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This English translation of the COPYRIGHT Act has been translated (through the revisions of Act No. 147 of 2004 (Effective April 1, 2005)) in compliance with the Standard Bilingual Dictionary (March 2006 edition).

This is an unofficial translation. Only the original Japanese texts of laws and regulations have legal effect, and the translations are to be used solely as reference material to aid in the understanding of Japanese laws and regulations.

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## COPYRIGHT ACT (Act No.48 of 1970)

### Chapter I General Provisions

#### Section 1 General Rules

##### Article 1. (Purpose)

The purpose of this Act is to provide for, and to secure protection of, the rights of authors, etc. and the rights neighboring thereto with respect [copyrightable] works as well as performances, phonograms, broadcasts and wire-broadcasts<sup>1</sup>, while giving due regard to the fair exploitation of these cultural products, and by doing so, to contribute to the development of culture.

##### Article 2. (Definitions)

(1) In this Act, the meanings of the terms listed in the following items shall be as prescribed respectively in those items:

- (i) "work" means a production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain;
- (ii) "author" means a person who creates the work;
- (iii) "performance" means the [theatrical] acting, dancing, musical performances,

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<sup>1</sup> Despite the fact that "yusen hoso" is translated as "wire diffusion" in the Standard Bilingual Dictionary (March 2006 edition), for easier understanding we have translated it here as "wire-broadcast (ing)".

singing, reciting, declaiming or performing in other ways of a work, including similar acts which do not involve the performance of a work but which have the nature of public entertainment<sup>2</sup>;

- (iv) "performers" means actors, dancers, musicians, singers and persons who engage in other forms of performances, as well as those who conduct or direct performances;
- (v) "phonograms" means fixations of sounds on phonographic discs, recording-tapes and other forms of tangible medium, excluding, however, those fixations [of sound] that are intended to be replayed exclusively with images;
- (vi) "producers of phonograms" means those who first fix the sounds contained in phonograms;
- (vii) "commercial phonograms" means copies of phonograms made for the purpose of sale to the public;
- (vii-2) "public transmission" means the transmission, by wireless communications or wire-telecommunications, intended for direct reception by the public, excluding, however, transmissions (other than transmissions of a computer program work) by wire-telecommunication facilities, one part of which is located on the same premises where all remaining parts are located or, if the premises are occupied by two or more persons, all parts of which are located within the area (within such premises) occupied by the same person(s);
- (viii) "broadcast" means the form of public transmission involving a transmission transmitted by wireless communication intended for simultaneous reception of identical content by the public;
- (ix) "broadcasting organizations" means persons who engage in the broadcasting business<sup>3</sup>;
- (ix-2) "wire-broadcast" means the form of public transmission involving a transmission transmitted by wire-telecommunication intended for simultaneous reception of identical content by the public;
- (ix-3) "wire-broadcasting organizations" means persons who engage in the wire-broadcasting business<sup>4</sup>;
- (ix-4) "automatic public transmission" means the form of public transmission which occurs automatically in response to a request from the public, excluding, however, public transmissions falling within the term "broadcast" or "wire-broadcast";

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<sup>2</sup> Despite the fact that "geino" is translated as "performing art" in the Standard Bilingual Dictionary (March 2006 edition), we believe that "public entertainment" is more appropriate in this context.

<sup>3</sup> In this context, "business" may be either for profit-making purposes or non-profit purposes.

<sup>4</sup> In this context, "business" may be either for profit-making purposes or non-profit purposes.

- (ix-5) "to make transmittable" means making an automatic public transmission possible by any of the acts set out below:
- (a) to record information on public transmission recording medium of an automatic public transmission server already connected with a telecommunications line that is provided for use by the public; to add to such an automatic public transmission server, as a public transmission recording medium thereof, a recording medium which stores information; to convert a recording medium that stores information into a public transmission recording medium of such an automatic public transmission server; or to input information into such an automatic public transmission server. For the purpose of this item (ix-5), " automatic public transmission server" means a device which, when connected with a telecommunications line provided for use by the public, functions to perform automatic public transmission of information which is either recorded on the public transmission recording medium of the transmission recording medium of such device or is inputted into such automatic public transmission server; and in this item (ix-5) and below, "public transmission recording medium" means such part of the recording medium of an automatic public transmission server as is provided for automatic public transmission use.
  - (b) to connect with a telecommunications line that is provided for use by the public, an automatic public transmission server the public transmission recording medium of which stores information or into which information has been inputted. For the purpose of this provision, if connection with a telecommunications line that is offered for use by the public is made through a series of acts, such as wiring, starting of the automatic public transmission server and putting into operation computer programs for transmission or reception the last to occur of such series of acts shall be considered to constitute the act of connection.
  - (x) "maker of a cinematographic work" means the person who takes the initiative in, and the responsibility for, the making of a cinematographic work;
  - (x-2) "computer program" means an expression of a combination of instructions to cause a computer to function in order to be able to obtain a certain result;
  - (x-3) "database" means a collection of information, such as dissertations, numerical values or diagrams, which is systematically organized so that such information can be searched by use of a computer;
  - (xi) "derivative work" means a work created by translating, arranging musically, or transforming, or dramatizing, cinematizing or otherwise adapting a pre-existing work;
  - (xii) "work of joint authorship" means a work collaboratively created by two or more persons with respect to which the contribution of each person cannot be

- severed and separately exploited;
- (xiii) "sound recording" means the fixation of sound on an object and also the production of one or more copies of such fixation;
  - (xiv) "visual recording" means the fixation of a sequence of images on an object and also the production of one or more copies of such fixation;
  - (xv) "reproduction" means the reproduction in a tangible form by means of printing, photography, photocopy, sound or visual recording or other methods; and
    - (a) in the case of [play/film] scripts and other similar dramatic works, "reproduction" includes sound and visual recording of the stage performances, broadcasts or wire-broadcasts of said works; and
    - (b) in the case of architectural works, "reproduction" includes the completion of building in accordance with the drawings therefor;
  - (xvi) "stage performance" means the performance of a work, excluding, however, musical performances ("musical performances" include singing; the same shall apply hereinafter);
  - (xvii) "screen presentation" means the projection of a work (other than a publicly transmitted work) on a screen or other object, and includes the replaying, in accompaniment with such projection, of sounds which have been fixed in a cinematographic work;
  - (xviii) "recitation" means oral communication by means of reading aloud or any other method, but excluding any oral communication falling within the term "performance";
  - (xix) "distribution" means the transfer or rental of reproductions of a work to the public, whether with or without charge, and in the case of cinematographic works or works reproduced therein, "distribution" includes the transfer of ownership or rental of, reproductions of a cinematographic work for the purpose of making such cinematographic work itself or the works reproduced therein, as the case may be, available to the public;
  - (xx) "technological protection measures" means electronic, magnetic or other measures not discernible by human senses ([all of the aforementioned measures being collectively referred to] in the next item as "electromagnetic means") used to prevent or deter acts that would constitute infringements of the moral rights of author or copyrights as provided for in Article 17, paragraph (1) or the moral rights of performer as provided for in Articles 89, paragraph (1) or the neighboring rights as provided for in Article 89, paragraph (6) ([all of the aforementioned rights being] hereinafter in this item collectively referred to as "copyright, etc.") (excluding, however, measures used without the intent of the owner of copyright, etc.), through systems which, when works, performances, phonograms or, broadcasted or

wire-broadcasted sounds or images are recorded on a recording medium or transmitted, also record or transmit signals that cause certain specific responses by machines that attempt to exploit such works, performances, phonograms, broadcasts or wire-broadcasts (in the next item collectively referred to as "works, etc."). In this item, "deter" means to deter such acts as would constitute infringements on copyright, etc. by causing extreme obstruction to the results of such acts; the same shall apply in Article 30, paragraph (1), item (ii). In this item, "exploit" includes acts which if done without the consent of the author or the performer would constitute an infringement of the moral rights of the author or the moral rights of the performer.

(xxi) "rights management information" means information concerning the moral rights of author or copyrights (each provided for in Article 17, paragraph (1)) or the rights provided for in Article 89, paragraphs (1) to (4) ([all of the aforementioned rights being] hereinafter in this item collectively referred to as "copyright, etc."), which said information falls within any of (a), (b) or (c) below and which, together with works, performances, phonograms, or broadcasted or wire-broadcasted sounds or images, is recorded on a recording medium or transmitted by electromagnetic means; excluding, however, information not used for ascertaining a work, etc.'s exploitation, for the administrative handling of authorizations to exploit the work, etc. or for other matters pertaining to copyright, etc. management (in each case, only to the extent the same is done by computer):

- (a) information which identifies the work, etc., the owners of the copyright, etc. or such other information as specified by Cabinet Order;
- (b) information regarding the manner of, and conditions for, the exploitation of the work, etc. where the exploitation of the work, etc. is authorized;
- (c) information which enables the identification of the matters mentioned in (a) or (b) above by comparison with other information.

(xxii) "within this country" means the jurisdiction where this Act is effective.

(xxiii) "outside this country" means outside the jurisdiction where this Act is effective.

(2) As used in this Act, "artistic work" includes a work of crafts of artistic value (bijutsukougeihin).

(3) As used in this Act, "cinematographic work" includes a work which (i) is expressed through a process producing visual or audio-visual effects similar to those of cinematography, and (ii) is fixed in an object.

(4) As used in this Act, "photographic work" includes a work expressed through a process similar to that of producing a photograph.

(5) As used in this Act, "the public" includes a large number of specified persons.

- (6) As used in this Act, "juridical person" includes associations and foundations that do not have juridical personality but have representatives or managers.
- (7) In this Act, "stage performances," "musical performances" and "recitations" include the stage performances, musical performances or recitations of a work by way of the replaying of sound or visual recordings of the same (excluding, however, those constituting public transmissions and screen presentations and the transmission of stage performances, musical performances or recitations of a work by means of telecommunications equipment (excluding, however, those constituting public transmissions)).
- (8) In this Act, "rental" includes any act giving rise to the acquisition of the authority to use something or any other similar act, regardless of label or means.
- (9) In this Act, the meanings assigned to the terms defined in [any of] paragraph (1), items (vii-2), (viii), (ix-2), (ix-4), (ix-5) and (xiii) to (xix) and the preceding two paragraphs shall also apply to their respective variant verb forms.

### Article 3. (Publication of a work)

- (1) A work has been "published" when reproductions of it have been made and distributed, in reasonably sufficient quantities to meet the public demand therefor given the nature of the work, by a person entitled to the right provided for in Article 21 or with the authorization of such person ("authorization" means the authorization provided for under Article 63, paragraph (1) to exploit a work; the same shall apply in this Chapter and the Chapter below, with the exception of Article 4-2 and Article 63) or by a person in favor of whom the right of publication provided for in Article 79 has been established; provided, however that the foregoing shall not apply to situations where the making and distributing of reproductions harms the rights of a person entitled to a right provided for in Article 26 or Article 26-2, paragraph (1) or Article 26-3.
- (2) An original work shall be deemed to have been "published" when reproductions of its translation (a form of derivative works) have been made and distributed, in such quantities as prescribed in the preceding paragraph, by a person who, pursuant to Article 28, is entitled to the same right as that provided for in Article 21 or by a person with authorization from such a person; provided, however, that the foregoing shall not apply to situations where the making and distributing of reproductions harms the rights of a person who, pursuant to the provisions of Article 28, is entitled to the same right as one of those provided for in Article 26, Article 26-2, paragraph (1) or Article 26-3 pursuant to the provisions of Article 28.
- (3) A person who would be entitled to a right under either of the preceding two paragraphs if its work were protected under this Act, as well as a person with authorization from such a person to exploit such work, shall be considered to be a person entitled to such right or a person who with authorization from such a

person (as the case may be), and the provisions of the preceding two paragraphs shall apply on that basis.

#### Article 4. (Making a work public)

- (1) A work has been "made public" when it has been published, or when, by means of stage performance, musical performance, screen presentation, public transmission, recitation or exhibition, it has been made available to the public [in either case,] by a person entitled to the rights provided for in Articles 22 to 25 or by a person with authorization from such a person. In the case of an architectural work, a work has been "made public" when it has been constructed by a person possessing the right provided for in Article 21 or by a person with authorization from such a person.
- (2) A work shall be deemed to have been "made public" when it has been made transmittable by a person entitled to the rights provided for in Article 23, paragraph(1) or by a person with authorization from such a person.
- (3) An original work shall be deemed to have been "made public" (a) when its translation (a form of derivative works) has been made available to the public, by a person who, pursuant to the provisions of Article 28, is entitled to the same rights as those provided for in Articles 22 to 24 or by a person with authorization from such a person, by means of its stage performance, musical performance, screen presentation, public transmission or recitation, or (b) when such translation has been made transmittable by a person who, pursuant to the provisions of Article 28, is entitled to the same rights as those provided for in Article 23, paragraph(1) or by a person with authorization from such a person.
- (4) An artistic work or a photographic work shall be deemed to have been "made public" when it has been exhibited by such a person as provided for in Article 45, paragraph (1), in such a manner as provided for in said paragraph.
- (5) A person who would be entitled to a right provided for in paragraphs (1) to (3) of this Article if his work were protected under this Act, as well as a person with authorization from such a person to exploit the work, shall be considered to be a person entitled to such right or a person with authorization from such a person (as the case may be), and the provisions of these paragraphs shall apply with respect to such persons.

#### Article 4-2. (Publication of phonograms)

A phonogram has been "published" when reproductions of the phonogram have been made and distributed, in reasonably sufficient quantities to meet the public demand therefor given the nature of the phonogram, by a person who is entitled to the right provided for in Article 96 or with authorization from such a person; provided, however, that the foregoing shall not apply to situations where the making

and distributing of reproductions harms the rights of a person entitled to a right provided for in Article 97-2, paragraph (1) or Article 97-3, paragraph (1). "Authorization" means the authorization to exploit a phonogram under the provision of Article 63, paragraph (1), as applied mutatis mutandis pursuant to Article 103; the same shall apply in Chapter IV, Sections 2 and 3).

Article 5. (Effect of international treaty)

If an international treaty provides otherwise with respect to the rights of authors and the rights neighboring thereto, the provisions of such international treaty shall prevail.

## **Section 2 Scope of Application**

Article 6. (Protected works)

Only those works falling under one of the following items shall receive protection under this Act:

- (i) works of Japanese nationals ("Japanese nationals" includes juridical persons established under the laws and regulations of Japan and those who have their principal offices in Japan; the same shall apply hereinafter);
- (ii) works first published in this country, including those first published outside this country and thereafter published within this country within thirty days from the date from their first publication;
- (iii) works in addition to those listed in the preceding two items, with respect to which Japan has the obligation to grant protection under an international treaty.

Article 7. (Protected performances)

Only those performances falling under one of the following items shall receive protection under this Act:

- (i) performances which take place within this country;
- (ii) performances fixed in the phonograms listed in item (i) or (ii) of the next Article;
- (iii) performances transmitted through the broadcasts listed in Article 9, item (i) or (ii), excluding, however, those incorporated in sound or visual recordings before transmission with the consent of the performers concerned;
- (iv) performances transmitted through wire-broadcasts listed in either item of Article 9-2, excluding, however, those recorded in sound or visual recordings before transmission with the consent of the performers concerned;
- (v) in addition to those listed in the preceding four items, any of the following performances:
  - (a) performances which take place in a contracting party to the International

Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter referred to as "the Convention for the Protection of Performers, etc.");

- (b) performances fixed in phonograms listed in item (iii) of the next Article;
- (c) performances transmitted through broadcasts listed in Article 9, item (iii), excluding, however, those recorded in sound or visual recordings before transmission with the consent of the performers concerned;
- (vi) in addition to those listed in the preceding five items, any of the following performances:
  - (a) a performances which take place in a Contracting Party to the WIPO Performances and Phonograms Treaty (hereinafter referred to as "the WPPT");
  - (b) performances fixed in the phonograms listed in item (iv) of the next Article;
- (vii) in addition to those listed in the preceding six items, any of the following performances:
  - (a) performances which take place in a member state of the World Trade Organization;
  - (b) performances fixed in phonograms listed in item (v) of the next Article;
  - (c) performances transmitted through broadcasts listed in Article 9, item (iv), excluding those incorporated in sound or visual recordings before transmission with the consent of the performers concerned.

#### Article 8. (Protected phonograms)

Only those phonograms falling under one of the following items shall receive protection under this Act:

- (i) phonograms the producers of which are Japanese nationals;
- (ii) phonograms comprising sounds first fixed within this country;
- (iii) in addition to those listed in the preceding two items, any of the following phonograms:
  - (a) phonograms the producers of which are nationals of any of the contracting parties to the Convention for the Protection of Performers, etc. ("nationals" includes juridical persons established under the laws and regulations of such contracting party and those who have their principal offices in such contracting party; the same shall apply hereinafter);
  - (b) phonograms comprising sounds first fixed in any of the contracting parties to the Convention for the Protection of Performers, etc.;
- (iv) in addition to those listed in the preceding three items, any of the following phonograms:
  - (a) phonograms the producers of which are nationals of any of the contracting parties to the WPPT ("nationals" includes juridical persons established under

- the laws and regulations of such contracting party and those who have their principal offices in such contracting party; the same shall apply hereinafter);
- (b) phonograms comprising sounds first fixed in any of the contracting parties to the WPPT;
  - (v) in addition to those listed in the preceding four items, any of the following phonograms:
    - (a) phonograms the producers of which are nationals of any of the member states of the World Trade Organization ("nationals" includes juridical persons established under the laws and regulations of such member state and those who have their principal offices in such member state; the same shall apply hereinafter.);
    - (b) phonograms comprising sounds first fixed in any of the member states of the World Trade Organization;
  - (vi) in addition to those listed in the preceding five items, phonograms which Japan has an obligation to protect under Article 121-2, item (ii) of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (referred to as "the Phonograms Convention").

#### Article 9. (Protected broadcasts)

Only those broadcasts falling under one of the following items shall receive protection under this Act:

- (i) broadcasts transmitted by broadcasting organizations of Japanese nationality;
- (ii) broadcasts transmitted from broadcasting facilities located within this country;
- (iii) in addition to those listed in the preceding two items, any of the following broadcasts:
  - (a) broadcasts transmitted by broadcasting organizations which are nationals of any of the contracting parties to the Convention for the Protection of Performers, etc.;
  - (b) broadcasts transmitted from broadcasting facilities located within any of the contracting parties of the Convention for the Protection of Performers, etc.;
- (iv) in addition to those listed in the preceding three items, any of the following broadcasts:
  - (a) broadcasts transmitted by broadcasting organizations which are nationals of any of the member states of the World Trade Organization;
  - (b) broadcasts transmitted from broadcasting facilities located within any of the member states of the World Trade Organization.

