54</sup> refuses to notify the authority concerned of the origin and quantity of items in his possession that have been unlawfully manufactured or placed on the market, and to name the recipients and disclose the extent of any distribution to commercial and industrial consumers;

l. rents out a computer program.

<sup>2</sup> Any person who has committed any act mentioned in paragraph 1 for commercial gain shall be prosecuted *ex officio*. The penalty is a custodial sentence not exceeding five years or a monetary penalty. The custodial sentence must be combined with a monetary penalty.<sup>55</sup>

#### **Art. 68** Omission of source

Any person who intentionally omits to indicate the source used where required by statute (Articles 25 and 28) and where the author is named therein, to provide the name of the author, is liable to a fine on the complaint of the person whose rights have been infringed.

#### **Art. 69** Infringement of related rights

<sup>1</sup> On the complaint of the person whose rights have been infringed, any person who wilfully and unlawfully commits any of the following acts is liable to a custodial sentence not exceeding one year or a monetary penalty:<sup>56</sup>

- a. broadcasts the performance of a work by radio, television or similar means, including by wire;
- b. fixes a performance of a work on blank media;
- c. offers, transfers or otherwise distributes copies of a performance of a work;
- d. retransmits a broadcast performance of a work by means of technical equipment, the operator of which is not the original broadcasting organisation;
- e.<sup>57</sup> makes a performance of a work made available, a broadcast performance of a work or a retransmitted performance of a work perceptible;
- e<sup>bis</sup>.<sup>58</sup> uses a performance of a work under a false name or under a name other than the artist name designated by the performer;
- e<sup>ter</sup>.<sup>59</sup> makes a performance of a work, a phonogram or audiovisual fixation or a broadcast available through any kind of medium in such a way that persons may access them from a place and at a time individually chosen by them;

<sup>54</sup> Amended by Annex No 2 of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2251; BBl 2006 1).

<sup>55</sup> Amended by Art. 2 of the Federal Decree of 5 October 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>56</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>57</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>58</sup> Inserted by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

- f. reproduces a phonogram or audiovisual fixation and offers, transfers or otherwise distributes the reproductions;
- g. retransmits a broadcast;
- h. fixes a broadcast on blank media;
- i. reproduces a broadcast fixed on blank media or distributes copies of such reproductions;
- k.<sup>60</sup> refuses to notify the responsible authority concerned of the origin and quantity of the carriers of a performance protected under Articles 33, 36 or 37 in his possession that have been unlawfully manufactured or placed on the market, or to name the recipients and disclose the extent of any distribution to commercial and industrial customers.

<sup>2</sup> Any person who has committed any act mentioned in paragraph 1 for commercial gain shall be prosecuted *ex officio*. The penalty is a custodial sentence not exceeding five years or a monetary penalty. The custodial sentence must be combined with a monetary penalty.<sup>61</sup>

**Art. 69a<sup>62</sup>** Offences relating to technical protection measures and to rights-management information

<sup>1</sup> On the complaint of the person whose protection has been violated, any person who wilfully and unlawfully commits any of the following acts is liable to a monetary penalty:

- a. circumvents effective technological measures under Article 39 paragraph 2 with the intention of illegally using works or other protected subject-matter;
- b. manufactures, imports, offers, transfers or otherwise distributes, rents, gives or advertises for use, or possesses for commercial purposes devices, products or components, or provides services which:
  - 1. are the subject-matter of sales promotion, advertising or marketing with the goal of circumventing effective technological measures,
  - 2. have only a limited commercially significant purpose or use other than the circumvention of effective technological measures, or
  - 3. are primarily designed, manufactured, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological measures.
- c. removes or alters electronic rights management information on copyright and related rights under Article 39c paragraph 2;

<sup>59</sup> Inserted by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>60</sup> Amended by Annex No 1 of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

<sup>61</sup> Amended by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

<sup>62</sup> Inserted by Art. 2 of the Federal Decree of 5 Oct. 2007, in force since 1 July 2008 (AS 2008 2497; BBl 2006 3389).

- d. reproduces, imports, offers, transfers or otherwise distributes, broadcasts or makes perceptible or available works or other protected subject-matter on which electronic rights management information under Articles 39c paragraph 2 have been removed or altered.

<sup>2</sup> Any person who has committed any act mentioned in paragraph 1 for commercial gain shall be prosecuted *ex officio*. The penalty is a custodial sentence not exceeding one year or a monetary penalty.

<sup>3</sup> Acts under paragraph 1 letter c and d are only liable to prosecution where they are carried out by a person who is known or, under the circumstances, should be known, for instigating, enabling, facilitating or concealing infringements of copyright or related rights.

