

UNESCO
WORLD ANTI PIRACY OBSERVATORY

GERMANY

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I. Legislation

1. Copyright laws

Copyright is protected in Germany through international Agreements, the [German Copyright Act](#) (Urheberrechtsgesetz, UrhG), as well as other legislation related to enforcement of copyright or affecting copyright protection.

The law came into force on September 9, 1965 and was last amended by the Act of December 7, 2008.

2. Other laws

The [German Copyright Act](#) includes regulations governing civil claims, statutory criminal offences etc. For civil litigations and criminal cases concerning acts of piracy the general rules contained in the [Code of Civil Procedure](#) (Zivilprozessordnung, ZPO) and the [Code of Criminal Procedure](#) (Strafprozessordnung, StPO) are applicable.

3. Latest developments and perspectives

There are no planned amendments.

By enacting Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 195 p. 16) the European Union has taken effective measures against product piracy. The German legislator implemented the legislative measures required under the Directive in 2008.

4. Summary of legislation

- *Exclusive rights of the authors and of the owners of neighboring rights*

Exclusive Rights of the authors

Authors (section 15 of the Copyright Act) are granted the following exclusive rights:

- (1) the right of reproduction ([section 16 of the Copyright Act](#))
- (2) the right of distribution ([section 17 of the Copyright Act](#))
- (3) the right of exhibition ([section 18 of the Copyright Act](#))
- (4) the right of communication to the public (section 15 of the Copyright Act), which in particular comprises:

- the right of recitation, performance and presentation ([section 19 of the Copyright Act](#))
- the right of making available to the public (section 19a of the Copyright Act)
- the right of broadcasting ([section 20 of the Copyright Act](#))
- the right of communication by means of video or audio recordings ([section 21 of the Copyright Act](#))
- the right of communication of broadcasts and of making available to the public ([section 22 of the Copyright Act](#)).

Exclusive right of the owners of neighbouring rights

- **Performers rights**

The performer ([sections 77](#) and [78](#) of the Copyright Act) has the exclusive right to
- fix his performance on a video or audio recording medium

- reproduce and distribute the video or audio recording medium on which his performance has been fixed
- make his performance available to the public
- broadcast his performance, unless the performance has been legally fixed on video or audio recording mediums which have been released or legally made available to the public
- make his performance available to the public by screen, loudspeaker or similar technical devices, in a place other than that in which the live broadcast takes place.

- **Organizers**

If a performance is organized by an enterprise, the organizer (section 81 of the Copyright Act) has the exclusive right in addition to the exclusive right of the performer to:

- fix his performance on a video or audio recording medium
- reproduce and distribute the video or audio recording medium on which his performance has been fixed
- make his performance available to the public
- broadcast his performance, unless the performance has been legally fixed on video or audio recording mediums which have been released or legally made available to the public
- to make his performance available to the public by screen, loudspeaker or similar technical devices, in a place other than that in which the live broadcast takes place.

- **Producers of an audio recording**

The producer of an audio recording ([section 85 of the Copyright Act](#)) has the exclusive right to

- reproduce the recording
- distribute the recording
- make the recording available to the public.

- **Broadcasting organization**

A broadcasting organization (section 87 of the Copyright Act) has the exclusive right to:

- rebroadcast its broadcasts
- make the broadcast available to the public
- record its broadcasts on a video or audio recording medium
- take photographs of its broadcasts
- reproduce and distribute such recordings or photographs, with the exception of the rental right
- make its broadcast available to the public in places only accessible to the public on payment of an entrance fee.

- **Producer of films**

The producer of a film ([section 94 of the Copyright Act](#)) has the exclusive right to:

- reproduce the video recording or video and audio recording on which the cinematographic work is fixed
- distribute the video recording or video and audio recording on which the cinematographic work is fixed
- use for public presentation or broadcasting the video recording or video and audio recording on which the cinematographic work is fixed
- make the video recording or video and audio recording on which the cinematographic work is fixed available to the public

- **Maker of a database**

The maker of a database (section 87b of the Copyright Act) has the exclusive right to

- reproduce
- distribute

- communicate to the public the whole database or a qualitatively or quantitatively substantial part thereof.

- *Exceptions and limitations to copyright / Permitted Acts in relation to copyright works*

In the EU, there is an exhaustive list of limitations and exceptions to the exclusive rights of authors and owners of neighboring rights. These are set out in Article 5 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (Info-Soc Directive, cf. annex). The German Copyright Act meets the standards defined by the Directive.

The limitations are contained in sections 44a to 53a and 55 to 60 of the Copyright Act.

Section 44a	Temporary Acts of Reproduction
Section 45	Administration of Justice and Public Safety
Section 45a	Persons with Disabilities
Section 46	Collections for Religious, School or Instructional Use
Section 47	School Broadcasts
Section 48	Public Speeches
Section 49	Newspaper Articles and Broadcast Commentaries
Section 50	Reporting on Events of the Day
Section 51	Quotations
Section 52	Public Communication
Section 52a	Making Works Available to the Public for Instruction and Research
Section 52b	Reproduction of Works at Electronic Reading Desks in Publicly Accessible Libraries, Museums and Archives
Section 53	Reproduction for Private and Other Personal Uses
Section 53a	Mail-order Copies
Section 55	Reproduction by Broadcasting Organizations
Section 56	Reproduction and Public Communication in Commercial Enterprises
Section 57	Incidental Works
Section 58	Works in Exhibitions, on Public Sale and in Institutions Accessible to the Public
Section 59	Works in Public Places
Section 60	Portraits

The special limitations on the rights of the maker of a database are as follows:

Section 87c of the Copyright Act

Limitations on the Rights of the Maker of a Database

(1) The reproduction of a qualitatively or quantitatively substantial part of a database shall be permissible:

1. For private use; this shall not apply to a database the elements of which are individually accessible by electronic means;
2. For the purposes of personal scientific use, if and to the extent that the reproduction for this purpose is necessary and the scientific use does not serve commercial purposes;
3. For personal use in teaching, in non-commercial institutions of education and further education and in vocational training in a quantity required for one school class.