#### Article 9-2. (Protected wire-broadcasts)

Only those wire-broadcasts falling under one of the following items shall receive protection under this Act:

- (i) wire-broadcasts transmitted by wire-broadcasting organizations of Japanese nationality (excluding, however, those wire-broadcasts having the same contents as a received broadcast; the same shall apply in the next item);
- (ii) wire-broadcasts transmitted from wire-broadcasting facilities located within this country.

## **Chapter II Rights of Author**

### **Section 1 Works**

#### Article 10. (Illustrations of works)

- (1) As used in this Act, examples of "works" include, in particular, the following:
  - (i) novels, [play/film] scripts, dissertations, lectures and other literary works;
  - (ii) musical works;
  - (iii) choreographic works and pantomimes;
  - (iv) paintings, engravings, sculptures and other artistic works;
  - (v) architectural works;
  - (vi) maps as well as diagrammatical works of a scientific nature, such as drawings, charts, and models;
  - (vii) cinematographic works;
  - (viii) photographic works;
  - (ix) computer program works.
- (2) Current news reports and miscellaneous reports having the character of mere communications of facts shall not fall within the term "works" as provided in item (i) listed in the preceding paragraph.
- (3) The protection granted by this Act to works provided in paragraph (1), item (ix) shall not extend to any computer programming language, rule or algorithm used for creating such work. For the purpose of this provision, the following terms shall have the meanings hereby assigned to them, respectively, in each of the items below:
  - (i) "computer programming language" means letters and other symbols, as well as the systems for their use, as a means of expressing a computer program;
  - (ii) "[computer programming] rule" means a special rule with respect to how to use a particular computer program's computer programming language (as defined in the preceding item);
  - (iii) "[computer programming] algorithm" means the method of combining, in a computer program, the instructions given to a computer.

#### Article 11. (Derivative works)

The protection granted by this Act to derivative works shall not affect the rights of

an author to the original work.

Article 12. (Compilations)

- (1) Compilations (not falling within the term "databases"; the same shall apply hereinafter) which, by reason of the selection or arrangement of their contents, constitute intellectual creations shall be protected as independent works.
- (2) The provision set forth in the preceding paragraph shall not affect the rights of the author to each of works forming a part of the compilations set forth in said paragraph.

Article 12-2. (Database works)

- (1) Databases which, by reason of the selection or systematic construction of information contained therein, constitute intellectual creations shall be protected as independent works.
- (2) The provision set forth in the preceding paragraph shall not affect the rights of an author to a work which constitutes a part of a database set forth in said paragraph.

Article 13. (Works not protected)

A work falling under any of the following items apply shall not constitute the subject of the rights granted by the provisions of this Chapter:

- (i) the Constitution and other laws and regulations;
- (ii) public notices, instructions, circular notices and the like issued by organs of the State or local public entities, incorporated administrative agencies ("incorporated administrative agencies " means those provided for in Article 2, paragraph (1) of the Act on General Rules for Incorporated Administrative Agencies (Act No. 103 of 1999); the same shall apply hereinafter) or local incorporated administrative agencies ( "local incorporated administrative agencies" means those provided for in Article 2, paragraph (1) of the Act on Local Incorporated Administrative Agencies (Act No. 118 of 2003); the same shall apply hereinafter);
- (iii) judgments, decisions, orders and decrees of courts, as well as rulings and judgments made by government agencies in proceedings of a quasi-judicial nature;
- (iv) translations and compilations prepared by organs of the State or local public entities, incorporated administrative agencies or local incorporated administrative agencies of [any of] the materials listed in the preceding three items.

**Section 2 Authors**

Article 14. (Presumption of authorship)

A person whose name or appellation (hereinafter referred to as "true name"), or whose widely known pen name, abbreviation or other substitute for his true name (hereinafter referred to as "pseudonym"), is indicated as the name of the author in the customary manner on the original of his work or when his work is offered to or made available to the public, shall be presumed to be the author of such work.

Article 15. (Authorship of a work made by an employee in the course of his duties)

(1) The authorship of a work (except a computer program work) which, on the initiative of a juridical person or other employer (hereinafter in this Article referred to as "juridical person, etc."), is made by an employee in the course of the performance of his duties in connection with the juridical person, etc.'s business and is made public by such juridical person, etc. as a work under its own name, shall be attributed to such juridical person, etc., unless otherwise stipulated by contract, work regulations or the like at the time of the making of the work.

(2) The authorship of a computer program work which, on the initiative of a juridical person, etc. is made by an employee in the course of his duties in connection with the juridical person, etc.'s business, shall be attributed to such juridical person, etc., unless otherwise stipulated by contract, work regulations or the like at the time of the making of the work.

Article 16. (Authorship of cinematographic work)

The authorship of a cinematographic work shall be attributed to those who, by taking charge of producing, directing, filming, art direction, etc., have creatively contributed to the creation of such cinematographic work as a whole, excluding, however, authors of novels, [play/film] scripts, music or other works adapted or reproduced in such cinematographic work; provided, however, that the foregoing shall not apply where the provisions of the preceding Article are applicable.

### **Section 3 Contents of Rights**

#### **Subsection 1 General Provisions**

Article 17. (Rights of author)

(1) An author shall enjoy the rights provided for in paragraph (1) of the next Article, Article 19, paragraph (1) and Article 20, paragraph (1)(hereinafter referred to as "moral rights of author") as well as the rights provided for in Articles 21 to 28 (hereinafter referred to as "copyright").

(2) Enjoyment of the moral rights of author and copyrights shall not be subject to

any formality.

### **Subsection 2 Moral rights of author**

Article 18. (Right to make the work public)

- (1) An author shall have the right to offer and to make available to the public any work of his which has not yet been made public (which shall include a work already made public without the author's consent; hereinafter the same shall apply in this Article). The same shall apply to any derivative works arising from the author's said work.
- (2) In the cases listed in each of the items below, the author shall be presumed to have consented to the acts listed in such item:
  - (i) where the copyright in a work not yet made public has been transferred: the offering and the making available to the public of such work by exercise of the copyright thereto;
  - (ii) where the original of an artistic or photographic work not yet made public has been transferred: the making available to the public of such work by exhibition of its original;
  - (iii) where the ownership of copyright in a cinematographic work belongs to the maker of the cinematographic work pursuant to the provisions of Article 29: the offering and the making available to the public of such work by exercising the copyright thereto.
- (3) In the cases listed in each of the items below, the author shall be deemed to have consented to the acts listed in such item:
  - (i) where a work not yet made public has been offered to an administrative organ (an "administrative organ" means any of those provided for in Article 2, paragraph (1) of the Act on the Disclosure of Information Possessed by Administrative Organs (Act No. 42 of 1999; hereinafter referred to as "the Administrative Organs Information Disclosure Act")), except, however, in the case where manifestation of intention of the author to the contrary has been made by the time when the decision to disclose has been made pursuant to the provision of Article 9, paragraph (1) of the Administrative Organs Information Disclosure Act: the offering and the making available to the public of such work by the head of the administrative organ pursuant to the provisions of the Administrative Organs Information Disclosure Act;
  - (ii) where a work not yet made public has been offered to incorporated administrative agencies, etc. ("incorporated administrative agencies, etc." means any of those provided for in Article 2, paragraph (1) of the Act on the Disclosure of Information Processed by Incorporated Administrative Agencies, etc. (Act No. 140 of 2001; hereinafter referred to as "the Incorporated Administrative Agencies,

- etc. Information Disclosure Act")), except in the case where the author's manifestation of intention to the contrary has been made by the time when the decision to disclose has been made pursuant to the provision of Article 9, paragraph (1) of the Incorporated Administrative Agencies, etc. Information Disclosure Act: the offering and the making available to the public of the work by an incorporated administrative agencies, etc. pursuant to the provisions of the Incorporated Administrative Agencies, etc. Information Disclosure Act;
- (iii) where a work not yet made public has been offered to a local public entity or local independent administrative institution (except in the case where the author's manifestation of intention on the contrary has been made by the time when the decision to disclose has been made): the offering and the making available to the public of the work by the relevant organ of a local public entity or local independent administrative institution pursuant to the provisions of the relevant Information Disclosure Ordinance ( "the Information Disclosure Ordinance" means the regulations of the relevant local public entity or local independent administrative institution which provide for the right of residents, etc. to request the Disclosure of Information possessed by such entity or institution; the same shall apply hereinafter).
- (4) The provisions of paragraph (1) shall not apply in any of the following cases:
- (i) where a work, which has not yet been made public and in which information prescribed in Article 5, item (i) (b) or (c) or the proviso to Article 5, item (ii) of the Administrative Organs information Disclosure Act has been recorded, is offered or made available to the public by the head of an administrative organ pursuant to the provisions of said Article, or where a work, which has not yet been made public, is offered or made available to the public by the head of an administrative organ pursuant to the provisions of Article 7 of the Administrative Organs Information Disclosure Act;
- (ii) where a work, which has not yet been made public and in which information prescribed in Article 5, item (i) (b) or (c) or the provisions of Article 5, item (ii) of the Incorporated Administrative Agencies, etc. Information Disclosure Act has been recorded, is offered or made available to the public by an independent administrative institution, etc. pursuant to the provisions of said Article, or where a work which has not yet been made public, is offered or made public to the public by an independent administrative institution, etc. pursuant to the provisions of Article 7 of the Independent Administrative Institution, etc. Information Disclosure Act;
- (iii) where a work which has not yet been made public (and in which information equivalent to that provided for in Article 5, item (i) (b) or the proviso to Article 5, item (ii) of the Administrative Organs Information Disclosure Act is recorded) is offered or made available to the public by an organ of a local public

entity or a local independent administrative institution pursuant to the provisions of the information Disclosure Ordinance (which have provisions equivalent to Article 13, paragraphs (2) and (3) of the Administrative Organs Information Disclosure Act; the same shall apply in item (v));

(iv) where a work which has not yet been made public (and in which information equivalent to that provided for in Article 5, item (i) (c) of the Administrative Organs Information Disclosure Act has been recorded) is offered or made available to the public by an organ of a local public entity or a local independent administrative institution pursuant to the provisions of the Information Disclosure Ordinance;

(v) where a work which has not yet been made public is offered or made available to the public by an organ of a local public entity or a local independent administrative institution pursuant to provisions of the Information Disclosure Ordinance that are the equivalent of those of Article 7 of the Administrative Organs Information Disclosure Act.

#### Article 19. (Right to determine the indication of the author's name)

(1) The author shall have the right to determine whether or not his name should be indicated as the work's author, and if so, whether his true name or a pseudonym should be indicated as such on the original of his work or when his work is offered or made available to the public. The author shall have the same right with respect to the indication of the author's name when derivative works from his work are offered or presented to the public.

(2) In the absence of the author's manifestation of intention to the contrary, a person exploiting the author's work may indicate the name of the author in the same manner as already adopted by the author.

(3) It is permissible to omit the name of the author where, to the extent compatible with fair practice, it is determined that there is no risk of damage to the interests of the author in his claim to authorship in light of the purpose and the manner of the exploitation of the work.

(4) The provisions of paragraph (1) shall not apply in any of the following cases:

(i) when the name of the author is to be indicated in the same manner as already adopted by the author when said work was offered or made available to the public by the head of an administrative organ, by an independent administrative institution, etc. or by an organ of a local public entity or a local independent administrative institution pursuant to the provisions of the Administrative Organs Information Disclosure Act, the Independent Administrative Institution, etc. Information Disclosure Act or the Information Disclosure Ordinances;

(ii) when the name of the author is to be omitted at the time that his work is offered or made available to the public by the head of an administrative organ,

by an independent administrative institution, etc. or by an organ of a local public entity or a local independent administrative institution pursuant to the provisions of Article 6, paragraph (2) of the Administrative Organs Information Disclosure Act, the provisions of Article 6, paragraph (2) of the Incorporated Administrative Agencies, etc. Information Disclosure Act or the provisions of the Information Disclosure Ordinance equivalent to Article 6, paragraph (2) of the Administrative Organs Information Disclosure Act.

Article 20. (Right to maintain integrity)

- (1) The author shall have the right to maintain the integrity of his work and its title, and no distortion, mutilation or other modification thereof shall be made against his intent.
- (2) The provisions of the preceding paragraph shall not apply to any of the following modifications:
  - (i) a change of ideographs or words or other modifications considered unavoidable for school educational purposes where the exploitation of a work is made pursuant to the provisions of Article 33, paragraph (1) (including the case where it is applied mutatis mutandis pursuant to paragraph (4) of the same Article), Article 33-2, paragraph (1) or Article 34, paragraph (1);
  - (ii) a modification of an architectural work by means of extension, rebuilding, repairing, or remodeling;
  - (iii) a modification which is necessary to enable the use on a particular computer of a computer program work that is otherwise unusable on such computer, or to make more effective use of a computer program work on a computer;
  - (iv) in addition to those listed in the preceding three items, modifications that are considered unavoidable in light of the nature of a work as well as the purpose of and the manner of its exploitation.

### **Subsection 3 Types of Rights Comprising a Copyright**

Article 21. (Right of reproduction)

The author shall have the exclusive right to reproduce his work.

Article 22. (Right of performance)

The author shall have the exclusive right to perform his work publicly ("publicly" means for the purpose of making a work seen or heard directly by the public; the same shall apply hereinafter).

Article 22-2. (Right of screen presentation)

The author shall have the exclusive right to make his work publicly available by

screen presentation.

Article 23. (Rights of public transmission, etc.)

- (1) The author shall have the exclusive right to effect a public transmission of his work (including, in the case of automatic public transmission, making his work transmittable).
- (2) The author shall have the exclusive right to communicate publicly any work of his which has been publicly transmitted, by means of a receiving apparatus receiving such public transmission.

Article 24. (Right of recitation)

The author of a literary work shall have the exclusive right to recite his work publicly.

Article 25. (Right of exhibition)

The author of an artistic work or of an unpublished photographic work shall have the exclusive right to exhibit the original of his work publicly.

Article 26. (Rights of distribution)

- (1) The author of a cinematographic work shall have the exclusive right to distribute his work by distributing reproductions of said cinematographic work.
- (2) The author of a work reproduced in a cinematographic work shall have the exclusive right to distribute his work by distributing reproductions of the same.

Article 26-2. (Right of ownership transfer)

- (1) The author shall have the exclusive right to offer his work (with the exception of cinematographic works; the same shall apply below in this Article) to the public by transferring ownership of the original or reproductions of his work (excluding, however, reproductions of a cinematographic work where the author's work has been reproduced in said cinematographic work; the same shall apply below in this Article).
- (2) The provisions of the preceding paragraph shall not apply in the case of a transfer of the ownership of the original or reproductions of a work falling under any of the following items:
  - (i) the original or reproductions of a work the ownership of which has been transferred to the public by a person who possesses the right prescribed in the preceding paragraph or by a person with authorization from such a person;
  - (ii) reproductions of a work the ownership of which has been transferred to the public under the authority of a ruling [for compulsory license] under the provisions of Article 67, paragraph (1) or Article 69 or with a license under the

- provisions of Article 5, paragraph (1) of the Act on Special Provisions of the Exceptional Provisions to the Copyright Act, required as a consequence of the Enforcement of the Universal Copyright Convention (Act No. 86 of 1956);
- (iii) the original or reproductions of a work the ownership of which has been transferred to a small number of specific persons by a person who possesses the right prescribed in the preceding paragraph or by a person with authorization of such a person;
  - (iv) the original or reproductions of a work the ownership of which has been transferred outside this country, (a) without prejudice to a right that is the equivalent to that prescribed in the preceding paragraph, or (b) by a person who has a right equivalent to that prescribed in the preceding paragraph or by a person with authorization from such a person.

Article 26-3. (Right of rental)

The author shall have the exclusive right to offer his work (with the exception of a cinematographic work) to the public through the rental of reproductions of the work (excluding, however, reproductions of a cinematographic work where the author's work has been reproduced in said cinematographic work).

Article 27. (Rights of translation, adaptation, etc.)

The author shall have the exclusive right to translate, arrange musically or transform, or dramatize, cinematize, or otherwise adapt his work.

Article 28. (Right of the original author in the exploitation of a derivative work)

In connection with the exploitation of a derivative work, the author of the original work shall have exclusive rights of the same types as those possessed by the author of the derivative work under the provisions of this Subsection.

**Subsection 4 Ownership of Copyright in Cinematographic Works**

Article 29. (Ownership of copyright in cinematographic works)

- (1) The copyright to a cinematographic work (excluding, however, those to which the provisions of Article 15, paragraph (1), the next paragraph or paragraph (3) of this Article are not applicable) shall belong to the maker of said cinematographic work, provided that the authors of the cinematographic work have undertaken to participate in the making of the same.
- (2) In the case of a cinematographic work made by a broadcasting organization alone for the exclusive purpose of technologically enabling a broadcast (excluding, however, cinematographic works to which the provisions of Article 15, paragraph (1) are applicable), the following rights, which are among the various rights

comprising the copyright thereto, shall belong to said broadcasting organization as the maker of the cinematographic work:

- (i) (a) the right to broadcast said work, and (b) the right (A) to wire-broadcast said broadcasted work, or (B) to transmit said broadcasted work to the public by means of a receiving apparatus [receiving the broadcast];
  - (ii) the right to reproduce said work and the right to distribute said work to other broadcasting organizations by distribution of reproductions thereof.
- (3) In the case of a cinematographic work made by a wire-broadcasting organization alone for the exclusive purpose of technologically enabling a wire-broadcast (excluding, however, cinematographic works to which the provisions of Article 15, paragraph (1) are not applicable), the following rights, which are among the various rights comprising in the copyright thereto, shall belong to said wire-broadcasting organization as the maker of the cinematographic work:
- (i) (a) the right to wire-broadcast said work, and (b) the right to transmit said wire-broadcasted work to the public by means of a receiving apparatus [receiving the wire-broadcast];
  - (ii) the right to reproduce said work and the right to distribute said work to other wire-broadcasting organizations by distribution of reproductions thereof.

#### **Subsection 5 Limitations on Copyright**

Article 30. (Reproduction for private use)

- (1) Except in the cases listed below, it shall be permissible for the user of a work that is the subject of a copyright (below in this Subsection simply referred to as a "work") to reproduce the work for his personal use or family use or other equivalent uses within a limited scope (hereinafter referred to as "private use"):
- (i) where reproduction is made by means of automatic reproduction machines (an "automatic reproduction machine" means a machine having reproduction functions and in which all or the main parts of its reproducing devices have been automated) installed for the use by the public;
  - (ii) where (a) reproduction has become possible by the circumvention of technological protection measures or as a result of such circumvention, the results of acts deterred by such technological protection measures have ceased to be obstructed, and (b) reproduction is made with the knowledge of the facts described in (a) above. For purposes of this item and Articles 120-2, items (i) and (ii), "circumvention" means to enable acts prevented by technological protection measures or to cause cessation of the obstruction of the results of acts deterred by such technological protection measures, in each case, by removal or modification of signals used for such measures; provided, however, that "removal" or "modification" shall not include removal or modification which

necessarily occurs because of technological restrictions accompanying the conversion of recording or transmission systems.

