

Law of March 18, 1993, Containing Rules on the Protection of Performers, Phonogram Producers and Broadcasting Organizations and Amending the Copyright Law 1912

(Law on Neighboring Rights)

Chapter 1 Definitions

Art. 1.

For the implementation of the provisions of this Law or of provisions pursuant to this Law:

- (a) "performers" shall mean actors, singers, musicians, dancers and any other person who acts, sings, delivers or otherwise performs a literary or artistic work, as also an artist who performs a variety or circus act or a puppet show;
- (b) "recording" shall mean the fixing of sounds, images or a combination thereof, for the first time on any medium suitable to reproduce or communicate to the public such fixation;
- (c) "phonogram" shall mean any recording of the sounds only of a performance or of other sounds;
- (d) "phonogram producer" shall mean the natural or legal person who first manufactures a phonogram or first has a phonogram manufactured;
- (e) "broadcasting organization" shall mean an establishment that produces programs and broadcasts them or has them broadcast under its responsibility, in compliance with the legislation of the country in which the broadcasting takes place;
- (f) "reproduction" shall mean the manufacture of one or more copies of a recording or of part of a recording;
- (g) "broadcasting" shall mean the dissemination of programs by means of a transmitter within the meaning of Article 1, first paragraph, item (cc), of the Media Law (Staatsblad 1987, 249) or of a cable broadcasting installation within the meaning of Article 1, first paragraph, item (g), of the Law on Telecommunication Services (Staatsblad 1988, 520);
- (h) "rebroadcasting" shall mean the simultaneous broadcasting by one establishment of a program that has been broadcast by another establishment or broadcasting organization;
- (i) "program" shall mean a broadcast radio or television program or a part of a program.

Chapter 2 Content of Neighboring Rights

Art. 2.-

- (1) Performers shall have the exclusive right to give their consent to one or more of the following acts:
- (a) the recording of a performance;
 - (b) the reproduction of a recording of a performance;

(c) the sale, supply or other putting into circulation, as also importing, offering or storing for such purposes, a recording of a performance or a reproduction thereof;

(d) the broadcasting, rebroadcasting or any other form of communication to the public of a performance or a recording of a performance or a reproduction thereof.

(2) Where a reproduction of a recording of a performance has been put into circulation by the holder of the exclusive right, referred to in the first paragraph, or with his explicit consent, the acquirer of the reproduction shall not infringe that exclusive right, with respect to such reproduction, by performing the acts referred to in item (c) of the first paragraph.

(3) With regard to the provision of item (d) in the first paragraph, communication to the public shall also mean a performance that takes place in a closed circle, except if restricted to the family circle, a circle of friends or a circle that may be assimilated thereto if participation therein involves payment in any form whatsoever.

(4) Communication to the public of a performance shall not include a performance that is exclusively used for teaching given by the authorities or by a legal person that is non-profit making, where such performance constitutes a part of the school curriculum, syllabus or the curriculum of the establishment or serves a scientific purpose.

(5) The rebroadcasting of a program by the same organization that originally broadcast the program shall not be considered a separate communication to the public.

Art. 3.

An employer shall be entitled to exploit the rights of a performer, referred to in Article 2, where such has been agreed between the parties or derives from the nature of the employment agreement concluded between them, from usual practice or the demands of fairness and equity. However, where otherwise agreed or where it otherwise results from the nature of the agreement, from usual practice or from the demands of fairness and equity, the employer shall owe to the performer or his successor in title equitable remuneration for each form of exploitation of his rights. The employer shall respect the rights of the performer referred to in Article 5.

Art. 4.

Articles 45a to 45g of the Copyright Law 1912 shall apply mutatis mutandis to the performance of a performer that is intended as a contribution to the making of a cinematographic work as laid down in Article 45a of the aforementioned Law.