In the cases referred to in items 2 and 3, the source must be clearly acknowledged.

(2) The reproduction, distribution and communication to the public of a qualitatively or quantitatively substantial part of a database shall be permissible for use in proceedings before a court, an arbitration tribunal or a public authority as well as for purposes of public security.

- *Protection of foreign works*

According to sections 120, 122 of the Copyright Act, nationals of a Member State of the European Union or of another Contracting State of the Agreement on the European Economic Area (EEA) and stateless persons who are habitually resident in the territory to which this Act applies enjoy copyright protection with respect to all of their works, whether or not they have been published and regardless of the place of publication. For the rest, foreign nationals enjoy copyright protection with respect to their works published in the territory to which this Act applies. In addition, foreign nationals enjoy copyright protection as provided by international treaty.

Section 120 of the Copyright Act

German Nationals and Nationals of another Member State of the EU or of Another Contracting State of the Agreement on the EEA

(1) German nationals shall enjoy copyright protection with respect to all of their works, whether or not they have been published and regardless of the place of publication. In the case of a work created by joint authors (section 8), it shall be sufficient if one of the joint authors is a German national.

(2) The following shall be deemed equal to German nationals:

1. Germans within the meaning of Article 116 para. 1 of the Basic Law who do not have German nationality, and
2. Nationals of another Member State of the European Union or of another Contracting State of the Agreement on the European Economic Area.

Section 121 of the Copyright Act

Foreign Nationals

(1) Foreign nationals shall enjoy copyright protection with respect to their works published in the territory to which this Act applies, unless the work or a translation of the work has been published outside that territory more than 30 days prior to its publication within that territory. Subject to the same limitation, foreign nationals shall enjoy protection with respect to their works published in the territory to which this Act applies in translation only.

(2) Works of fine art which are an integral part of real property located in the territory to which this Act applies shall be on an equal footing with works published in that territory for the purposes of subsection (1).

(3) The protection afforded under subsection (1) may be limited by ordinance issued by the Federal Minister of Justice for a foreign national who does not belong to a member State of the Berne Convention for the Protection of Literary and Artistic Works and, at the time of publication of the work, had his domicile neither in the territory to which this Act applies nor in one of the member States of the Berne Union, and if the State of which he is a national does not afford adequate protection to the works of German nationals.

(4) Foreign nationals shall further enjoy copyright protection as provided by international treaty. In the absence of such treaty, such works shall be protected by copyright if, according to an announcement by the Federal Minister of Justice in the Federal Law Gazette, German nationals enjoy in the State of which the author is a national equivalent protection for their works.

(5) The resale royalty right (section 26) shall be available to foreign nationals only if the State of which they are nationals grants, according to an announcement by the Federal Minister of Justice in the Federal Law Gazette, German nationals an equivalent right.

(6) Foreign nationals shall enjoy protection under sections 12 to 14 with respect to all of their works, even if the conditions contained in subsections (1) to (5) are not fulfilled.

Section 122 of the Copyright Act
Stateless Persons

(1) Stateless persons who are habitually resident in the territory to which this Act applies shall enjoy with respect to their works the same copyright protection as German nationals.

(2) Stateless persons who are not habitually resident in the territory to which this Act applies shall enjoy with respect to their works the same copyright protection as the nationals of the foreign State in which they are habitually resident.

Section 123 of the Copyright Act
Foreign Refugees

The provisions of section 122 shall apply mutatis mutandis to foreigners who are refugees within the meaning of treaties or other legal provisions. This shall not preclude protection under section 121.

- *Period of copyright protection*

1. Authors

Copyright expires 70 years after the author's death.

2. Performers (section 82 of the Copyright Act)

Where a performance has been recorded on a video or audio medium, the exclusive rights shall expire 50 years after the publication of the video or audio recording, or, if its first legal use for public communication took place earlier, after the latter. However, the rights of the performer shall expire 50 years after the performance if the video or audio recording has not been published or legally used for public communication within that period of time.

3. Organizers (section 82 of the Copyright Act)

Where a performance has been recorded on a video or audio medium, the rights of the organizer shall expire 25 years after the publication of the video or audio recording, or, if its first legal use for public communication took place earlier, after the latter. However, the rights of the organizer shall expire 25 years after the performance if the video or audio recording has not been published or legally used for public communication within that period of time.

4. Producer of an audio recording (section 85 of the Copyright Act)

The right shall expire 50 years after the publication of the audio recording. If the audio recording was not published within 50 years of production, but was used legally for communication to the public, the right shall expire 50 years after the latter. If the audio recording has not been published or legally used for communication to the public during that period, the right shall expire 50 years after the production of the audio recording.

5. Broadcasting organization (section 87 of the Copyright Act)

The right expires 50 years after the first broadcast.