- (2) Any person who, for private use purposes, makes sound or visual recordings on a recording medium used for digital sound and visual recordings (as specified by Cabinet Order) by means of a machine possessing functions to make digital sound or visual recordings (as specified by Cabinet Order) (excluding, however, (i) machines having special capacities generally not for private use, such as capacities for broadcast business purposes, and (ii) machines having sound or visual recording functions incidental to their primary functions, such as telephones with a sound recording function) shall pay a reasonable amount of compensation to the copyright holders concerned.

#### Article 31. (Reproduction in libraries, etc.)

In the following cases, it shall be permissible to reproduce a work included in library materials (in this Article, "library materials" means books, documents and other materials held in [the collection of] libraries, etc.) as an activity falling within the scope of the non-profit-making activities of libraries, etc. (in this Article, "libraries, etc." means libraries and other establishments designated by Cabinet Order and having among their purposes, the providing of library materials for use by the public):

- (i) where, in response to the request of a user of a library, etc. and for the purpose of his research or study, such user is furnished with a single reproduction of (a) a part of a work already made public, or (b) in the case of an individual work reproduced in a periodical already published for a considerable period of time, all of such individual work;
- (ii) where the reproduction is necessary for the purpose of preserving library materials;
- (iii) where, in response to the request of other libraries, etc., a reproduction of [a work constituting] library materials is furnished because such work is difficult to obtain due to such work being out of print or other similar reasons.

#### Article 32. (Quotations)

- (1) It shall be permissible to quote from and thereby exploit a work already made public, provided that such quotation is compatible with fair practice and to the extent justified by the purpose of the quotation, such as news reporting, critique or research.
- (2) It shall also be permissible to reproduce, as explanatory materials, in newspapers, magazines and other publications informational materials, public relations materials, statistical materials, reports and other similar works which have been prepared by organs of the State or local public entities or incorporated

administrative agencies or local incorporated administrative agencies for the purpose of general public dissemination and made public under their authorship; provided, however, that the foregoing shall not apply where there is an express indication [on the work] that such reproduction has been expressly prohibited.

Article 33. (Reproduction in school textbooks, etc.)

- (1) It shall be permissible to reproduce in school textbooks ("school textbooks" means textbooks authorized by the Minister of Education and Science or those compiled under the authorship of the Ministry of Education and Science for use in the education of pupils or students in primary schools, junior or senior high schools, schools for secondary education or other equivalent schools; the same shall apply in the next Article) works already made public, to the extent deemed necessary for the purpose of school education.
- (2) A person who makes such reproduction in a school textbook pursuant to the preceding paragraph shall notify the author thereof and pay to the copyright holder compensation, the amount of which will be fixed each year by the Commissioner of the Agency for Cultural Affairs, taking into account the spirit of the provisions of the preceding paragraph, the type and the usage of the work, the ordinary royalty rate, and other factors.
- (3) The Commissioner of the Agency for Cultural Affairs shall give public notice in the Official Gazette of the amount of compensation fixed in accordance with the provisions of the preceding paragraph.
- (4) The provisions of the preceding three paragraphs shall apply mutatis mutandis with respect to the reproduction of works in textbooks intended for correspondence courses of senior high schools (including the senior grade course at schools for secondary education) and in teachers' manuals for school textbooks set forth in paragraph (1) (such teachers' manuals shall be limited to those published by the same publisher of the related school textbooks).

Article 33-2. (Reproduction in order to prepare a textbook, etc. in large print)

- (1) It shall be permissible to reproduce a work already reproduced in a school textbook, by enlarging letters and characters, illustrations, etc. used in said school textbook for the purpose of providing the same for use by weak-sighted pupils or students in their studies.
- (2) A person who intends to prepare a textbook for school education by reproduction of a work or works contained in a school textbook by enlarging the letters and characters, illustrations, etc. [of such work(s)] pursuant to the provisions of the preceding paragraph (textbooks for school education shall in this paragraph be limited to only those which reproduce the whole or a considerable portion of a work that is printed in the relevant school textbook; such textbooks for school education

being in this paragraph referred to as "large-print textbooks for school education") shall give advance notice to the publisher of the said textbook and, in the case where copies of such large-print textbook for school education are to be distributed for profit-making purposes, pay to the holder(s) of the copyright compensation, the amount of which will be fixed each year by the Commissioner of the Agency for Cultural Affairs in proportion to the amount of compensation provided for in paragraph (2) of the preceding Article.

- (3) The Commissioner of the Agency for Cultural Affairs shall give public notice in the Official Gazette of the amount of compensation fixed in accordance with the provisions of the preceding paragraph.

Article 34. (Broadcast, etc. in school education programs)

- (1) It shall be permissible, to the extent deemed necessary for school educational purposes, to broadcast or transmit by wire-broadcast a work already made public, in educational broadcast programs or educational wire-broadcast programs which conform to the education course standards established by the laws and regulations on school education, and to reproduce such already-made-public work in teaching materials for these broadcasted and wire-broadcasted programs.
- (2) A person who exploits a work pursuant to the preceding paragraph shall give notice to the [work's] author and pay to the copyright holder a reasonable amount of compensation.

Article 35. (Reproduction, etc. in schools and other educational institutions)

- (1) A person who teaches a lesson, and those who receive the lesson, in a school or other educational institutions (excluding, however, those institutions established for profit-making purposes) may, if and to the extent deemed necessary for use in the course of the lesson, reproduce a work already made public; provided, however, that the foregoing shall not apply in the case where such reproduction is likely to unreasonably prejudice the interests of the copyright holder in light of the type and the usage of the work as well as the number of copies and the manner of reproduction.
- (2) When, in the course of a lesson at an educational institution set forth in the preceding paragraph, exploiting a work already made public, by (a) offering or presenting the original or reproductions of such work to those who directly take lessons, or (b) by performing, presenting or reciting it pursuant to the provisions of Article 38, paragraph (1), it shall be permissible to make public transmissions of such work (including, in the case of an automatic public transmission, making such work transmittable) for reception by those who are receiving the same lesson at the same time but at a location other than where such lesson is being given; provided, however, that the foregoing shall not apply in the case where such public

transmission is likely to unreasonably prejudice the interests of the copyright holder in light of the type and the usage of the work as well as the manner of the public transmission. Since there is no Japanese-equivalent, this should be deleted.

Article 36. (Reproduction, etc. as examination questions)

- (1) It shall be permissible to reproduce or make public transmissions (excluding, however, broadcasts or wire-broadcasts, but including, in the case of automatic public transmission, making a work transmittable; the same shall apply in the next paragraph) of, a work already made public, as questions for an entrance examination or other examinations of knowledge or skill or for a license, to the extent deemed necessary for such purposes; provided, however, that the foregoing shall not apply in the case where such reproduction or public transmission[, as the case may be,] is likely to unreasonably prejudice the interests of the copyright holder in light of the type and usage of the work as well as the manner of the public transmission.
- (2) A person who, for profit-making purposes, makes such reproduction or public transmission as set forth in the preceding paragraph shall pay to the copyright holder compensation in an amount which corresponds to the ordinary royalty rate.

Article 37. (Reproduction in Braille, etc.)

- (1) It shall be permissible to reproduce in Braille a work already made public.
- (2) It shall be permissible to record on a recording medium, or to make public transmissions (excluding, however, broadcasts or wire-broadcasts, but including, in the case of automatic public transmission, making a work transmittable) of, a work already made public, by means of a Braille-processing system using a computer.
- (3) For Braille libraries and other establishments (designated by Cabinet Order) for the promotion of the welfare of the persons with visual disabilities, it shall be permissible, solely for the purpose of renting by persons with visual disabilities, to make sound recordings of a work already made public.

Article 37-2. (Automatic public transmission for persons with aural disabilities)

A person, designated by Cabinet Order, who engages in activities for the promotion of the welfare of persons with aural disabilities, may, solely for the purpose of providing the same for use by persons with aural disabilities, make automatic public transmissions (including making a work transmittable by means of inputting information into an automatic public transmission server already connected to a telecommunications line which is provided for use by the public) of broadcasted or wire-broadcasted work, by converting oral words of such work into written words.

Article 38. (Performances, etc. not for profit-making purposes)

- (1) It shall be permissible to publicly perform, present and/or recite a work already made public, for non-profit-making purposes and if no fees are charged to the audience or spectators ("fees" includes consideration of any kind whatsoever for the offering and the making available of a work to the public; the same shall apply below in this Article), to audiences or spectators. The foregoing, however, shall not apply when the performers or reciters concerned are paid any remuneration for such performance, presentation or recitation.
- (2) It shall be permissible, for non-profit-making purposes and if no fees are charged to the audience or spectators, to wire-broadcast a work already broadcasted.
- (3) It shall be permissible, for non-profit-making purposes and if no fees are charged to the audience or spectators, to communicate to the public, by means of a receiving apparatus, a work already broadcasted or wire-broadcasted. The same shall apply to such public communication made by means of a receiving apparatus of a kind commonly used in private homes.
- (4) It shall be permissible, for non-profit-making purposes and if no fees are charged to borrowers, to offer to the public a work (excluding a cinematographic work) already made public, by renting reproductions of the work (excluding, in the case of a work reproduced in the cinematographic work, reproductions of the cinematographic work).
- (5) For audiovisual education establishments and other not-for-profit establishments designated by Cabinet Order and having among its purposes the providing of cinematographic films and other audiovisual materials for use by the public, it shall be permissible to distribute a cinematographic work already made public by renting reproductions of the work, if no fees are charged to borrowers of such reproductions. In such case, the person who makes such distribution shall pay a reasonable amount of compensation to the owner of the right prescribed in Article 26 (including the owner of the same right as that prescribed in Article 26 pursuant to the provisions of Article 28) with respect to such cinematographic work or a work reproduced in such cinematographic work.

Article 39. (Reproduction, etc. of editorials on current topics)

- (1) It shall be permissible to reproduce in other newspapers or magazines, and to broadcast or wire-broadcast, editorials published in newspapers or magazines on current political, economic or social topics (excluding, however, those of an academic nature); provided, however, that the foregoing shall not apply if there is an indication [in or near the editorial] that such exploitation is prohibited.
- (2) It shall also be permissible to communicate to the public, by means of a receiving apparatus, editorials broadcasted or wire-broadcasted pursuant to the preceding paragraph.

Article 40. (Exploitation of political speeches, etc.)

- (1) It shall be permissible to exploit, by any means (other than exploitation involving a compilation of works of the same author), political speeches and statements delivered in public and statements delivered in the course of judicial proceedings (including administrative trials of governmental agencies and other quasi-judicial proceedings; the same shall apply in Article 42).
- (2) It shall be permissible to reproduce in newspapers and magazines, and to broadcast and wire-broadcast, speeches and statements (other than those prescribed in the preceding paragraph) publicly delivered in organs of the State or local public entities, incorporated administrative agencies or local incorporated administrative agencies, to the extent justified for purposes of news reporting.
- (3) It shall also be permissible to communicate to the public, by means of a receiving apparatus, speeches and statements broadcasted or wire-broadcasted in accordance with the provisions of the preceding paragraph.

Article 41. (Reporting of current events)

For the purpose of reporting current events by means of photography, cinematography, broadcast or otherwise, it shall be permissible to reproduce a work involved in such event or a work seen or heard in the course of the event, and to exploit any such work in conjunction with the reporting of such event, in each case to the extent justified for purposes of news reporting.

Article 42. (Reproduction for judicial proceedings, etc.)

It shall be permissible to reproduce a work if and to the extent deemed necessary for the purpose of judicial proceedings or for internal use by legislative or administrative organs; provided, however, that the foregoing shall not apply where such reproduction is likely to unreasonably prejudice the interests of the copyright holder in light of the type and the usage of the work as well as the number of reproductions and the manner of reproduction.

Article 42-2. (Exploitation for purposes of disclosure pursuant to the Administration Organs Information Disclosure Act, etc.)

For the purpose of offering or making available to the public a work pursuant to the provisions of the Administration Organs Information Disclosure Act, the Incorporated Administrative Agencies, etc. Information Disclosure Act or the Information Disclosure Ordinance, the head of an administration organ, an independent administrative institution, etc., an organ of a local public entity or a local independent administrative institution may, if and to the extent deemed necessary for purposes of disclosure, exploit the work in accordance with the method

(s) prescribed, respectively, in (a) Article 14, paragraph (1) of the Administration Organs Information Disclosure Act (including the provisions of the Cabinet Order based upon said paragraph), (b) Article 15, paragraph (1) of the Incorporated Administrative Agencies, etc. Information Disclosure Act (including the method(s) established by the relevant independent administrative institution, etc. based upon said paragraph, other than those provided for by the Cabinet Order based upon the provisions of Article 14, paragraph (1) of the Administration Organs Information Disclosure Act), or (c) the Information Disclosure Ordinances (excluding the method (s) other than those prescribed in Article 14, paragraph (1) of the Administration Organs Information Disclosure Act, which in turn includes the provisions of the Cabinet Order based upon said paragraph).

Article 43. (Exploitation by means of translation, adaptation, etc.)

When exploitation of a work is permitted under any of the items listed below, such exploitation may be done pursuant to the method and in accordance with the provisions set forth in each respective item below:

- (i) Article 30, paragraph (1) or Article 33, paragraph (1) (including the case where applied *mutatis mutandis* pursuant to paragraph (4) of the same Article), Article 34, paragraph (1) or Article 35: translation, arrangement, transformation, and adaptation;
- (ii) Article 31, item (i), Article 32, 36 or 37, Article 39, paragraph (1), Article 40, paragraph (2), or Article 41 or 42: translation.
- (iii) Article 37-2: adaptation (limited to summary forms only).

Article 44. (Ephemeral recordings by broadcasting organizations, etc.)

- (1) Broadcasting organizations may make ephemeral sound or visual recordings of a work which they are in a position to broadcast without infringing the rights [of the author] provided for in Article 23, paragraph (1), for purposes of their own broadcasts and through use of their own facilities or those of other broadcasting organizations which are also in a position to broadcast the same work.
- (2) Wire-broadcasting organizations may make ephemeral sound or visual recordings of a work which they are in a position to wire-broadcast without infringing the rights of [the author] provided for in Article 23, paragraph (1), for purposes of their own wire-broadcasts (except those made upon reception of broadcasts) and through use of their own facilities.
- (3) It shall not be permissible to preserve ephemeral sound or visual recordings made pursuant to the provisions of the preceding two paragraphs for a period beyond six months of their recordation, or, if the recordings are broadcasted or wire-broadcasted within this period, for a period beyond six months of said broadcast or wire-broadcast. The foregoing, however, shall not apply when

preservation in official archives is authorized by Cabinet Order.

Article 45. (Exhibition of an artistic work, etc. by the owner of the original)

- (1) The original of an artistic work or a photographic work may be publicly exhibited by its owner or by a person with authorization from said owner.
- (2) The provisions of the preceding paragraph shall not apply with respect to a permanent installation of the original of an artistic work in open places accessible by the public, such as streets and parks, or at places easily seen by the public, such as the outer walls of buildings.

Article 46. (Exploitation of an artistic work, etc. located in open places)

With the exception of the following instances, it shall be permissible to exploit, by any means whatsoever, an artistic work permanently installed in an open place as provided for in paragraph (2) of the preceding Article and an architectural work:

- (i) reproduction of a sculpture and offering such reproduction to the public by transferring ownership of it;
- (ii) [imitative] reproduction of an architectural work and offering such [imitative] reproduction to the public by transferring ownership of it;
- (iii) reproduction of a work for the purpose of permanent installation in an open place as provided for in paragraph (2) of the preceding Article;
- (iv) reproduction of an artistic work exclusively for the purpose of selling its reproductions and the sale of such reproductions.

Article 47. (Reproduction required for exhibition of artistic works, etc.)

A person who publicly exhibits the originals of artistic works or photographic works in a manner that does not harm the rights [of the author] provided for in Article 25, may reproduce such works in pamphlets for the purpose of explaining or introducing them to viewers.

Article 47-2. (Reproduction, etc. by the owner of the reproduction of a computer program work)

- (1) The owner of a reproduction of a computer program work may make reproductions or adaptations (including reproductions of derivative works created by means of such adaptation) of said work if and to the extent deemed necessary for his own exploitation of said work on a computer; provided, however, that the foregoing shall not apply where the provisions of Article 113, paragraph (2) applies to the use made of such reproductions in connection with such exploitation.
- (2) If the owner of the reproductions discussed in the preceding paragraph ceases to have ownership of any of such reproductions (including reproductions made pursuant to the provisions of said paragraph), for reasons other than the

destruction of the same, he may not thereafter preserve other reproductions, in the absence of any declaration of intention of the copyright holder to the contrary.

Article 47-3. (Transfer of ownership of reproductions made pursuant to the provisions of limitations on the right of reproduction)

Works permitted to be reproduced pursuant to the provisions of Article 31, item (i), Article 32, Article 33, paragraph (1) (including the cases where applied *mutatis mutandis* pursuant to paragraph (4) of the same Article), Article 33-2, paragraph (1), Article 34, paragraph (1), Article 35, paragraph (1), Article 36, paragraph (1), Article 37, paragraph (1) or (2), Article 39, paragraph (1), Article 40, paragraph (1) or (2), Article 41, 42, 42-2, 46 or 47 (excluding, however, in cases involving the provisions of Article 31, item (i), Article 35, paragraph (1), Article 36, paragraph (1) or Article 42, reproductions of cinematographic works (including, in the case of works reproduced in cinematographic works, reproductions of such cinematographic works; the same shall apply below in this Article)) may be offered to the public by transferring ownership of the reproductions made pursuant to these provisions. The foregoing, however, shall not apply where the ownership of reproductions of Works made pursuant to the provisions of Article 31, item (i), Article 33-2, paragraph (1), Article 35, paragraph (1), Article 41, 42 or 42-2 (excluding, however, in cases involving the provisions of Article 31, item (i), Article 33-2, paragraph (1), Article 35, paragraph (1) or Article 42, copies of cinematographic works) is transferred to the public for purposes other than those provided for in Article 31, item (i), Article 35, paragraph (1), Article 41, 42 or 42-2.