Art. 5.-

(1) A performer shall have the right, even if he has transferred his right in accordance with Article 2:

(a) to oppose communication to the public of a performance without acknowledgment of his name or other designation as performer, unless such opposition would be unreasonable;

(b) to oppose communication to the public of a performance under a name other than his own as also to oppose the making of any alteration in the way in which he is designated, insofar as such name or designation is given or communicated to the public in connection with the performance;

(c) to oppose any other alteration to the performance, unless such alteration is of such nature that opposition would be unreasonable;

(d) to oppose any distortion, mutilation or other impairment of the performance that may prejudice the reputation or the name of the performer or his value in that capacity.

(2) The rights referred to in the preceding paragraph shall be transferred on the death of the performer and until expiry of the right referred to in Article 2 to the person designated by him in his last will or codicil thereto.

(3) The rights referred to in items (a) to (c) in the first paragraph may be waived in writing.

Art. 6.-

(1) A phonogram producer shall have the exclusive right to give his consent to:

(a) the reproduction of a phonogram manufactured by him;

(b) the sale, supply or other putting into circulation, as also the importing, offering or storing for such purposes, of a phonogram manufactured by him or a reproduction thereof;

(c) the broadcasting, rebroadcasting or any other form of communication to the public of a phonogram manufactured by him or a reproduction thereof. Article 2(3) to (5) shall apply *mutatis mutandis*.

(2) If a reproduction of a phonogram has been put into circulation by the holder of the exclusive right referred to in the first paragraph, or with his explicit consent, the acquirer of the copy shall not be deemed to infringe the exclusive right by performing the acts, with respect to that copy, referred to in the first paragraph under item (b).

Art. 7.-

(1) A phonogram or reproduction thereof published for commercial purposes may be broadcast or communicated to the public in some other way without the consent of the phonogram producer or the performer or their successors in title on condition that equitable remuneration be paid therefor.

(2) In the event of disagreement as to the amount of the equitable remuneration, the District Court of The Hague, acting in first instance, shall have exclusive competence to determine, at the request of the most diligent party, the amount of the remuneration.

(3) The remuneration shall be due to both the performer and the producer, or their successors in title, and shall be divided between them in equal parts.

Art. 8.-

(1) A broadcasting organization shall have the exclusive right to give its consent to one or more of the following acts:

(a) the rebroadcasting of programs;

(b) the recording of programs and the reproduction of such recordings;

(c) the sale, supply or other putting into circulation, as also the importing, offering or storing for such purposes, of a recording of a program or of a reproduction thereof;

(d) the communication to the public of programs, whatever the technical facilities used for that purpose;

(e) the communication to the public of recordings of programs or reproductions thereof, whatever the technical facilities used for that purpose.

(2) If a reproduction of a recording of a program is put into circulation by the holder of the exclusive right referred to in the first paragraph, or with his explicit consent, the acquirer of the copy shall not be deemed to infringe the exclusive right, with respect to the reproduction, by performing the acts referred to in the first paragraph under item (c).

Art. 9.

The rights afforded by this Law shall be inheritable. These rights shall be transferable in whole or in part, with the exception of those referred to in the first paragraph of Article 5. Delivery required by whole or partial transfer shall be effected by means of a corresponding instrument. Transfer shall comprise only those authorizations that are recorded in the instrument or which necessarily derive from the nature or purpose of the title. The provisions of the third and fourth sentences of this Article shall apply *mutatis mutandis* with respect to the giving of consent referred to in Articles 2, 6 and 8.

Art. 10.