6. Producer of films (section 94 of the Copyright Act)

The right expires 50 years after the publication of the video recording or video and audio recording or, if its first legal use for public communication took place earlier, after the latter; however, it shall expire 50 years after the production if the video recording or video and audio recording has not been published or legally used for public communication during that period.

7. Maker of a database (section 87d of the Copyright Act))

The rights of the maker of a database expire 15 years after the publication of the database, and 15 years after the making of the database if it has not been published within that period of time.

- *Registration*

Neither registration of a work nor any other formality is required as a prerequisite for copyright protection

5. International treaties

Germany is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention on the Protection of Literary and Artistic Works](#), in force since December 5, 1887.
- [Universal Copyright Convention](#), accession since June 3, 1955 to UCC of 1952 and on October 18, 1973 to UCC of 1971.
- [WTO TRIPS Agreement on Trade Related Aspects of Intellectual Property Rights](#), since January 1, 1995.
- [Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations](#), in force since October 21, 1966.
- [Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms](#), in force since May 18, 1974.
- [Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite](#), in force since August 25, 1979.
- European Agreement on the Protection of Television Broadcasts, since December 31, 1974.
- Cyber Crime Convention, in force since July 1, 2009.

II. Measures and remedies

1. Copyright infringement

Under the German Copyright Act any use of a protected work or other subject matter which is not authorized by the holder of any copyright or any right related to copyright or by law constitutes an infringement of copyright. There are no specific provisions concerning internet copyright infringements.

2. Remedies to protect copyright holders

Civil Remedies

Most of the remedies have been harmonized in the European Union under Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (Enforcement Directive, cf. annex). The German Copyright Act meets the standards defined by the Directive.

Where a copyright has been infringed, the right holder can assert various civil claims:

- The right holder may claim damages (section 97 (2) of the Copyright Act)

“An obligation to pay damages to the injured party for the prejudice suffered as a result of the activity shall arise where the activity was carried out with intent or negligently. Any profit obtained by the infringer as a result of the infringement of the right may also be taken into account for the purpose of setting the damages. Entitlement to damages may also be assessed on the basis of the amount the infringer would have had to pay in equitable remuneration had he requested authorization to use the right infringed. Authors, writers of academic publications (section 70 of the Copyright Act), photographers (section 72 of the Copyright Act) and performers (section 73 of the Copyright Act) may also demand monetary compensation for damage that is non-pecuniary in nature provided and to the extent that this is equitable.”

- The right holder may assert a claim for the destruction, recall or surrender of infringing copies (section 98 of the Copyright Act)

- If the infringer acts on a commercial scale, the right holder has a right of information (section 101 of the Copyright Act):

“(1) A request for provision of information without delay as to the origin and distribution networks of infringing reproductions or other products may be brought by the injured party against anyone who unlawfully infringes, on a commercial scale, copyright or any other right protected by this Act. A commercial scale may be deemed to exist on the basis of either the number of infringements or the severity of the infringement.

(2) In cases of manifest infringement or in cases where the injured party has brought a court action against the infringer, such a right shall exist, without prejudice to subsection (1), also against any person who, on a commercial scale,

1. was in possession of the infringing reproductions;
2. was using the infringing services;
3. was providing services used in infringing activities; or
4. was indicated by the person referred to in number 1, 2 or 3 as being involved in

the production, manufacture or distribution of the reproductions, other products or services, unless the person concerned would, under sections 383 to 385 of the Code of Civil Procedure, be entitled to refuse to give testimony as a witness in the proceedings against the infringer. In the event of a claim pursuant to the first sentence being brought before a court, the court may, upon application, suspend the litigation pending against the infringer until disposal of any litigation being conducted in respect of a right to information. The person obliged to provide information may demand reimbursement from the injured party of the expenses necessarily incurred in providing the information.”

The following subsections (3) to (8) implement the remaining elements of Article 8 of the Enforcement Directive. According to section 101 (9) of the Copyright Act, the right holder has a right to information from the internet service provider only after a judicial order has been issued.

The right holder can enforce his civil claims out of court or in court proceedings.

Outside the courtroom, right holders can enforce their rights by notification. In court the right holder can obtain a temporary injunction or a final decision. In the case of a temporary injunction the claim is only secured. The final decision then still needs to be taken in the main proceedings.

Criminal Remedies

The willful infringement of copyrights can lead to imprisonment and monetary fines, but also to the confiscation of proceeds and instrumentalities (forfeiture and confiscation, sections 73-76a

Criminal Code (Strafgesetzbuch, StGB)) and objects (section 110 of the Copyright Act). The court specifies these measures in its judgment.

An injured party is informed about the measures initiated in his favor and can assert before a civil court the claims under civil law resulting from the criminal offence. With the help of the civil-law, at least provisionally enforceable title, he may apply to the competent criminal court for enforcement in the seized assets even before charges have been brought in the criminal proceedings.

3. Provisional measures

Civil claims:

- Cease and desist (section 97 (1) of the Copyright Act):

“(1) Any person who unlawfully infringes copyright or any other right protected by this Act may be required by the injured party to eliminate the infringement or, where there is a risk of repeated infringement, may be prohibited by the injured party from continuing the infringement. Entitlement to prohibit the infringer from future infringement shall also exist where the risk of a violation exists for the first time.”

The right established under section 97 (1) of the Copyright Act may also be asserted by way of temporary relief (sections 935 to 945 of the Code of Civil Procedure).