Article 48. (Clear indication of source)

(1) In each of the cases listed in the items below, the source of the work prescribed in such item must be clearly indicated in the manner and to the extent deemed reasonable in light of the manner of the reproduction and/or exploitation:

(i) where reproduction of works is made pursuant to the provisions of Article 32, Article 33, paragraph (1) (including the case where applied *mutatis mutandis* pursuant to the provisions of paragraph (4) of the same Article), Article 33-2, paragraph (1), Article 37, paragraph (1) or (3), or Article 42 or 47;

(ii) where exploitation of works is made pursuant to the provisions of Article 34, paragraph (1), Article 37-2, Article 39, paragraph (1), or Article 40, paragraph (1) or (2);

(iii) where exploitation of works, by means other than by reproduction, is made pursuant to the provisions of Article 32, or where exploitation of works is made pursuant to the provisions of Article 35, Article 36, paragraph (1), Article 38, paragraph (1), or Article 41 or 46, if, in each case, standard practice so requires.

(2) When clearly indicating the source in accordance with the preceding paragraph,

the name of the author that appears on said work must be indicated, except in cases where the author's name is clearly identifiable as a result of such clear indication or where the work is anonymous.

- (3) Where exploitation is made of works by translating, arranging musically, transforming or adapting them pursuant to the provision of Article 43, clear indication of the source of the work must be made, as provided for in the provisions of the preceding two paragraphs.

Article 49. (Uses, etc. of reproductions for other purposes)

- (1) The following person shall be deemed to have made a reproduction as provided for in Article 21:

- (i) a person who either (a) distributed reproductions of works made pursuant to, but for purposes other than those provided for in, the provisions of Article 30, paragraph (1), Article 31, item (i), Article 33-2, paragraph (1), Article 35, paragraph (1), Article 37, paragraph (3), or Articles 41 to 42-2, or Article 44, paragraph (1) or (2), or (b) made available to the public works through such reproductions;
- (ii) a broadcasting organization or wire-broadcasting organization which preserved ephemeral recordings in violation of the provisions of Article 44, paragraph (3);
- (iii) a person who either [(a)] distributed reproductions of works made pursuant to the provisions of Article 47-2, paragraph (1) (excluding, however, reproductions falling within those provided for in item (ii) of the next paragraph), or [(b)] made works available to the public through such reproductions;
- (iv) a person who preserved reproductions set forth in Article 47-2, paragraph (2) in violation of said paragraph (excluding, however, reproductions falling within those provided for in item (ii) of the next paragraph).

- (2) The following persons shall be deemed to have made a translation, musical arrangement, transformation or adaptation as provided for in Article 27 with respect to original works of the derivative works concerned:

- (i) a person who either (a) distributed reproductions of derivative works made pursuant to the provisions of Article 30, paragraph (1), Article 31, item (i), Article 35, Article 37, paragraph (3), or Article 41 or 42, by virtue of the application of the provisions of Article 43, paragraph (1) or (2), or (b) made such derivative works available to the public through such reproductions, in each case, for purposes other than those provided for in the aforementioned provisions;
- (ii) a person who either [(a)] distributed reproductions of a derivative work made pursuant to the provision of Article 47-2, paragraph (1), or [(b)] made

- such derivative work available to the public through such reproductions;
- (iii) a person who preserves reproductions set forth in the preceding item in violation of the provisions of Article 47-2, paragraph (2).

Article 50. (Relationship with moral rights of author)

The provisions of this Subsection shall not be construed as affecting the moral rights of an author.

**Section 4 Term of Protection**

Article 51. (In general)

- (1) The duration of a copyright shall begin at the time of the creation of the work.
- (2) Unless otherwise provided in this Section, the copyright shall continue to subsist until the end of the fifty year period following the death of the author (or in the case of a work of joint authorship, following the death of the last surviving co-author; the same shall apply in paragraph (1) of the next Article).

Article 52. (Term of protection for anonymous or pseudonymous works)

- (1) The copyright in an anonymous or pseudonymous work shall continue to subsist until the end of the fifty year period following the making public of the work; provided, however, that if the fifty year period following the death of the work's author is found to have ended before the expiration of said fifty year period following the making public of the work, then the copyright in such work shall be deemed to expire at the time found to be the end of the fifty year period following the death of said work's author.
- (2) The provisions of the preceding paragraph shall not apply in any of the following cases:
- (i) where the pseudonym adopted by the author with respect to a pseudonymous work is widely known as that of the author;
  - (ii) where, within the period set forth in the preceding paragraph, the author causes his true name to be registered pursuant to the provisions of Article 75, paragraph (1);
  - (iii) where, within the period set forth in the preceding paragraph, the author makes public his work on which he indicates his true name or a widely known pseudonym of his, as the name of the author.

Article 53. (Term of protection for works under the name of a corporate body)

- (1) The copyright in a work bearing the name of a juridical person or other corporate body as that of its author [including a work which does not bear any name as the name of its author but which, if made public, would bear the name of

a juridical person or other corporate body as the name of its author] shall continue to subsist until the end of the fifty year period following the making public of the work, or if the work is not made public within the fifty year period following its creation, then until the end of the fifty year period following said work's creation.

(2) The provisions set forth in the preceding paragraph shall not apply where, within the period set forth in the preceding paragraph, an individual who is the author of a work bearing the name of a juridical person or other corporate body as the name of its author, makes public the work on which he indicates his true name or a widely known pseudonym of his, as the name of the author.

(3) With respect to the duration of a copyright in a work the authorship of which is attributed to a juridical person or other corporate body pursuant to the provisions of Article 15, paragraph (2), the provisions of paragraph (1) shall apply even to a work which does not qualify as a work dealt with in paragraph (1), as if such work bore the name of such corporate body as that of its author.

#### Article 54. (Term of protection for cinematographic works)

(1) The copyright in a cinematographic work shall continue to subsist until the end of the seventy year period following the making public of the work, or if the work has not been made public within the seventy year period following its creation, then until the end of the seventy year period following the work's creation.

(2) When the copyright in a cinematographic work expires by reason of the expiration of its duration, the copyright in the original work [with respect to which said cinematographic work is a derivative work], as far as the exploitation of said cinematographic work is concerned, shall be deemed to also expire [at the time of the expiration of the copyright in said cinematographic work].

(3) The provisions of the preceding two Articles shall not apply to copyrights in cinematographic works.

#### Article 55. [Deleted]

#### Article 56. (Time when serial publications, etc. are made public)

(1) The time when a work is made public for the purposes of Article 52, paragraph (1), Article 53, paragraph (1), and Article 54, paragraph (1), shall be, [(a)] in the case of a work made public in successive volumes, issues or installments, at the time when each volume, issue or installment is made public, and [(b)] in the case of a work gradually made public in parts, at the time when its last part is made public.

(2) In the case of a work gradually made public in parts, the part last made public shall be deemed to be the last part for the purpose of the preceding paragraph if the part that is supposed to follow next is not made public within three years after

the immediately preceding part was made public.

Article 57. (Calculation of the term of protection)

In the case of Article 51, paragraph (2), Article 52, paragraph (1), Article 53, paragraph (1), and Article 54, paragraph (1), when determining the end of the fifty year period following the death of the author, the end of the fifty year period following either the making public of a work or the creation of a work, as well as the end of the seventy year period following either the making public of a work or the creation of a work, calculation shall be made from the beginning of the year following the year in which the death of the author, the making public of the work or the creation of the work, as the case may be, occurred.

Article 58. (Special provisions for the term of protection)

If the country of origin of a work (other than a work with respect to which Article 6, item (i) is applicable) is a foreign state which is a member of the International Union established by the Berne Convention for the Protection of Literary and Artistic Works, a contracting party to the WIPO Copyright Treaty or a member state of the World Trade Organization pursuant to the provisions of the Berne Convention, the WIPO Treaty or the Marrakech Agreement Establishing the World Trade Organization, as the case may be, and if the duration of the copyright therein granted by that country of origin is shorter than that provided for in Articles 51 to 54, then the duration of the copyright shall be that granted by said country of origin.

### **Section 5 Personal Nature of Moral Rights of Author, etc.**

Article 59. (Personal nature of moral rights of author)

The moral rights of author shall be personal and exclusive to the author and cannot be transferred.

Article 60. (Protection of moral interests after author's death)

(1) Even after the death of the author, no person who offers or makes available a work to the public may commit an act which would constitute an act of infringement upon the moral rights of author if the author were alive; provided, however, that the foregoing shall not apply to such act where it is found to not be against the will of the author in light of the nature and extent of the act as well as changes in social circumstances and other conditions.

### **Section 6 Transfer and Expiry of Copyright**

Article 61. (Transfer of copyright)

- (1) A copyright may be transferred in whole or in part.
- (2) Where a contract for the transfer of a copyright makes no particular reference to the rights provided for in Article 27 or 28 as the rights being transferred thereunder, it shall be presumed that such rights have been reserved to the transferor.

Article 62. (Termination of copyright in the absence of heirs, etc.)

- (1) A copyright shall terminate in the following cases:
  - (i) where, upon the author's death, the copyright escheats to the National Treasury pursuant to the provisions of Article 959 (Escheatment of Remaining Assets to National Treasury) of the Civil Code (Act No. 89 of 1896);
  - (ii) where, upon the dissolution of a juridical person who is the copyright holder, the copyright escheats to the National Treasury pursuant to the provisions of Article 72, paragraph (3) (Escheatment of Remaining Assets to National Treasury) of the Civil Code or the provisions of other equivalent acts.
- (2) The provisions of Article 54, paragraph (2) shall apply mutatis mutandis in the case where the copyright in a cinematographic work terminates pursuant to the provisions of the preceding paragraph.

### **Section 7 Exercise of Rights**

Article 63. (Authorization to exploit works)

- (1) The copyright holder may authorize another person to exploit the work which is the subject of his copyright.
- (2) A person who obtains authorization pursuant to the preceding paragraph may exploit the subject work in the manner and to the extent so authorized.
- (3) The right to exploit the work which is the subject of an authorization granted pursuant to paragraph (1) may not be transferred without the consent of the copyright holder.
- (4) Unless otherwise stipulated by contract, an authorization to broadcast or wire-broadcast a work does not include an authorization to make sound or visual recordings of said work.
- (5) The provisions of Article 23, paragraph(1) shall not apply to the making transmittable of a work by a person who has obtained authorization to make a work transmittable pursuant to paragraph (1), to the extent the making transmittable of such work is made repeatedly or by means of another automatic public transmission server in the manner and to the extent so authorized; provided, however, that such manner and/or extent do not deal with the frequency of the making transmittable of such work or with the automatic public transmission server to be utilized for the making transmittable of such work.

Article 64. (Exercise of moral rights of co-authors)

- (1) The moral rights of co-authors of a work of joint authorship may not be exercised without the unanimous agreement of all co-authors.
- (2) A co-author of a work of joint authorship may not, in bad faith, prevent the agreement set forth in the preceding paragraph from being reached.
- (3) Co-authors may appoint, from among themselves, one co-author to exercise their moral rights, as their representative.
- (4) Limitations on the authority of a person to exercise the rights referred to in the preceding paragraph as a representative, may not be asserted against a third party without knowledge [of such limitations].

Article 65. (Exercise of joint copyright)

- (1) A co-holder of a copyright in a work of joint authorship or of any other co-owned copyright (hereinafter in this Article referred to as "joint copyright") may not transfer or pledge his share without the consent of the other co-holders.
- (2) A joint copyright may not be exercised without the unanimous agreement of all co-holders.
- (3) In the preceding two paragraphs, a co-holder may not, without justifiable grounds, refuse to give the consent provided for in paragraph (1) or prevent the agreement provided for in the preceding paragraph from being reached.
- (4) The provisions of paragraphs (3) and (4) of the preceding Article shall apply *mutatis mutandis* to the exercise of a joint copyright.

Article 66. (Copyright which is the subject of a pledge)

- (1) The copyright holder shall be entitled to exercise the copyright even when a pledge has been established thereon, unless otherwise provided by the act of establishment.
- (2) A pledge on a copyright may also be exercised on the money or any other thing to be received by the copyright holder in connection with the transfer of said copyright or the exploitation of the work which is the subject of the copyright (including any consideration for establishment of a right of publication); provided, however, that before payment or delivery [of the money or other thing], the right to receive the same has been attached.

### **Section 8 Exploitation of Work under Ruling [for Compulsory License]**

Article 67. (Exploitation of work where the copyright holder thereof is unknown, etc.)

- (1) When, despite reasonable efforts, it is not possible to contact the copyright holder because his identity is unknown or for other [similar] reasons, then it shall be

possible to exploit, under authority of a ruling [for compulsory license] issued by the Commissioner of the Agency for Cultural Affairs and upon depositing, for the benefit of the copyright holder, compensation in the amount fixed by the Commissioner as corresponding to the ordinary amount of royalty therefor, a work which has been made public or a work as to which it is clear that it has been offered or made available to the public for a considerable period of time.

- (2) A reproduction of a work made pursuant to the provisions of the preceding paragraph shall indicate that it is a reproduction made pursuant to a ruling [for compulsory license] issued pursuant to the provisions of said paragraph and the date when said ruling [for compulsory license] was issued.

Article 68. (Broadcasting of a work)

- (1) A broadcasting organization which wishes to broadcast a work that has already been made public may, after first requesting consultation with the work's copyright holder regarding authorization to broadcast the work and failing to reach agreement through such consultation, or when unable to enter into consultation with the work's copyright holder regarding such authorization, broadcast such work under the authority of a ruling [for compulsory license] issued by the Commissioner of the Agency for Cultural Affairs and upon payment to the copyright holder of compensation in the amount fixed by the Commissioner as corresponding to the ordinary amount of royalty therefor.
- (2) Works broadcasted pursuant to the provisions of the preceding paragraph may also be wire-broadcasted or communicated to the public by means of a receiving apparatus. In such case, the person making such wire-broadcast or communication to the public must pay to the copyright holder compensation in an amount corresponding to the ordinary amount of royalty therefor, except in the case where the provisions of Article 38, paragraphs (2) or (3) are applicable.

Article 69. (Recording, etc. on a commercial phonogram)

When a commercial phonogram has been sold for the first time in this country and three years have passed from the date of the first sale of such commercial phonogram, a person wishing to make a sound recording of a musical work recorded on such phonogram with the authorization of such musical work's copyright holder and to thereby manufacture a different commercial phonogram may, after first requesting consultation with the music work's copyright holder regarding authorization to make a sound recording of such work or to offer such sound recording to the public and failing to reach agreement through such consultation, or when unable to enter into consultation with the work's copyright holder, make such sound recording or offer such sound recording to the public by transfer of ownership under the authority of a ruling [for compulsory license] issued by the Commissioner of the Agency for

Cultural Affairs and upon payment to the copyright holder of compensation in the amount fixed by the Commissioner as corresponding to the ordinary amount of royalty therefor.

Article 70. (Procedures and standards for a ruling [for compulsory license])

- (1) Applicants for a ruling [for compulsory license] provided for in Article 67, paragraph (1), Article 68, paragraph (1) or the preceding Article shall pay an application fee, the amount of which shall be fixed by Cabinet Order taking into account the actual costs thereof.
- (2) The provisions of the preceding paragraph shall not apply to cases where the person who would [otherwise] be required to pay the application fee pursuant to the provisions of said paragraph is the State or an independent administrative institution designated by Cabinet Order by taking into consideration the nature of its business or other circumstances (in Article 78, paragraph (5) and Article 107, paragraph (2), collectively referred to as "the State, etc.").
- (3) Upon receipt of an application for a ruling [for compulsory license] provided for in Article 68, paragraph (1) or the preceding Article, the Commissioner of the Agency for Cultural Affairs shall notify the copyright holder concerned of such application and afford him an opportunity to state his opinion within a reasonable period of time specified by the Commissioner.
- (4) Upon receipt of an application for a ruling [for compulsory license] provided for in Article 67, paragraph (1), Article 68, paragraph (1) or the preceding Article, the Commissioner of the Agency for Cultural Affairs shall not issue such a ruling [for compulsory license] when he finds that any of the following items applies:
  - (i) that it is clear that the author has the intention to forever cease the publication or other exploitation of his work; or
  - (ii) that unavoidable circumstances will not permit the copyright holder whose work is the subject of the application for a ruling [for compulsory license] provided for in Article 68, paragraph (1) to give the authorization to broadcast said work.
- (5) When, as per the provisions of the preceding paragraph, the Commissioner of the Agency for Cultural Affairs intends to not issue the ruling [for compulsory license], it shall give advance notice to the applicant of its reasons for such refusal and afford the applicant an opportunity to explain his case and furnish evidence in support thereof. When [finally] making the decision to refuse to issue a ruling [for compulsory license], the Commissioner shall notify the applicant of such denial, in writing, accompanied by the reasons therefor.
- (6) Upon issuance of the ruling [for compulsory license] provided for in Article 67, paragraph (1), the Commissioner of the Agency for Cultural Affairs shall give public notice thereof in the Official Gazette and at the same time, notify the

applicant of such issuance. Upon issuance of the ruling [for compulsory license] provided for in Article 68, paragraph (1) or the preceding Article, the Commissioner shall notify the parties concerned of such issuance.

(7) In addition to those matters provided for in the preceding paragraphs, other matters necessary in connection with the rulings [for compulsory license] provided for in this Section shall be provided by Cabinet Order.

### **Section 9 Compensation**

Article 71. (Consultation with the Council for Cultural Affairs)

When fixing the amount of compensation provided for in Article 33, paragraph (2) (including the case where applied mutatis mutandis pursuant to the provisions of paragraph (4) of the same Article), Article 33-2, paragraph (2), Article 67, paragraph (1), Article 68, paragraph (1), and Article 69, the Commissioner of the Agency for Cultural Affairs shall consult with the Council for Cultural Affairs.

Article 72. (Action with respect to the amount of compensation fixed)

(1) Concerned parties who are dissatisfied with the amount of compensation fixed pursuant to the provisions of Article 67, paragraph (1), Article 68, paragraph (1) or Article 69 may, within six months of learning that a ruling [for compulsory license] has been issued in accordance with such provisions, bring an action for an increase or decrease of the amount of compensation.

(2) In the action set forth in the preceding paragraph, the copyright holder shall be the defendant when the person who brings the action is the exploiter of the work, and the exploiter of the work shall be the defendant when the person who brings the action is the copyright holder.