The rights referred to in Articles 2, 6 and 8 shall not be infringed where the acts referred to in those Articles are carried out for the purposes of:

(a) personal exercise, study or use by the person who records or reproduces in single copies; the fifth paragraph of Article 16b of the Copyright Law 1912 shall apply *mutatis mutandis* as shall Articles 16c to 16g of the Copyright Law 1912;

(b) reporting in public in a photographic, cinematographic, radio or television report on current affairs, provided that it is necessary in order to give a proper account of the current affairs that are the subject of the report and provided that short fragments only are used;

(c) a recording made by or on behalf of a broadcasting organization that is authorized to broadcast or to have broadcasts made, for the purposes of its own programs, provided that the recording is destroyed within 28 days after the first broadcast of the program for which the recording has been made, but in any event within half a year of its manufacture; the third paragraph of Article 17b of the Copyright Law 1912 shall apply *mutatis mutandis*; Article 5 shall be complied with in respect of the performance of a performer;

(d) quotation in an announcement, criticism, polemical or scientific discussion; items 1, 2 and 4 in the first paragraph and the fifth paragraph of Article 15a of the Copyright Law 1912 shall apply *mutatis mutandis*; Article 5 shall be complied with in respect of the performance of a performer.

Art. 11.

The rights referred to in Articles 2, 6 and 8 shall not be infringed where the acts referred to in those Articles are carried out for the purposes of:

(a) the inclusion of parts of performances, phonograms or programs or reproductions thereof in publications or audio or video recordings made for the purposes of illustration in teaching; Article 16, first paragraph, item (a), sub-items 1, 2, 4 and 5, and the fifth paragraph of the Copyright Law 1912, where the last-mentioned paragraph concerns the reasonable compensation to be paid, shall apply *mutatis mutandis*; Article 5 shall be complied with in respect of the performance of a performer;

(b) communication to the public of parts of performances, phonograms or programs or

reproductions thereof by means of the broadcast of a program intended to serve as illustration in teaching; Article 16, first paragraph, item (b), sub-items 1, 2, 4 and 5, and the fifth paragraph of the Copyright Law 1912, where the last-mentioned paragraph concerns the reasonable compensation to be paid, shall apply mutatis mutandis; Article 5 shall be complied with in respect of the performance of a performer.

Art. 12.

The rights afforded by this Law shall expire on completion of 50 years counted from the end of the year in which

- (a) the performance took place, in the case of performances;
- (b) the phonogram was manufactured, in the case of phonograms and the performances recorded thereon;
- (c) the program was broadcast, in the case of broadcasting organizations.

Chapter 3 The Exercise and Enforcement of Neighboring Rights

Art. 13.

The rights referred to in Article 2 may be exercised exclusively, in the case of a joint performance by six or more persons, by a representative chosen by a majority of the performers participating in the performance. The provision in the first sentence of this Article shall not apply to a soloist, director or conductor participating in the joint performance. The rights referred to in Article 2 may be enforced, in those cases where they concern a joint performance, by any of the performers participating in the performance separately, unless otherwise agreed.

Art. 14.

Where a joint right with regard to one and the same phonogram or program is held by two or more producers of phonograms or broadcasting organizations, that right may be enforced by any one of them separately, unless otherwise agreed.

Art. 15.-

(1) Payment of the equitable remuneration referred Article 7 shall be made to a representative legal person designated by our Minister for Justice who shall be responsible for the collection and distribution of such remuneration, to the exclusion of other persons. With regard to determining the amount of remuneration and the collection thereof as also the exercise of the exclusive right, the legal person referred to in the preceding sentence shall represent the right holders both in and out of court.

(2) The legal person referred to in the first paragraph shall be subject to supervision by a Supervisory Board of which the members shall be appointed by our Minister for Justice.

Detailed rules concerning the supervision shall be issued in the form of general administrative regulations.

(3) The distribution of the remuneration collected shall be made on the basis of regulations established by the legal person referred to in the first paragraph and approved by our Minister for Justice. Our Minister for Justice shall seek the opinion of the Supervisory Board referred to in the second paragraph of those regulations.

Art. 16.-

(1) In addition to compensation for damages, the right holder referred to in Articles 2, 6 and 8

may require that the person who has infringed his right be ordered to surrender the profits made as a result of the infringement and to produce the relevant accounts of receipts and expenditure.