Criminal law

In accordance with sections 111b et seqq. of the Code of Criminal Procedure, objects and other assets may be temporarily secured by seizure in criminal proceedings if there are reasons for assuming that the conditions for their forfeiture or for their confiscation are met. In the same way the Public Prosecution Office may also secure assets by seizure in the injured party's favour.

4. Penalties for copyright infringement

In civil cases

As a general rule, there are no punitive damages under German civil law and, accordingly, also not in the field of copyright law.

The right holder can enforce his civil claims in court proceedings.

- Destruction of the infringing goods(section 98 of the Copyright Act)

Instead of destruction the injured party may require that the copies that are the property of the infringer be surrendered to him in return for equitable remuneration that may not exceed the cost of manufacture.

- Publication

If a civil action has been brought under the German Copyright Act, the judgment may authorize the successful party to publish the judgment at the cost of the unsuccessful party, if the successful party can provide a legitimate reason for doing so. Unless the court rules otherwise, the judgment may not be published until it becomes final.

- Seizure

An injured party is informed about the measures initiated in his favour and can assert before a civil court the claims under civil law resulting from the criminal offence. With the help of the civil-law, at least provisionally enforceable title, he may apply to the competent criminal court for enforcement in the seized assets even before charges have been brought in the criminal proceedings.

- *For criminal offence in copyright cases*
 - Monetary Fines

The minimum fine is 5 daily rates, the maximum 360 or (in the case of multiple offences) 720 daily rates. The amount of a daily rate typically depends on the offender's actual average one-day net income or the average income he could achieve in one day (Section 40 (1), (2) of the Criminal Code).

- Imprisonment
- Confiscation of proceeds and instrumentalities (forfeiture and confiscation, sections 73 to 76a of the Criminal Code (Strafgesetzbuch, StGB)) and objects (section 110 of the Copyright Act)
- Damages including the right holder's attorney's fee
- Publication

If in cases covered by sections 106 to a penalty has been pronounced, the court shall, at the request of the injured party and if the latter can show a justified interest, order publication of the judgment. The nature of the publication shall be laid down in the judgment.

Section 106 of the Copyright Act

Unauthorized Exploitation of Copyrighted Works

(1) Any person who, other than in a manner allowed by law and without the right holder's consent, reproduces, distributes or publicly communicates a work or an adaptation or transformation of a work shall be liable to imprisonment for up to 3 years or a fine.

(2) The attempt to commit such an offence shall be punishable.

Section 107 of the Copyright Act

Unlawful Affixing of Designation of Author

(1) Any person who:

1. without the author's consent, affixes a designation of author (section 10 (1)) to the original of a work of fine art or distributes an original bearing such designation,
2. affixes a designation of author (section 10 (1)) on a copy, adaptation or transformation of a work of fine art in such manner as to give to the copy, adaptation or transformation the appearance of an original or distributes a copy, adaptation or transformation bearing such designation, shall be liable to imprisonment for up to three years or a fine if the offence does not carry a more severe penalty under other provisions.

(2) The attempt to commit such an offence shall be punishable.

Section 108 of the Copyright Act

Infringement of Neighbouring Rights

(1) Any person who, other than in a manner allowed by law and without the right holder's consent:

1. reproduces, distributes or publicly communicates a scientific edition (section 70) or an adaptation or transformation of such edition;
2. exploits a posthumous work or an adaptation or transformation of such work contrary to section 71;
3. reproduces, distributes or publicly communicates a photograph (section 72) or an adaptation or transformation of a photograph;
4. exploits a performance contrary to sections 77 (1) or (2), first sentence, section 78 (1);
5. exploits an audio recording contrary to section 85;
6. exploits a broadcast contrary to section 87;
7. exploits a video or video and audio recording contrary to section 94 or section 95 in conjunction with section 94;

8. uses a database contrary to section 87b (1), shall be liable to imprisonment for up to three years or a fine.

(2) The attempt to commit such an offence shall be punishable.

Section 108a of the Copyright Act

Unlawful Exploitation on a Commercial Basis

(1) Where the person committing the acts referred to in sections 106 to 108 does so on a commercial basis, the penalty shall be imprisonment for up to five years or a fine.

(2) The attempt to commit such an offence shall be punishable.

Section 108b

Infringement of Technological Measures and Rights-Management Information

(1) Any person who,

1. with the intention of enabling for himself or a third party access to a work that is protected under this Act or to other subject matter protected under this Act or its exploitation, circumvents an effective technological measure without the consent of the right holder, or

2. knowing that he has no authorization

a) removes or alters rights-management information from right holders, if any of the information concerned is affixed to a reproduction of a work or of other protected subject matter, or is published in the context of the communication to the public of such a work or protected subject matter, or

b) distributes, imports for distribution, broadcasts, communicates to the public or makes available to the public a work or other protected subject matter where rights-management information was removed or altered without authorization, by doing so, have at least carelessly induced, enabled, facilitated or concealed an infringement of copyright or related rights, if the offence was not committed exclusively for the personal private use of the offender or of persons personally associated with the offender or does not relate to such use, shall be liable to imprisonment for up to one year or a fine.

(2) Punishment shall also be imposed on whomever in violation of section 95a (3) produces, imports, distributes, sells or rents a device, a product or component for commercial purposes.

(3) If in cases under subsection (1) the offender acts on a commercial basis, the penalty shall be imprisonment for up to three years or a fine.

5. Requirements for foreign persons

Every citizen of another country has access to the German civil courts.