**Art. 70<sup>63</sup>**            Unauthorised assertion of rights

Any person who, without the required authorisation (Art. 41), asserts copyright or related rights, the exploitation of which is subject to federal supervision (Art. 40), is liable to a fine.

**Art. 71**                Offences in business activities

Articles 6 and 7 of the Federal Act of 22 March 1974<sup>64</sup> on Administrative Criminal Law apply to offences committed in business activities by agents or similar persons.

**Art. 72<sup>65</sup>**            Forfeiture in criminal proceedings

Works of architecture that have been constructed may not be forfeited under Article 69 of the Swiss Criminal Code<sup>66</sup>.

**Art. 73**                Prosecution

<sup>1</sup> Prosecution is the responsibility of the cantons.

<sup>2</sup> Offences under Article 70 are prosecuted and judged by the Swiss Federal Institute of Intellectual Property in accordance with the Federal Act of 22 March 1974 on Administrative Criminal Law<sup>67</sup>.

<sup>63</sup> Amended by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

<sup>64</sup> SR 313.0

<sup>65</sup> Amended by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

<sup>66</sup> SR 311.0

<sup>67</sup> SR 313.0

## Chapter 3:<sup>68</sup> Appeals to the Federal Administrative Court

### Art. 74

<sup>1</sup> Appeals against decisions of the supervisory authority and the Arbitration Commission may be brought before the Federal Administrative Court.

<sup>2</sup> Appeals against decisions by the Arbitration Commission only have suspensive effect if the instructing judge of the Federal Administrative Court so orders *ex officio* or in response to an application by a party.

## Chapter 4: Assistance Provided by the Customs Administration

### Art. 75<sup>69</sup> Notification of suspicious goods

<sup>1</sup> The Customs Administration is authorised to notify the owners of copyright or related rights as well as the authorised collective rights management organisations if there is any suspicion of the imminent import, export or transit of goods, the distribution of which would violate legislation applicable in Switzerland on copyright or related rights.

<sup>2</sup> In such cases, the Customs Administration is authorised to withhold the goods for three working days in order that the persons entitled may file an application in accordance with Article 76 paragraph 1.

### Art. 76 Application for assistance

<sup>1</sup> If owners or licensees of copyright or related rights entitled to institute proceedings or an authorised collective rights management organisation have clear indications of the imminent import, export or transit of goods, the distribution of which would violate legislation applicable in Switzerland on copyright or related rights, they may request the Customs Administration in writing to refuse the release of the goods.

<sup>2</sup> The applicants must provide all the relevant information available to them that is required by the Customs Administration in order to decide on the application. In particular, they shall provide a precise description of the goods.<sup>70</sup>

<sup>3</sup> The Customs Administration makes the final decision on the application. It may charge a fee to cover the administrative costs.<sup>71</sup>

<sup>68</sup> Amended by Annex No 19 of the Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (AS 2006 2197; BBl 2001 4202).

<sup>69</sup> Amended by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

<sup>70</sup> Amended by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

<sup>71</sup> Amended by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

**Art. 77<sup>72</sup>** Withholding of goods

<sup>1</sup> If the Customs Administration, as a result of an application under Article 76 paragraph 1, has grounds to suspect that certain goods intended for import, export or transit violate legislation applicable in Switzerland on copyright or related rights, then it shall notify the applicant and the declarant, holder or owner of the goods accordingly.

<sup>2</sup> The Customs Administration shall withhold the goods for a maximum of ten working days from the time of notification pursuant to paragraph 1 so that the applicant may obtain preliminary measures.

<sup>3</sup> Where justified by the circumstances, it may withhold the goods for a maximum of ten additional working days.

**Art. 77a<sup>73</sup>** Samples

<sup>1</sup> While the goods are being withheld, the Customs Administration is authorised to hand over or deliver to the applicant, on request, samples for examination or to permit the applicant to inspect the goods being withheld.

<sup>2</sup> The samples are collected and delivered at the expense of the applicant.

<sup>3</sup> They must be returned after the examination has been carried out, if this is reasonable. If samples are retained by the applicant, they are subject to the provisions of customs legislation.

**Art. 77b<sup>74</sup>** Safeguarding manufacturing and trade secrets

<sup>1</sup> At the same time as notification is made in accordance with Article 77 paragraph 1, the Customs Administration shall inform the declarant, holder or owner of the goods of the possible handover of samples or the opportunity to inspect them in accordance with Article 77a paragraph 1.

<sup>2</sup> The declarant, holder or owner may request to be present at the inspection in order to safeguard his manufacturing or trade secrets.

<sup>3</sup> The Customs Administration may refuse to hand over samples on a reasoned request from the declarant, holder or owner.

**Art. 77c<sup>75</sup>** Application for destruction of the goods

<sup>1</sup> When making an application under Article 76 paragraph 1, the applicant may submit a written request for the Customs Administration to destroy the goods.