(2) The right holder may assert the claims referred to in the first paragraph also in the name or on behalf of a licensee, irrespective of the latter's right to join in proceedings instituted by the right holder whether or not in his name or on his behalf in order to obtain direct compensation for the damages he has suffered or to obtain the award of a corresponding share of the profits to be surrendered by the defendant. The claims referred to in the first paragraph or one of such claims can only be filed by a licensee if he has obtained the authority to do so.

Art. 17.-

(1) The rights referred to in Articles 2, 5, 6 and 8 shall entitle the right holder to claim as his property any recordings or reproductions thereof communicated to the public in infringement of his rights as also any unauthorized reproductions or to require them to be destroyed or rendered unusable. The same entitlement shall apply with respect to movable goods that are not register goods, and which have directly served to manufacture the recordings or reproductions referred to in the first sentence, as also with regard to the amount of entrance money paid to be present at a performance and other monies that may be assumed to have been obtained as a result of infringement of one of the rights referred to in Articles 2, 5, 6 and 8.

(2) The provisions of the Code of Civil Procedure concerning seizure and execution shall apply to the surrender of movable goods that do not constitute register goods. In the event of more than one seizure, the person who has obtained a seizure under this Article shall have precedence.

(3) The court may order that surrender shall take place only against payment by the plaintiff of remuneration to be determined by the court.

Art. 18.

The entitlement referred to in Article 17, first paragraph, may not be exercised with respect to recordings or reproductions thereof that are in the possession of persons who do not trade in such articles and who have obtained them exclusively for their own use, unless they themselves have committed the infringement of the corresponding right.

Art. 19.

Actions to prohibit an act by which an infringement has been committed or is to be committed against one of the rights referred to in Articles 2, 6 and 8 may also be asserted by the legal persons appointed by our Minister for Justice with full legal competence for the purpose of pursuing the interests of performers, phonogram producers and broadcasting organizations.

Art. 20.-

(1) At the request of one or more trade or professional organizations considered by the Minister for Justice to be representative and that are legal persons with full legal competence for the purpose of asserting the interests of persons who professionally or by way of business sell, supply or put into circulation in some other way or import, offer or store for such purposes recordings or reproductions thereof, the aforementioned Minister may order that the trade or professional organizations designated by him shall be required to conduct their administration in a manner to be detailed by him.

(2) Any person who does not satisfy the obligations set out in the preceding paragraph shall be

liable to a second category fine. Such act shall constitute an offense.

Chapter 4 Criminal Provisions

Art. 21.

Any person who intentionally infringes the rights referred to in Articles 2, 6 and 8 of this Law shall be liable to imprisonment of up to a maximum of six months or a fourth category fine.

Art. 22.

Any person who intentionally

- (a) broadcasts, rebroadcasts or communicates to the public in some other manner,
- (b) publicly offers for dissemination,
- (c) holds for the purposes of reproduction or dissemination,
- (d) holds for the purpose of importing into the Netherlands or
- (e) stores for gainful purpose

a recording or a reproduction thereof where he knows that they have been made in infringement of the rights referred to in Articles 2, 6 and 8 of this Law, shall be liable to imprisonment of up to six months or a fourth category fine.

Art. 23.

Any person who commits the criminal offenses referred to in Articles 21 and 22 by way of habitual trade or by way of business shall be liable to imprisonment of up to four years or a fifth category fine.

Art. 24.

Any person who

- (a) broadcasts, rebroadcasts or communicates to the public in some other manner,
- (b) publicly offers for dissemination,
- (c) holds for the purposes of reproduction or dissemination,
- (d) holds with a view to importing into the Netherlands or
- (e) stores for gainful purpose

a recording or a reproduction thereof, if he may reasonably be expected to assume that the rights referred to in Articles 2, 6 and 8 of this Law have been thereby infringed, shall be liable to a third category fine.

Art. 25.