The Code of Civil Procedure (ZPO) contains two special provisions in that regard: In certain cases a plaintiff living abroad may be required to pay a security for the legal costs arising (security for legal costs; section 110 ZPO). However, no such obligation to pay a security for legal costs exists if the plaintiff is living in another Member State of the European Union or another state in the European Economic Area.

Furthermore, this does not apply to states with whom bilateral or multilateral agreements have been signed concerning the waiving of the security, the most important being the Convention on Civil Procedure signed in The Hague in 1954. Citizens of a total of some 100 states are thus exempt from paying a security for legal costs. In some cases, however, this only applies (to states outside the EU) if these plaintiffs have a place of residence in Germany. Further, a party living abroad may be obligated to appoint an authorized recipient (Zustellungsbevollmächtigten) in Germany (section 184 ZPO).

Section 110 the Code of Civil Procedure

(1) Plaintiffs whose habitual place of residence is not a Member State of the European Union or a Contracting State of the Agreement on the European Economic Area shall pay a security for legal costs upon the request of the defendant.

(2) This obligation shall not apply:

1. if no security can be demanded on account of international treaties;
2. if the decision concerning the reimbursement of the legal costs to the defendant would be enforced on account of international treaties;
3. if the plaintiff owns sufficient real property or debts secured by property at home to cover the legal costs;
4. in the case of counter-claims;
5. in the case of claims raised on account of a public notice.

The obligation to pay a security for legal costs is only ordered if the defendant submits an application thereto, as the provision aims to protect him against not being reimbursed the legal costs by the plaintiff in the case of prevailing, for example if enforcement abroad would be difficult. The point of reference is therefore not the plaintiff's nationality but rather his habitual place of residence. The court fixes the amount of the security (section 112 ZPO). If the plaintiff does not pay a security for legal costs within the set time limit, the action is declared withdrawn upon application by the defendant (section 113 ZPO). The court likewise determines the type of security for legal costs (section 108 (1) ZPO).

Section 184 of the Code of Civil Procedure contains the following regulation governing the appointment of an authorized recipient:

(1) In the case of service in accordance with section 183 (N.B.: section 183 ZPO regulates service abroad), the court may order that the party appoint an authorized recipient within a suitable time limit whose place of residence and business premises are in Germany if they have not appointed an authorized representative. Where no authorized recipient is appointed, later service can be effected up until the subsequent appointment by sending the document to the party's address by post.

(2) The document shall be deemed to have been delivered two weeks after posting. The court may determine a longer time limit. The order in accordance with subsection (1) above must contain a reference to these legal consequences. The time and address to which the document was sent by post must be added to the files as proof of service.

The provision serves to promote the action, in particular to prevent an inappropriate delay in the proceedings on account of service abroad. The interests of the parties not residing in Germany are sufficiently safeguarded because they may appoint an authorized recipient of their choice and, in addition, are informed of the consequences of not appointing such a representative.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

The competent authorities responsible for enforcing copyright law are:

- The Police

- The Federal Financial Office (South-East), Central Agency for the Protection of Industrial Property Rights, Customs Criminological Office, all the main customs offices, all the customs investigation offices
- The Public Prosecution Office
- The Courts

b) Enforcement bodies entitles to act ex-officio in copyright infringement cases

The German public prosecution offices are obligated to take action in relation to all criminal offences which may be prosecuted, provided there are sufficient factual indications (section 152 (2) Of the Code of Criminal Procedure)

The consequence of the principle of mandatory prosecution established in that provision is that all criminal offences are prosecuted, against all suspects, and, if the conditions are met, that charges must be preferred.

In the case of certain criminal offences listed in section 374 Of the Code of Criminal Procedure in the area of infringement of intellectual property an exception is made to the principle of state prosecution. In the case of these offences the injured party may himself ensure that the criminal offence is prosecuted by instituting what is known as a private prosecution (Privatklageverfahren). The public prosecution office need not be involved in such cases. However, in accordance with section 376 Of the Code of Criminal Procedure the public prosecution office is obligated to prefer public charges if it is in the public interest. In accordance with No. 86 para. 2 of the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine, that is generally the case if the public peace is disturbed beyond the injured party's sphere of life and the general public has an interest in the criminal prosecution, for instance on account of the extent of the criminal offence.

The public prosecution office learns about criminal behavior by receiving information on a criminal offence or applications for criminal prosecution - including from right holders - (section 158 (1) Of the Code of Criminal Procedure) or by learning about a suspected criminal offence by other means - in particular by being given information by the police.

Where the public prosecution office comes to the conclusion after completing its investigations that there is sufficient reason to suspect that the accused committed the offence he is accused of, it prefers public charges before the competent court in accordance with the principle of mandatory prosecution (section 170 (1) Of the Code of Criminal Procedure) or it applies to that court for an arrest warrant to be issued. The key element here is therefore the public prosecutor's prognosis regarding whether, in accordance with the factual and legal situation which is presumed to remain unchanged, he would move in the trial for the accused to be convicted at the end of the investigation proceedings.