Article 73. (Limitations on objections to the amount of compensation fixed)

In an objection raised under the Administrative Dissatisfaction Inspection Act (Act No. 160 of 1962) to a ruling [for compulsory license] issued pursuant to the provisions of Article 67, paragraph (1), Article 68, paragraph (1) or Article 69, dissatisfaction with the amount of the compensation fixed shall not constitute a reason for dissatisfaction with the issuance of the ruling [for compulsory license]; provided, however, that the foregoing shall not apply in the case where the person who obtains a ruling [for compulsory license] provided for in Article 67, paragraph (1) is unable to bring an action provided for in paragraph (1) of the preceding Article because the identity of the copyright holder is unknown or for other equivalent reasons.

Article 74. (Deposit of compensation)

- (1) In any of the following cases, a person who is required to pay the compensation provided for in Article 33, paragraph (2) (including the case where applied mutatis mutandis pursuant to the provisions of paragraph (4) of the same Article), Article 33-2, paragraph (2), Article 68, paragraph (1) or Article 69 shall, instead of paying the compensation [to the copyright holder], deposit said compensation:
  - (i) where the copyright holder refuses or is unable to receive the compensation;
  - (ii) where, without negligence on the part of said person, the copyright holder cannot be ascertained;
  - (iii) where said person brings an action provided for in Article 72, paragraph (1) with respect to the amount of the compensation;
  - (iv) where a pledge has been established on the copyright (except in the case where authorization has been obtained from the pledgee).
- (2) In the case of item (iii) of the preceding paragraph, at the request of the copyright holder, the person who is required to pay the compensation shall pay [to the copyright holder] an amount based upon his own estimate and deposit the difference between his estimated amount and the amount of compensation fixed in the ruling [for compulsory license].
- (3) The deposit of the compensation pursuant to the provisions of Article 67, paragraph (1) or (2) shall be made (a) with the deposit office nearest to the domicile or residence of the copyright holder in the event that said copyright holder is domiciled or maintains a residence at a known address in this country, or (b) in all other cases, with the deposit office nearest to the domicile or the residence of the depositor, as the case may be.
- (4) The person who has made a deposit pursuant to the provisions of the preceding paragraph shall promptly notify the copyright holder of the fact of said deposit. The foregoing, however, shall not apply in the case where the depositor is unable to notify the copyright holder because the identity of the copyright holder is unknown or for other [similar] reasons.

## **Section 10 Registration**

Article 75. (Registration of true name)

- (1) The author of a work that is made public, anonymously or pseudonymously, may have his true name registered with respect to said work, regardless of whether he actually owns the copyright therein.
- (2) The author may, [even] after his death, obtain the registration of his true name as set forth in the preceding paragraph through a person designated in his [testamentary] will.
- (3) A person whose true name has been registered shall be presumed to be the author of the work which is the subject of said registration.

Article 76. (Registration of the date of first publication, etc.)

- (1) The copyright holder [of any work], as well as the publisher of an anonymous or pseudonymous work, may have registered said work's date of first publication or the date when the work was first made public.
- (2) Works as to which the date of first publication or the date of its first having been made public has been registered shall be presumed to have been first published or first made public on said registered date.

Article 76-2. (Registration of the date of creation)

- (1) The author of a computer program work may have the date of the creation of his computer program work registered. The foregoing, however, shall not apply where six months have passed since the creation of said work.
- (2) A work as to which the date of [its] creation has been registered as set forth in the preceding paragraph shall be presumed to have been created on said registered date.

Article 77. (Registration of copyright)

Unless registered, the matters set forth in the following items may not be asserted against a third party:

- (i) the transfer (other than by inheritance or other universal successions; the same shall apply in the next item) of the copyright or a restriction on the disposal of the copyright;
- (ii) the establishment, transfer, modification or termination of the pledge on a copyright (other than termination by reason of merger or by reason of the termination of the copyright or the claim secured by the pledge), or a restriction on the disposal of a pledge established on the copyright.

Article 78. (Procedures, etc. for registration)

- (1) The registrations provided for in Article 75, paragraph (1), Article 76, paragraph (1), Article 76-2, paragraph (1) and the preceding Article are accomplished by the Commissioner of the Agency for Cultural Affairs' entry [of the relevant matters] in the copyright registry.
- (2) Upon accomplishment of the registration set forth in Article 75, paragraph (1), the Commissioner of the Agency for Cultural Affairs shall give public notice of such registration in the Official Gazette.
- (3) Any person may request that the Commissioner of the Agency for Cultural Affairs provide a transcript or extract of the copyright registry or a copy of the documents annexed thereto or an opportunity to inspect the copyright registry and the documents annexed thereto.

- (4) A person making a request pursuant to the preceding paragraph shall pay a processing fee, the amount of which shall be fixed by Cabinet Order, taking into account the actual costs thereof.
- (5) The provisions of the preceding paragraph shall not apply where the person who would [otherwise] be required to pay the processing fee pursuant to the provisions of said paragraph is the State, etc.
- (6) The provisions of Chapters II and III of the Administrative Procedures Act (Act No. 88 of 1993) shall not apply to measures taken in connection with registrations provided for in paragraph (1).
- (7) The provisions of the Administration Organs Information Disclosure Act shall not apply to the copyright registry and the documents annexed thereto.
- (8) The provisions of Chapter IV of the Act on the Protection of Personal Information Possessed by Administrative Organs (Act No. 58 of 2003) shall not apply to government-possessed personal information recorded in the copyright registry and the documents annexed thereto. The term "government-possessed personal information" means such information as provided for in Article 2, paragraph (3) of said Act.
- (9) In addition to those matters provided for in this Section, other matters necessary in connection with registrations provided for in paragraph (1) shall be provided by Cabinet Order.

Article 78-2. (Special provisions for the registration of a computer program work)

In addition to those matters provided for in this Section, other matters pertaining to the registration of computer program works shall be provided by other acts.

### **Chapter III Right of Publication**

Article 79. (Establishment of the right of publication)

- (1) The holder of the right provided for in Article 21 (in this Chapter referred to as "the holder of right of reproduction") may establish a right of publication in favor of a person who undertakes to publish the work in a document or picture.
- (2) If a pledge is established on the right of reproduction, the holder of the right of reproduction shall only be able to establish a right of publication with the consent of the pledgee.

Article 80. (Subject matter of the right of publication)

- (1) The holder of a right of publication shall, for the purpose of distribution and as provided by the act of establishment, possess the exclusive right to reproduce the original of the work with respect to which the right of publication has been established, without change and in a document or a picture, by means of printing

or other mechanical or chemical processes.

- (2) If [(a)] the author of the subject work dies within the duration of the right of publication or [(b)] unless otherwise provided by the act of establishment, three years have passed since the first publication following the establishment of the right of publication, the holder of the right of reproduction may, notwithstanding the provisions set forth in the preceding paragraph, reproduce the work in compilations, such as complete collections, comprised only of the works of the same author.
- (3) The holder of the right of publication may not authorize a third person to reproduce the work with respect to which the right of publication has been established.

#### Article 81. (Obligation of publication)

Unless otherwise provided by the act of establishment, the holder of the right of publication shall have the following obligations:

- (i) the obligation to publish the work within six months of the date of receiving, from the holder of the right of reproduction, manuscripts or other originals or other equivalent items that are necessary for the reproduction of the work; and
- (ii) the obligation to publish the work continuously in conformity with business practice.

#### Article 82. (Revision and/or additions or deletions of work)

- (1) In the case of a new reproduction made by the holder of the right of publication, the author may, to the extent reasonable, make revisions, and additions or deletions, to his work.
- (2) Whenever the holder of the right of publication intends to make a new reproduction of the work with respect to which his right of publication has been established, the holder of the right of publication shall notify the author [of such work], in advance, of such intention.

#### Article 83. (Duration of the right of publication)

- (1) The duration of the right of publication shall be as stipulated by the act of establishment [of said right of publication].
- (2) When the duration of the right of publication is not stipulated by the act of establishment [of said right of publication], the right of publication shall expire at the end of the three-year period following the day of first publication after the establishment of said right.

#### Article 84. (Right to terminate the right of publication)

- (1) When the holder of the right of publication is in breach of his obligation under

Article 81, item (i), the holder of the right of reproduction may terminate said right of publication by notice to the holder thereof.

- (2) When the holder of the right of publication is in breach of his obligation under Article 81, item (ii), the holder of right of reproduction may terminate said right of publication by notice to the holder thereof in the event that despite demand by the holder of the right of reproduction for the holder of the right of publication to perform [its said obligation] within a period established by the holder of the right of reproduction (which period must be three months or more), performance is not made within said period.
- (3) When the substance of a work has become incompatible with the views of the author who is also the holder of the right of reproduction, he may, by notice to the owner of the right of publication, terminate the right of publication in order to effect the permanent cessation of the publication of the work; provided, however, that the foregoing shall not apply unless said author compensates the holder of the right of publication, in advance, for any damages that ordinarily arise as a result of the permanent cessation of publication.

Article 85. Deleted.

Article 86. (Limitation on the right of publication)

- (1) The provisions of Article 30, paragraph (1), Articles 31 and 32, Article 33, paragraph (1) (including where applied mutatis mutandis pursuant to the provision of paragraph (4) of the same Article), Article 33-2, paragraph (1), Article 34, paragraph (1), Article 35, paragraph (1), Article 36, paragraph (1), Article 37, paragraph (1), Article 39, paragraph (1), Article 40, paragraphs (1) and (2), Articles 41 to 42-2, and Articles 46 and 47 shall apply mutatis mutandis to the reproduction of works with respect to which the right of publication has been established. In these cases, the term "the copyright holder" in Article 35, paragraph (1) and Article 42 shall be deemed to be replaced with "the holder of the right of publication".
- (2) The person who, for purposes other than those provided for in Article 30, paragraph (1), Article 31, item (i), Article 33-2, paragraph (1), Article 35, paragraph (1), Article 41, 42 or 42-2, as applied mutatis mutandis pursuant to the preceding paragraph, distributes reproductions of a work which have been made by virtue of the application of said provisions or makes said work available to the public by distributing said reproductions, shall be deemed to have made reproductions as provided for in Article 80, paragraph (1).

Article 87. (Transfer, etc. of the right of publication)

The right of publication may be transferred or pledged only with the authorization

of the holder of the right of reproduction.

Article 88. (Registration of the right of publication)

- (1) Unless registered, the matters set forth in the following items may not be asserted against a third party:
  - (i) the establishment, transfer (other than by inheritance or other universal successions; the same shall apply in the next item), modification or termination (other than termination by reason of merger, or because of the termination of the right of reproduction), or a restriction on disposal of the right of publication;
  - (ii) the establishment, transfer, modification or termination of a pledge on a right of publication (other than termination by reason of merger of the pledge, or because of the termination of the right of publication or the claim secured thereby), or a restriction on disposal of the pledge established on the right of publication.
- (2) The provisions of Article 78 (except for paragraph (2) thereof) shall apply mutatis mutandis to the registration set forth in the preceding paragraph. In such case, the term "the copyright registry" in Article 78, paragraphs (1), (3), (7) and (8) shall be deemed to be replaced with "the registry of the right of publication".

## **Chapter IV Neighboring Rights**

### **Section 1 General Provisions**

Article 89. (Neighboring rights)

- (1) The performer shall enjoy the rights provided for in Article 90-2, paragraph (1) and Article 90-3, paragraph (1) (hereinafter referred to as "moral rights of performer") and the rights provided for in Article 91, paragraph (1), Article 92, paragraph (1), Article 92-2, paragraph (1) and Article 95-2, paragraph (1) and Article 95-3, paragraph (1), as well as the right to secondary use fees provided for in Article 95, paragraph (1) and the right to remuneration provided for in Article 95-3, paragraph (3).
- (2) The producer of a phonogram shall enjoy the rights provided for in Articles 96 and 96-2, Article 97-2, paragraph (1) and Article 97-3, paragraph (1), as well as the right to secondary use fees provided for in Article 97, paragraph (1) and the right to remuneration provided for in Article 97-3, paragraph (3).
- (3) The broadcasting organization shall enjoy the rights provided for in Articles 98 to 100.
- (4) The wire-broadcasting organization shall enjoy the rights provided for in Articles 100-2 to 100-5.
- (5) Enjoyment of the rights referred to in each of the preceding paragraphs shall not

be subject to any formality.

- (6) The rights referred to in paragraphs (1) to (4) (other than the moral rights of performer, as well as the right to secondary use fees and the right to remuneration referred to in paragraphs (1) and (2)), are called "neighboring rights".

Article 90. (Relationship between the rights of authors and neighboring rights)

The provisions of this Chapter shall not be construed as affecting the rights of authors.

## **Section 2 Rights of Performer**

Article 90-2. (Right to indicate name)

- (1) When a performer's performance is offered or made available to the public, the performer shall have the right to determine whether his name, his stage name or any other alternative to his name should be indicated as the name of the performer, or whether the name of the performer is to be indicated at all.
- (2) In the absence of any manifestation of intention by the performer to the contrary, a person exploiting a performance may indicate the name of the performer in the same manner as already adopted by the performer.
- (3) It shall be permissible to omit any indication of the name of the performer where, in light of the purpose and the manner of exploitation of a performance, it is determined that there is no risk of harming the interests of the performer to assert that he is the performer of his performance or that such omission is compatible with fair practice.
- (4) The provisions of paragraph (1) shall not apply in any of the following cases:
- (i) if the name of the performer is indicated in the same manner as already adopted by the performer when his performance is offered or made available to the public by the head of a government organization, by an incorporated administrative agency, etc. or by an organ of a local public entity or a local incorporated administrative agency pursuant to the provisions of the Administrative Organs Information Disclosure Act, the Incorporated Administrative Agencies, etc. Information Disclosure Act or Information Disclosure Ordinances;
  - (ii) if the name of the performer is to be omitted at the time that his performance is offered or made available to the public by the head of an administrative organ, by an incorporated administrative agency, etc. or by an organ of a local public entity or a local incorporated administrative agency pursuant to the provisions of Article 6, paragraph (2) of the Administrative Organs Information Disclosure Act, the provisions of Article 6, paragraph (2) of the Incorporated Administrative Agencies, etc. Access to Information Act or the provisions of the

Information Disclosure Ordinances equivalent to those of Article 6, paragraph (2) of the Administrative Organs Information Disclosure Act.

Article 90-3. (Right to preserve integrity)

- (1) The performer shall have the right to preserve the integrity of his performance against any distortion, mutilation or other modification that would harm his honor or reputation.
- (2) The provisions of the preceding paragraph shall not apply to modifications deemed unavoidable in light of the nature of the performance as well as the purpose and manner of its exploitation, or to modifications deemed not to be incompatible with fair practice.

Article 91. (Right to make sound or visual recordings)

- (1) The performer shall have the exclusive right to make sound or visual recordings of his performance.
- (2) The provisions of the preceding paragraph shall not apply to sound or visually recorded performances which have been incorporated into cinematographic works with the authorization of the person entitled to the right provided for in the preceding paragraph, except where such recorded performances are to be incorporated into sound recordings (excluding, however, those sound recordings intended to be replayed exclusively with images).

Article 92. (Right to broadcast and right to wire-broadcast)

- (1) The performer shall have the exclusive rights to broadcast and to wire-broadcast his performance.
- (2) The provisions of the preceding paragraph shall not apply in the following cases:
  - (i) in the case of a wire-broadcast of a broadcasted performance;
  - (ii) in the case of a broadcast or a wire-broadcast of the following performances:
    - (a) sound or visually recorded performances made with the authorization of the person entitled to the right provided for in paragraph (1) of the preceding Article;
    - (b) sound or visually recorded performances provided for in paragraph (2) of the preceding Article, excluding, however, the sound recordings provided for in said paragraph.

Article 92-2. (Right to make transmittable)

- (1) The performer shall have the exclusive right to make his performance transmittable.
- (2) The provisions of the preceding paragraph shall not apply to the following performances:

- (i) visually recorded performances made with the authorization of the person entitled to the right provided for in Article 91, paragraph(1);
- (ii) sound or visually recorded performances provided for in Article 91, paragraph (2), excluding, however, the sound recordings provided for in said paragraph.

Article 93. (Fixation for broadcast purposes)

- (1) A broadcasting organization which has obtained authorization from the person entitled to the right to broadcast provided for in Article 92, paragraph (1) to broadcast a performance may make sound or visual recordings of such performance for the purpose of broadcasting the same; provided, however, that the foregoing shall not apply where contractually otherwise provided or where the sound or visual recording is to be used for the purpose of broadcasting a program different in contents from the program authorized for broadcasting.
- (2) The following persons shall be deemed to have made the sound or visual recording provided for in Article 91, paragraph (1):
  - (i) a person who used or offered a sound or visual recording made pursuant to the provisions of the preceding paragraph (a) for a purpose other than broadcasting said recording, or (b) for the purpose provided for in the proviso to the same paragraph;
  - (ii) a broadcasting organization which has been offered a sound or visual recording made pursuant to the provisions of the preceding paragraph and which re-offered the same to another broadcasting organization for rebroadcasting by the latter.

Article 94. (Broadcast of fixation, etc. made for broadcast purposes)

- (1) Unless contractually otherwise provided, when the person entitled to the right provided for in Article 92, paragraph (1) authorizes the broadcast of the performance, the performance may be broadcasted not only in the broadcast so authorized, but in the following broadcasts as well:
  - (i) a broadcast which uses sound or visual recordings made pursuant to the provisions of paragraph (1) of the preceding Article, by a broadcasting organization which has obtained said authorization;
  - (ii) a broadcast which [(a)] uses sound or visual recordings made by the broadcasting organization which has obtained said authorization pursuant to the provisions of paragraph (1) of the preceding Article, and [(b)] is supplied by such broadcasting organization;
  - (iii) a broadcast (other than the broadcast set forth in the preceding item) which uses authorized programs supplied by the broadcasting organization which has obtained said authorization.
- (2) When broadcasting a performance in a broadcast provided for in any of the items

of the preceding paragraph, the broadcasting organization provided for in said item shall pay a reasonable amount of remuneration for said performance to the person entitled to the right provided for in Article 92, paragraph (1).