Any person who unlawfully makes with intent any changes in a performance, in the title of such performance or in the acknowledgment of the performer or who commits any other act with relation to such performance that may prejudice the reputation or the name of the performer or prejudice his value in that capacity, shall be liable to imprisonment of up to six months or a fourth category fine.

Art 26.

The acts that are punishable under Articles 21, 22, 23, 24 and 25 shall constitute criminal offenses.

Art. 27.

Any person who intentionally furnishes false or incomplete information in a written request or submission to the legal person referred to in Article 15, first paragraph, for the purposes of determining sums due on the basis of Article 7 of this Law shall be liable to detention of up to three months or a third category fine. This act shall be considered an offense.

Art. 28.

The investigating officials shall be entitled, for the purposes of investigating circumstances that are punishable under this Law and in order to seize articles that may be associated therewith, to enter any place. If access is refused to them, they may obtain entry if necessary by the use of force. They may not enter a dwelling against the will of the occupier except on presentation of a special warrant or in the presence of a public prosecutor or an assistant public prosecutor. A report shall be established by them on such entry within 24 hours.

Art. 29.

The investigating officials may at any time require for the purposes of investigating the facts punishable under this Law, any accounts or other documentary information that may reasonably be required to fulfill their tasks from persons who in the exercise of their profession or trade reproduce, sell, supply or otherwise put into circulation recordings or reproductions thereof, to which the rights referred to in Articles 2, 6 and 8 refer, or who import, offer or store such articles for those purposes or who communicate them to the public.

Art. 30. –

(1) The reproductions declared confiscated by the court shall be destroyed; however, the court may provide in its decision that they should be surrendered to the right holder if the latter applies to the registry of the court within one month of the decision becoming final.

(2) Property in the reproductions shall be transferred to the right holder by surrender. The court may order that the surrender shall be conditional on payment by the right holder of a given compensation that shall accrue to the State.

Art. 31.

Any person who is concerned by the implementation of this Law and who thereby obtains knowledge of facts whose confidential nature he knows or must reasonably assume, and who is not subject to an obligation of secrecy with respect to such facts by reason of his office, profession or statutory provision, shall be obliged to secrecy with respect thereto, except where a statutory provision requires him to make them known or the need to make them known derives from his task in the implementation of this Law.

Chapter 5 Criteria of Application

Art. 32. –

(1) The preceding Articles shall apply to a performer if:

(a) he is Dutch or has his usual place of residence in the Netherlands or is a national of a State party to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; or

(b) his performance took place in the Netherlands or in a State party to the Rome Convention for

the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; or

(c) his performance, has been recorded on a phonogram as defined in the second paragraph of this Article; or

(d) his performance, that has not been recorded on a phonogram, has been communicated to the public by means of the program of a broadcasting organization as defined in the sixth paragraph of this Article.

(2) The foregoing Articles shall apply to a producer of phonograms if:

(a) he is Dutch or has his place of business or usual place of residence in the Netherlands or is a national of or a legal person constituted under the laws of a State party to the Convention referred to in item (a) of the first paragraph or to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms; or

(b) the recording took place in the Netherlands or in a State party to the Convention referred to in item (a) of the first paragraph or to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms; or

(c) the phonogram was first, or within 30 days of the first issue in another country, put into circulation in the Netherlands or in a State party to the Convention referred to in item

(a) of the first paragraph or to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.

(3) The putting into circulation referred to in the second paragraph shall be deemed to exist whenever an offer of copies of lawfully made reproductions of a phonogram has been made such that the reasonable needs of the public are catered for.

(4) With respect to phonograms of which the producer is a national of or a legal person established in accordance with the law of a State party to the Convention referred to in item

(a) of the first paragraph, Article 7 shall always apply to the extent that and for the term that such State affords protection with regard to phonograms of which the producer is a Dutch national or has his place of business in the Netherlands.

(5) The right to equitable remuneration referred to in Article 7 shall not apply to phonograms of which the producer is not a subject of or is not a legal person established in accordance with the law of a State party to the Convention referred to in item (a) of the first paragraph.