Where based on the public prosecutor's assessment of the evidence, it is probable that the accused will not be convicted, the investigation proceedings are terminated (section 170 (2) Of the Code of Criminal Procedure). The obligation to prefer charges, which is rooted in the principle of mandatory prosecution, is not applied to small- and medium-scale crimes, to which the principle of discretionary prosecution applies (section 153 et seqq. of the Code of Criminal Procedure). Accordingly, the public prosecution office may terminate investigation proceedings for instance if the perpetrator's guilt would be viewed as negligible and the public has no interest in the prosecution or the conditions and instructions imposed on the accused are suitable for eliminating the public's interest in the criminal prosecution.

c) Courts dealing with copyright cases

There are no courts specializing in copyright law. The ordinary courts have jurisdiction over copyright infringements both with regard to criminal prosecution and asserting civil claims. In accordance with section 105 of the Copyright Act, however, the federal Land governments are authorized to assign civil-law actions concerning copyright to one particular regional court in their federal Land in order to ensure case law is consistent and comprehensive. The Länder have made use of this right. There are 22 regional courts to which jurisdiction for copyright disputes have been assigned.

2. Enforcement at the border

Measures to enforce intellectual property rights (e.g. copyright) in the cross-border movement of goods are regulated in the European Union under Council Regulation (EC) No. 1383/2003. Where the Regulation permits the national legislator to introduce regulations or is not applicable, the Copyright Act is definitive in Germany.

Taking action pursuant to Council Regulation (EC) No. 1383/2003:

The Council Regulation is applicable in respect of goods that are subject to customs supervision (goods from third countries), or those located in a free trade zone. In order to be able to go through the procedural steps set out therein, the copyright holder must submit an application. The Federal Finance Office (South-East), Central Agency for the Protection of Industrial Property Rights, of the Federal Finance Ministry is responsible for allowing the application.

Where the customs authorities suspect that goods for which a decision has been granted, infringe an intellectual property right (e.g. copyright), it either suspends the surrender of the goods or withholds them.

The copyright holder as well as the applicant or owner of the goods is informed of the measure without delay.

Two possible options are available after surrender of the goods is suspended or the goods are withheld. After receiving notification of the surrender/withholding of the goods the customs authority which stopped the goods must be informed within 10 working days (one extension of the deadline by a max. of 10 further working days is possible) that either civil-law proceedings for the establishment of the infringement of the property right are pending or the copyright holder has agreed to a simplified procedure to destroy the goods.

The conditions which must be met for the simplified procedure to destroy the products to be carried out are, along with a written application from the copyright holder, his being notified that the goods infringe property rights, and the agreement of the person submitting the application, the owner or the proprietor to their being destroyed. This agreement is also deemed to have been given if no explicit objection to the destruction is raised within 10 working days.

Where the person is submitting the application, the owner or proprietor of the goods objects to the destruction, only the institution of civil-law proceedings for the establishment of the infringement of the property right is possible. Where the infringement of the property right is confirmed by declaratory proceedings, the Council Regulation only provides for the goods to be destroyed under the supervision of the customs authorities, at the copyright holder's cost. The customs authority may deal with organizational matters.

In order to protect the alleged infringer of a property right against abuse of the procedure by the copyright holder, the copyright holder must submit a statement as part of the application procedure by means of which he accepts possible liability vis-à-vis persons affected by the measures taken by the customs authorities in the event that the procedure instituted in accordance with the Council Regulation is terminated on account of the action or the inaction of the copyright holder or it is established that the goods in question do not violate an intellectual property right.

Within the framework of an ex officio procedure, the Council Regulation provides for the possibility of suspending the surrender of the goods which are suspected of infringing intellectual property rights for 3 working days, or rather for them to be withheld for 3 working days even if the copyright holder has not yet submitted an application by that point in time. Where the copyright holder submits an application within the time limit for the customs authorities to take action and all the conditions for the application to be allowed have been met, the procedure is as described in the above.

Goods that are not of a commercial nature located in travelers' personal baggage and within the permitted limits established for the granting of exemption from import duties are not subject to the regulations in the Council Regulation. The internal movements of goods as well as parallel imports are likewise not subject to the Council Regulation but rather to national legislation (copyright law).

Seizure by the customs authorities in accordance with the German Copyright Act (UrhG) The precondition for the institution of a measure under the UrhG is likewise an application submitted by the copyright holder and payment of a corresponding security (bank guarantee). National legislation does not provide for an ex officio procedure as described in the above.

Where an application has been allowed, the customs office may order seizure if the infringement of the property right is obvious. That means that the infringement must be obvious for the local customs officer and no rational doubts may exist. This goes beyond the suspicion required under the aforementioned Council Regulation.

A two-week time limit applies to seizure; any objection to the seizure may be raised within that period. After the time limit has expired or rather after the end of the legal remedy proceedings, the goods in question are confiscated. Legal redress may also be sought against the confiscation. Once the decision to confiscate the goods becomes final the goods are destroyed.

IV. Public Awareness

1. Awareness campaigns and actions

The Federal Ministry of Justice provides information about the risks associated with and effects of product and brand piracy and reports about current and planned measures to combat them on its website under "Topics", "Trade and Economic Law" (http://www.bmj.bund.de/enid/7d3e82d3d7fd360826d6e091cc366e67,0/Handels-u_Wirtschaftsrecht/Produktpiraterie_1h0.html).

In addition, the Federal Ministry of Justice provides information on the internet (www.kopien-brauchen-originale.de) about applicable copyright law.

The aim of the International Chamber of Commerce's (ICC) "Business Action to Stop Counterfeiting and Piracy" (BASCAP) initiative is to heighten public awareness for the dangers of product and brand piracy. Since September 2007 ICC Germany, the Brands Association, the BDI and the DIHK have been operating a portal on the topic of product and brand piracy and the protection of intellectual property. The website (www.orginal-ist-genial.de) provides information for consumers, producers and traders on the damage caused by and dangers of brand and product piracy. It also reports on preventive strategies and special company and association activities.

