

**CHAPTER II—COPYRIGHT—Article 3**  
**Object of protection**

1. In accordance with this Directive, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.
  
2. The copyright protection of databases provided for by this Directive shall not extend to their contents and shall be without prejudice to any rights subsisting in those contents themselves.

## CHAPTER III—SUI GENERIS RIGHT—Article 7

### Object of protection

1. Member States **shall** provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a **substantial investment** in either the obtaining, verification or presentation of the contents **to prevent extraction and/or re-utilization** of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.
2. For the purposes of this Chapter:
  - (a) ‘extraction’ shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;
  - (b) ‘re-utilization’ shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database within the Community by the right holder or with his consent shall exhaust the right to control resale of that copy within the Community;

Public lending is not an act of extraction or re-utilization.

3. The right referred to in paragraph 1 may be transferred, assigned or granted under contractual license.
4. The right provided for in paragraph 1 shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of eligibility of the contents of that database for protection by copyright or by other rights. Protection of databases under the right provided for in paragraph 1 shall be without prejudice to rights existing in respect of their contents.
5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.

## **Berne—Article 9**

- (1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

## **Berne—Article 14**

- (1) Authors of literary or artistic works shall have the exclusive right of authorizing:
  - (i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;
  - (ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.

.....

## **Berne—Article 12**

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

## **Berne—Article 8**

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

## Berne—Article 11

- (1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:
  - (i) the public performance of their works, including such public performance by any means or process;
  - (ii) any communication to the public of the performance of their works.

...

### Article 11*bis*

- (1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:
  - (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
  - (ii) any communication to the public by wire or by re-broadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
  - (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

## Article 11<sup>ter</sup>

- (1) Authors of literary works shall enjoy the exclusive right of authorizing:
  - (i) the public recitation of their works, including such public recitation by any means or process;
  - (ii) any communication to the public of the recitation of their works.

## Berne—Article 14

- (1) Authors of literary or artistic works shall have the exclusive right of authorizing:
  - ...
  - (ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.

.....

## Article 14<sup>ter</sup>

- (1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.
- (2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.
- (3) The procedure for collection and the amounts shall be matters for determination by national legislation.

## **TRIPS—Article 11 Rental Rights**

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works.

A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title.

In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

## § 106. Exclusive rights in copyrighted works

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies . . . ;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies . . . of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of [certain works], . . . to perform the copyrighted work publicly;
- (5) in the case of [certain works], . . . to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

## § 106. Exclusive rights in copyrighted works

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies . . . ;  
**[Berne art. 9]**
- (2) to prepare derivative works based upon the copyrighted work; **[Berne arts. 8 & 12]**
- (3) to distribute copies . . . of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; **[Berne art. 14 partly]**
- (4) in the case of [certain works], . . . to perform the copyrighted work publicly; **[Berne arts. 11\* & 14]**
- (5) in the case of [certain works], . . . to display the copyrighted work publicly; and **[No Berne]**
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission. **[No Berne]**

**§ 109: Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord**

- (a) Notwithstanding the provisions of section 106(3), the owner of a particular copy . . . lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy . . . .
  
- (b) . . . . Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording or the owner of copyright in a computer program . . . , neither the owner of a particular phonorecord nor any person in possession of a particular copy of a computer program . . . , may, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord or computer program . . . by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. . . .

## Berne—Article 2

- (1) The expression “literary and artistic works” shall include . . . dramatic or dramatico-musical works; . . . musical compositions with or without words; . . . .

## Berne—Article 13

- (1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any;

but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

## TRIPS—Article 14

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing [unauthorized] . . . fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing [unauthorized] . . . broadcasting by wireless means and the communication to the public of their live performance.

## **§ 1101. Unauthorized fixation and trafficking in sound recordings and music videos**

- (a) Unauthorized Acts.—Anyone who, without the consent of the performer or performers involved—
- (1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation,
  - (2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance, or
  - (3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States,

shall be subject to the remedies provided in sections 502 through 505, to the same extent as an infringer of copyright.

## **ROME—Article 12**

If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both. Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration.

## **ROME—Article 10**

Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

## **TRIPS—Article 14**

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

...

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. . . .

## **Berne—Article 9**

...

- (2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

## **TRIPS—Article 13**

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

## § 110. Limitations on exclusive rights: Exemption of certain performances and displays

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

...

- (5)(A) except as provided in subparagraph (B), communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—
- (i) a direct charge is made to see or hear the transmission; or
  - (ii) the transmission thus received is further transmitted to the public;
- (B) communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a radio or television broadcast station . . . or, if an audiovisual transmission, by a cable system or satellite carrier [under certain conditions relating to size of the establishment and the type of equipment being used to perform or display].

## **The 3-Step Test**

To be consistent with Article 13 of TRIPS, a limitation or exception to an exclusive right must

- (1) be confined to certain special cases;
- (2) not conflict with the normal exploitation of the work;  
and
- (3) not unreasonably prejudice the legitimate interests of the right holder.

## § 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of section 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.