Article 95. (Secondary use of commercial phonograms)

- (1) When a broadcasting organization or wire-broadcasting organization (below in this Article and in Article 97, paragraph (1) referred to as "broadcasting organization, etc.") broadcasts or wire-broadcasts using commercial phonograms incorporating a sound recording of the [subject] performance, which sound recording has been made with the authorization of the person entitled to the right provided for in Article 91, paragraph (1) (excluding broadcasts or wire-broadcasts made following reception of such broadcast or wire-broadcast), it shall pay a secondary use fee to the performer of said performance (only, however, to the extent of the duration of the neighboring rights for performances provided for in Article 7, items (i) to (vi); the same shall apply in the next paragraph through paragraph (4)).
- (2) As far as the Contracting States of the Convention for the Protection of Performers, etc. are concerned, the provisions of the preceding paragraph shall apply to a performer whose performance is fixed in a phonogram the producer of which is a national of a country which is a Contracting State, other than a Contracting State which, pursuant to the provisions of Article 16 (1) (a) (i) of said Convention, has declared that it will not apply the provisions of Article 12 of said Convention.
- (3) With respect to a phonogram provided for in Article 8, item (i), when the term of protection granted by a contracting state to the Convention for the Protection of Performers, etc. pursuant to Article 12 of the Convention is shorter than the period of protection enjoyed by a performer under the provisions of paragraph (1), the term of protection to be enjoyed pursuant to said paragraph by a performer whose performance is fixed in a phonogram the producer of which is a national of said Contracting State shall correspond to the term of protection which, pursuant to the provisions of Article 12 of said Convention, is granted by said contracting state with respect to phonograms provided for in Article 8, item (i).
- (4) In the case of a performer whose performance is fixed in a phonogram the producer of which is a national of a country [(a)] which is a contracting state to the WPPT (excluding, however, a contracting state to the Convention for the Protection of Performers, etc.) and [(b)] which has made certain reservations pursuant to the provisions of Article 15 (3) of the WPPT, the provisions of paragraph (1) shall apply, within the limitations of the reservations so made.
- (5) When there exists an association (including a federation of associations) composed of a considerable number of professional performers doing business in

this country, which the Commissioner of the Agency for Cultural Affairs designates, with the consent of such association, to have the right to receive the secondary use fees provided for in the paragraph (1), then such right shall be exercised exclusively through such association.

- (6) The Commissioner of the Agency for Cultural Affairs may not make a designation of an association as set forth in the preceding paragraph, unless such association satisfies the following requirements:
  - (i) that it is not established for profit-making purposes;
  - (ii) that its members may freely join and withdraw;
  - (iii) that its members are granted equal rights to vote and to elect;
  - (iv) that it has sufficient ability to perform properly by itself the business of exercising the rights to receive secondary use fees provided for in paragraph (1) for its respective holders (below in this Article referred to as "the rightholders").
- (7) When requested by a rightholder, the association set forth in paragraph (5) may not refuse to exercise the rightholder's right for him.
- (8) When a request set forth in the preceding paragraph is made, the association set forth in paragraph (5) has the authority, for the benefit of the rightholder and in its own name, to take all judicial and non-judicial action in connection with said right.
- (9) As may be provided by Cabinet Order, the Commissioner of the Agency for Cultural Affairs may require that the association set forth in paragraph (5) report on its business concerning the secondary use fees provided for in paragraph (1), request the submission of accounting books, documents and other materials, and/or make necessary recommendations for improving the manner of the execution of said association's business.
- (10) The amount of the secondary use fee which the association set forth in paragraph (5) may demand on behalf of the rightholder pursuant to the provisions of paragraph (5) shall be fixed each year by consultation between said association and [each of] the broadcasting organizations, etc. or federation of the broadcasting organizations, etc.
- (11) If the consultation set forth in the preceding paragraph does not result in an agreement, the parties concerned may, as provided by Cabinet Order, request that the Commissioner of the Agency for Cultural Affairs issue a ruling [for compulsory license] fixing the amount of the secondary use fees provided for in the preceding paragraph.
- (12) The provisions of Article 70, paragraphs (3), (6) and (7), as well as those of Articles 71 to 74, shall apply mutatis mutandis to the ruling [for compulsory license] and the secondary use fees provided for in the preceding paragraph. In such case, the term "the copyright holder" in Article 70, paragraph (3) shall be deemed to be replaced with "the parties concerned", the term "the exploiter of the

work" in Article 72, paragraph (2) shall be deemed to be replaced with "broadcasting organizations, etc. provided for in Article 95, paragraph (1)", the term "the copyright holder" in the same paragraph shall be deemed to be replaced with "the association provided for in paragraph (5) of the same Article, and the term "the copyright holder" in Article 74 shall be deemed to be replaced with "the association provided for in Article 95, paragraph (5)".

- (13) The provisions of the Act on Prohibition of Private Monopoly and Maintenance of Fair Trade (Act No. 54 of 1947) shall not apply to the determination resulting from the consultation provided for in paragraph (10) and to the acts done on the basis of such determination; provided, however, that the foregoing shall not apply where unfair trade practices are used or where application of the foregoing would unreasonably harm the interests of businesses concerned.
- (14) In addition to those matters provided for in paragraphs (5) to the preceding paragraph, other necessary matters regarding the payment of the secondary use fees provided for in paragraph (1) and the association provided for in paragraph (5) shall be provided for by Cabinet Order.

#### Article 95-2. (Right to transfer ownership)

- (1) The performer shall have the exclusive right to offer his performance to the public by transferring ownership of sound or visual recordings of his performance.
- (2) The provisions of the preceding paragraph shall not apply to the following performances:
- (i) visually recorded performances produced with the authorization of the person entitled to the right provided for in Article 91, paragraph (1);
  - (ii) sound or visually recorded performances provided for in Article 91, paragraph (2), other than the sound recordings provided for in said paragraph.
- (3) The provisions of paragraph (1) shall not apply when the offer is by transferring of ownership of a sound or visual recording of a performance (except for those performances listed in each of the items in the preceding paragraph; the same shall apply below in this Article), where any of the following items are applicable to such sound or visual recording:
- (i) a sound or visual recording of a performance the ownership of which recording has been transferred to the public by the person entitled to the right provided for in paragraph (1) or by a person with authorization from such person;
  - (ii) a sound or visual recording of a performance the ownership of which recording has been transferred to a small number of specific persons by the person entitled to the right provided for in paragraph (1) or by a person with authorization from such person;
  - (iii) a sound or visual recording of a performance the ownership of which

recording has been transferred, outside this country, (a) without prejudice to rights equivalent to that provided for in paragraph (1), or (b) by the person entitled to a right equivalent to that provided for in said paragraph or by a person with authorization from such person.

Article 95-3. (Right of rental, etc.)

- (1) The performer shall have the exclusive right to offer his performance to the public by rental of a commercial phonogram in which his performance has been sound recorded.
- (2) The provisions of the preceding paragraph shall not apply when the offering is by rental of a commercial phonogram after the period established by Cabinet Order (which shall be one month or more, but not more than twelve months, from the day of the first sale of such phonogram) (including another phonogram all reproductions of which have contents identical to those of said commercial phonogram; hereinafter referred to as "post-period commercial phonograms").
- (3) Where a person who engages in the business of the rental of commercial phonograms to the public (hereinafter referred to as "commercial phonograms renters") offers a performance to the public by rental of post-period commercial phonograms, he shall pay a reasonable amount of remuneration to the performer whose performance (to the extent within the duration of the neighboring rights therein) is incorporated in such phonogram.
- (4) The provisions of Article 95, paragraphs (5) to (14) shall apply mutatis mutandis to the right to receive remuneration provided for in the preceding paragraph. In such case, the term "broadcasting organizations, etc." throughout paragraph (10) of the same Article and "broadcasting organizations, etc. provided for in Article 95, paragraph (1)" throughout paragraph (12) of the same Article shall be deemed to be replaced with "commercial phonograms renters provided for in Article 95-3, paragraph (3)".
- (5) The right to receive royalties with respect to the authorization given by the person entitled to the right provided for in paragraph (1) may be exercised through the association provided for in Article 95, paragraph (5), which shall apply mutatis mutandis in the preceding paragraph.
- (6) The provisions of Article 95, paragraphs (7) to (14) shall apply mutatis mutandis to the case provided for in the preceding paragraph. In such case, the provisions of the second sentence of paragraph (4) of this Article shall apply mutatis mutandis.

**Section 3 Rights of Producer of Phonograms**

Article 96. (Right of reproduction)

The producer of a phonogram shall have the exclusive right to reproduce his phonogram.

Article 96-2. (Right to make transmittable)

The producer of a phonogram shall have the exclusive right to make his phonogram transmittable.

Article 97. (Secondary use of commercial phonograms)

- (1) When a broadcasting organization, etc. broadcasts or wire-broadcasts using a commercial phonogram (other than a broadcast or wire-broadcast made following reception of such broadcast or wire-broadcast), it shall pay secondary use fees to the producer of said phonogram (to the extent that said phonogram falls under any of items (i) to (iv) of Article 8 and to the extent that the duration of the neighboring rights therein has yet to expire) which has been so broadcasted or wire-broadcasted.
- (2) The provisions of Article 95, paragraphs (2) and (4) shall apply mutatis mutandis to the producer of a phonogram provided for in the preceding paragraph, and the provisions of paragraph (3) of the same Article shall apply mutatis mutandis to the term of protection provided for in the preceding paragraph. In such case, the term "a performer whose performance is fixed in a phonogram the producer of which is a national" in paragraphs (2) to (4) of the same Article shall be deemed to be replaced with "a producer of a phonogram who is a national", and the term "the period of protection enjoyed by a performer" in paragraph (3) of the same Article shall be deemed to be replaced with "the period of protection enjoyed by a producer of a phonogram".
- (3) Where there exists an association (including a federation of associations) which is composed of a considerable number of producers of phonograms doing business in this country which the Commissioner of the Agency for Cultural Affairs designates, with the consent of such association, to have the right to receive the secondary use fees provided for in the paragraph (1), then such right shall be exercised exclusively through such association.
- (4) the provisions of Article 95, paragraphs (6) to (14) shall apply mutatis mutandis to secondary use fees provided for in paragraph (1) and to the association set forth in the preceding paragraph.

Article 97-2. (Right to transfer ownership)

- (1) The producer of a phonogram shall have the exclusive right to offer his phonogram to the public by transferring ownership of reproductions of his phonogram.
- (2) The provisions of the preceding paragraph shall not apply when the offer is by

transferring the ownership of a reproduction of a phonograms with respect to which any of the following items apply:

- (i) a reproduction of a phonogram the ownership of which has been transferred to the public by the person entitled to the right provided for in the preceding paragraph or by a person with authorization from such person;
- (ii) a reproduction of a phonogram the ownership of which has been transferred to a small number of specific persons by the holder of the right provided for in the preceding paragraph or by a person with authorization from the holder of said right;
- (iii) a reproduction of a phonogram the ownership of which has been transferred, outside this country, (a) without prejudice to rights equivalent to that provided for in the preceding paragraph, or (b) by the person entitled to a right equivalent to that provided for in said paragraph or by a person with authorization from such person.

Article 97-3. (Right of rental, etc.)

- (1) The producer of a phonogram shall have the exclusive right to offer his phonogram to the public by rental of a commercial phonogram in which his phonogram has been reproduced.
- (2) The provisions of the preceding paragraph shall not apply when the offer is by rental of post-period commercial phonograms.
- (3) When a commercial phonograms renter has offered a phonogram to the public by rental of a post-period commercial phonogram, he shall pay a reasonable amount of remuneration to the producer whose phonogram (to the extent that the duration of the neighboring rights therein has yet to expire) has been so offered to the public.
- (4) The provision of Article 97, paragraph (3) shall apply mutatis mutandis to the exercise of the right to receive remuneration set forth in the preceding paragraph.
- (5) The provisions of Article 95, paragraphs (6) to (14) shall apply mutatis mutandis to the remuneration provided for in paragraph (3) of this Article and to the associations provided for in Article 97, paragraph (3), which are applied mutatis mutandis in the preceding paragraph. In such case, the provisions of the second sentence of Article 95-3, paragraph (4) shall apply mutatis mutandis.
- (6) The right to receive royalty with respect to the authorization given by the person entitled to the right provided for in paragraph (1) of this Article may be exercised through the association provided for in Article 97, paragraph (3), which is applied mutatis mutandis in paragraph (4) of this Article.
- (7) The provisions of paragraph (5) shall apply mutatis mutandis to the case provided for in the preceding paragraph. In such case, the term "Article 95, paragraph (6)" in paragraph (5) shall be deemed to be replaced with "Article 95, paragraph (7)".

## **Section 4 Rights of Broadcasting Organization**

### Article 98. (Right of reproduction)

A broadcasting organization shall have the exclusive right to make sound or visual recordings and/or otherwise reproduce by means of photography or other similar processes, the sounds or images incorporated in its broadcast following reception of the broadcast or the wire-broadcast made following reception of the broadcast.

### Article 99. (Right to rebroadcast and right to wire-broadcast)

- (1) A broadcasting organization shall have the exclusive right to rebroadcast and to wire-broadcast its broadcast following reception thereof.
- (2) The provisions of the preceding paragraph shall not apply to a wire-broadcast which a person who wire-broadcasts following reception of a broadcast is required by laws and regulations to make.

### Article 99-2. (Right to make transmittable)

The broadcasting organization shall have the exclusive right to make transmittable its broadcasts following reception thereof or of wire-broadcasts made following reception of said broadcasts.

### Article 100. (Right to transmit television broadcasts)

A broadcasting organization shall have the exclusive right to transmit its broadcasts to the public, by use of special equipment to enlarge images, following reception of its television broadcasts or its wire-broadcasts made following reception of said broadcasts.

## **Section 5 Rights of Wire-Broadcasting Organization**

### Article 100-2. (Right of reproduction)

A wire-broadcasting organization shall have the exclusive right to make sound or visual recordings of, or otherwise reproduce by means of photography or other similar processes, the sounds or images incorporated in its wire-broadcasts, following reception of said wire-broadcasts.

### Article 100-3. (Right to broadcast and right to wire-broadcast)

A wire-broadcasting organization shall have the exclusive right to broadcast and to re-wire-broadcast its wire-broadcasts following reception thereof.

### Article 100-4. (Right to make transmittable)

A wire-broadcasting organization shall have the exclusive right to make its wire-broadcasts transmittable following reception of such wire-broadcasts.

Article 100-5. (Right to transmit television wire-broadcasts)

A wire-broadcasting organization shall have the exclusive right to transmit its wire-broadcasts to the public, by use of special equipment to enlarge images, following reception of its television wire-broadcasts.

### **Section 6 Term of Protection**

Article 101. (Term of protection for performances, phonograms, broadcasts and wire-broadcasts)

(1) The duration of neighboring rights shall begin at the following moments in time:

- (i) for a performance, when the performance took place;
- (ii) for a phonogram, when the first fixation of sounds was made;
- (iii) for a broadcast, when the broadcast took place;
- (iv) for a wire-broadcast, when the wire-broadcast took place.

(2) The duration of neighboring rights shall expire at the following moments in time:

- (i) for a performance, the passage of fifty years commencing with the year immediately following the year when the performance took place;
- (ii) for a phonogram, the passage of fifty years commencing with the year immediately following the year when its publication occurred, or when publication has not been made by the end of the period of fifty years commencing with the year immediately following the year when the first fixation of sound was made, then the passage of fifty years commencing with the year immediately following the year when the first fixation of sound occurred;
- (iii) for a broadcast, the passage of fifty years commencing with the year immediately following the year when the broadcast took place;
- (iv) for a wire-broadcast, the passage of fifty years starting with the year immediately following the year when the wire-broadcast took place.

### **Section 7 Personal Nature of Moral Rights of Performer, etc.**

Article 101-2. (Personal nature of moral rights of performer)

The moral rights of performer shall be personal and exclusive to the performer and cannot be transferred.

Article 101-3. (Protection of the moral interests after the performer's death)

Even after the death of the performer, no person who offers or makes available a performance to the public may commit any act which would infringe upon the moral

rights of performer if the performer were alive; provided, however, that the foregoing shall not apply to such act where it is found to not be against the will of the performer in light of the nature and extent of the act as well as changes in social circumstances and other conditions.

### **Section 8 Limitations, Transfer, Exercise and Registration of Rights**

Article 102. (Limitations on neighboring rights)

- (1) (a) The provisions of Article 30, paragraph (1), Articles 31, 32, 35 and 36, Article 37, paragraph (3), Article 38, paragraphs (2) and (4), and Articles 41 to 42-2 and 44 (other than paragraph (2) thereof) shall apply mutatis mutandis to the exploitation of performances, phonograms, broadcasts or wire-broadcasts which are the subject matter of neighboring rights; (b) the provisions of Article 30, paragraph (2) and Article 47-3 shall apply mutatis mutandis to the exploitation of performances or phonograms which are the subject matter of neighboring rights; (c) and the provisions of Article 44, paragraph (2) shall apply mutatis mutandis to the exploitation of performances, phonograms or wire-broadcasts which are the subject matter of neighboring rights. In such case, the term "Article 23, paragraph (1)" in Article 44, paragraph (1) shall be deemed to be replaced with "Article 92, paragraph (1), Article 99, paragraph (1) or Article 100-3", and the term "Article 23, paragraph (1)" in Article 44, paragraph (2) shall be deemed to be replaced with "Article 92, paragraph (1) or Article 100-3".
- (2) Where reproduction is made of performances, phonograms, or sounds or images of broadcasts or wire-broadcasts ( hereinafter collectively referred to as "performance, etc.") pursuant to the provisions of Article 32, Article 37, paragraph (3) or Article 42 , as applied mutatis mutandis pursuant to the preceding paragraph, the source of the same must, where it is customary to indicate the source thereof, be clearly indicated in the manner and to the extent deemed reasonable in light of the character of the reproduction.
- (3) Where it is permissible to broadcast or wire-broadcast works pursuant to the provisions of Article 39, paragraph (1) or Article 40, paragraph (1) or (2), it shall be permissible to wire-broadcast the broadcasts or wire-broadcasts of such works or to transmit such broadcasts or wire-broadcasts to the public by use of special equipment to enlarge images, following reception of such broadcasts or wire-broadcasts.
- (4) The following persons shall be deemed to have made the sound or visual recordings or the reproductions provided for in Article 91, paragraph (1), Article 96, Article 98 or Article 100-2:
  - (i) a person who, for purposes other than those provided for in Article 30, paragraph (1), Article 31, item (i), Article 35, paragraph (1), Article 37,

paragraph (3), Article 41, 42 or 42-2, or Article 44, paragraph (1) or (2), as applied mutatis mutandis pursuant to paragraph (1) of this Article, distributes those reproductions of performance, etc. which have been made by virtue of the application of said provisions or makes available to the public said performances, the sounds from said phonograms, or the sounds or images from said broadcasts or wire-broadcasts, by broadcasting said reproductions;

- (ii) a broadcasting organization or a wire-broadcasting organization which preserves the sound or visual recordings set forth in Article 44, paragraph (3), as applied mutatis mutandis pursuant to paragraph (1) of this Article, in violation of the provisions of said Article 44, paragraph (3).

#### Article 102-2. (Relationship with moral rights of performer)

The provisions of the preceding Article pertaining to limitations on neighboring rights (other than the provisions of paragraph (3) of said Article) shall not be construed to affect the moral rights of performer.