2. Promotion of legal exploitation

The Federation of German Industry (BDI, <http://www.bdi-online.de/>) organized the first Intellectual Property Day in 2006. In doing so it took up an initiative of the WIPO which has declared the 26th of April to be World Intellectual Property Day. The aim of the annual series of events is to raise the broader public's awareness for the special protection of intellectual property. The German Justice Minister, Brigitte Zypries, and the President of the European Patent Office gave speeches at the event held in April 2008. In addition, Mrs Zypries launched the competition "The Idea", organized by Microsoft and Messe Frankfurt, as well as the BDI Competition for Pupils called "Love of Ideas". The "Love of Ideas" competition aims to raise more awareness among young people for the value of intellectual property by allowing them to look at the topic creatively and by developing their own ideas.

The information portal www.iRights.info has been available on the internet since mid-March 2005. It provides information for private individuals on applicable copyright law. The information platform was initiated and financed by the Federal Ministry of Food, Agriculture and Consumer Protection (BMELV) as part of its consumer information project. The platform is kept up to date by the project organizer. It presents aspects and regulations of the applicable copyright law affecting private individuals in a systematic, factual and easily understandable manner. Changes resulting from amendments to the law are taken into account. The portal addresses various target groups via their own access (young people, adults, private individuals, those publishing works of third parties - e.g. school magazines - and much more). A chronology of primary products and statements regarding legislative procedures are also provided. Up-to-date news with links to the relevant press and specialist articles are available for download and an online forum invites users of iRights info to discuss the articles posted on the site or their questions concerning copyright law.

3. Associations and organizations with awareness-raising purpose

The Society for the Prosecution of Copyright Infringements, reg'd society (GVU), is funded by companies and associations in the film and entertainment software industry. Its job is to uncover infringements of its members' copyrights and to notify the criminal prosecution authorities of these infringements. In addition, the GVU supports the offices of the criminal prosecution authorities in carrying out criminal proceedings both when it comes to legal and technical aspects. The GVU does awareness training in the form of seminars and lectures held in authorities, schools and legislative bodies, as well as by informing the public about the content and results of its work and problems associated with copyright law.

A Working Group German Trade and Industry Against Product and Brand Piracy, reg'd society (APM, <http://www.markenpiraterie-apm.de/>) was founded in 1997 as a cross-industry joint initiative of the German Chamber of Industry and Commerce (DIHK), the Brands Association and the Federation of German Industry (BDI). The Group engages in PR work, sheds light on the consequences of product and brand piracy (e.g. using a flyer entitled "Shady Business", a travelling exhibition and a poster campaign) and supports its member companies in pushing through their rights, for example by monitoring the internet and using investigative teams at well-known outlets for forged products. The APM website also provides additional information for trade and industry and citizens on combating product piracy. A special service provided by APM is an office in Germany that companies can contact when facing difficulties pushing through their intellectual property rights in China (China Contact Point of the APM). The goal is to collect information, practical aids and to provide political support in the case of complaints against the Chinese administration.

4. Best practices

During the German G8 Presidency in 2007 the trade associations of the G8 states developed strategies to prevent the trade in counterfeit products (Strategies of G8 Industry and Business to Promote Intellectual Property Protection and to Prevent Counterfeiting and Piracy; http://www.bdi-online.de/Dokumente/Presse/G8_BusinessDeclaration_neu.pdf). This is a collection of best practices which show by example what companies and associations can do to combat product piracy.

V. Capacity-building

- 1. Training**
- 2. Establishment of specialized units and intersectoral groups**
- 3. Best practices**

VI. Other

1. TPM/DRM

The German Copyright Act provides protection for Technological Protection Measures (TPMs) in sections 95a - 95d UrhG.

Sections 95a and 95b implement Article 6 of the Info-Soc Directive, which contains regulations governing the protection of effective technological measures.

Section 95a of the Copyright Act protects effective technological measures against circumvention and also against certain preparatory acts. The provision presupposes the intention to circumvent is aimed at gaining access to work or at exploiting the work (use within the meaning of the Copyright Act). Circumvention actions which exclusively serve scientific purposes (e.g. cryptography) are not covered.

Section 95b ensures that those favored by certain regulations governing limitations can also use the protected works when TPMs are applied. The range of instruments for the effective implementation also includes the possibility of penalization (in the form of a regulatory fine) set out in section 111a (1) no. 2, subsections (2) and (3) of the Copyright Act.

Section 95c of the Copyright Act regulates the protection of information required for the management of rights. The labeling requirements set out in section 95d of the Copyright Act serve the purposes of consumer protection and the integrity of competition. Labeling with information concerning the characteristics of the technological measures serves to inform the consumer about the extent and effects of the protective measures so that they can make an informed decision regarding whether to make a purchase or not. Such a duty of labeling is necessary because the public can expect to be given information regarding the facts which have a decisive influence on their decisions to purchase goods. This is especially obvious when one considers that consumers currently regularly assume that image and sound carriers can be copied and played without time restrictions on all standard equipment available on the market.

Section 95a of the Copyright Act
Protection of Technological Measures

(1) Effective technological measures to protect a work protected under this Act or other subject matter protected under this Act may not be circumvented without the consent of the right holder where the person acts in the knowledge or with reasonable grounds to know that circumvention is taking place in order to facilitate access to such a work or protected subject matter or its exploitation.