(6) The foregoing Articles shall apply to broadcasting organizations if:

(a) the head offices of the broadcasting organization are established in the Netherlands or in a State referred to in item (a) of the first paragraph;

(b) the broadcast has taken place in the Netherlands or in a State referred to in item (a) of the first paragraph.

Art. 33.

The rights afforded by this Law shall apply with respect to performances, phonograms or programs that have taken place, been manufactured or broadcast, respectively, prior to the entry into force of this Law, to acts that have taken place after the entry into force of this Law.

Art. 34.

Reliance on Article 162 of Book 6 of the Civil Code shall not be affected by the foregoing Articles of this Law.

Chapter 6 Amendment of the Copyright Law 1912 (Staatsblad 308)

Art. 35.

The Copyright Law 1912 is amended as follows:

A.

The fourth paragraph of Article 12 is replaced as follows:

"(4) The simultaneous broadcasting of a work contained in a radio or television program by the same organization that originally broadcast the program shall not be considered a separate communication to the public."

B.

The following amendments are made to Article 15:

(1) In the opening part, the words "that have been broadcast by radio or television or have been transmitted by cable by a cable broadcasting organization within the meaning of the Law on Telecommunication Services (Staatsblad 1988, 520)" is replaced by: "that have been included in a broadcast radio or television program."

(2) In the first paragraph, under item I, the words "in a radio or television broadcast, or by means of transmission by cable to the public by a cable broadcasting organization within the meaning of the Law on Telecommunication Services (Staatsblad 1988, 520)" is replaced by: "in a broadcast of a radio or television program."

C.

In Article 16, first paragraph, item (b), the words "a radio or television broadcast or by communication by means of cable by a cable broadcasting organization within the meaning of the Law on Telecommunication Services (Staatsblad 1988, 520)" is replaced by: "the broadcasting of a radio or television program."

D.

In Article 17a, first paragraph, the following amendments are made:

(1) The words "by means of the radio or television broadcasting of signs, sounds or images, or the distribution on a broader scale, by wire or otherwise, of a work made public in such a manner" are replaced by: "by the broadcasting of a radio or television program."

(2) The words "or be distributed on a broader scale" are deleted.

(3) The words "or to distribute it on a broader scale" are deleted.

E.

In Article 17b, the following amendments are made:

(1) In the first paragraph, the words "by broadcasting on radio or television" are replaced by: "by the broadcasting of a radio or television program."

(2) In the second paragraph, the words "its own radio and television broadcasts" are replaced by: "the broadcasting of its own radio or television programs."

In the second paragraph, the words "radio or television broadcasting of the work that took place, and in any event within six months following the date of the recording" are replaced by: "broadcasting of a radio or television program, and in any event within six months following the date of the recording."

F.

In Article 30a, second and third paragraphs, the words "radio or television broadcasting" are replaced in each case by: "broadcasting in a radio or television program."

G.

In Article 45a, first paragraph, the word "moving" is deleted.

H.

A new second sentence is added to Article 45d, as follows:

"The producer shall be required to pay equitable remuneration to the authors or their successors in title for each form of exploitation of the cinematographic work."

The present third sentence of Article 45d is to read as follows:

"the producer shall also be required to pay equitable remuneration to the authors or their successors in title if he exploits the work in a form that did not exist or was not reasonably foreseeable at the time referred to in Article 45c or if he assigns the right to a third party to effect such exploitation."

I.

A new fifth sentence is added to Article 45d, to read as follows:

"The remuneration referred to in this Article shall be agreed in writing."

J.

In Article 47, fourth paragraph, the words "radio or television broadcasting" are replaced by: "the broadcasting of a radio or television program."

Chapter 7 Final Provisions

Art. 36.

This Law shall enter into force at a time to be determined by Royal Decree.

Art. 37.

This Law may be cited as the Law on Neighboring Rights.