#### Article 103. (Transfer, exercise, etc. of neighboring rights)

The provisions of Article 61, paragraph (1) shall apply mutatis mutandis to the transfer of neighboring rights; the provisions of Article 62, paragraph (1) shall apply mutatis mutandis to the termination of such rights; the provisions of Article 63 shall apply mutatis mutandis to the authorization to exploit performances, phonograms, broadcasts or wire-broadcasts; the provisions of Article 65 shall apply mutatis mutandis with respect to the joint ownership of such rights; the provisions of Article 66 shall apply mutatis mutandis with respect to the case where a pledge of such rights has been established. In such case, the term "Article 23, paragraph (1)" in Article 63, paragraph (5) shall be deemed to be replaced with "Article 92-2, paragraph (1), Article 96-2, Article 99-2 or Article 100-4".

#### Article 104. (Registration of neighboring rights)

The provisions of Articles 77 and 78 (other than paragraph (2)) shall apply mutatis mutandis to the registration of neighboring rights. In such case, the term "the copyright registry" throughout paragraphs (1), (3) and (7) of Article 78 shall be deemed to be replaced with "the registry of neighboring rights".

### **Chapter V Compensation for Private Sound and Visual Recordings**

#### Article 104-2. (Exercise of the right to receive compensation for private sound and visual recordings)

- (1) When there exists an association established for the purpose of exercising the right to receive the compensation provided for in Article 30, paragraph (2)

(including cases where applied mutatis mutandis pursuant to the provisions of Article 102, paragraph (1); the same shall apply below in this Chapter) (in this Chapter referred to below as "compensation for private sound and visual recordings") for the benefit of the persons entitled to such right (in this Chapter referred to below as "rightholders") and which, with its consent, has been designated by the Commissioner of the Agency for Cultural Affairs as the only association throughout the country for each of the following categories of compensation for private sound and visual recordings (in this Chapter referred to below as "the designated management association"), the right to receive compensation for private sound and visual recordings shall be exercised exclusively through each such designated management association:

- (i) compensation for private sound and visual recordings, for sound recordings made for private use purposes (other than a sound recording made exclusively with a visual recording; in this Chapter referred to below as a "private sound recording");
  - (ii) compensation for private sound and visual recordings, for visual recordings made for private use purposes (including a visual recording made exclusively with a sound recording; in this Chapter referred to below as a "private visual recording").
- (2) In the event of a designation in accordance with the provisions of the preceding paragraph, the designated management association shall have the authority, for the benefit of the rightholders and in its own name, to take all judicial and non-judicial action in connection with the right to receive the compensation for private sound and visual recordings.

#### Article 104-3. (Standard for designation)

The Commissioner of the Agency for Cultural Affairs may not designate an association in accordance with the provisions of paragraph (1) of the preceding Article, unless such association satisfies the following requirements:

- (i) that it is a juridical person established pursuant to the provisions of Article 34 (Establishment of non-profit corporations) of the Civil Code;
- (ii) that [(a)] in the case of the compensation for the private sound and visual recordings listed in paragraph (1), item (i) of the preceding Article, it is composed of associations listed in (a), (c) and (d) below, respectively, and [(b)] in the case of the compensation for the private sound and visual recordings listed in item (ii) of the same paragraph, it is composed of associations listed in (b), (c) and (d) below, respectively:
  - (a) an association (including a federation of associations) which [(a)] is composed of the persons entitled to the right provided for in Article 21 in connection with a work with respect to which a private sound recording has

- been made, and [(b)] is recognized as representing, in this country, the interests of the persons entitled to the right provided for in said Article in connection with a work with respect to which a private sound recording has been made;
- (b) an association (including a federation of associations) which [(a)] is composed of the persons entitled to the right provided for Article 21 in connection with a work with respect to which a private visual recording has been made, and [(b)] is recognized as representing, in this country, the interests of the persons entitled to the right provided for in said Article in connection with a work with respect to which a private visual recording has been made;
  - (c) an association (including a federation of associations) composed of a considerable number of professional performers in this country;
  - (d) an association (including a federation of associations) composed of a considerable number of producers of phonograms doing business in this country;
- (iii) that each of the associations listed in (a), (b), (c) and (d) of the preceding item, respectively, satisfies the following requirements:
- (a) that it is not established for profit-making purposes;
  - (b) that its members may freely join and withdraw;
  - (c) that its members are granted an equal rights to vote and to elect;
- (iv) that it has sufficient ability to perform properly the business of exercising for rightholders the right to receive compensation for private sound and visual recordings (including the business pertaining to the activities provided for in Article 104-8, paragraph (1); in this Chapter referred to below as "the compensation-related business").

Article 104-4. (Special provisions for payment of compensation for private sound and visual recordings)

- (1) A purchaser of a recording machine or a recording medium designated by the Cabinet Order set forth in Article 30, paragraph (2) (in this Chapter referred to below as a "designated recording machine" and a "designated recording medium", respectively) (limited, however, to the initial purchaser of a retailed designated recording machine or designated recording medium) shall, upon request by the relevant designated management association, at the time of purchase and as a lump-sum payment of the compensation for private sound and visual recordings to be made using said designated recording machine or designated recording medium, pay the amount fixed, pursuant to the provisions of Article 104-6, paragraph (1), as the compensation for private sound and visual recordings with respect to such designated recording machine or designated recording medium, in the event that

said designated management association requests such payment.

- (2) A person who has paid the compensation for private sound and visual recordings pursuant to the provisions of the preceding paragraph may request a refund from the designated management association of said compensation for private sound and visual recordings, by certifying that he uses such designated recording machine or designated recording medium exclusively for other than private sound and visual recording use.
- (3) The provisions of Article 30, paragraph (2) notwithstanding, a person who, by means of a designated recording machine for which payment of compensation for private sound and visual recordings has been requested pursuant to the provisions of paragraph (1) and paid, makes a private sound recording or a private visual recording on a designated recording medium for which payment of compensation for private sound and visual recordings has been requested pursuant to the provisions of paragraph (1) and paid, shall not be required to pay compensation for said private sound recording or private visual recording; provided, however, that the foregoing shall not apply where said designated recording machine or designated recording medium is one with respect to which the compensation for private sound and visual recordings has been refunded pursuant to the provisions of the preceding paragraph.

Article 104-5. (Obligation of cooperation by manufacturers, etc.)

Where a designated management association requests compensation for private sound and visual recordings pursuant to the provisions of paragraph (1) of the preceding Article, any person engaged in the business of manufacturing or importing designated recording machines or designated recording medium (in paragraph (3) of the next Article, referred to as "manufacturer, etc.") shall cooperate with the designated management association in requesting and receiving such compensation for private sound and visual recordings.

Article 104-6. (Amount of compensation for private sound and visual recordings)

- (1) Where a designated management association will exercise the right to receive compensation for private sound and visual recordings pursuant to the provisions of Article 104-2, paragraph (1), the designated management association must fix the amount of such compensation and obtain the approval thereof from the Commissioner of the Agency for Cultural Affairs. The same shall apply when the designated management association intends to revise such amount.
- (2) When the approval set forth in the preceding paragraph has been obtained, then the amount of the compensation for private sound and visual recordings shall, notwithstanding the provisions of Article 30, paragraph (2), be the amount so approved.

- (3) When applying under paragraph (1) for approval with respect to the payment of compensation for private sound and visual recordings which it proposes to request pursuant to the provisions of Article 104-4, paragraph (1), a designated management association shall, in advance, seek the opinions of the associations of manufacturers, etc. which are recognized as representing the opinions of such manufacturers, etc.
- (4) The Commissioner of the Agency for Cultural Affairs shall not approve the amount of compensation for private sound and visual recordings applied for under paragraph (1) unless it determines that the same is an appropriate amount, taking into consideration the purpose of the provisions of Article 30, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 102, paragraph (1) and Article 104-4, paragraph (1)), the ordinary amount of sound or visual recording royalties and other factors.
- (5) When intending to give its approval under paragraph (1), the Commissioner of the Agency for Cultural Affairs shall consult with the Council for Cultural Affairs.

Article 104-7. (Rules for execution of the compensation-related business)

- (1) When intending to commence its compensation-related business, a designated management association shall establish rules for the execution of such business and notify the Commissioner of the Agency for Cultural Affairs of such rules. The same shall apply when the designated management association intends to amend such rules.
- (2) The designated management association shall include in the rules set forth in the preceding paragraph the matters pertaining to the distribution of the compensation for private sound and visual recordings (limited to the compensation paid and received pursuant to the provisions of Article 104-4, paragraph (1)), and it shall decide the matters pertaining to such distribution by taking into consideration the purpose of the provisions of Article 30, paragraph (2).

Article 104-8. (Expenditures for business activities, etc. in connection with the protection of copyrights, etc.)

- (1) Designated management associations shall spend an amount corresponding to the rate fixed by Cabinet Order (which rate shall be 20% or less of the compensation for private sound and visual recordings (limited to the compensation paid and received pursuant to the provisions of Article 104-4, paragraph (1))) for business activities in connection with the protection of copyrights and neighboring rights as well as for business activities for the promotion of the creation of works and for the dissemination of works.
- (2) When intending to enact or amend the Cabinet Order set forth in the preceding paragraph, the Commissioner of the Agency for Cultural Affairs shall consult with

the Council for Culture Affairs.

- (3) When he finds necessary for assuring the proper operation of the business pertaining to the activities provided for in paragraph (1), the Commissioner of the Agency for Cultural Affairs may issue to the designated management association orders necessary for the supervision of such business.

Article 104-9. (Collection of reports, etc.)

When he finds necessary for assuring the proper operation of a designated management association's compensation-related business, the Commissioner of the Agency for Cultural Affairs may require that the designated management association report on its compensation-related business, demand the submission of accounting books, documents and other materials, or make recommendations necessary for improving the manner of execution of the compensation-related business.

Article 104-10. (Delegation to Cabinet Order)

In addition to the matters provided for in this Chapter, other necessary matters with respect to designated management associations and the compensation-related business shall be established by Cabinet Order.

## **Chapter VI Dispute Resolution**

Article 105. (Conciliators for the resolution of disputes concerning copyrights)

- (1) With the aim of resolving disputes concerning the rights provided for in this Act through mediation, the Agency for Cultural Affairs will provide conciliators for resolution of copyright disputes (in this Chapter referred to below as "conciliators").
- (2) The Commissioner of the Agency for Cultural Affairs will commission, from among [persons with relevant knowledge and experience] in connection with matters pertaining to copyright or neighboring rights, up to three conciliators for each case.

Article 106. (Application for mediation)

When a dispute arises in connection with the rights provided for in this Act, a party concerned may apply for mediation with the Commissioner of the Agency for Cultural Affairs.

Article 107. (Application fee)

- (1) The applicant for mediation shall pay an processing fee in an amount to be fixed by Cabinet Order, giving consideration to the actual costs thereof.
- (2) The provisions of the preceding paragraph shall not apply when the person who is supposed to pay the processing fee pursuant to the provision of said paragraph is

the State, etc.

Article 108. (Submission to mediation)

- (1) Upon application by both parties concerned pursuant to the provisions of Article 106, or where consented to by the other party, in the case of an application by one party concerned, the Commissioner of the Agency for Cultural Affairs shall submit the matter for mediation by the conciliators.
- (2) In the case of an application provided for in the preceding paragraph, the Commissioner of the Agency for Cultural Affairs may decide not to submit the matter to the conciliators, when he finds the nature of such case inappropriate for mediation or when he determines that the party or parties [frivolously] applied for the mediation for improper purposes.

Article 109. (Mediation)

- (1) The conciliators shall endeavor to mediate between the parties concerned in order to resolve the case by confirming the points asserted by the parties and in conformity with the actual circumstances.
- (2) The conciliators may discontinue the mediation when they determine that there is no prospect for resolving the case.

Article 110. (Report, etc.)

- (1) When the mediation ends, the conciliators shall report such fact to the Commissioner of the Agency for Cultural Affairs.
- (2) When the conciliators discontinue the mediation pursuant to the provisions of the preceding Article, they shall report the fact of such discontinuation and the reasons therefor to the Commissioner of the Agency for Cultural Affairs and shall at the same time notify the same to the parties concerned.

Article 111. (Delegation to Cabinet Order)

In addition to the matters provided for in this Chapter, other necessary matters pertaining to the procedures for mediation and the conciliators shall be established by Cabinet Order.

## **Chapter VII Infringement of Rights**

Article 112. (Right to seek injunction)

- (1) The author, the copyright holder, the holder of the right of publication, the performer, or the holder of neighboring rights may demand that persons infringing, or presenting a risk of infringing, on his moral rights of author, copyright, right of publication, or moral rights of performer or neighboring rights, as applicable, cease

the infringement or not infringe, as the case may be.

- (2) When making the demand provided for in the preceding paragraph, the author, the copyright holder, the holder of the right of publication, the performer or the holder of the neighboring rights may [also] demand the taking of measures necessary to effect the cessation or prevention of the infringement, such as the destruction of objects constituting the acts of infringement, objects made by acts of infringement, and/or machines and tools used exclusively for acts of infringement.

Article 113. (Acts deemed to constitute infringement)

- (1) The following acts are deemed to constitute acts of infringements on the moral rights of author, copyrights, rights of publication, moral rights of performer or neighboring rights, as applicable:
  - (i) the act of the importing, for the purpose of distribution in this country, objects made by an act which would have constituted an infringement on the moral rights of author, copyrights, rights of publication, moral rights of performer or neighboring rights had it occurred in this country at the time of importation;
  - (ii) the act of distributing or possessing for the purpose of distributing, objects made by an act infringing on the moral rights of author, copyrights, rights of publication, moral rights of performers or neighboring rights (including by an act of importation falling under the preceding item), by a person who is aware of such infringement.
- (2) The act of using on a computer in the course of one's business a reproduction made by an act infringing on the copyright of a computer program work (including a reproduction made by the owner of such reproduction pursuant to the provisions of Article 47-2, paragraph (1) as well as a reproduction of a computer program work imported by an act of importation falling under item (i) of the preceding paragraph and a reproduction made by the owner of such imported reproduction pursuant to the provisions of Article 47-2, paragraph (1)) shall be deemed to constitute an act of infringement on said copyright, to the extent that the person using such reproduction was aware of such infringement at the time that he acquired authority to use the same.
- (3) The following acts are deemed to constitute acts infringement on the moral rights of author, copyrights, moral rights of performer or neighboring rights pertaining to rights management information concerned:
  - (i) the act of intentionally adding false information as rights management information;
  - (ii) the act of intentionally removing or modifying rights management information, excluding, however, cases where deemed unavoidable in light of the purpose and the manner of exploiting the work or performance, etc., including cases involving technological constraints accompanying the conversion of recording or

- transmission systems;
- (iii) the act of distributing, or importing or possessing for the purpose of distributing, a reproduction of a work or performance, etc. with respect to which an act provided for in the preceding two items occurred, and the act of publicly transmitting or making transmittable such work or performance, etc., in all cases, with knowledge of the fact that such act had occurred.
- (4) For the purpose of the application of the provisions of the preceding paragraph, the right to secondary use fees provided for in Article 95, paragraph (1) and Article 97, paragraph (1) and the right to remuneration provided for in Article 95-3, paragraph(3) and Article 97-3, paragraph (3) shall be deemed to be neighboring rights. In such case, the term "the holders of neighboring rights" in the preceding Article shall be deemed to be replaced with "the holder of neighboring rights (including the persons entitled to the rights deemed to be neighboring rights pursuant to the provisions of paragraph (4) of the next Article)", and the term "neighboring rights" in paragraph (1) of the preceding Article shall be deemed to be replaced with "neighboring rights (including the rights deemed to be neighboring rights pursuant to the provisions of paragraph (4) of the next Article)".
- (5) Where the copyright holder or the holder of neighboring rights, who publishes by himself or who causes others to publish a commercial phonogram intended for distribution within this country (in this paragraph referred to below as "a commercial phonogram for domestic distribution"), publishes by himself or causes others to publish, outside this country, a commercial phonogram that is the same as said commercial phonogram for domestic distribution and [yet] which is intended for distribution exclusively outside this country (in this paragraph referred to below as "a commercial phonogram for overseas distribution"), [(a)] the act of importing such commercial phonogram for overseas distribution for the purpose of distribution within this country, [(b)] the act of distributing such commercial phonogram for overseas distribution within this country, and [(c)] the act of possessing such commercial phonogram for overseas distribution for the purpose of distributing the same within this country, in each case, by a person who knows that such commercial phonogram is for distribution outside this country, are deemed to constitute acts of infringement of the copyright or neighboring rights in such commercial phonogram, if and to the extent that such distribution, within this country, of such phonograms for overseas distribution is likely to unreasonably adversely affect the profits that could be expected to be obtained by the copyright holder or the holder of neighboring rights by publishing a commercial phonogram for domestic distribution; provided, however, that the foregoing shall not apply to: the act of importing a commercial phonogram for overseas distribution that is the same as a commercial phonogram for domestic distribution with respect to which

the period fixed by Cabinet Order (which period shall be seven years or less) from the date of its first publication has lapsed; or the act of distributing, or possessing for the purpose of distributing, within this country, said commercial phonogram for overseas distribution.

- (6) An act of exploitation of a work in a manner prejudicial to the honor or reputation of the author shall be deemed to constitute an act of infringement on his moral rights of author.

Article 113-2. (Special provisions for the right of transfer of ownership pertaining to a third party without knowledge)

The act of transferring to the public the ownership of the original or a reproduction of a work (excluding a reproduction of cinematographic works, including, in the case of a work reproduced in a cinematographic work, a reproduction of a cinematographic work; the same shall apply below in this Article), a sound or visual recording of a performance or a reproduction of a phonogram by a person who, at the time of acquiring ownership of said original or reproduction of a work, sound or visual recording of a performance or reproduction of a phonogram did not know, and was not negligent in not knowing, that such original or reproduction of a work, sound or visual recording of a performance or reproduction of a phonogram did not fall under any of the items of Article 26-2, paragraph (2), Article 95-2, paragraph (3) or Article 97-2, paragraph (2), respectively, shall be deemed to not constitute an act of infringement on the rights provided for in Article 26-2, paragraph (1), Article 95-2, paragraph (1) or Article 97-2, paragraph (1), as the case may be.

Article 114. (Presumption of amount of damages, etc.)