(2) For the purpose of this Act, technological measures shall be technologies, devices and components that, in the normal course of their operation, are designed to prevent or restrict acts, in respect of protected works or other subject matter pursuant to this Act, which are not authorized by the right holder. Technological measures shall be deemed effective where the use of a protected work or of other subject matter pursuant to this Act is controlled by the right holder through application of an access control, a protection process, such as encryption, scrambling or other transformation, or a copy control mechanism, which achieves the protection objective.

(3) The production, import, distribution, sale, rental, advertising with a view to selling or rental and possession for commercial purposes of devices, products or components, as well as providing services, shall be prohibited which

1. are the subject matter of sales promotions, advertising or marketing with the aim of circumventing effective technological measures, or
2. apart from circumventing effective technological measures only have a restricted economic purpose or benefit, or
3. are mostly drafted, produced, adjusted or provided in order to facilitate or make easier the circumvention of effective technological measures.

(4) Tasks and powers of public agencies for the purposes of protecting public security or the administration of criminal justice shall remain unaffected by the prohibitions contained in subsections (1) and (3).

Section 95b of the Copyright Act
Measures in Respect of Limitations

(1) Where a right holder applies technological measures in accordance with this Act, he shall be obliged to provide to the beneficiaries of the provisions below, where they have legal access to the work or the protected subject matter concerned, the means of benefiting from these provisions to the necessary extent:

1. Section 45 (Administration of Justice and Public Safety),
2. Section 45a (Persons with Disabilities),
3. Section 46 (Collections for Religious, School or Instructional Use), with the exception of religious use,
4. Section 47 (School Broadcasts),
5. Section 52a (Making Works Available to the Public for Instruction and Research),
6. Section 53 (Reproduction for Private and Other Personal Uses)
 - a) subsection (1), where copies on paper or a similar medium which have been effected by the use of any kind of photographic technique or by some other process having similar effects are concerned,
 - b) subsection (2), first sentence, item 1,
 - c) subsection (2), first sentence, item 2 in conjunction with the second sentence item 1 or 3,
 - d) subsection (2), first sentence, items 3 and 4 in each case in conjunction with the second sentence item 1 and the third sentence,
 - e) subsection (3),
7. Section 55 (Reproduction by Broadcasting Organizations).

Agreements which exclude the obligations pursuant to the first sentence shall be invalid.

(2) Whoever violates the principle provided for under subsection (1) may be pursued by the beneficiary of one of the named provisions for this to provide the means required to bring about the respective entitlement. If the means offered constitutes an agreement between the associations of the right holders and the beneficiary of the restriction provision, it shall be presumed that the means is sufficient.

(3) Subsections (1) and (2) shall not apply where works and other protected subject matter are made available to the public on the basis of a contractual agreement in such a way that they are available to members of the public from places and at times individually chosen by them.

(4) Technological measures applied in order to meet the obligations stipulated under subsection (1), including the measures applied to implement voluntary agreements shall enjoy legal protection afforded by the provisions of section 95a.

Section 95c of the Copyright Act

Protection of Information Required for Rights-Management

(1) Information from right holders for the management of rights may not be removed or altered if any of the information concerned is affixed to a reproduction of a work or of other protected subject matter or in the context of communication to the public of such a work or protected subject matter is published and if removal or alteration has been knowingly undertaken without authorization, and those acting know or have reasonable grounds to know that by doing so they are inducing, enabling, facilitating or concealing an infringement of copyright or related rights.

(2) Rights-management information within the meaning of this Act shall be electronic information which identifies the work or other subject matter, the author or any other right holder, information on the terms and conditions for the exploitation of the works or protected subject matter, and any numbers and codes that represent such information.

(3) Works or other protected subject matter from which information for rights-management has been removed or altered without authorization may not be knowingly distributed, imported for distribution, broadcast, communicated to the public or made available to the public without authorization if the person acts in the knowledge or with reasonable grounds to know that they have induced, enabled, facilitated or concealed a violation of copyright or related rights.

Section 95c of the Copyright Act

Labeling Obligations

(1) Works and other protected subject matter that are protected by technological measures shall be clearly labeled with information on the characteristics of the technological measures.

(2) Whoever protects works and other protected subject matter by technological measures shall label these in order to facilitate rights-management as afforded by the provisions of section 95b (2) with his name or the name of the enterprise and the address to which documents are to be delivered. The first sentence shall not apply in cases under section 95b (3).

Section 111a of the Copyright Act

Regulatory Fine Provisions

(1) Any person who,

1. in violation of section 95a (3)

a) sells, rents or distributes a device, a product or component outside the group of people with whom the offender is personally associated, or

b) for commercial purposes possesses, advertises for sale or rental or provides a service in respect of a device, a product or a component,

2. in violation of section 95b (1), first sentence, does not provide necessary means, or

3. in violation of section 95d (2), first sentence, does not or does not fully label works or other protected subject matter shall be deemed to have committed a regulatory offence.

(2) In cases under subsection (1) items 1 and 2, the regulatory offence may be sanctioned with an administrative fine of up to fifty thousand euro and in other cases with a regulatory fine of up to ten thousand euro.

2. Licensing Schemes

3. Optical Discs

4. Hotlines

5. Contact Details

Kopien Brauchen Originale

Website: www.kopien-brauchen-originale.de

I rights

Website: www.iRights.info