<sup>72</sup> Amended by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

<sup>73</sup> Inserted by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

<sup>74</sup> Inserted by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

<sup>75</sup> Inserted by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

<sup>2</sup> If an application for destruction is made, the Customs Administration shall notify the declarant, holder or owner of the goods accordingly as part of the notification made under Article 77 paragraph 1.

<sup>3</sup> The application for destruction does not result in the time limits for obtaining preliminary measures under Article 77 paragraphs 2 and 3 being extended.

**Art. 77d<sup>76</sup>** Consent

<sup>1</sup> The destruction of the goods requires the consent of the declarant, holder or owner.

<sup>2</sup> Consent is deemed to be given if the declarant, holder or owner does not expressly object to the destruction within the time limits given under Article 77 paragraphs 2 and 3.

**Art. 77e<sup>77</sup>** Evidence

Before the destruction of the goods, the Customs Administration shall remove samples and hold them in safekeeping as evidence in any actions for damages.

**Art. 77f<sup>78</sup>** Damages

<sup>1</sup> If the destruction of the goods proves to be unjustified, the applicant is exclusively liable for the resultant loss.

<sup>2</sup> If the declarant, holder or owner has given express written consent for the destruction, no claims for damages may be made against the applicant if the destruction later proves to be unjustified.

**Art. 77g<sup>79</sup>** Costs

<sup>1</sup> The destruction of the goods is carried out at the expense of the applicant.

<sup>2</sup> The costs for collecting and safekeeping samples under Article 77e are decided by the court in connection with the assessment of claims for damages in accordance with Article 77f paragraph 1.

**Art. 77h<sup>80</sup>** Accountability statement and damages

<sup>1</sup> If it is anticipated that withholding the goods may lead to a loss being incurred, the Customs Administration may make the withholding of the goods dependent on the applicant providing them with an accountability statement. As an alternative to this

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<sup>78</sup> Inserted by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

<sup>79</sup> Inserted by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

<sup>80</sup> Inserted by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

statement and where justified by the circumstances, the Customs Administration may request the applicant to provide appropriate security.

<sup>2</sup> The applicant is liable for any losses incurred from withholding the goods and from collecting the samples if preliminary measures are not ordered or prove to be unjustified.

## **Title 6: Final Provisions**

### **Chapter 1: Implementation and Repeal of Current Legislation**

#### **Art. 78** Implementing provisions

The Federal Council enacts the implementing provisions.

#### **Art. 79** Repeal of federal legislation

The following are repealed:

- a. the Federal Act of 7 December 192281 on Copyright in Literary and Artistic Works.
- b. the Federal Act of 25 September 194082 on the Collection of Copyright Royalties.

### **Chapter 2: Transitional Provisions**

#### **Art. 80** Subject-matter already protected

<sup>1</sup> This Act also applies to works, performances, phonograms and audiovisual fixations and broadcasts created prior to its commencement.

<sup>2</sup> Where the use of a work, performance, phonogram, audiovisual fixation or broadcast that is unlawful under this Act was previously permitted, it may be completed if begun prior to the commencement of this Act.

#### **Art. 81** Existing contracts

<sup>1</sup> Contracts concerning copyright or related rights concluded prior to the commencement of this Act and decisions issued on the basis of such contracts remain in effect in accordance with the previous law.

<sup>2</sup> Unless otherwise agreed, such contracts do not apply to rights first created by this Act.

<sup>81</sup> [BS 2 817; AS 1955 855]  
<sup>82</sup> [BS 2 834]

**Art. 81a**<sup>83</sup> Licensees' right of action

Article 62 paragraph 3 and Article 65 paragraph 5 apply only to licence agreements that have been concluded or confirmed after the Amendment to this Act dated 22 June 2007 comes into force.

**Art. 82** Authorisation for the exploitation of copyright

The collective rights management organisations authorised under the Federal Act of 25 September 1940<sup>84</sup> on the Collection of Copyright Royalties must request reauthorisation (Art. 41) within six months of the commencement of this Act.

**Art. 83** Tariffs

<sup>1</sup> Tariffs of the authorised collective rights management organisations that were approved under the previous law remain in force until their term of validity expires.

<sup>2</sup> Remuneration under Articles 13, 20 and 35 becomes due on the commencement of this Act; it may be claimed from the time the corresponding tariff is approved.

**Chapter 3: Referendum and Commencement****Art. 84**

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council shall determine the commencement date.

Commencement date:<sup>85</sup> 1 July 1993

Art. 74 para. 1: 1 January 1994.

<sup>83</sup> Inserted by Annex No I of the Federal Act of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

<sup>84</sup> [BS 2 834]

<sup>85</sup> Federal Council Decree of 26 April 1993