- (1) In the case where the copyright holder, the holder of the right of publication or the holder of the neighboring rights (in this paragraph referred to below as "the copyright holder, etc.") asserts against a person who intentionally or negligently infringes upon the holder's copyright, right of publication or neighboring rights, as the case may be, a claim for compensation for damages sustained by said holder as a result of such infringement, and such infringer has transferred the ownership of the object made by way of such an act of infringement or has made a public transmission (including, in the case of an automatic public transmission, by making transmittable) constituting such an act of infringement, then the amount obtained by multiplying [(a)] the number of objects the ownership of which has been so transferred or the number of reproductions of works or performance, etc. made as a result of reception by the public of such public transmissions (in this paragraph referred to below as "the reception reproductions"), as the case may be (such number is in this paragraph referred to below as "the number transferred, etc."), by [(b)] the per unit profit of the objects (including reception

reproductions) that the copyright holder, etc. could have sold had there been no such act of infringement, can be regarded as the amount of damages suffered by such copyright holder, etc., but only within the limit of the copyright holder's ability to sell or take other [similar] actions with respect to said objects. However, when there exist circumstances under which the copyright holder, etc. could not have sold such objects in such number corresponding, in whole or in part, to the number transferred, etc., then the amount corresponding to such number shall be deducted.

- (2) In the case where the copyright holder, the holder of the right of publication or the holder of the neighboring rights asserts against a person who, intentionally or negligently, infringes on such holder's copyright, right of publication or neighboring rights, a claim for compensation for damages sustained, the profits, if any, obtained by the infringer by way of said his infringement will be presumed to be the amount of damages suffered by such copyright holder, holder of the right of publication or holder of the neighboring rights, as the case may be.
- (3) The copyright holder or holder of the neighboring rights may assert against a person who, intentionally or negligently, infringes upon said holder's copyright or neighboring rights, a claim for compensation for damages in an amount corresponding to the amount of money which would be received by such holder through the exercise of its copyright or neighboring rights, as the case may be, as the amount of damages sustained by said holder.
- (4) The provisions of the preceding paragraph shall not preclude a claim for compensation for damages in excess of the amount provided for therein. In such case, when the infringer of the copyright or neighboring rights did not act intentionally or with gross negligence, the court may consider such absence of intent or gross negligence on the part of the infringer in fixing the amount of damages.

#### Article 114-2. (Obligation to clarify specific conditions [of infringement])

In a lawsuit pertaining to an infringement on the moral rights of author, copyright, right of publication, moral rights of performer or neighboring right, when the other party denies the specific conditions of the object which the author, the copyright holder, the holder of the right of publication, the performer or the holder of the neighboring rights, as the case may be, asserts as either constituting such act of infringement or being made by such act of infringement, the other party shall clarify the specific conditions of his acts; provided, however, that the foregoing shall not apply where there are reasonable grounds why the other party cannot make such clarification.

#### Article 114-3. (Production of documents, etc.)

- (1) In a lawsuit pertaining to an infringement on the moral rights of author, copyright, right of publication, moral rights of performer or neighboring right, the court, upon petition of a party, may order any other party to produce documents necessary to prove the act of infringement concerned or to calculate the damages caused by said act of infringement; provided, however, that the foregoing shall not apply when the person in possession of such documents has justifiable grounds for refusing to produce them.
- (2) When the court finds it necessary for determining whether there exist justifiable grounds as provided for in the proviso to the preceding paragraph, the court may require that the person in possession of the documents present the same to the court. In such case, no person may ask for the disclosure of the documents so presented.
- (3) In the case referred to in the preceding paragraph, when the court finds it necessary to disclose the documents mentioned in the latter half of the preceding paragraph and to consult the opinions of the [petitioning] party, etc. as to whether there exist such justifiable grounds as provided for in the proviso to paragraph (1), the court may disclose such documents to such [petitioning] party, etc. and its trial counsel and/or the assistant of such party, etc. or of such trial counsel. In this paragraph and in Article 114-6, paragraph (1), the term, "the party, etc." means a party (or in the case of a juridical person, its representative), or its agent (excluding, however, trial counsel and an assistant to such party or to its legal counsel), employee or any other worker of such party.
- (4) The provisions of the preceding three paragraphs shall apply mutatis mutandis to the production of the object of inspection which is necessary to prove an act of infringement concerned in a lawsuit pertaining to an infringement on the moral rights of author, copyright, right of publication, moral rights of performer or neighboring right.

Article 114-4. (Obligation of the parties to explain to appraiser)

When the court, in a lawsuit pertaining to an infringement on a copyright, right of publication or neighboring right, has, upon petition of a party, ordered an appraisal with respect to matters necessary to calculate the damages caused by such act of infringement, the parties shall provide to the appraiser an explanation of matters necessary for such appraisal.

Article 114-5. (Determination of reasonable damages)

Where, in a lawsuit pertaining to an infringement on a copyright, right of publication or neighboring right, it is found that damages have been incurred, but it is extremely difficult to prove the facts necessary to establish the amount of damages due to the nature of such facts, the court may determine an appropriate amount of

damages on the basis of the entire import of oral proceedings and the results of the court's examination of the evidence.

Article 114-6. (Protective order)

- (1) In a lawsuit pertaining to an infringement on the moral rights of author, copyright, right of publication, moral rights of performer or neighboring right, the court may, upon petition of a party, issue an order, in the form of a decision, to any other party, etc., trial counsel or assistant to a party or legal counsel, that trade secrets ("trade secrets" means those provided for in Article 2, paragraph (4) of the Unfair Competition Prevention Act (Act No. 47 of 1993); the same shall apply hereinafter) in the possession of [petitioning] party shall not be used for purposes other than those in furtherance of said lawsuit and shall not be disclosed to persons other than those against whom an order pertaining to such trade secrets has been issued pursuant to the provisions of this paragraph, where a prima facie showing has been made that each of the reasons listed below applies; provided, however, that the foregoing shall not apply where, at the time of such petition, the party, etc. [against which the petitioned order is sought to be issued], trial counsel [against which the petitioned order is sought to be issued] or assistant [against which the petitioned order is sought to be issued] had already acquired or possessed such trade secrets by means other than through inspection of the briefs provided for in item (i) or the examination of evidence or the disclosure provided for in that item.
  - (i) trade secrets in the possession of such other party appear in briefs already produced or to be produced, or such trade secrets are contained in the evidence already examined or to be examined (including documents disclosed pursuant to the provisions of Article 114-3, paragraph (3));
  - (ii) trade secrets provided for in the preceding item are to be used for purposes other than in the furtherance of said lawsuit, or it is likely that disclosure of such trade secrets will impede a party's business activities that are based upon such trade secrets, and in order to prevent such impediment, it is necessary to restrict the use or disclosure of such trade secrets.
- (2) The petition for the order pursuant the provisions of the preceding paragraph (hereinafter referred to as a " protective order") must be in writing, stating the following matters:
  - (i) the person to whom the protective order is to issue;
  - (ii) facts sufficient to identify the trade secrets to be subject matter of the protective order;
  - (iii) facts respectively constituting the reasons provided for in each of the two items of the preceding paragraph.
- (3) In the case where a protective order has been issued, a written decision thereof

must be served upon the person against whom such protective order will issue.

- (4) The protective order shall become effective from the time when the written decision has been served upon the person against whom such protective order will issue.
- (5) An immediate appeal may be lodged against a ruling dismissing a petition for a protective order.

Article 114-7. (Rescission of protective order)

- (1) The person who petitioned for a protective order and any person against whom such protective order was issued may each petition the court with whom the case record resides (or if there is no court with whom the case record resides, then the court which issued the protective order) to rescind the protective order for reason that any of the requirements provided for in the preceding Article, paragraph (1) is lacking or has become lacking.
- (2) In the case where a ruling has been rendered on a petition for rescission of a protective order, the written decision thereof shall be served upon the person who brought said petition and upon the other side.
- (3) An immediate appeal may be lodged of a ruling on a petition for rescission of a protective order.
- (4) A ruling rescinding a protective order shall not take effect, unless and until it has become final and non-appealable.
- (5) Where the court has issued a ruling rescinding a protective order, the court shall immediately notify a person, if any (other than the person who brought the petition for rescission of the protective order and the other side), against whom another protective order may have been issued in relation to the same trade secret in the lawsuit in which the rescinded protective order was issued, of the fact that a ruling has been made to rescind the protective order first above mentioned.

Article 114-8. (Notice, etc. of a request for inspection, etc. of the case record)

- (1) In the case where a decision provided for in Article 92, paragraph (1) of the Code of Civil Procedure (Act No. 109 of 1996) has been made with regard to the case record for a lawsuit in which a protective order has been issued (excluding, however, a lawsuit in which all protective orders have been rescinded), the court clerk shall, if a party has made a request, pursuant to the same paragraph, for perusal, etc. of the portions [of the case record] containing the confidential matters and if the person who has made such request is not a person against whom a protective order has been issued in the subject lawsuit, immediately after said request, give notice of such request to the party who filed the petition provided for in that paragraph (other than, however, the person who made such

request; the same shall apply in paragraph (3)).

- (2) In the case referred to in the preceding paragraph, the court clerk shall not, until the end of the two week period following the day of the request provided for in the same paragraph (in the case where a petition for a protective order has been made before said day by the person undertaking the procedures for said request, then for a period until the ruling on said petition has become final and non-appealable) allow the person who, pursuant to the same paragraph, undertakes the procedures to request perusal, etc. of the portions [of the case record] containing the confidential matters.
- (3) The provisions of the preceding two paragraphs shall not apply when all parties who filed the petition provided for in Article 92, paragraph (1) of the Code of Civil Procedures consent to allow perusal, etc. of the portions [of the case record] containing the confidential matters provided for in paragraph (1) by a person having made a request provided for in paragraph (1).

Article 115. (Measures for restoration, etc. of honor)

The author or the performer may demand against a person who, intentionally or negligently, infringes on his moral rights, that, in lieu of, or in addition to, compensation for damages, such person take appropriate measures to ensure identification of the author or the performer as the author or the performer (as the case may be), to make corrections [of distortions, mutilations, and/or modifications], or to restore the honor and reputation of the author or the performer (as the case may be).

Article 116. (Measures to protect moral interests after the author's or the performer's death)

- (1) After the death of the author or the performer, [a member of] his bereaved family ("bereaved family" means the surviving spouse, children, parents, grandchildren, grandparents, and brothers and sisters of the deceased author or performer; the same shall apply below in this Article) may make: [(a)] the demand provided for in Article 112 against any person who commits an act, or is likely to commit an act, in violation of the provisions of Article 60 or Article 101-3 with respect to the author or the performer concerned, or [(b)] the demand provided for in the preceding Article against any person who, intentionally or negligently, commits an act of infringement on the moral rights of author or performers or who has committed an act in violation of the provisions of Article 60 or Article 101-3.
- (2) The order of the members of the bereaved family who may make the demand set forth in the preceding paragraph shall be the order provided for in said paragraph. However, in the case where the order has been separately determined by the

[testamentary] will of the author or the performer, then such order shall apply.

- (3) The author or The performer may designate by [testamentary] will the person to act on behalf of the bereaved family in making the demand provided for in paragraph (1). In such case, the designated person may not make a demand after the passage of fifty years commencing from the year immediately following the date of the author's or performer's death (as the case may be), or, if members of the bereaved family are still alive at the time of the passage of said fifty years, then after the death of all such bereaved family members.

Article 117. (Infringement with respect to the rights in a work of joint authorship, etc.)

- (1) Each co-author of, or each co-holder of the copyright in, a work of joint authorship shall be entitled to make, without the consent of the other co-authors or co-holders of the copyright, the demand provided for in Article 112, and/or a demand for compensation for damages to his share or a demand for the return of the unjust enrichment corresponding to his share.
- (2) The provisions of the preceding paragraph shall apply mutatis mutandis to an infringement on copyrights or neighboring rights in co-ownership.

Article 118. (Preservation of rights in anonymous or pseudonymous works)

- (1) The publisher of an anonymous or pseudonymous work shall be entitled to make, in his own name and for the benefit of the author or the copyright holder of said work, the demand provided for in Article 112, Article 115 or Article 116, paragraph (1), or a demand for compensation for damages for an infringement of the moral rights of author or the copyright, as the case may be, or for return of an unjust enrichment. The foregoing, however, shall not apply where the pseudonym is widely known as being that of the author and where the true name of the author has been registered under the provisions of Article 75, paragraph (1).
- (2) A person whose true name or widely known pseudonym is indicated as the name of the publisher in a customary manner on reproductions of an anonymous or pseudonymous work shall be presumed to be the publisher of said work.

## **Chapter VIII Penal Provisions**

Article 119.

A person with respect to whom either of the following items applies shall be punishable by imprisonment with work for a term not more than five years or by a fine of not more than five million Yen, or by both:

- (i) a person who infringes on the moral rights of author, copyright, right of publication, moral rights of performer or neighboring rights (excluding, however,

- [(a)] a person who reproduces by himself a work or performance, etc. for private use purposes as provided for in Article 30, paragraph (1) (including cases where applied mutatis mutandis pursuant to provisions of Article 102, paragraph (1));
  - [(b)] a person who, pursuant to the provisions of Article 113, paragraph (3), commits an act deemed to constitute an act of infringement on the moral rights of author, copyright, moral rights of performer or neighboring rights (including rights deemed to constitute neighboring rights pursuant to the provisions of Article 113, paragraph (4); the same shall apply in Article 120-2, item (iii)); and
  - [(c)] a person who commits an act deemed to constitute an act of infringement on a copyright or neighboring rights pursuant to the provisions of Article 113, paragraph (5);
- (ii) a person who, for profit-making purposes, causes the automatic reproducing machine provided for in Article 30, paragraph (1), item (i) to be used to reproduce works or performance, etc., when such act of reproduction constitutes an infringement on a copyright, right of publication or neighboring rights.

#### Article 120.

A person who violates the provisions of Article 60 or Article 101-3 shall be punishable by a fine of not more than five million Yen.

#### Article 120-2.

A person which respect to whom any of the following items applies shall be punishable by imprisonment with work for a term not more than three years or by a fine of not more than three million Yen, or by both:

- (i) a person who either: [(a)] [(A)] transfers to the public the ownership of, or rents to the public, [(B)] manufactures, imports or possesses for transfer of ownership or rental to the public, or [(C)] offers for use by the public, a device the sole function of which is to circumvent technological protection measures (including a set of parts [of such a device] capable of being easily assembled) or reproductions of a computer program the sole function of which is to circumvent technological protection measures, or [(b)] transmits to the public, or makes transmittable, the aforementioned computer program;
- (ii) a person who, as a business, circumvents technological protection measures in response to a request from the public;
- (iii) a person who, for profit-making purposes, commits an act deemed to constitute an act of infringement on the moral rights of author, copyright, moral rights of performer or neighboring rights pursuant to the provision of Article 113, paragraph (3);
- (iv) a person who, for profit-making purposes, commits an act deemed to constitute an act of infringement on a copyright or neighboring rights pursuant

to the provision of Article 113, paragraph (5).

Article 121.

A person who distributes a reproduction of a work on which reproduction the true name or widely known pseudonym of a person who is not the author is indicated as the name of the author (including a reproduction of a derivative work on which reproduction the true name or widely known pseudonym of a person who is not the author of the original work is indicated as the name of the author of the original work) shall be punishable by imprisonment with work for a term not more than one year or by a fine of not more than one million Yen, or by both:

Article 121-2.

A person who [(a)] reproduces, as a commercial phonogram, a commercial phonogram which falls under either of the following two items (including reproductions of said commercial phonogram, including reproductions produced by multiple acts of reproduction), or [(b)] distributes such reproductions or possesses them for the purposes of distributing, shall be punishable by imprisonment with work for a term not more than one year or by a fine of not more than one million Yen, or by both; provided, however, that the foregoing shall not apply with respect to a person who makes, distributes or possesses reproductions made after the passage of more than fifty years from the year immediately following the year in which the first fixation of sounds on the matrices listed in the following items:

- (i) a commercial phonogram manufactured by a person engaged in the business of manufacturing commercial phonograms in this country, from the matrix of the phonogram (other than those phonograms with respect to which any of the four items of Article 8 applies) received from the producer of phonograms who produced said phonogram;
- (ii) a commercial phonogram manufactured by those engaged in the business of manufacturing commercial phonograms outside this country, from the matrix of the phonogram (other than those phonograms with respect to which any of the four items of Article 8 applies) received from the producer of phonogram who produced said phonogram and who is a national of any of the contracting states to the Convention for the Protection of Performers, etc., the members of the World Trade Organization or the Contracting States to the Phonograms Convention ("nationals" includes juridical persons established under the laws and regulations of such contracting state or member and those who have their principal offices in such Contracting State or member).

Article 122.

A person who violates the provisions of Article 48 or Article 102, paragraph (2)

shall be punishable by a fine of not more than five hundred thousand Yen.

Article 122-2.

A person who violates a protective order shall be punishable by imprisonment with work for not a term not more than three years or by a fine of not more than three million Yen.

Article 123.

- (1) In the case of a crime set forth in Article 119, Article 120-2, items (iii) and (iv), Article 121-2 and the preceding Article, prosecution shall take place only upon the filing of a complaint [by the injured person].
- (2) A publisher of an anonymous or a pseudonymous work may file a complaint with respect to a crime provided for in the preceding paragraph with respect to his work; provided, however, that the foregoing shall not apply in cases where the proviso to Article 118, paragraph (1) is applicable and where such complaint is contrary to the clear indication of intent by the author.

Article 124.

- (1) Where the representative of a juridical person (including the administrator of an association or foundation without juridical personality), an agent, an employee or any other worker of a juridical person or person, in connection with the business of such juridical person or person, commits an act in violation of the provisions mentioned in any of the following items, then, in addition to the punishment of the violator [himself], the fine fixed in each item below shall be imposed upon such juridical person and the fine fixed in the provisions of each Article mentioned in each item below shall be imposed upon such person:
  - (i) Article 119, item (i) (other than the portions pertaining to the moral rights of author and the moral rights of performer): a fine of not more than one hundred fifty million Yen;
  - (ii) Article 122-2 : a fine of not more than one hundred million Yen;
  - (iii) Article 119, item (i) (limited to portions pertaining to the moral rights of author and the moral rights of performer) or (ii), or Article 120 to Article 122: the fine set forth in each of these Articles.
- (2) Where the provisions of the preceding paragraph apply to an association or foundation without juridical personality, its representative or administrator shall represent such association or foundation in connection with its acts of litigation, and the provisions of the Code of Criminal Procedure which are applicable where a juridical person is the accused or suspect shall apply mutatis mutandis.
- (3) In the case of paragraph (1), a complaint filed against the violator and the dismissal of such complaint against such violator shall be also effective with

respect to the juridical person or the person concerned, and a complaint filed against a juridical person or a person or the dismissal of such complaint against such juridical person or person shall be also effective with respect to the violator concerned.